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# A MODEL OF THE LAW COMMUNICATION PROCESS: FORMAL AND FREE LAW\*

*Sandra M. Huszagh and Fredrick W. Huszagh\*\**

## I. INTRODUCTION

Governance connotes a process through which diverse individuals and entities simultaneously strive for individual fulfillment and social evolution. Government is an increasingly dominant factor in this process, and thus is of greatest importance to the legal profession.

American government rests on the tenet that individual and institutional citizens must obey properly constructed governmental commands, whether legislative, administrative, or judicial. Mandatory education fosters the learning skills that must underlie this critical citizenship obligation. Multifarious media channels distribute the details of required deference, so that these details theoretically are available to all citizens. Unfortunately, most individual and institutional citizens do not possess all the skills necessary to convert such theoretically available information into the knowledge necessary for deference.

If government decrees were enforced absolutely and all citizens wanted to defer to properly exercised authority, penalties associated with ignorance could tax non-deferential behavior, and the deficiencies which cause it, out of existence. Absent saturation enforcement or extremely high penalties, "deficient citizens" actually have a competitive advantage regarding government decrees that impose obligations. Further, government programs specifically extending benefits to such persons seldom will be efficient or effective because of these same deficiencies.

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\* A second article discussing informal law in the context of the law communication process will be published in Vol. 13, No. 2 of the *Georgia Law Review*.

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Government authority in the past has avoided the major burden of these dilemmas in three ways. First, all citizens are assumed to be cognizant of the laws applicable to them; thus, ignorance is not a defense to their enforcement. Second, important laws are transmitted rather effectively to particular citizen groups whose deference is most essential. Third, enforcement is concentrated on those target groups or made automatic, permitting groups naturally ignorant of applicable laws to avoid their penalties.

As governmental decrees grow in number and complexity, procedural gimmicks, self-enforcing laws, and benign neglect will increasingly prove unacceptable because enlightened citizens will resist government demands of deference to behavioral commands which are immune to mastery. Citizens will expect governments, like producers of products, to design and enforce laws in ways compatible with the endowments that citizen-users normally possess. If more is asked, governments will be required to supplement these endowments by making laws more directive and simpler to comprehend and by insuring that the necessary information is readily available. Inattention to these obligations can only result in malignant citizen unrest and inefficient governance.

This Article and one to be published in the next issue depict how government decrees are made available to citizens and identify those conditions under which various citizens are not likely to acquire the knowledge essential for the deference that American government requires. The process by which government communicates its commands to citizens is often inadequate to make individuals or organizations aware of applicable laws. Even if the citizen receives the law, he may fail to understand or respond to the law as the law-drafters intended. The roots of these failures can be examined alternatively by (1) analyzing the law transmission process to determine where information loss is possible, or (2) analyzing the adequacy of receptory capacity of intended law subjects.

This Article concentrates primarily on the law transmission process and secondarily examines how reception capacity is affected by the skills and proximity of personnel whom business organizations employ to increase knowledge of government decrees. Although the focus is on how the law transmission process of federal, state, and local governments in the United States affects the ability of business organizations to respond to laws, the model set forth is also relevant to other intended law subjects and other countries.<sup>1</sup>

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<sup>1</sup> The analysis will clarify the process of communicating laws to governmental and private organizations, individuals, and groups. The authors' research indicates that the model also

## II. BASIC STRUCTURE OF THE COMMUNICATIONS PROCESS

Shannon and Weaver, in *The Mathematical Theory of Communication*, identify six essential, interrelated elements in the communication process.<sup>2</sup> This Article proposes that these elements are expressed in the law communication process in the following ways. The *information source*, an individual or group, creates a message or sequence of messages defining desired citizen behavior. The *law message*, which originated in the legislative, executive, or judicial branches of federal, state, or local government, may take many forms, including a single, statutory enactment, or an executive order followed by an administrative regulation, a judicial construction, or both. After the source formulates the message, an *encoder* prepares it for a transmission *channel*. Some channels, such as *Statutes at Large*, *United States Code*, and the various reporting services, carry the full text of the message and related information. Other mass or specialized media channels, such as newspapers and professional journals, carry only summaries of laws, *i.e.*, signals. *Decoders* monitor these channels and translate their content for eventual use by the intended *destinations* of the messages, such as individuals and corporations. In business organizations, decoders of full text channels are lawyers or paralegals who are either retained externally or are internal to the business. Decoders of signals carried by newspapers and specialized professional journals include lawyers and business personnel in functional areas such as finance, marketing, physical distribution, and public relations. A decoder may summarize or add interpretive comments to the message or signal should he route the message within the business organization for decisionmaking or an appropriate response.

