

STATUTORY INTERPRETATION FROM THE INSIDE: METHODS APPENDIX

Abbe R. Gluck*

Lisa Schultz Bressman**

I. PROJECT DESIGN.....	1
A. <i>Determining the Baseline Population</i>	5
B. <i>Collecting Our Sample Population</i>	7
C. <i>The Interviews</i>	10
D. <i>Recording the Results</i>	12
E. <i>Representativeness of the Sample</i>	13
F. <i>Reporting of the Data</i>	19
G. <i>Conducting the Survey</i>	20
II. SURVEY QUESTIONS	22
III. OUTREACH E-MAILS	45
A. <i>Initial Outreach E-mail</i>	45
B. <i>Second and Third Round Outreach E-mails</i>	47
IV. COMMENT CODES	49
V. ADDITIONAL VARIABLES UTILIZED	51
VI. THE DATA.....	52

I. PROJECT DESIGN

This Appendix elaborates on the discussion of methodology provided in Part I.B of the Article.¹ As noted there, the survey asked 171 questions²

* Associate Professor of Law, Yale Law School.

** Associate Dean for Academic Affairs and David Daniels Allen Distinguished Professor of Law, Vanderbilt Law School.

For assistance with the methodological aspects of the project, we are especially grateful to Ian Ayres, Shari Diamond, Jonah Gelbach, Fiona Heckscher, Dan Ho, Christine Jolls, Al Klevorick, James Lindgren, Anne Joseph O'Connell, Alan Schwartz, Roberta Romano and, for truly extraordinary research assistance, Adriana Robertson and Amy Semet.

1. See Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 STAN. L. REV. 901, 919-23 (2013).

of 137 staffers in Congress. Respondents were given unlimited opportunities to offer additional qualitative comments to explain their answer to any question. Respondents were also asked at the end of most sections whether these “were the right questions to be asking” about the topic at issue,³ and were asked if there was anything we left out or that they wished to add at the end of the entire survey. Our goal in using this format was to combine the objectivity of a standardized survey format with the benefits of a more open-ended interview, although we recognize that there are dangers and biases inevitably associated with both formats.⁴

We limited our pool almost entirely to counsels (see below for a few exceptions) for several reasons. First and foremost, there are no sources available that designate, among all congressional staffers, which staffers have drafting responsibility,⁵ and there are significant limitations to any attempt to aggregate such data, short of personally asking each of the 6099 staff members in the House and Senate.⁶

Congressional staff also performs a wide variety of functions for the members of Congress, committees, and other offices for which they work.⁷ Each staff member is likely to take on several different roles and staff with the same job title may have entirely different responsibilities.⁸ The

2. Specifically, we asked eighty-five questions, with fifteen questions containing three to ten subparts. Two of these questions (Q77A and Q32A) were added after the first batch of interviews took place, as discussed below.

3. Each time we asked this question, at least 70% respondents reported that we were asking the right questions about the topic. *See* Q19; Q28; Q40; Q60; Q64. Almost no respondents said we were not asking the right questions. Those who did not answer “yes” typically offered additional insights into aspects of the process about which we had not inquired. We do not include one of these questions (Q49) in this tally, because most of the comments were simply elaborations on the previous questions, or the introduction of new elements we had not inquired about, rather than “yes” or “no” answers.

4. *See* Gluck & Bressman, *supra* note 1, at 920 n.57 (citing methodological sources and discussing this point in more detail).

5. Telephone conversation between Research Assistant Alexandra Golden and House Clerk’s Office (Oct. 2011).

6. R. ERIC PETERSEN ET AL., CONG. RESEARCH SERV., R41366, HOUSE OF REPRESENTATIVES AND SENATE STAFF LEVELS IN MEMBER, COMMITTEE, LEADERSHIP, AND OTHER OFFICES, 1977-2010, at 4 (2010).

7. Examples of congressional staff responsibilities include: conducting policy research, processing and responding to constituent correspondence, arranging travel for members of Congress, communicating members’ policies and positions to the media and the public at large, conducting legislative and investigative hearings, and performing administrative tasks, among others. For a brief overview of congressional staff duties, *see* JOHN S. PONTIUS & FAYE M. BULLOCK, CONG. RESEARCH SERV., 93-380 GOV, CONGRESSIONAL STAFF: DUTIES AND FUNCTIONS (2003).

8. R. ERIC PETERSEN ET AL., CONG. RESEARCH SERV., RL34545, CONGRESSIONAL STAFF: DUTIES AND FUNCTIONS OF SELECTED POSITIONS 6 (2008) (quoting a 1996 Senate Handbook as stating, “[t]hroughout the Senate, individuals with the same job title perform vastly different duties”).

responsibilities of staff are thus highly contingent upon the particular member and office, making it nearly impossible to determine if staff in a given office draft legislation. No source prepared by the House or the Senate provides official job descriptions for staff positions,⁹ and a variety of titles are used to describe the same position.¹⁰ For these reasons, it is impossible to determine the exact number of congressional staff who participate in the legislative drafting process from their job titles alone.¹¹

Because of these limitations, we defined our baseline population as counsels serving either on committees or in the House and Senate Offices of the Legislative Counsel. In both the House and Senate, the bulk of legislative consideration occurs at the committee level,¹² and although there are nonlawyer committee staffers, many do not draft legislation and an attempt to reach all of the approximately 2500 committee staff across both houses of Congress¹³ was beyond capacity of this project. Across this

9. *Id.* at 2 & n.6.

10. For example, a survey conducted by the Congressional Research Service (“CRS”), the nonpartisan research arm of the legislative branch, found that for fourteen common staff titles, the House and Senate staff produced 118 alternative titles for the same positions. According to that survey, in 2008 there were 500 separate entities in the House that hired staff and 135 similar entities in the Senate, none of which is required to follow a uniform standard for creating and filling staff positions. *Id.* at 2.

11. A closer examination of current staff positions on one committee in the House and one committee in the Senate provides a useful illustration. The House Agriculture Committee, for instance, employs forty-three staff members. Staff on the Committee hold a variety of unique titles, including “Policy Director,” “Science Advisor,” “Chief Economic Advisor,” and “Senior Policy Advisor,” in addition to the more commonly used titles of “Professional Staff,” “Legislative Assistant,” and “Staff Director.” In the Senate, the Budget Committee uses staff titles such as “Performance Budget Specialist,” “Budget Analyst,” “Healthcare Analyst,” and “General Counsel” that are similarly inscrutable for purposes of determining which staffers draft legislation. *See also Frequently Asked Questions*, LEGISTORM, <http://www.legistorm.com/salaries/faq.html> (May 20, 2013) (noting the difficulty of parsing staffer titles).

12. On the role of committees in the House, *see* JOHN V. SULLIVAN, PARLIAMENTARIAN, U.S. HOUSE OF REPRESENTATIVES, HOW OUR LAWS ARE MADE, H.R. DOC. NO. 110-49, at 9 (2007). Senate Rule XXVI(8)(a) describes the role of committees as assisting the Senate in “its formulation, consideration, and enactment of . . . legislation” through “review and study . . . [of] the subject matter of which is within the legislative jurisdiction of that committee.” Senate Rule XXVI; PONTIUS & BULLOCK, *supra* note 7, at 2 (describing the role of committee staff as, in part, “draft[ing] and analyz[ing] legislation and amendments . . . [and] prepar[ing] legislation for reporting to the House or Senate . . .”). In comparison, the role of members’ personal office legislative staff as described by CRS is to “conduct research and analysis on policy issues and assist in devising and carrying out strategies for accomplishing the legislative goals of the Member.” *Id.*

13. PETERSEN ET AL., *supra* note 6, at 2. Because there is no publicly available source of staffing data in Congress, CRS compiled information from House and Senate staff directories to determine staffing levels for member offices, committees, leadership offices, and other officials in the House and Senate. These data have their own

varied staff, committee counsels are generally the ones most likely to have a role in the drafting process. We also surmised that counsels were likely to be the most aware of the Supreme Court's practices with respect to statutory interpretation and so to the extent that counsels were unaware of, or uninterested in, the canons, such evidence would be particularly useful to our study.¹⁴

That said, the baseline population we have chosen is likely both over- and underinclusive. It is overinclusive because many counsels do not participate in legislative drafting at all.¹⁵ It is underinclusive because, in addition to committee counsels, leadership staff,¹⁶ "personal staff" (those who officially serve on the staff of individual members rather than on committee staff¹⁷), and many other nonlawyers (recognizing that many of these leadership and personal staff are lawyers, too) have important drafting responsibilities. In addition, there are some members who employ few or no counsels at all in committee positions, preferring instead for nonlawyers to perform the same oversight role in drafting that counsels perform on other committees. Further, there are some staffers who work for individual members and not committees, but who unofficially split their time between their member's personal office and their member's committee work. A counsel for a particular member, for example, may simultaneously serve as that member's staffer on a particular committee.

limitations—for example, not all staff are included in the telephone directories, and some staff who are included no longer work in Congress—however, CRS has found that this to be the most accurate assessment possible of staffing levels. For 2009, CRS reports that there were 1362 committee staff employed in the House, and 1153 in the Senate. *Id.* at 18-24.

14. See Gluck & Bressman, *supra* note 1, at 921-22 & n.62.

15. Some committees in the House and Senate are oversight and investigative bodies, and thus employ primarily investigative staff, including the House Committee on Oversight and Government Reform and the House Committee on Ethics, among others. Additionally, as each standing committee has oversight responsibility over agencies and activities within the committee's jurisdiction, investigative staff who are employed in this capacity are less likely to participate in the legislative drafting process than other staff. FREDERICK M. KAISER ET AL., CONG. RESEARCH SERV., RL30240, CONGRESSIONAL OVERSIGHT MANUAL 15 (May 1, 2007).

16. Leadership offices in the House and Senate, such as those of the Speaker and Majority Leader of the House and the Majority Leader of the Senate, work closely with committees to set the legislative calendar, and serve as spokespeople for their party conferences about the legislative agenda. *Art & History: Majority and Minority Leadership and Party Whips*, U.S. SENATE, http://www.senate.gov/artandhistory/history/common/briefing/Majority_Minority_Leaders.htm (last visited May 20, 2013); *House History: Majority & Minority Leaders*, U.S. HOUSE OF REPRESENTATIVES, http://artandhistory.house.gov/house_history/leaders.aspx (last visited May 20, 2013).