In order for full-text messages or signals to be fully communicated from the information source to the destination, certain things must occur at three communication levels.<sup>3</sup> At the *technical level*, the sequence of words making up the law message or signal must be physically transferred from the source to the decoder and from the decoder to the destination. At the *semantic level*, the decoder or

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reflects the major characteristics of law communication in Mexico.

<sup>2</sup> C. SHANNON & W. WEAVER, *THE MATHEMATICAL THEORY OF COMMUNICATION* 31-35 (1964).

<sup>3</sup> As Shannon and Weaver point out, an inherent overlap of the three levels hampers systematic examination of the communication process. *Id.* at 56. Shapiro criticizes the few applications of communication theory to law information for failing to distinguish among the three levels. See Shapiro, *Toward a Theory of Stare Decisis*, 1 *J. LEGAL STUD.* 125, 126-27 (1972).

destination must accord the message the semantic meaning intended by the information source. At the *effectiveness level*, the message must reach the destination in a context that commands the destination's careful attention. Normally, a law message received from a distinguished lawyer is given greater attention than one from a paralegal. Similarly, the President of the United States is more responsive to a verbal message from a highly trusted cabinet official or through a telephone delegated for only high priority messages than from a low level official or through a conventional phone.

This Article focuses only on the factors within each of the six communication elements which normally cause information loss in the communication process, factors which thus determine whether communication within each level is achieved. Chart one summarizes and describes these factors. The impact of each factor on information loss is different, however, depending on the type of law transmitted. Some of the law characteristics causing these differences are (1) formality, (2) substantive focus, (3) jurisdiction of origin, and (4) stability. This Article will begin with a discussion of these characteristics because one needs a general understanding of them to apply the model properly.

### III. BASIC LAW CHARACTERISTICS

#### A. *Formality: Formal, Informal, Free*<sup>4</sup>

An ideal formal statute contains all essential elements within a single message.<sup>5</sup> Thus, an ideal *formal law* does not require subse-

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<sup>4</sup> See Rosenau, *Private Preferences and Political Responsibilities: The Relative Potency of Individual and Role Variables in the Behavior of U.S. Senators*, in *QUANTITATIVE INT'L POL.* 17, 26-27 (J. Singer ed. 1968), in which an analysis of the lawmakers' formal, informal, and free roles suggests the utility of the formality descriptor. For support of the formality descriptor across cultures, see Rosenn, *The Jeito: Brazil's Institutional Bypass of the Formal Legal System and its Developmental Implications*, 19 *AM. J. COMP. LAW* 514 (1971).

<sup>5</sup> Laws that are purely formal seldom exist. Because of the nature of language, few statutes are sufficiently unambiguous to preclude the necessity of judicial or administrative proceedings to resolve conflicts in their interpretations. Also, most statutes delegate discretionary authority to intervening governmental entities. A statute may delegate to an administrator the task of writing regulations to flesh out the broad outlines of the statute, a statute may empower an agency to enforce the law, or a court may determine a party's guilt or innocence under a criminal statute. If a statute requires regulations, administrative rulings, or judicial proceedings for its application, the law type is then informal in character.

Nevertheless, there are many relatively formal laws. For example, § 55 of the Model Business Corporations Act, which many states have adopted, requires incorporators to submit the articles of incorporation to the secretary of state for approval. The statute contemplates only one subsequent message, approval of the secretary of state. Furthermore, in the great majority of cases, approval is a formality. Thus, little or no discretionary authority intervenes between

quent messages such as administrative regulations, agency rulings, or judicial constructions to complete its meaning or facilitate compliance. The ideal formal law is contextually clear and does not require personal mediation or "bargaining" between law subject and governmental entities to accomplish the behavior intended by the information source. Formal laws apply "territorially," without regard to social, economic, or sexual distinctions.<sup>6</sup> A sociologist would say that formal laws generally embody persistent patterns of action and thereby "give order and constancy to recurrent events."<sup>7</sup>