17. A substantial number of staff in member offices participate in the legislative drafting process. Discussions with Senate staff reveal that senators who introduce legislation independently (without the input of a committee) rely heavily on their own staff to draft the bill. In contrast, bills introduced by a senator in his capacity as a committee member are more likely to be drafted by committee staff.

Sometimes the committee covers part of the salary of these staffers, but sometimes it does not. As discussed below, our sample therefore includes a few staffers who have this joint role, as well as a few noncounsels who expressly perform the role of counsels on their committees.

In addition, we took demographic information from our respondents and examined whether age, experience, political party, House-versus-Senate employment, majority-party or minority-party status, law school attendance, or a course in legislation or statutory drafting had any effect on their answers. All respondents were assured that their names or other identifying characteristics would never be revealed.

A. *Determining the Baseline Population*

We have assumed that the actual population of committee counsels and Legislative Counsels with drafting responsibility is fixed at the size of 650. As discussed below, however, the true population of such counsels is likely smaller.

We used the two main congressional directories to compile our baseline population: all staffers who were listed as committee counsels or Legislative Counsels in either LegiStorm (which maintains records of salaries paid to legislative staffers in the Senate every six months and in the House every three months¹⁸) or the Congressional Yellow Book (a directory published four times a year¹⁹) were included. Also included were all Appropriations Committee staff who had law degrees in their official biographies because that committee does not use counsel titles. There was very substantial overlap between these databases, with LegiStorm listing 688 such counsels, including Legislative Counsels, and the Yellow Book listing 566 such counsels, not including Legislative Counsels. Not all names appeared in both sources (this was expected, because LegiStorm lists all staffers paid within a particular period and so lists duplicative positions—where staffers left or changed titles and were replaced by others during the same observed period—which also explains why

18. See *About Congressional Staff Salaries*, LEGISTORM, <http://www.legistorm.com/salaries/aboutcs.html> (last visited May 20, 2013). We used the most recently available data, which in the Senate spanned October 1, 2010 to March 31, 2011, and in the House spanned April 1, 2011 to June 30, 2011. Because Appropriations Committee staff does not list titles in LegiStorm, our research assistants used the ALMANAC OF THE UNELECTED STAFF OF THE U.S. CONGRESS (Suzanne Struglinksi & Lisa Friedman eds., 23d ed. 2011) to determine how many counsels were on that committee. They also included seventeen committee staffers who did not currently have counsel titles, but had in the past, on the theory that they had moved to more supervisory roles (like staff director) but were still doing counsel work.

19. See *Congressional Yellow Book*, LEADERSHIP DIRECTORIES, <http://www.leadershipdirectories.com/Products/LeadershipPrintDirectories/Government/CongressionalYellowBook> (last visited May 20, 2013).

LegiStorm has more names), but we included all of the extra names—including those that were only in one directory—in our pool after deleting for duplication.²⁰ This process yielded a total of 794 names. As a third check,²¹ we searched the statements prepared by the Clerk of the House and the Secretary of the Senate that identify all disbursements made by each congressional office, a search that produced a total of 542 committee counsels, not including Legislative Counsels—a number that was almost certainly too high, because it included “temporary” counsels, who were often employed only for a few weeks.²² We also independently confirmed from the Offices of the House and Senate Legislative Counsel that their total number of counsels were forty-nine and thirty-four, respectively. Adding the total number of Legislative Counsels to the Yellow Book’s 566 tally and the disbursement office’s 542 tally, yields 649 and 625, respectively. Based on these three estimates, we have assumed that the population of committee counsels, plus Legislative Counsels, numbers 650. We believe this number is overinclusive, because only LegiStorm had a total higher than 650 (and LegiStorm lists as separate positions any single position filled by more than one staffer within a quarter) and because there are several committees that are purely investigatory or administrative and do no drafting.²³ Even within committees with drafting responsibility, there are counsels who have investigative or other nondrafting roles.²⁴ Regardless, as discussed below, because of the

20. Some counsels were duplicated within a directory, likely because they had changed committees. We removed those duplicates that we could determine to a high probability were likely the same person, but left multiple names if the names were common (e.g., John Matthews).

21. E-mail from James V. Saturno, Research Manager, Legislative & Budget Process Section, Gov’t & Fin. Div., Cong. Research Serv., to Research Assistant Mallory Jensen (Mar. 23, 2012) (suggesting that best sources of data were LegiStorm and the Yellow Book but also suggesting that the disbursement documents might be a good confirming device as well).

22. *See id.*; *see also Statement of Disbursements*, U.S. HOUSE OF REPRESENTATIVES, <http://disbursements.house.gov> (last visited May 20, 2013); *Report of the Secretary of the Senate*, U.S. SENATE, http://www.senate.gov/legislative/common/generic/report_secsen.htm (last visited May 20, 2013) (online searchable disbursement reports for each house).

23. For instance, the Senate Select Committee on Ethics, the House Committee on Oversight and Government Reform, and the Permanent Subcommittee on Investigations. *See also* Memorandum from Research Assistant Giselle Barcia to Abbe R. Gluck (describing research finding no introduction of bills by those committees on the Library of Congress “Thomas” website, and phone calls to each committee confirming the observation).

24. Using the number 794 instead would be far too high to estimate the current population of counsels at any one moment. For example, that number reflects staffers who overlapped but replaced one another during the same quarterly pay period. None of the sources that compute staffing levels compute a committee counsel level higher than 686, including Legislative Counsels.

difficulty in determining the precise characteristics of the true population of legislative drafters,²⁵ we have only run a few statistical analyses. We also report those results in two ways, using both a “super population” assumption—treating the actual population as if it were drawn from an infinitely-sized super population rather than 650—and separately treating the actual population of counsels as fixed at a size of 650. Unless noted, the results were the same using both populations. Otherwise, we simply report only the raw data.

B. *Collecting Our Sample Population*

We gave ourselves five months to compile our sample. Our goal was to attempt to contact the 794 individuals we had identified through our analysis of the various directories, as described in the preceding section. Our initial e-mail was directed at 575 counsels. This initial email list was created from the 688 names we compiled through our work with LegiStorm, with certain groups of counsels omitted, either inadvertently (twenty-five) or on purpose (eighty-eight²⁶). The initial email yielded forty-two respondents (approximately 7.3% of 575 or 6.4% of 650).²⁷ We then looked at our population of respondents and saw that respondents were slightly skewed toward Democrats, so we re-sent the same initial e-mail to all of the Republican Chief Counsels, which yielded nine more respondents. A third round of identical e-mails was later sent to all recipients from the first round of e-mails whose initial e-mail bounced back²⁸ or to the 118 counsels whose names appeared in the Yellow Book but not LegiStorm, or whose names a second LegiStorm directory check revealed had been mistakenly left off the first e-mail, and to certain counsels who had initially been omitted intentionally.²⁹ That third round of e-mails yielded nineteen more respondents. Finally, we asked each person we interviewed, in addi-

25. E-mail from James V. Saturno to Research Assistant Mallory Jensen, *supra* note 21.

26. One committee chief counsel had heard about our study and asked us to send the email through him. We also omitted those counsels who already had been snowballed into our sample by others. *See infra* notes 30-31 and accompanying text.

27. E-mail from Columbia-Vanderbilt Law Schools Legislative Research Project (Nov. 3, 2011).

28. For these individuals, we e-mailed them using a different e-mail address. For example, if the person’s name was Matthew Feder, our initial e-mail would have been sent to matthew.feder@mail.house.gov. If that e-mail bounced back, on this second round, we tried a different version of the first name, usually a nickname, e.g., matt.feder@mail.house.gov.

29. Specifically, included in that third round was the entire list of counsels from one committee that we had omitted from our original e-mail because one chief counsel asked us to go through him to reach his committee and promised us a representative cross-sample of committee staff. However, after several follow-up emails to him went unanswered, we decided to include his whole committee in our next e-mail blast.

tion to several potential interviewees who were ineligible,³⁰ to recommend someone else whom we might interview, which yielded forty-five more respondents,³¹ and which explains the inclusion of some respondents who are not counsels (those respondents were identified by other staffers as having counsel-like committee drafting responsibilities). Every staffer who offered to be interviewed was interviewed. Of the 794 individuals total whom we tried to reach, we received 209 responses (26% of 794 or 32% of 650). Of the sixty who declined via e-mail (as opposed to not responding), 25% explained that their committee does not engage in legislative drafting, another 8% cited a committee policy against participating in surveys, and others cited a lack of time or did not offer a substantive explanation.

With respect to the Offices of House and Senate Legislative Counsel, upon receipt of our initial mass e-mails, we were contacted by the heads of each office offering to set up a day of interviews with their staffs. They promised us a representative group, both in terms of subject-matter expertise and experience.³² We interviewed twenty-two Legislative Counsels (thirteen from the Senate, nine from the House) referred to us in this manner. In addition, six more Legislative Counsels had responded to our cold e-mail directly (four from the House, two from the Senate), and we interviewed them separately as well.³³ The following diagram summarizes our sample-collection process.³⁴

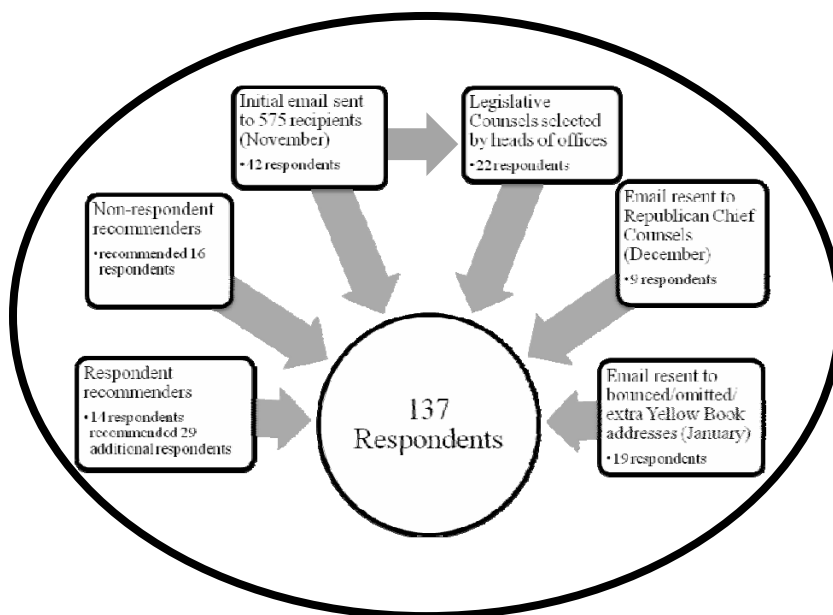
30. Two of our potential interviewees were current students at Columbia Law School, where one of us was on the faculty at that time, so we deemed them ineligible. Several others had left congressional service before our cut-off date (all respondents had to have served within the last two years to be eligible for the survey).

31. Of this number, twenty-nine were “snowballed” in this manner from fourteen of our respondents, and sixteen snowballed from people we did not interview because they were ineligible for the survey or, in the case of one counsel, referred us to a colleague instead.

32. With respect to the Office of Legislative Counsel in the House, the task of selecting a representative group from those who volunteered was delegated to another counsel in the office.

33. These six are included in the totals from the first and third round of e-mails.

34. We are unable to confirm the identity of the individual who “snowballed” one of our respondents. As it is probable that this snowballer was included in our sample, we have made that assumption for purposes of this diagram.



The initial outreach e-mail assured respondents that their identities would be kept confidential and explained the other precautions we would take to ensure confidentiality. We have included the text of the e-mail in Part III of this Appendix.

Our final sample includes 137 staffers with legislative drafting responsibility. Of that sample population, 107 are committee staff from twenty-six different committees;³⁵ twenty-eight are Legislative Counsels, and two are personal staff who have responsibility for legislative drafting (one for a member and the other for the leadership³⁶). Eighteen did not have formal counsel titles, either because their committee does not utilize

35. Q2. Six of the 107 described themselves as serving both on committee and personal staff. We had respondents from the following House committees: Judiciary, Rules, Small Business, Energy and Commerce, Ways and Means, Homeland Security, Oversight and Government Reform, Financial Services, Transportation and Infrastructure, Intelligence, Education and the Workforce, Science, Space and Technology, and House Administration. From the Senate, we interviewed staffers from the following committees: Judiciary, Health, Education, Labor and Pensions, Rules and Administration, Appropriations, Small Business and Entrepreneurship, Homeland Security and Government Affairs, Banking, Housing and Urban Affairs, Agriculture, Nutrition and Forestry, Finance, Energy and Natural Resources, Commerce, Science and Transportation, and Foreign Relations. We also interviewed respondents from the Joint Committee on Taxation.

36. Leadership staff work for personal members (the leaders of the houses) but have more drafting responsibilities than ordinary personal staff.

those titles,³⁷ or because they were committee lawyers with a more supervisory title such as “staff director,” or because (in nine instances) they were nonlawyers specifically identified to us by others as staffers who serve in the capacity of counsels. In total, fifteen were not lawyers (some nonlawyers have counsel titles because of the functions they perform), including one who was a current law student.

As noted, fifty-two work for Republicans; fifty-four work for Democrats; three are nonpartisan staff who work for committees; and twenty-eight are the nonpartisan Legislative Counsel staff.³⁸ Sixty-seven work in the House and seventy work in the Senate; fifty-eight work for the majority and forty-eight for the minority. Sixty-two said they had taken legislation or a similar course while in law school.³⁹ Twenty-nine took a course in interpretation or drafting outside of law school (for example, a CRS or CLE course).⁴⁰ The majority of our respondents (eighty) were between the ages of thirty-one and forty-five; forty-eight were over forty-five and eight were thirty or younger (one person did not answer). Almost all respondents (119) had a role in drafting seven or more pieces of legislation.⁴¹ Eighty-nine of them had five or more years’ experience on Capitol Hill.⁴²

C. *The Interviews*

The majority of interviews took place in person, in the respondents’ offices, while Congress was in recess. Due to scheduling difficulties, however, forty-one respondents were interviewed over the telephone outside of the recess period. Each interview took approximately an hour, and followed the same written script, ensuring that all respondents were asked the identical questions in the identical manner. No respondents saw the substantive survey questions themselves, but those who were interviewed in person filled out their demographic data on a written form. We interviewed twenty-five out of the first twenty-nine respondents as a team, with one of us serving as the primary interviewer but both of us recording answers. We then compared our answer coding across those twenty-five surveys to confirm that there was little or no danger of surveyor or coder bias. The survey generally did not allow for coder

37. The Appropriations Committee is one example of a committee that does not utilize counsel titles.

38. See Q2; Q82.

39. Q9.

40. Q10.

41. Thirteen were involved in three to six pieces, two were involved in two or fewer, and three did not know. Q6.

42. Q5.

discretion⁴³: respondents were read all questions and answer choices from a written script and asked to select among them. We also fully transcribed all comments received. As such there were very few differences between coders and we were able to resolve all of them.⁴⁴ We then conducted the

43. We ultimately discovered one minor difference between our coding practices. See *infra* note 44 (explaining that, for a few questions, one of us accepted answers such as “I guess” and marked such answers as “other,” while the other pressed respondents to classify the “I guess” response as “yes” or “no”).

44. There was a minority of questions for which there were statistically significant differences (at 95% confidence) between surveys conducted by phone and in person, and between surveys conducted by each of the two authors. Using phone/in-person and coder as dependent variables, respectively, we conducted multinomial logit regressions. We controlled for Legislative Counsel and Judiciary, given the specialized nature of those two committees and the fact that each author did not interview equal numbers of respondents from those two groups. We conducted various iterations of these regressions, as we tested using the finite 650 population as a base as well as the super population assumption. Because the low level of responses for many of the questions could potentially cloud the analysis, we dropped all responses that had fewer than twenty respondents answering that specific answer choice, resulting in forty-one questions being dropped (excluding demographic Questions 1 to 10, the Legislative-Counsel only Questions 79 to 81, and questions in which we asked whether these “were the right questions to be asking” about the topic at issue).

With respect to in-person versus phone surveys, there were statistically significant differences at 95% for fourteen questions using the super population assumption and seventeen questions using the finite 650 population—only 8% and 10% of 171 questions, respectively. When comparing interviewers, we found differences for twenty-six questions using the super population assumption, and twenty-seven using the finite population of 650. While we cannot rule out that the method of investigation or the identity of the interviewer made a difference, there are other plausible explanations for the divergences. For example, the surveys conducted in person were all conducted during recess, when staffers were generally more relaxed. The surveys conducted by phone took place when Congress was in session and so some staffers were more rushed. In addition, although most Legislative Counsel and Judiciary committee respondents were interviewed in person, a greater share of respondents from those groups were interviewed over the phone than respondents who were not Legislative Counsel or members of the Judiciary committee, and those populations tended to respond differently on certain kinds of questions. (For example, 35% of Judiciary respondents were interviewed by phone compared to 27% for the rest.) As another example, one of us interviewed more Legislative Counsel than others and one interviewer also interviewed more over the phone than the other interviewer. Although these differences do not explain the difference for some questions, other differences might. In particular, a differential coding practice was likely responsible for some of these differences. For example, for Questions 45-47 (questions where we did see some differences), concerning the textual canons and which each had many subparts, many respondents gave answers on the order of “I suppose” or “I guess so,” one of us simply transcribed that phrase, in which case the answer was coded as “other,” whereas the other one of us asked respondents to clarify if they meant yes or no. As noted in the text, we tried to avoid such differences by ensuring that each survey was identical—read from a script and respondents were given all answers choices from which to make a selection—and by conducting the first batch jointly. However, we also recognize that there is always a risk with interviews that respondents’ answers might be affected by the personality of the interviewer or how respondents wish to be perceived by a particular interviewer. See Herbert M. Kritzer, *Sto-*

remaining 112 interviews separately. We also created two different versions of the survey with the blocks of questions “scrambled” to test whether the order of the question blocks affected the responses (it did not).⁴⁵

D. *Recording the Results*

We entered all responses by hand onto paper copies of the survey, and all surveys were kept in locked cabinets in our offices. To assuage potential concerns about confidentiality, we did not bring any computers or recording devices to the interviews.

The numerical returns were entered from the survey hard copies into Stata by our research assistant and then triple checked. We also each transcribed all of the qualitative comments.⁴⁶ It soon became evident, for certain questions, that many of the comments had similar themes (for example, many people, when asked whether courts apply the presumption against preemption to favor the reach of state or federal law, chose the answer “it depends,” but then offered the additional explanation that it depended on subject matter area). Each of us separately identified the themes we saw in each question, and then cross-checked what we found with the other author in order to devise a list of comment codes. We then each individually reviewed the more than 4000 comments⁴⁷ across the survey, determined which comments should have a comment code assigned to them, and then cross-checked our coding with the other author

ries from the Field: Collecting Data Outside Over There, in PRACTICING ETHNOGRAPHY IN LAW: NEW DIALOGUES, ENDURING METHODS 143, 154 (June Starr & Mark Goodale eds., 2002).

45. Specifically, seventy-six respondents were asked one version of the survey, and sixty-one were asked a different version. We did not see statistically significant differences (at 95% confidence) between the two versions using either the super population assumption or the finite 650 population assumption, except with regard to eight questions (after controlling for Legislative Counsel and Judiciary)—a difference of only 5%, which one would expect to see even occurring as a result of natural variation. *See* Q17; Q34; Q43; Q54; Q68a, c-d; Q77a. We did not scramble subparts within questions. For example, Q50 asked about drivers of ambiguity in legislation, and provided seven answer options (respondents could mark as many as they wished). When we created the second version of the survey, we did not scramble the order of the answer choices within questions of this nature. Further, many of the surveys conducted early in the process were in the chronological format and chronological surveys were also more likely to be conducted in person to a statistically significant degree.

46. In some instances, our administrative assistants did the first round of transcribing, but we each checked every transcription for accuracy.

47. In total, we had 4817 questions in which a respondent said something more than the answer choice. A few hundred of these, however, were small notes, like “I think so.” We include these in the total number because line-drawing between substantive and nonsubstantive responses is difficult and does not affect our discussion of the data.

to confirm that we each had coded every comment with the same code and to mitigate the risk of coder bias. This technique allowed us to quantify much of our qualitative data. All of the numerical figures and calculations in the Article were then double-checked by two research assistants, working independently of one another.