In contrast, *informal laws* incorporate only some elements within the original statutory enactment. Determination of what entities are subject to the law and the content of their specific obligations is delegated to administrative bodies or postponed to the enforcement or dispute resolution phases.<sup>8</sup> Informal laws are composed of sequential messages and generally are nonterritorial. To implement informal laws, personal mediation is frequently required. The relative importance of informal laws and their ratio to formal laws increase as a legal system develops.<sup>9</sup>

*Free laws* are less numerous and important than formal and informal laws in the United States; however, their inclusion facilitates application of the model to other nations where free law is more predominant.<sup>10</sup> In the United States, free laws appear in the form of presidential executive orders<sup>11</sup> and special legislation granting

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the statute and the contemplated behavior. In effect, any person (ignoring questions of capacity and competence) may create a corporation almost solely by reference to the statute. In contrast, the Internal Revenue Code (I.R.C.) is supplemented extensively with regulations, rulings, opinions, and case law. A corporation must examine dozens or even hundreds of messages before it can take a deduction provided for in the Code.

<sup>6</sup> See Galanter, *The Modernization of Law*, in LAW AND THE BEHAVIORAL SCIENCES 990 (1969), where the author states that "territorial" means "the same rules are applicable to members of all religions, tribes, classes, castes and localities and to both sexes."

<sup>7</sup> W. MOORE, SOCIAL CHANGE 5 (1963). For example, a relatively formal federal statute which provides that elections for members of the House of Representatives shall take place on the next Tuesday after the first Monday in November, in every even-numbered year, is found in full text form at 2 U.S.C. § 7 (1977).

<sup>8</sup> See note 5 *supra*.

<sup>9</sup> Generally, a more industrialized country will have a larger ratio of informal to formal laws as the administrative apparatus of government expands in order to implement economic and social legislation. For a discussion of the substantive descriptor, see note 18 and accompanying text *infra*.

<sup>10</sup> For a discussion of free law in an historical analysis of German law, see J. DAWSON, THE ORACLES OF LAW 189 (1968).

<sup>11</sup> Examples include President Kennedy's informal coercion to "roll back" steel price increases, see 108 CONG. REC. 7306-10 (1962), and President Truman's order authorizing federal personnel to seize and operate the nation's steel mills. Exec. Order No. 10,340, 17 Fed. Reg. 3,139 (1952).

relief or benefits to specific persons or organizations.<sup>12</sup> Free laws do not apply territorially; they apply to specific entities or classes of entities. Within some political systems, arbitrary enforcement accompanies free laws. So that an information source may selectively enforce a free law, the law text may provide only minimal descriptions of the destination's responsibilities. In sharp contrast to formal laws, free laws do not "give order and constancy to recurrent events."<sup>13</sup>

Because of the unpredictability surrounding its enactment and enforcement, free law may have a high degree of personal mediation associated with it in both developed and developing political systems.<sup>14</sup> Compared to formal and informal laws, bribery and charismatic personal intervention frequently accompany the drafting and enforcement of free laws. Understandably, free laws are of special concern for business organizations operating in multiple United States or foreign jurisdictions, for while it is relatively unlikely that a free law which affects a business organization will exist in a particular United States jurisdiction, this probability increases when the number of jurisdictions multiplies or the jurisdiction is a foreign country at an earlier stage of legal development.

#### B. *Substantive Descriptor: Economic, Political, Social*

A law can be substantively described as having an economic, political, or social focus. Of course, most laws are a mixture of several foci and their effects similarly may be mixed. A dominant substantive focus, however, can often be identified.<sup>15</sup>

Communication dynamics inherent in each focus affect the quality of law transmission. Political laws are generally comprised of fewer messages originating from fewer information sources.<sup>16</sup> In contrast, social and economic laws often integrate messages produced

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<sup>12</sup> Such legislation may, for example, authorize settlement of a tort claim against the United States, create a national historic site, exempt a federal employee from mandatory retirement, or afford relief to certain persons from immigration quotas. See generally Comment, *Private Bills in Congress*, 79 HARV. L. REV. 1684 (1966).

<sup>13</sup> See W. MOORE, *supra* note 7.

<sup>14</sup> For example, executive orders are often preceded by exploitation of presidential influence and "jaw-boning" with potential subjects of the law.