E. Representativeness of the Sample

Given the difficulties of accessing this population of respondents, and given the institutional pressures on this population not to speak to the public, the level of response to our cold e-mails (seventy—not including Legislative Counsels) greatly surpassed our expectations. The only way to obtain additional respondents after that point, given the private nature of the staffer culture, was to use referrals. We recognize that this method (sometimes called a partial “snowball sample”) is a potential weakness of our sample. That said, we do not believe that this method of compiling our sample had an effect on our results. We found no statistically significant difference (at 95% confidence) between the responses of those respondents who entered our sample through our cold emails and those who were “snowballed” into the sample.⁴⁸ We also found no statistically significant difference between the “snowballer” respondents (those respondents who recommended other respondents) and the rest of the respondents in the sample.⁴⁹

48. Viewing the population as having been drawn from some represented super population, whether an individual was “snowballed” is simply one characteristic of that individual, so we can test for whether that characteristic has a statistically significant effect on that individual’s responses to the survey. As noted, we observed no such effect. Controlling for Legislative Counsel, using the super population assumption, the snowball method was significant at 95% in only two questions in the entire survey: Q45d and Q46d.

49. To test the null hypothesis that snowballers and others were not systemically different, we conducted additional statistical tests. To do so, we first compiled a subset of our survey questions that contained only binary responses (such as “yes” or “no”), and excluded all such questions where ten or more respondents answered “other” or “don’t know” (45 out of 171 questions). We then suppressed these “other” or “don’t know” responses, and used only the dichotomous responses (i.e., the “yes” or “no” responses). We did this in order to be able to perform regression analyses using Ordinary Least Squares (OLS). We then randomly selected twenty survey questions from this subset in order to mitigate problems of multiple inference.

In order to test whether the individuals who recommended other participants (“snowballers”) varied systematically from the rest of our sample, we ran OLS regressions, using the super population approach, on all twenty questions in our subsample simultaneously, without controls and found that the coefficient on the “snowballer” indicator was statistically significant for only one of these questions at a 95% significance level. Given that a 95% significance level implies that there is a 5% chance of a “false positive” result, the fact that we found that the coefficient on one of these regressions was significant is not strong evidence that “snowballer” was affecting

We recognize that there is a danger of self-selection bias in surveys of this nature⁵⁰ (and, with respect to our sample from the Offices of Legislative Counsel, a bias inherent in having respondents selected by the office chief). Unfortunately, such problems are unavoidable in a project of this nature, with a generally reticent population that necessarily depends on volunteers.

We also did our best to mitigate these concerns by confirming that our sample drew from different committees, both chambers of Congress, both political parties, and the majority and minority of each chamber. We also have tried to test whether our sample was representative of the population of congressional committee counsels and Legislative Counsels using a range of demographic data and other relevant characteristics. As detailed below, we did not find statistically significant differences (using a standard

our results. Recognizing that our Legislative Counsel respondents often gave responses that were different from the rest of our sample, we redid this analysis, omitting Legislative Counsels, and again found that only one question was significant at 95%. (Due to the limitations of Stata, we were unable to conduct a similar simultaneous analysis using the finite population of 650.) In order to ensure that non-random external “snowballees” (individuals who were recommended by people who did not themselves participate in the survey) were not polluting our results, we also conducted a third analysis in which we excluded these respondents. Our results in this second analysis were very similar to the first. Again, we found that the coefficient on the “snowballer” indicator was statistically significant for one of the questions at a 95% significance level, again using the super population approach. We therefore do not reject the null hypothesis that respondents who recommended additional respondents are indistinguishable from the rest of our sample.

We then conducted a fourth analysis in which we removed all snowballees (including those who were recommended by individuals who did participate in the survey). In this analysis, we found that the coefficient on “snowballer” was not significant at 95% for any of the questions. Finally, we conducted the analysis a fifth time, this time excluding all snowballees and the remaining Legislative Counsels. Again, we found that the coefficient on “snowballer” was not significant at 95% for any of the questions. Despite these results, we recognize that fully understanding the effects of the “snowball” effect on our sample would require even more, and more sophisticated, testing. We also note that we are unable to confirm the identity of the individual who “snowballed” one of our respondents. While it is probable that this snowballer was included in our sample, it is possible that we have omitted one snowballer from our analysis, and counted that individual among the “non-snowballer” respondents.

We also attempted, but were unable, to determine whether there were any relationships between the answers offered by a snowballer respondent and his/her particular snowballee (i.e., did people recommend others who were “like them”?). Unfortunately, there was not enough variation in our data to meaningfully test this hypothesis: most snowballers referred only a very small number snowballees (often just one). The largest group was the nine House Legislative Counsels who were snowballed by their snowballer-boss. Since our Legislative Counsel respondents already vary systematically from our non-Legislative Counsel respondents, we concluded that an analysis of this particular snowball group could lead to misleading results.

50. For example, those who responded might be more interested in interpretive methodology than others.

95% confidence threshold) between our sample and a control group of counsels across the following characteristics: House/Senate employment, political party, and majority/minority party status. The committee assignments of the survey group were generally also reflective of the control group.

To test for representativeness, we collected additional demographic data on the individuals in our survey, as well as from a randomly selected control group of counsels. We randomly selected 200 names from our database of all committee counsels and Legislative Counsels. Four of these individuals were identified as “repeats” upon closer investigation and we could not find most of the information for an additional nine because we could not confirm the names. Ultimately, the control group had almost 30% of the total population of committee counsels (about 187 out of 650) for whom we were able to get at least some information. Thirty of these individuals were also in our survey, as would be expected in taking a random sample from the same population as our survey. The data was collected from two sources: LegiStorm and Westlaw Profiler.⁵¹

Three research assistants performed the data collection, using the same detailed coding protocol. One research assistant collected data from Westlaw for the control group, and a second collected data from LegiStorm. In order to maintain the confidentiality of the survey participants, the only research assistant who has had access to the list of respondents for the entire project was assigned the task of collecting data from both Westlaw and LegiStorm for individuals from the survey sample. Comparing the results across coders provided an additional means of ensuring that the coding was consistent across coders.

Using both LegiStorm and Westlaw, we were able to find profiles of 187 of 199 individuals in the control group, and 135 of 137 individuals in the survey sample. Not all of the online profiles were complete. We collected information on chamber, party, majority/minority status, committee, job title, whether the job title included the word “counsel,” whether the staffer was a Legislative Counsel, college, college graduation year, law school, law school graduation year, law school ranking (based on *U.S. News and World Report*), whether they had an advanced degree, whether they were on law review and what title they had, whether they had a clerkship, type of clerkship, and year of last job title change prior to the

51. Westlaw Profiler did not contain information on most of the individuals in either the control or the survey sample, and was generally more useful to confirm and supplement results found on LegiStorm than as a primary data source. For individuals with records in both databases, we found no differences in the data reported with respect to the factors we investigated. The exception was for Legislative Counsels, about whom we were able to gather more information using Westlaw Profiler than we were on LegiStorm. In particular, we were able to supplement the Legislative Counsels’ educational information by using Westlaw.

present counsel position. All information was gathered as of the fourth quarter of 2011, the quarter during which the survey's initial outreach e-mail to the counsel population was sent. There was ultimately not enough information regarding advanced degree, law review participation, clerkships, or job changes and we dropped those variables. We also concluded that the presence of the word "counsel" in the job title was not informative, given the variety of job titles among committee lawyers.

We analyzed the data three ways: (1) comparing the control group to the survey group; (2) comparing the control group to the survey group, but excluding the thirty people who overlapped between the two groups; and (3) comparing the thirty overlappers to each of the control and survey groups that did not have the thirty overlappers in them.⁵² Following is a summary of the results:

Chamber: We were able to obtain chamber information for 90% of the control group and 97% of the survey group. Both groups were about evenly divided between chambers.

Party: We obtained party information for 93% of the control group and 99% of the survey group. Some (about twenty-five to thirty people) were nonpartisan, either because they worked in the Legislative Counsel's Office or on a nonpartisan committee. The control group had fewer nonpartisan counsels (in particular, Legislative Counsels) than the survey group. Both the control group and the survey group had a statistically indistinguishable amount of staffers working for Democrat and Republican members, with approximately half of each group composed of Democrats and half composed of Republicans (when eliminating nonpartisans).

Majority or Minority Status: We had information on majority/minority status for 94% of the control group and 99% of the survey group. Eliminating the nonpartisan respondents, a little more than half of both the control and survey groups worked for the majority and just a little less than half worked for the minority. Whether someone worked for the majority or minority was statistically indistinguishable in both the survey and control group if we eliminated the nonpartisan staffers from the analysis.

Committee: A wide range of committees was reflected in both the control and survey groups. Excluding Legislative Counsels, we found committee information for 95% of the control group and 99% of the survey group. The largest group among both the control group and the survey group was the Judiciary Committee. The Judiciary Committee constituted about 25% of each of the control and survey groups, a result that was not statistically significant in a chi square goodness of fit analysis. The survey group had more House Ways and Means, more Senate Homeland Security, and more Senate Health, Education Labor and Pensions

52. To compare the groups, we used chi square goodness of fit tests and then supplemented the analysis by doing t-tests, where appropriate. The results of the analyses done each of these ways was substantially the same for most of the data below.

counsels than the control group, in addition to a difference of one or two other people on different committees. Twelve percent of the control group were Legislative Counsels, compared to 20% of the survey group. We expected this difference: given the paucity of research on the role of Legislative Counsel, we were eager to interview as many as we could and asked the heads of each office to arrange a day of interviews.

Region: We collected information on the state of the member for whom the counsel worked, when applicable. We were able to collect this information for 101 staffers (54%) in the control group and sixty-eight staffers (50%) in the survey group. We then assigned each state to one of four regions—North, South, Midwest or West—in order to conduct chi square goodness of fit tests. The differences between the two groups were not significant at 95% confidence. However, when we compared the control versus the survey group excluding the thirty overlappers (those who were in both the control and were our respondents), the results were statistically significant, indicating that the survey group in particular had more Southerners than the control group. The results were also significant when comparing the thirty overlappers with the survey and control groups (excluding overlappers), respectively. We do not, however, have any reason to believe that this difference would have affected the results.

College Graduation Year: We gathered information on college graduation year as a proxy for age and experience. We were not able to obtain this data for many individuals and the missing data likely affected the results. For the control group, we were able to obtain college graduation data for 49%, compared to 61% for the survey group. For those persons for whom we were able to obtain data, the survey group was generally older: 55% of the survey group, compared to 37% of the control group, graduated in 1993 or earlier. The chi square goodness of fit tests showed that there was a statistically significant difference between the control and survey groups.