<sup>15</sup> The Federal Patent Act, 35 U.S.C. §§ 1-293, primarily has an economic focus, while the Public Health Service Act, 42 U.S.C. §§ 201-300, carries a social focus. Some laws, however, such as the Federal Bankruptcy Act, 11 U.S.C. §§ 1-1103, are a close mixture of economic and social foci.

<sup>16</sup> See, e.g., 2 U.S.C. § 1 (1977), which deals with the time for election of senators.

by agencies, commissions, and courts.<sup>17</sup> Decoders' and destinations' perceptions of a channel's importance and of the rationality of the message it carries may vary according to substantive focus and past familiarity with that focus. For example, business organizations may most closely follow those subjects that have a critical impact on profit-making.

The jurisdiction's stage of development may determine the predominant focus of its laws.<sup>18</sup> Economic laws increase with industrialization.<sup>19</sup> As industrialization increases, the political content of laws also may intensify, particularly if the government assumes a strong role in economic planning.<sup>20</sup> In an industrialized society, social laws increase as technology advances and pressures mount to protect the rights of the individual as a worker and consumer.<sup>21</sup> In contrast, laws of a pre-industrial society may lack social content and the government in pre-industrial and industrializing societies may exercise political power more arbitrarily.<sup>22</sup>

### C. *Jurisdiction Descriptor: Federal, State, Local*

The jurisdiction in which a law is enacted affects the quality of information flow and, in turn, information loss. In the United States, differences in the quality of the law-making process among jurisdictions are caused by differences in: (1) training of law drafters, which may affect message clarity; (2) rationality of indexing, and conditioning for accessibility after enactment; (3) input from interest groups into the drafting process, which affects homogeneity of message meaning; and (4) resources of the jurisdiction, such as financial (determining ability to record deliberations), distributive (channels available), and human (frequency and length of time designated for lawmaking). Generally, at the federal level more channels are available to transmit law information than at the

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<sup>17</sup> Examples are messages produced by the Social Security Administration, the Interstate Commerce Commission, and the Federal Trade Commission.

<sup>18</sup> See Ansoff, *Management in Transition*, in *CHALLENGE TO LEADERSHIP: MANAGING IN A CHANGING WORLD* 35 (Drucker ed. 1973).

<sup>19</sup> W. MOORE, *supra* note 7, at 91.

<sup>20</sup> *Id.* at 195. When social transformation accompanies industrialization, the number of political laws likely will increase to accommodate citizens' drives to participate in government and the government's drive to control the extent of that participation.

<sup>21</sup> See *SOCIETY AND MARKETING: AN UNCONVENTIONAL VIEW* (N. Kangun ed. 1972).

<sup>22</sup> The unpredictability of laws with political content obviously has specific importance to foreign-based multinational corporations. See *generally* *COMPARATIVE ANALYSIS FOR INTERNATIONAL MARKETING* 25 (B. Liander ed. 1967).



state or local level and the quality of encoding of federal laws is superior to that of state or local laws.

D. *Stability Descriptor: Old, Modified, New*

The stability of a law can be described as old, modified, or new. Stability affects transmission at the three levels of communication—technical, semantic, and effectiveness. For example, publicity in the mass media about a new law may signal the law's existence to relevant persons and organizations. On the other hand, especially in pre-industrial or industrializing environments, channels may not exist to provide an adequate interpretation of a new or modified law so that an appropriate response can be formulated by the organization subject. If the subject has access to subsequent messages, such as judicial or administrative constructions, the old law may have a clearer meaning than an ambiguous new law which has yet to be interpreted, either judicially or administratively.

IV. STRUCTURE OF THE MODEL ANALYSIS

The law model distinguishes "paths" by which law information travels from information sources to decoders and destinations. Although there are numerous paths carrying law information, a major distinction exists between *full text paths* and *signaling paths*. As noted above, in most cases signaling paths transmit only highlights or summaries of the law, unless the law text is simple and short. Full text paths can be divided into official full text and annotated text paths, the latter transmitting both the full message and explanatory remarks. Signaling paths can be categorized as specialized media or mass media paths. As discussed in the path narratives below, Path One with its official text represents the "original" communication on which Paths Two, Three, and Four are based.<sup>23</sup>