Law School Graduation: We gathered information on law school graduation as another way to measure experience, although given that many staffers come to Capitol Hill after years in private practice, we have doubts that law school graduation date is a reliable proxy for legislative drafting experience. For the control group, we were only able to obtain law school graduation years for 52% of the group compared to 54% for the survey group. Our results indicated that 45% of the control group compared to 64% of the survey group graduated from law school in the year 2000 or before, results that were statistically significant at the 95% confidence level.

Law School Ranking: Using information from *U.S. News and World Report*, we ranked the law schools attended by people in the control and survey group. We split the sample between those who went to schools in the top 14 and those who did not. In a separate analysis, we divided it by those who attended schools in the top 50 and those who did not. We were able to rank law schools for about 68% individuals in the control group and 66% in the survey group. Those in the survey group were more likely to have attended a top-14 law school than those in the control group (49% versus 32%). The results were statistically significant at 95%

confidence using chi square goodness of fit tests. Comparing the top-50 law schools versus the rest, the results are still significant. Eighty percent of the survey group attended a top-50 school, whereas 68% of the control group did.

In thus putting together our sample, we recognize that we may have sacrificed depth for breadth. A thorough investigation of the practices of every drafter on a single committee might offer deep insights that a project of our scope has missed. That said, not all committees have many counsels (some have as few as five⁵³) and, at least with respect to some committees, we did interview a significant number of counsels from those particular committees. For example, we interviewed twelve counsels out of a total of forty on the House Judiciary Committee; seven out of twenty counsels on the Senate Health, Education, Labor and Pensions Committee; seven out of nineteen on House Ways and Means Committee; four out of eleven on House Homeland Security; four out of eight on Senate Small Business and Entrepreneurship; two out of six on House Science, Space and Technology; three out of six on Senate Agriculture, Nutrition and Forestry; and two out of six on Senate Rules and Administration.⁵⁴

With respect to respondents in the Offices of Legislative Counsel, the heads of each office assured us that the sample they gave us was representative. On the Senate side, the Office of Legislative Counsel is divided into five teams of attorneys, with each team covering a particular set of legislative areas. We interviewed two attorneys from each team, and were told that such a sample ensured that we had interviewed individuals knowledgeable of all areas covered by that team.⁵⁵ In addition, as noted, two Senate Legislative Counsels responded to our initial e-mail without going through their office and we interviewed them as well. In total, we interviewed fifteen out of their total staff of thirty-four counsels.⁵⁶ With respect to seniority, we interviewed four out of six of the senior counsels and ten out of the twenty-eight junior counsels.⁵⁷ On the House side, we

53. For example, the House Agriculture, House Science and Technology, Senate Foreign Relations, the Senate Special Committee on Aging and Senate Veterans Affairs, House Budget, House Armed Services, House Administration, House Foreign Affairs, Senate Agriculture, Nutrition and Forestry, and Senate Rules and Administration all have six. See STATEMENT OF DISBURSEMENTS OF THE HOUSE, AS COMPILED BY THE CHIEF ADMINISTRATIVE OFFICER, FROM OCTOBER 1, 2011 THROUGH DECEMBER 31, 2011, available at http://disbursements.house.gov/2011q4/2011q4_singlevolume.pdf.

54. See *id.*

55. E-mail from James Fransen, Legislative Counsel for the U.S. Senate, to Abbe R. Gluck (Apr. 19, 2012).

56. *Id.*

57. E-mail from James Fransen, Legislative Counsel for the U.S. Senate, to Lisa Schultz Bressman (Mar. 23, 2012).

57. E-mail from James Fransen to Abbe R. Gluck, *supra* note 55 (including letterhead illustrating counsel seniority).

interviewed eight senior officials (out of eighteen) and five junior officials (out of thirty one),⁵⁸ including four who responded to our e-mail directly without being referred to us by their chief. The “senior” title in that office indicates more than twenty years’ experience in the Office.⁵⁹ The House Legislative Counsel divides legislative subject matter areas into more than 430 topics; and we interviewed counsels working on 54% of those topics.⁶⁰

F. *Reporting of the Data*

Recognizing the limitations of our sample—in particular not being able to use a random sample—and the difficulty of determining the accurate baseline population, we have chosen to report our findings in a descriptive manner mostly using only the raw data rather than engaging in more sophisticated hypothesis testing to explore whether there were statistically significant drivers of certain answers. Even with these limitations, for many questions, our results were sufficiently lopsided to at least suggest that most counsels would be likely to respond in the same manner. For example, forty-six of our questions had more than 70% of respondents agreeing on a particular answer choice, and twenty-five had more than 90%.⁶¹

Where possible, we also have tried to verify our respondents’ observations with external data. For example, after a number of respondents mentioned the importance of the Congressional Budget Office (CBO) in the drafting process, we consulted scholarly and popular publications discussing CBO to determine whether they make the same observations (they do).⁶²

In a few instances, we have reported cross-tabulations, i.e., the relationship between the way a respondent has answered two separate questions (for example, whether someone familiar with *Chevron* is likely also to know the presumption against preemption). Because it is

58. E-mail from Megan Renfrew, Assistant Counsel, Office of Legislative Counsel, U.S. House of Representatives, to Abbe R. Gluck (Apr. 11, 2012).

59. E-mail from Megan Renfrew, Assistant Counsel, Office of Legislative Counsel, U.S. House of Representatives, to Abbe R. Gluck (Jan. 23, 2013).

60. *See id.*; Memorandum from Giselle Barcia, *supra* note 23.

61. Excluding Questions 1 to 10 and 82, which were all demographic questions, and Questions 78 and 83, which asked respondents what they would change if they could about the process and whether there was anything they wished to add. These figures also combine never and rarely responses and, separately, always and often responses when those options were offered.

62. *See* Lisa Schultz Bressman & Abbe R. Gluck, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part II*, 66 STAN. L. REV. (forthcoming 2014).

impossible to know the characteristics of the true population of legislative drafters, we consciously restricted our interpretation of the data to statements regarding our sample. However, we were asked on more than one occasion to provide a discussion of the statistical significance of some of the relationships we discuss. There are two ways of viewing our sample that do allow meaningful statements related to statistical significance. First, we can view our sample as representing a draw from a population, which itself is randomly drawn from some infinitely sized “super population.” Second, we can assume our sample does in fact represent what we assume to be the actual population of 650 committee and Legislative Counsels. We did all computations in both ways, and found many differences between the indicated groups that were significant at the 95% and sometimes even the 99% confidence level.

The fact that we limited the survey mostly to counsels is also sometimes more informative than others. For example, whereas legal rules unknown to our counsel respondents are unlikely to be known to other noncounsel drafters, it is difficult to draw inferences about the nonlawyer drafting population concerning those rules that our respondents did know. We address matters of this nature below in the context of our discussion of each specific finding.

G. Conducting the Survey

The survey questions are reproduced in Part II of this Appendix. We designed the questions ourselves and worded them, where possible, to track how the Court has formulated the relevant interpretive doctrines or else to capture key points of dispute in the theoretical debates, or inquire about factors, such as the relevance the rise of omnibus legislation, that have been noted in the political science literature but have not generally found their way into interpretive doctrine.

Many questions offered respondents a range of choices, and for such questions respondents were asked about each choice individually and allowed to answer yes or no to as many of them as they wished. For example, Q50 asked about drivers of statutory ambiguity, and provided seven answer choices. Respondents were asked about each choice separately and told they could choose all that applied. For each such question, we always asked whether there was anything else the respondent would like to add to the list of choices. In addition, at the outset of the survey, we told all respondents that they had unlimited opportunity to provide qualitative comments with respect to any question or aspect of the survey. We received more than 4000 such comments. We tested the questions on four colleagues with law and political science backgrounds, as well as four students who had worked on Capitol Hill, and we amended the questions based on their feedback.

All questions were asked orally, and respondents did not see a copy of the survey. As noted, there were two versions of the survey. The survey was divided into fourteen sections and a conclusion. In the first version of the survey, we asked respondents questions in order, Section 1 through Section 14. In the second version, apart from Sections 1 and 2, which were necessarily introductory, and Section 14, which applies only to Legislative Counsel, we randomly scrambled the sections, with a resulting section order of Section 1, 2, 12, 4, 11, 6, 5, 9, 3, 8, 13, 10, 7, 14. Respondents were not read the title of any section (e.g., “Section 3: Federalism”) or any question numbers.

Midway through the survey we made three question changes. As noted in the Article, it became evident to us that our original question about constitutional avoidance (Q32) was not clear, and so a more direct question on that topic—Q32a—was added for the last sixty-seven respondents. After the first thirty-four surveys, we also realized we needed a more direct question about textualism, and so added Q77A, which was asked of 103 respondents. Finally, after 104 surveys, we added a phrase to Q49 and Q77. Specifically, our original Q49 (“Are these the right questions to be asking about how statutory text is drafted?”) consistently prompted comments about the role of the Office of Legislative Counsel, about which we had not initially inquired about directly. We therefore added the following to the end of Q49: “We haven’t really discussed the role of Legislative Counsel; could you tell us what role they play for you?” Similarly, our original Q77a was “Please rate the accuracy of the following assertion: Substantial parts of statutes are typically drafted from scratch by congressional staffers.” Most of the respondents who answered this question distinguished between ordinary staffers and Legislative Counsel for this purpose. Since our intention was to understand the role of ordinary staffers in drafting, after the first 104 surveys, we added the qualifying phrase “not including Legislative Counsel.”

With respect to some of the introductory questions, a handful of respondents said that they would prefer not to disclose their committee, congressional chamber or partisan affiliation. For purposes of compiling summary statistics, however, we were able to collect this information through a public records search. Where not provided by respondents, the data on these points, as listed in the codebook, is based on this supplemental research.

II. SURVEY QUESTIONS

Introduction

Thank you again for participating in this project. As we explained when we reached out to you, we are surveying legislative staffers for an article for an academic journal. The aim of the project is to educate lawyers about how the legislative drafting process actually works. It is not our intention to expose inadequacies in that process but rather to educate people about the process.

We expect that the survey will take between 30 and 60 minutes. You do not have to participate in the survey, and you do not have to answer every question. We will be taking notes on your responses, but we will not disclose any information that might identify you. Only we will have access to the names of the people who responded, and we will destroy the records identifying these names once we have finished editing the article.

Would you like to continue? (yes / no)

Please respond to each question in the survey based on your general observations and knowledge as a congressional staffer. When a question refers to “drafting legislation” or “legislative drafting,” we mean the process of preparing a bill or an amendment to a bill for consideration by any committee, subcommittee, or elected member of the House or Senate. When a question refers to “rules” or “regulations,” we mean the rules or regulations that agencies issue through the notice-and-comment rulemaking process provided in the Administrative Procedure Act.

Section 1: Background

Please answer the following questions about your background.

Q1. Our records show that you are currently working, or have worked within the last two years in the House or Senate. Is that correct? (if so, mark which one)

1 - House

2 - Senate

3 - I am not working/have not worked in the House or Senate

Q2. Are/were you a member of Committee or Personal Staff? (mark one)

- 1 - Committee
- 2 - Personal
- 3 - Other (explain)

Q3. If you feel comfortable telling us, what committee do/did you work on (or assist your member on):

Q4. Do/did you have a “counsel” title or a noncounsel title? (mark one)

- 1 - Counsel
- 2 - Noncounsel

Q5. Have/did you work[ed] on the Hill in a job that includes legislative drafting work for more or less than five years? (mark one)

- 1 - More than five years
- 2 - Less than five years
- 3 - Other (explain)

Q6. For how many pieces of legislation have you had a role in the drafting process? (mark one)

- 1 - 0-2
- 2 - 3-6
- 3 - 7 or more
- 4 - Don't know

Q7. What is your age? (mark one)

- 1 - 22-30
- 2 - 31-45
- 3 - Over 45

Q8. Did you attend law school? (mark one)

- 1 - Yes
- 2 - No
- 3 - I am currently in law school

If no, skip to question 10.

Q9. Did you take a course that involved legislation, statutory interpretation, or statutory drafting in law school? (mark one)

- 1 - Yes
- 2 - No
- 3 - Other (explain)

Q10. Did you take a course that involved legislation, statutory interpretation, or statutory drafting anywhere else? (mark one)

- 1 - Yes (state where)
- 2 - No
- 3 - Other (explain)

Section 2: Who Drafts Legislation?

Q11. Who participates in drafting federal statutes? (mark any that apply)

- a - Elected members
- b - Committee staffers
- c - Personal Staffers
- d - House/Senate Legislative Counsel
- e - Federal Agencies
- f - The White House
- g - The States
- h - Outside groups (e.g., private interests, nonprofits, lobbyists)
- i - Other (explain)

Section 3: Federalism [Switched to Section 12 in Version No. 2]

This section concerns the drafting of federal legislation that potentially affects or preempts areas of state law.

Q12. In drafting legislation that involves an area traditionally covered by state law (e.g., medical malpractice, tort law, consumer fraud), to what extent are drafters deliberately ambiguous about the extent to which the federal law covers (or preempts) areas of state regulation? (mark one)

- 1 - Never
- 2 - Rarely
- 3 - Sometimes
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q13. Do drafters expect courts to decide the extent to which an ambiguous federal law covers or preempts areas of state regulation? (mark one)

- 1 - Yes
- 2 - No
- 3 - Other (explain)

Q14. Do drafters have a general expectation that courts will interpret such federal statutory ambiguities in ways that favor the reach of state law or federal law? (mark one)

- 1 - Favoring the reach of state law
- 2 - Favoring the reach of federal law
- 3 - It depends (explain)
- 4 - Don't know

Q15. If the statute gives a role to a federal agency in implementing it, do drafters expect that the agency will decide the extent to which an ambiguous federal law covers or preempts areas of state regulation? (mark one)

- 1 - Yes
- 2 - No
- 3 - Other (explain)

Q16. How important are questions about the relationship between state and federal law to the drafting process? (mark one)

- 1 - Very important
- 2 - Moderately important
- 3 - Sometimes important
- 4 - Rarely important
- 5 - Never important
- 6 - Other

Q17. Are you familiar with either or both of the following interpretive principles, which are sometimes called canons of interpretation? (mark which)

- 1 - The presumption against preemption
- 2 - The federalism canon

If neither, skip to question 19.

Q18. Do these canons play a role in drafting decisions?

- 1 - Yes (explain)
- 2 - No
- 3 - Only one of them does (explain)
- 4 - Other (explain)

Q19. Are these the right questions to be asking about how federalism comes into play during the drafting process?

Section 4: Administrative Agencies [Remained Section 4 in Version 2]

This section concerns legislation that includes a role for administrative agencies.

Q20. Are you familiar with any of the following interpretive principles related to how much deference courts will accord federal agency decisions when agencies are charged with implementing federal statutes? (mark any that apply)

- 1 - *Chevron*
- 2 - *Skidmore*
- 3 - *Mead*

If your answer is none, skip to question 23.

Q21. Do any of these principles play a role in drafting decisions (mark any that apply)?

- 1 - *Chevron*
- 2 - *Skidmore*
- 3 - *Mead*

If the answer to the previous question was yes, please explain how.

Q22. Please evaluate the following statement: The principles related to how much deference courts will accord federal agency decisions allow drafters to leave statutory terms ambiguous because the agency can later specify those terms. (mark one)

- 1 - Strongly agree
- 2 - Agree
- 3 - Agree somewhat (explain)
- 4 - Disagree
- 5 - Strongly disagree
- 6 - Other (explain)

Q23. When there are multiple agencies in the same statute, do drafters intend for one, both or neither agency to specify ambiguous terms in the statute? (mark one)

- 1 - One (explain how you know which)
- 2 - Both
- 3 - Neither
- 4 - Other (explain)

Q24. Does the particular subject matter of a statute (e.g., labor law, criminal law, foreign affairs, etc.) affect whether drafters intend that an agency will have authority to specify ambiguous statutory terms? (mark one)

- 1 - Yes (explain)
- 2 - No
- 3 - Other (explain)

Q25. Have you ever participated in drafting a statute that included a role for the states in federal statutory implementation or enforcement? (mark one)

- 1 - Yes
- 2 - No

If no, skip to question 28.

Q26. Why are states used to implement or enforce federal statutes? (mark any that apply)

- a - Insufficient personnel or other resources at the federal level
- b - State expertise in area being regulated
- c - A desire or need for state-by-state variation in how the federal statute should be implemented
- d - A desire or need for experimentation
- e - The party controlling the White House is different from the party controlling Congress
- f - A desire to respect "states' rights"
- g - Federalism concerns
- h - States sometimes ask for the authority to implement the statutes themselves
- i - Other (explain)

Q27. Please evaluate the following statement: When statutes give state actors substantial roles in implementation or enforcement, drafters intend for states to have a role in determining how the federal statute should be implemented in their state. (mark one)

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q28. Are these the right questions to be asking about how federal or state agency implementation comes into play during the drafting process?

Section 5: Criminal Legislation [Switched to Section 11 in Version 2]

This section involves the drafting of criminal legislation.

Q29. Have you ever participated in drafting criminal legislation? (mark one)

- 1 - Yes
- 2 - No

If no, skip to the next section.

Q30. Does the rule of lenity play a role in drafting decisions?

- 1 - Yes (explain)
- 2 - No
- 3 - Other (explain)
- 4 - I am not familiar with the rule of lenity

*Section 6: Constitutional Questions [Remained Section 6 in
Version 2]*

This section involves questions about the constitutionality of a statute or its provisions that may arise during the drafting process.

Q31. To what extent do drafters deliberately leave unresolved or ambiguous aspects of the statute about which constitutional issues have been raised? (mark one)

- 1 - Never
- 2 - Rarely
- 3 - Sometimes
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q32. Do drafters have a general expectation that courts will interpret statutory ambiguities involving constitutional issues in ways that favor upholding the statute or striking down the statute? (mark one)

- 1 - Upholding
- 2 - Striking down
- 3 - It depends
- 4 - Don't know

Q32A. Do drafters ever expect that courts will not confront the constitutional questions about statutes at all, but rather avoid them or try to decide them on other grounds? [Asked for last 67 surveys]

- 1 - Yes
- 2 - No
- 3 - Other (explain)

Q33. Do these expectations about what the courts will do play a role in drafting? (mark one)

- 1 - Yes (explain)
- 2 - No
- 3 - Other (explain)

Section 7: Clear Statement Rules [Switched to Section 5 in Version 2]

This section concerns what are sometimes called clear statement rules.

Q34. Are you familiar with any interpretive principle that ambiguities in statutes will be construed in a particular way unless the statute contains a “clear statement” to the contrary? (mark one)

- 1 - Yes
- 2 - No

If no, skip to question 37.

Q35. Are any specific “clear statement” rules especially salient or important to you when drafting? (list them)

Q36. Do you believe that courts rely on clear statement rules more consistently than they rely on other canons? (mark one)

- 1 - Yes
- 2 - No
- 3 - Other (explain)

Section 8: Interpretive Principles [Switched to Section 9 in Version 2]

This section asks for your views about the kinds of interpretive principles that we have discussed—such as preemption, federalism, *Chevron*, *Mead*, *Skidmore*, lenity, constitutional avoidance and clear statement rules.

Q37. Are these interpretive principles generally useful to drafters? (mark one)

- 1 - Yes (explain)
- 2 - No
- 3 - Other (explain)

Q38. Should there be more or fewer interpretive principles of this nature? (mark one)

- 1 - More (explain)
- 2 - Fewer
- 3 - Other (explain)

Q39. When courts apply these interpretive principles, do they assist courts in effectuating congressional intent? (mark one)

- 1 - Yes
- 2 - No
- 3 - Other (explain)

Q40. Are these the right questions to be asking about how interpretive principles come into play in the drafting process?

Section 9: Use of Language in Drafting [Switched to Section 3 in Version 2]

The following four questions concern statutory “lists.” By this, we mean statutory provisions such as: “No person shall commit animal cruelty, where ‘animal cruelty’ is defined as ‘conduct in which a living animal is intentionally maimed, mutilated, kicked, punched, or harmed.’”

Q41. In general, to what extent do the terms in a statutory list relate to one another? (mark one)

- 1 - Never
- 2 - Rarely
- 3 - Sometimes
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q42. In general, when terms appear in a statutory list, to what extent are any other terms intended to be excluded from that list? (mark one)

- 1 - Never
- 2 - Rarely
- 3 - Sometimes
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q43. Please rate the accuracy of the following assertion: Each word in a statutory list has an independent meaning and is not intended to overlap with other terms on the list. (mark one)

- 1 - Never
- 2 - Rarely
- 3 - Sometimes
- 4 - Often
- 5 - Always
- 6 - Other (explain)

We are now finished with statutory lists and are moving on to more general questions about use of language in drafting.