Each of the four paths differs in the manner in which factors internal to the six communication elements condition information flow. The path narratives that follow in this and the subsequent article are organized around an ideal law type—formal, informal, and free. Where jurisdiction level, substance, and/or stability may contribute to information loss, the narrative only suggests such effects or relegates their discussion to the accompanying notes. The two text and the two signaling paths also are integrated and com-

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<sup>23</sup> See D. BERLO, *THE PROCESS OF COMMUNICATION* 36 (1960), for a discussion of the notion of "original" communication.

pared to illustrate where differences exist in the transmission process. Several charts at the end of this Article illustrate where information loss is likely to occur within each path. These charts represent a cumulative evaluation of how factors internal to each communication element condition information flow at each jurisdictional level in situations where the destination is proximate to or distant from the law source.<sup>24</sup>

## V. FORMAL LAW COMMUNICATIONS MODEL

### A. Full Text Paths Of Formal Law

#### Path One Examples (Full Law Text):

*U.S. Statutes at Large, U.S. Code, state session laws, city codes*<sup>25</sup>

#### Path Two Examples (Full Law Text Plus Annotation):

*U.S. Code Annotated, loose-leaf services, reporters*<sup>26</sup>

1. *Technical Level.* — The ideal formal law is represented by a single message produced by a single information source, such as a

<sup>24</sup> See charts 2-10 at pp. 233-41 *infra*.

<sup>25</sup> Other examples of Path One channels containing commentary and legislative history, but without a detailed index or comprehensive cross-referenced annotation, are Congressional Record (CONG. REC.), United States Code Congressional and Administrative News (U.S. CODE CONG. & AD. NEWS), and Federal Register (FED. REG.).

Examples at the state and local levels are Acts and Resolutions of the General Assembly of the State of Georgia (1977 Ga. Laws) and Codified Ordinances of the City of Easton, Pennsylvania.

Preliminary application of the path analysis here employed to law transmission in Mexico confirms that the four paths fit beyond the context of the United States. Similarities exist between sparsely populated and non-industrialized states in the United States, such as Montana, and the Mexican federal jurisdiction. Further research on this correspondence promises insights into problems related to receiving and sending laws which confront multinational corporations and Mexican governmental units seeking to control their activities.

<sup>26</sup> Most loose-leaf services and reporters cover regulations promulgated by particular agencies. See, e.g., Workmen's Compensation Law Reporter (WORKMEN'S COMP. L. REP. (CCH)); Unemployment Insurance Reporter (UNEMPL. INS. REP. (CCH)); Federal Estate and Gift Tax Reporter (FED. EST. & GIFT TAX REP. (CCH)); Bender's Uniform Commercial Code. Although by definition most regulations fall under the category of informal law, there are occasional messages of a decidedly formal character. Such a formal message incorporates all information necessary for the three communication levels, and there is no delegation to implementing or enforcement entities. An example of a formal message fitting such a description is the requirement that when state highway departments find it necessary to employ private negotiators for private property acquisitions, the employment shall be by written contract. This message is incorporated within the Federal Highway Administration's authority to acquire real property for highway construction. FWHA Procedures Relating to Acquisition of Real Property By Negotiation, 23 C.F.R. § 712.304(a)(3)(i) (1977).

federal or state legislature, or a city council.<sup>27</sup> If laws are new or are being amended, there are natural pressures to increase the numbers of sources and messages. The complete law text is transmitted by both Paths One and Two, but significant dissimilarities exist between the transmission styles of the two paths. Messages in Path Two are enriched through integration with pre-enactment history,<sup>28</sup> interpretive comments on the law itself, and extensive cross-referencing. In addition, message perishability is less of a problem with the fairly detailed indexes that most loose-leaf services of Path Two contain.<sup>29</sup> Through such services, messages in Path Two are far more accessible than those in Path One<sup>30</sup> where the message is not

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<sup>27</sup> As an example of a formal law, the Georgia General Assembly requires all corporations who wish to register their corporate name to do so with the Secretary of State. GA. CODE ANN. § 22-303(b)(1) (1977).

<sup>28</sup> At the federal level the message may survive until historical information surrounding its enactment is available. Pre-enactment history is generally available in the Congressional Record and committee reports, although only law specialists can efficiently retrieve and analyze these materials in a meaningful way. *See, e.g.*, the debate and committee reports regarding amendments to the bankruptcy laws which eliminate the need for creditors' consent prior to the filing of a relief petition by a municipality. 11 U.S.C. § 404 (1978); 121 CONG. REC. 181 (1976); H.R. REP. NO. 94-686, 94th Cong., 2d Sess. 686 (1976), *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 539. Records of pre-enactment activities are generally unorganized or unrecorded at the state and local levels. *See* I. POLLACK, FUNDAMENTALS OF LEGAL RESEARCH 340, 359 (1967). The exercise of in personam jurisdiction over nonresident tortfeasors in Georgia illustrates the confusion which results from the absence of historical information. GA. CODE ANN. § 24-113.1(b) (1971) provides for the exercise of jurisdiction when both the tortious act and injury occur in Georgia. Subsection (c) provides for personal jurisdiction when the tortious act or omission occurs outside Georgia but the injury is sustained within the state, so long as the defendant meets a test of business contact with Georgia. Absent clear legislative guidance, the Georgia Supreme Court has read subsection (b) to provide jurisdiction over nonresident tortfeasors where the tortious act or omission occurs outside Georgia, rendering superfluous subsection (c) with its stringent test of business contacts by the defendant. *Coe & Payne Co. v. Wood Mosaic Corp.*, 230 Ga. 58, 195 S.E.2d 399 (1973). The apparently logical exclusion is nowhere explicitly discernable. *See* Beard & Ellington, *Trial Practice and Procedure*, 25 MERCER L. REV. 265 (1974); Comment, *Impact of the Coe & Payne Decision on Georgia's Long-Arm Statute*, 10 GA. ST. BAR J. 164 (1973).

<sup>29</sup> *See, e.g.*, Current Topical Index, 5 TRADE REG. REP. (CCH) 54,513:

Flammable materials

- artificial turf standards
- Flammable Fabrics Act enforcement:
  - FTC policy until changeover
  - Transfer to Consumer Product Safety Comm.
- Flammable Fabrics Information Center
- Insulation
  - Non-flammability claims
- Plastics
  - Trade regulation rule

<sup>30</sup> Where annotated statutes do not exist at the local level, oral communication among lawyers is a substitute. The extensiveness of the lawyer's local contacts obviously limits the effectiveness of this inter-personal network.

accented by commentary. Further, access to Path One is not eased by detailed indexing,<sup>31</sup> organization into one subject area such as that provided by loose-leaf services on taxation and labor, or by integration into several subject areas falling under one particular government agency's jurisdiction, such as that furnished by the Federal Trade Reporter's coverage of multiple subjects under the aegis of the Federal Trade Commission.<sup>32</sup>

During the encoding process, encoders serving Path Two have a good opportunity to preserve the formal law message's technical integrity if their skills are equal to the tasks of providing commentary, cross-referencing, and indexing.<sup>33</sup> The encoder serving Path One performs a comparatively mechanical function, adding only minimal time and subject indexing.<sup>34</sup>

Channel factors for the two paths compare in the following ways. Both are full capacity with physical space within channels to accommodate the full law text. There are usually fewer annotated channels for state and local law than for federal law.<sup>35</sup> Factors of

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<sup>31</sup> Indexing and cross-referencing are reasonably adequate at the federal level and in industrialized states. In many jurisdictions like Montana and Puerto Rico, however, indexing is poor.

<sup>32</sup> See, e.g., coverage of multiple subjects by the Trade Regulation Reporter (TRADE REG. REP. (CCH)): ¶ 10,173 (advertising); ¶ 10, 196 (door-to-door selling); ¶ 10,137 (food franchising); ¶ 10,153 (automobile warranties); ¶ 10,141 (Robinson-Patman orders); ¶ 10,139 (television commercials).

<sup>33</sup> Naturally, the encoder's capacity to preserve the message at the technical level relates to his prior training. Most encoders which staff commercial publishing companies are "research-type" personnel. End users are, for example, lawyers and law librarians.

<sup>34</sup> In comparison to note 29 *supra*, see, for example, the General Index to U.S.C. at 5284 (Supp. V 1975):

**FLAMMABLE FABRICS**

Actions and proceedings unaffected by transfer of functions to Consumer Product Safety Commission, 15 § 2079.