Q44a. Please rate the accuracy of the following assertion: When a particular term is used in multiple places in the same statute, that term is intended to mean the same thing throughout the entire statute.

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q44b. Please rate the accuracy of the following assertion: When a particular term is used in multiple places in the same statutory section, that term is intended to mean the same thing within a single statutory section.

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q44c. Please rate the accuracy of the following assertion: When a particular term is used in a statute, that term is intended to mean the same thing as the same term means in other statutes in related subject areas.

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q44d. Please rate the accuracy of the following assertion: When a particular term is used in a statute, that term is intended to mean the same things in other statutes on unrelated subjects throughout the U.S. Code.

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q44e. Please rate the accuracy of the following assertion: Dictionaries are used in determining what terms to use in statutes.

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q45. Are you familiar with any of the following canons of construction that concern how textual terms are to be construed? (mark all that apply)

- a - *Noscitur a sociis*
- b - *Ejusdem generis*
- c - The rule against superfluities or redundancy
- d - *Expressio unius/inclusio unius*
- e - *In pari materia*
- f - Whole act rule
- g - Whole code rule

If you are familiar with none of these, skip to question 47.

Q46. Which have you considered in drafting legislation? (mark all that apply)

- a - *Noscitur a sociis*
- b - *Ejusdem generis*
- c - The rule against superfluities or redundancy
- d - *Expressio unius/inclusio unius*
- e - *In pari materia*
- f - Whole act rule
- g - Whole code rule

Q47. Do you believe that courts rely on any of these rules in interpreting legislation? (mark all that apply)

- a - *Noscitur a sociis*
- b - *Ejusdem generis*
- c - The rule against superfluities or redundancy
- d - *Expressio unius/inclusio unius*
- e - *In pari materia*
- f - Whole act rule
- g - Whole code rule

Q48. Does it matter to your drafting practices whether the Supreme Court routinely relies on any of these rules? (mark one)

- 1 - Yes (explain)
- 2 - No
- 3 - Other (explain)

Q49. Are these the right questions to be asking about how statutory text is drafted? [We haven't really discussed the role of Legislative Counsel; could you tell us what role they play for you?] [Second question asked for only the last thirty-three surveys]

Section 10: Statutory Ambiguity [Switched to Section 8 in Version 2]

This section concerns statutory ambiguity.

Q50. Which, if any, of the following results in gaps or ambiguities in legislation? (mark all that apply)

- a - Lack of time
- b - Technical or complex nature of an issue in a bill
- c - Need for consensus on an issue
- d - Lack of knowledge about the best answer
- e - Desire for courts to fill the gaps
- f - Desire for an agency to fill the gaps
- g - Other (explain)

The following questions concern whether drafters intend that an agency has authority to fill statutory gaps or ambiguities in legislation.

Q51. To what extent is it relevant to whether drafters intend that an agency has gap-filling authority that the agency has authority to issue rules and regulations implementing the statute? (mark one)

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q52. To what extent is it relevant to the agency's gap-filling authority that an agency has a prior, long-standing view of an issue in question? (mark one)

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q53. To what extent is it relevant to the agency's gap-filling authority that the agency participated in drafting the legislation? (mark one)

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q54. To what extent is it relevant to the agency's gap-filling authority that the same political party controls both Congress and the White House at the time of enactment?

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q55. What kinds of statutory ambiguities or gaps do drafters intend for the agency to fill? (mark one)

- a - Ambiguities/gaps relating to the details of implementation
- b - Ambiguities/gaps relating to major policy questions
- c - Ambiguities/gaps implicating questions of major economic significance
- d - Ambiguities/gaps implicating questions of major political significance
- e - Ambiguities/gaps relating to the preemption of state law
- f - Ambiguities/gaps relating to the division of labor between state and federal agencies when both are given implementation roles
- g - Ambiguities/gaps relating to omissions in the statute
- h - Ambiguities/gaps relating to the agency's area of expertise
- i - Other (explain)

Q56. To what extent do drafters intend that state implementers interpret gaps or ambiguities in federal statutes that states are asked to administer? (mark one)

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q57. When politics drives statutory ambiguity, do drafters have a strategy for influencing how ambiguities will be interpreted after enactment?

- 1 - Yes (explain)
- 2 - No
- 3 - Other (explain)

Section 11: Legislative History [Switched to Section 13 in Version 2]

This section concerns legislative history.

Q58. Do you draft legislative history (e.g., floor statements, committee reports, conference reports, hearing testimony and questions, etc.)? (mark one)

- 1 - Yes (explain)
- 2 - No

Q59. In general, do you believe legislative history is a useful tool for statutory drafters? (mark one)

- 1 - Yes
- 2 - No
- 3 - Other (explain)

Q60. What is the purpose of legislative history? (mark all that apply)

- a - To explain the purpose(s) of the statute
- b - To explain the meaning of particular terms in the statute
- c - To indicate a disagreement over the meaning of a particular term or provision
- d - To indicate a decision to leave a deliberate ambiguity in the statute
- e - To facilitate the political deal
- f - To shape the way that agencies will interpret deliberate ambiguities
- g - To shape the way that individuals or courts will interpret deliberate ambiguities
- h - To shape the way that the statute will apply to unforeseeable future developments
- i - To shape the way that individuals or courts will interpret contested terms
- j - Other (explain)

Q61. For each of the following, please tell us if the type of legislative history is a (VR) very reliable source, a (SR) somewhat reliable source, or not a (NR) reliable source for legislators or staffers to use in resolving questions about statutory ambiguities or statutory implementation.

- _____ Floor statements by members in support of the statute
- _____ Floor statements by members opposed to the statute
- _____ Floor statements by party leadership
- _____ Committee reports in support of the statute
- _____ Committee reports in opposition to the statute
- _____ Conference reports
- _____ Hearing transcripts

Q62. For each of the following, please tell us if the type of legislative history is a (VR) very reliable source, a (SR) somewhat reliable source, or not a (NR) reliable source for courts or agencies to use in resolving questions about statutory ambiguities or statutory implementation.

- _____ Floor statements by members in support of the statute
- _____ Floor statements by members opposed to the statute
- _____ Floor statements by party leadership
- _____ Committee reports in support of the statute
- _____ Committee reports in opposition to the statute
- _____ Conference reports
- _____ Hearing transcripts

Q63. In assessing the reliability of legislative history, does any of the following matter? (mark all that apply; if yes, explain how it matters)

- a - How many members have heard/read the relevant statement/report
- b - Whether the statement/report was drafted or made by a Member
- c - How close the statement/report was made prior to the day the legislation passed
- d - Whether the statement was made after the legislation passed
- e - Whether the statement/report favors or opposes the legislation
- f - Whether the statement/report was essential to the political deal
- g - Other (explain)

Q64. Are we asking the right questions about the relevance of legislative history to the drafting process?

Section 12: Supreme Court's Approach [Switched to Section 10 in Version 2]

This section concerns the Supreme Court's approach to statutory interpretation.

Q65. In general, do you think the U.S. Supreme Court applies consistent rules to its interpretation of statutes? (mark one)

- 1 - Yes (explain)
- 2 - No

Q66. Are there any interpretive rules or conventions in particular you think that the U.S. Supreme Court consistently follows? (please list)

Q67. Would it/does it affect the way you draft legislation if you knew/know that the Court applies any particular interpretive rule(s) or convention(s) consistently? (mark one)

- 1 - Yes (explain)
- 2 - No
- 3 - Other (explain)

Q68. Which, if any, types of interpretive principles or sources listed below do you think are most useful to courts seeking to determine what Congress intended: (mark all that apply)

- a - Textual canons (like the whole act rule, or the rule against superfluities)
- b - Legislative history
- c - Substantive canons (like the federalism canon and the rule of lenity)
- d - Rules about agency deference
- e - News media, blogs, and the like
- f - Other

If your answer is none of these, please explain.

Q69. Have you ever drafted, or considered drafting, instructions to courts on how to interpret a statute or indicating which rules courts should use for interpreting a statute? (mark one)

- 1 - Yes (explain)
- 2 - No
- 3 - Other (explain)

Section 13: Legislative Processes [Switched to Section 7 in Version 2]

This section concerns different legislative processes, by which we mean the path a particular statute takes from drafting to enactment.

Q70. In general, do different types of statutes—for example, omnibus statutes, versus appropriations statutes, versus statutes focused on a single subject-matter—go through a different type of legislative process?

- 1 - Yes (explain)
- 2 - No
- 3 - Other (explain)

Q71. Please evaluate the following statement: A particular statutory term is as likely to have the same meaning throughout an omnibus statute as a single-subject statute.

- 1 - True
- 2 - False (explain)
- 3 - Other (explain)

Q72. Please evaluate the following statement: Legislative history is likely to play the same role in an omnibus statute as it does in a single-subject statute. (mark one)

- 1 - True
- 2 - False (explain)
- 3 - Other (explain)

Q73. Please evaluate the following statement: Legislative history is likely to play the same role in appropriations statutes as it plays in other statutes. (mark one)

- 1 - True
- 2 - False (explain)
- 3 - Other (explain)

Q74. Please evaluate the following statement: The process by which a statute is enacted—i.e., whether it goes through committee or not, whether it goes through conference, whether it is drafted on the floor or in summit, etc.—affects how it is drafted. (mark one)

- 1 - Strongly agree
- 2 - Agree
- 3 - Agree somewhat
- 4 - Disagree
- 5 - Strongly disagree
- 6 - Other (explain)

Please explain your answer.

Q75. Please evaluate the following statement: A particular statutory term is as likely to have the same meaning throughout a statute if that statute went through committee as opposed to one that was first introduced on the floor.

- 1 - True
- 2 - False (explain)
- 3 - Other (explain)

Q76. Please evaluate the following statement: A particular statutory term is as likely to have the same meaning throughout a statute if that statute went through conference as opposed to one that did not.

- 1 - True
- 2 - False (explain)
- 3 - Other (explain)

Q77a. Please rate the accuracy of the following assertion: Substantial parts of statutes are typically drafted from scratch by congressional staffers. [The phrase “not including Legislative Counsel” was added after the 104th survey.]

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q77b. Please rate the accuracy of the following assertion: Substantial parts of statutes are typically drafted based on language provided by policy experts and outside groups.