Consumer Product Safety Commission, transfer of functions to Consumer Product Safety Commission, 15 § 2079

Federal Trade Commission, transfer of functions, etc., to Consumer Product Safety Commission, 15 § 2079.

Secretary of Commerce, transfer of functions, etc., to Consumer Product Safety Commission, 15 § 2079.

Secretary of Health, Education and Welfare, transfer of functions, etc., to Consumer Product Safety Commission, 15 § 2079

When comparing this index excerpt with note 29 *supra*, observe the emphasis on substantive analysis in the former and on procedural analysis in the latter. The index to the annotated service is clearly the superior research tool.

<sup>35</sup> Most states have at least one annotated statute series and a separate digest encyclopedia. See, e.g., FLORIDA LAW AND PRACTICE; GA. CODE ANN. Delaware, however, has no digest, and Washington, D.C., has no annotated statutes. At the county and municipality levels, such channels are virtually nonexistent. The practitioner is limited to an occasional, one-volume treatment of particular areas of local law, which is usually only found in large metropolitan centers. See, e.g., M. CARROS, *THE LICENSING POWER IN NEW YORK CITY* (1963).

directivity, accessibility, and perishability impose dissimilar restraints on information flow within the two paths. Most Path One channels are neither organized nor comprehensively indexed by subject and their bulk and minimal indexing prevent quick scanning and access.<sup>36</sup> Such channels, therefore, are nondirective and access essentially is limited to a specialized decoder, *e.g.*, most often a lawyer or paralegal who follows legislative developments by subject area such as trade regulation. In contrast, those Path Two channels that are specialized by subject and are carefully indexed can be described as "directive." These qualities allow access by personnel with general legal skills and by legal specialists in substantive areas such as labor law, taxation, securities, and shipping.<sup>37</sup> A general lawyer's access, however, is usually limited to simple or only moderately complex laws such as minimum wage or business licensing laws. Such laws do not demand a specialized background and are textually explicit so that they can be indexed comprehensively by subject. For complex laws, such as the recent Tax Reform Act of 1976,<sup>38</sup> specialized decoders are essential.

In a strictly technical sense, channels of neither path are perishable, because they are available in comprehensive law libraries. Even after a considerable time lapse, specialized decoders are able to retrieve a formal law message through channels of either path, although this is considerably more difficult through Path One. The demands on the capacity of decoders of state and local laws, however, are greater than are the demands on decoders of federal laws.<sup>39</sup> These demands are greatest when only official, Path One channels exist, as is true for most local jurisdictions,<sup>40</sup> and when the anno-

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<sup>36</sup> See United States Statutes at Large (Stat.), which is a compilation of individual legislative bills organized by enactment date. There is also a subject index and a list of laws affected.

<sup>37</sup> See, *e.g.*, Labor Relations Reporter (LAB. REL. REP. (CCH)); Tax Court Reporter (TAX CT. REP. (CCH)); Federal Securities Law Reporter (FED. SEC. L. REP. (CCH)); Shipping Regulation Reports (SHIPPING REG. REP. (P&F)).

<sup>38</sup> Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1731 (codified in scattered sections of I.R.C.).

<sup>39</sup> Technical demands on decoding are greater on state and local jurisdictions than on federal jurisdictions due to the poorer availability and systemization of materials. Demands on decoding also depend on subject matter and the law's stability.

<sup>40</sup> As the following examples indicate, Path One channels may be the only means to retrieve the complete law text if annotated channels are nonexistent.

It is the practice in New York City for the city council to enact legislation which is then published chronologically by the city clerk as LOCAL LAWS OF THE CITY OF NEW YORK. Annually, all local laws, other than city charter amendments, are incorporated in the ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, also published by the city clerk.

In Atlanta, the city council adopts ordinances which are recorded in the MINUTES OF THE

tated services for state jurisdictions do not cover certain subjects.<sup>41</sup> There may be fewer specialists and generalists serving a decoding function at the state and local levels than at the federal level, but states such as New York, California, and Illinois, and their metropolitan centers, are an exception.