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q77c. Please rate the accuracy of the following assertion: Substantial parts of statutes are typically drafted by the White House, the executive branch or federal agencies.

- 1 - Never
- 2 - Rarely
- 3 - Sometimes (explain)
- 4 - Often
- 5 - Always
- 6 - Other (explain)

Q77A. Do you think courts should consult only the text of the statute, and not any other sources, when interpreting statutes? [Question added after the first thirty-four surveys]

- 1 - Yes (explain)
- 2 - No
- 3 - Other (explain)

Section 14: Legislative Counsel Only [Also Section 14 in Version 2]

Q79. Do you view your role in the legislative drafting process as different from that of members' personal staff or committee staff? (mark one)

- 1 - Yes (explain)
- 2 - No
- 3 - Other (explain)

Q80. In general, do you check statutes for internal and external consistency?

- 1 - Yes
- 2 - No
- 3 - Other (explain)

Q81. Is your role in the drafting process is generally the same regardless of whether statutes are written from scratch by your office, by staffers, or taken from language provided by outside groups, the White House, or agencies? (explain)

Conclusion [Asked at the End for Both Versions]

Q78. If you could change anything about legislative drafting, what would you change?

Q82. If you feel comfortable telling us, do you work for the majority or the minority?

Q83. Is there anything you would like to add regarding legislative drafting, the canons of interpretation, or the relationship between the Court and Congress in the legislative process?

III. OUTREACH E-MAILS

The outreach e-mails sent to potential respondents are reproduced below.⁶³

A. *Initial Outreach E-mail*

From: Columbia-Vanderbilt Law Schools Legislative Research Project
[mailto:legislprocess@vanderbilt.edu]

Sent: [date]

To: [name]

Subject: Inquiry from Professors Abbe Gluck and Lisa Bressman

Dear Ms. [Name],

We are professors at Columbia Law School (http://www.law.columbia.edu/fac/Abbe_Gluck) and Vanderbilt Law School (http://law.vanderbilt.edu/faculty/faculty-detail/index.aspx?faculty_id=153), who specialize in legislation and statutory interpretation. We would be extremely grateful if you might be willing to help us with our current research project.

We are working on a confidential survey of congressional staffers involved in drafting legislation. The purpose of the survey is not to expose any inadequacies in the drafting process (indeed, one of us is a former Hill staffer, and the other a former executive branch staffer), but rather to provide information that will educate law students and law professors about important aspects of that process. We think the legislative process has been vastly understudied and underappreciated in legal academia.

The survey has been approved by the strict Columbia and Vanderbilt Internal Review Boards, which means that we have the utmost in protective procedures in place to ensure the confidentiality of the names of all respondents. No identifying information will be retained and any information related to anyone to whom we spoke will be destroyed immediately after the survey. The goal is to produce a law review article for publication in a top law review. Each of us has a strong track record of publication in top legal journals, including in the *Yale Law Journal*, the *Columbia Law Review*, and many others.

63. The e-mail was sent from a special joint Gluck-Bressman account at Vanderbilt Law School that was created and used solely for this project. Gluck was on the faculty at Columbia Law School at the time the survey was conducted.

Is there any chance that you might be willing to take the survey? We are aiming to interview 100 staffers (both senior and junior, in the House and Senate, and from both parties) who play a role in drafting. We will come to you at any time convenient, and we expect that the survey will take 30 minutes. At the moment, we are targeting the weeks of [insert dates], but we are happy to come another time, or to interview you over the phone if more convenient.

With many thanks in advance for any help at all you'd be willing to provide,

Abbe Gluck
Associate Professor of Law
Milton Handler Fellow
Jerome L. Green Hall, Room 929
Columbia Law School
435 West 116th St.
New York, NY 10027
(212) 854-0679
agluck@law.columbia.edu

Lisa Bressman
Associate Dean for Academic Affairs
Professor of Law
Vanderbilt Law School
131 21st Ave. South
Nashville, TN 37203
(615) 343-6132
lisa.bressman@vanderbilt.edu

B. *Second and Third Round Outreach E-mails*

From: Columbia-Vanderbilt Law Schools Legislative Research Project
[mailto:legislprocess@vanderbilt.edu]
Sent: [date]
To: [name]
Subject: Inquiry from Professors Abbe Gluck and Lisa Bressman

Dear Mr. [name]:

We are professors at Columbia Law School (http://www.law.columbia.edu/fac/Abbe_Gluck) and Vanderbilt Law School (http://law.vanderbilt.edu/faculty/faculty-detail/index.aspx?faculty_id=153), who specialize in legislation and statutory interpretation. You may have already received an email from us asking if you might be willing to help with our current research project. If so, we apologize for the repeat email, and either way, we would be extremely grateful for your help.

We are working on a confidential survey of congressional staffers involved in drafting legislation. The purpose of the survey is not to expose any inadequacies in the drafting process (indeed, one of us is a former Hill staffer, and the other a former executive branch staffer), but rather to provide information that will educate law students and law professors about important aspects of that process. We think the legislative process has been vastly understudied and underappreciated in legal academia.

The survey has been approved by the strict Columbia and Vanderbilt Internal Review Boards, which means that we have the utmost in protective procedures in place to ensure the confidentiality of the names of all respondents. No identifying information will be retained and any information related to anyone to whom we spoke will be destroyed immediately after the survey. The goal is to produce a law review article for publication in a top law review. Each of us has a strong track record of publication in top legal journals, including in the *Yale Law Journal*, the *Columbia Law Review*, and many others.

Is there any chance that you might be willing to take the survey? We are aiming to interview 100 staffers (both senior and junior, in the House and Senate, and from both parties) who play a role in drafting. We will come to you, and we expect that the survey will take 30-60 minutes. At the moment, we are targeting [dates], but we are happy to come another time, or to interview you over the phone if more convenient.

With many thanks in advance for any help you would be willing to provide,

Abbe Gluck
Associate Professor of Law
Milton Handler Fellow
Jerome L. Green Hall, Room 929
Columbia Law School
435 West 116th St.
New York, NY 10027
(212) 854-0679
agluck@law.columbia.edu

Lisa Bressman
Associate Dean for Academic Affairs
Professor of Law
Vanderbilt Law School
131 21st Ave. South
Nashville, TN 37203
(615) 343-6132
lisa.bressman@vanderbilt.edu

IV. COMMENT CODES

A variety of qualitative responses to the survey were coded by the authors where themes were apparent. The authors coded such responses two ways: question specific coding for specific questions and “universal coding” for all questions. Many questions have one or two “codes” and/or “universal codes” applied, while a small number have as many as four codes.

Question-specific codes are labeled as follows:

q[number]code; q[number]code1; q[number]code2, etc.

Universal codes, follow a similar pattern:

q[number]ucode; q[number]ucode1; q[number]ucode2, etc.

Universal codes are applied consistently to all questions in the dataset. These universal codes are as follows:

- 1 “Legislative Counsel” (any answer mentioning Legislative Counsel)
- 2 “Congressional Budget Office” (any mention)
- 3 “No Courts” (any answer indicating a preference against judicial interpretation of statutes)
- 4 “Jurisdiction” (any answer mentioning committee jurisdiction)
- 5 “Framework” (any reference to canons of interpretations as frameworks for drafting)
- 6 “Llewellyn” (any mention)
- 7 “Single Drafter Fiction” (any reference to the notion that statutes are drafted by many different people)
- 8 “Details” (discussion of what level of detail is appropriate for statutory language)
- 9 “Sophistication” (discussion of sophistication differences across staffers)
- 10 “Results Oriented” (mention of courts as results oriented)
- 11 “Audience” (mention of different audiences for legislation or legislative history)
- 12 “Intent is Fiction” (discussion of congressional intent as fiction)
- 13 “Agency” (reference to notion that agencies, not courts are the critical interpreter)
- 14 “We Don’t Think About Courts” (statements that drafters do not think about courts or judicial interpretation)
- 15 “Personal Versus Committee” (references to differences across these two types of staff)
- 16 “Unorthodox Lawmaking” (references to fact that the textbook legislative process no longer exists)
- 17 “Intuitive” (discussion of canons as intuitive concepts, not legal rules)
- 18 “Don’t Know/Abstain”

- 19 “Congress” (answers discussing traditionally-recognized limitations on congressional behavior, such as lack of time, expertise and difficulty of reaching consensus)
- 20 “Leadership” (references to role of party leadership)
- 21 “Scalia” (any mention)
- 22 “Markup” (any mention)
- 23 “Conceptual Drafting” (any mention of votes based on concept documents rather than actual statutory text)
- 24 “Edict” (references to the requirement in the House that the constitutional source of all legislation be noted)
- 25 “Colloquy” (any mention)
- 26 “Technology” (any mention)
- 27 “Feedback Loop” (references to the dialogue between the Court and Congress over interpretive principles)
- 28 “Definitions” (any reference to a statutory definition)

V. ADDITIONAL VARIABLES UTILIZED

Variable Name	Variable Description	Response Codes
party	Response to Q82, "If you feel comfortable telling us, do you work for the majority or the minority?"	1 – Majority 2 – Minority 3 – Not Applicable
coder	Indicates which author interviewed the respondent and coded the responses	1 – Abbe Gluck 2 – Lisa Bressman 3 – Both Abbe Gluck and Lisa Bressman
chronological /mixed	Indicates which question order used	1 – Chronological, version 1 2 – Mixed, version 1 3 – Mixed, version 2 4 – Chronological, version 2
phone	Indicates whether the survey was conducted in person or by phone	1 – Survey conducted by phone 2 – Survey conducted in person
snowball	Indicates whether a respondent was brought into the sample by e-mail contact from authors, or by referral (i.e., "snowballed")	1 – E-mail contact from authors 2 – Referral ("snowball") 3 – Legislative Counsels 4 – Representative sample of Legislative Counsels, provided by external source
snowball1	Provides pseudonym of the original "snowballer"	
snowball3	Provides a description of how the respondent entered the sample	1 – E-mail from authors, November 2 – E-mail from authors, December 3 – E-mail from authors, January 4 – Referral from within the sample 5 – Referral from outside the sample 6 – Legislative Counsel referral - Senate 7 – Legislative Counsel referral - House 8 – E-mail from authors, November, Legislative Counsel 9 – E-mail from authors, January, Legislative Counsel
snowballhead	Provides the "head" of the snowball chain (using pseudonym).	

VI. THE DATA

We will make the survey data available to the public upon completion of our own writing about the project.