2. *Semantic Level.* — After technical transmission is accomplished, there are many factors which may impair semantic transmission of a formal law. Lawmakers represent and are supported by diverse interests.<sup>42</sup> Such heterogeneity may cause textual inconsistencies if diverse interests are accommodated within one law message.<sup>43</sup> An added problem specific to formal law is its basically static character. Although the formal law's meaning may fit the societal outlook at the time it is enacted, a decrease in its consistency can be expected if it is not amended over time.<sup>44</sup> Unless obsolete formal laws are "purged" from the body of statutory laws and new formal laws which correspond to changed conditions are introduced, response patterns of destinations may degenerate to deliberate non-

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MAYOR AND CITY COUNCIL OF ATLANTA. These minutes are available for public inspection at the office of the clerk of the city council. The ordinances are compiled annually into the SUPPLEMENT OF THE CODE OF GENERAL ORDINANCES OF THE CITY OF ATLANTA, which accompanies the more permanent CODE OF GENERAL ORDINANCES OF THE CITY OF ATLANTA.

In Athens, Georgia (pop. 60,000), the official statement of any ordinance appears in the MINUTES OF THE MAYOR AND COUNCIL OF THE CITY OF ATHENS, GEORGIA, published by the city council.

<sup>41</sup> Subjects covered by annotated services at the federal level, but not generally at the state level, include, for example, noise regulation, worker's compensation, labor relations, and trade regulation.

<sup>42</sup> A diversity of perspectives (economic, social, political, cultural, etc.) may be injected by lawmakers into the lawmaking process. Due to greater diversity inherent in federal compared to most state and local legislatures, less internal homogeneity can be expected with federal messages.

<sup>43</sup> See, e.g., the obvious inconsistencies in the policy declarations of the Export Administration Act of 1969, 50 U.S.C. app. § 2402 (1978). These conflicting policy statements have caused considerable controversy over implementation of the Act. See, e.g., *Hearings on the Export Administration Act: Agenda for Reform Before the Subcomm. on International Economic Policy and Trade of the House Comm. on International Relations*, 95th Cong., 2d Sess. 265 (1978); 223 U.S. EXPORT WEEKLY A1-A3 (1978).

<sup>44</sup> When enacted, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4347 (1977), was clearly consistent with a general concern about protecting the environment in an era of economic abundance. Currently, in an era of economic stagnation and currency instability, the governmental action required under the Act is increasingly viewed as a burden that must be applied strategically and not generally. See, e.g., 218 U.S. EXPORT WEEKLY A1-A2 (1978). A similar fate of constricted application befell the Webb-Pomerene Export Trade Act of 1918, 15 U.S.C. §§ 61-65 (1973). For a good historical review of its contraction, see Chapman, *Exports and Antitrust: Must Competition Stop at the Water's Edge?*, 6 VAND. J. TRANSNAT'L LAW 399, 407-11 (1973).

compliance.<sup>45</sup> Compliance also may be affected by the law's substantive focus and relative stability. Stability decreases as changes occur in the environment that is directly relevant to the law and in the original interests that prompted action by the lawmaking source. For example, the energy crisis of the mid-1970's contributed to relaxed enforcement of pollution control regulations against energy producers. This development also contributed to a realignment among business interests as they sought to take advantage of the trend both in Congress and in regulatory agencies like the Federal Energy Administration.

Several features within Path One can contribute to loss in message meaning. The channel's essentially fixed and static format prevents encoders from emphasizing a unique message or tailoring the message to alert business destinations; therefore, decoders using channels of this path must seek additional information through other paths to resolve inconsistencies in interpretation which develop as time passes. For example, without access to channels of Path Two, how would decoders interpret pollution control laws in an energy crisis?<sup>46</sup>

Encoders of annotated channels can present background information on the law's origin and its evolution.<sup>47</sup> Coupled with an elaborate network of cross-references, such information establishes a framework for interpretation when questions arise. Also, if annotations are consistently up-dated, potential for distortion is reduced. This path, however, has its deficiencies. The manpower and resources to handle such up-dating of annotations may exist only for laws of a few states and the federal government.<sup>48</sup> Further, encoders of the annotated path often do not possess the specialized skills in the subject necessary to annotate, cross-reference, and index a complex formal law.<sup>49</sup> Naturally, a higher potential for semantic distor-

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<sup>45</sup> See rather humorous examples in SEULING, *YOU CAN'T EAT PEANUTS IN CHURCH AND OTHER LITTLE-KNOWN LAWS* (1975).

<sup>46</sup> Environment Reporter (ENVIR. REP. (BNA)) facilitates such interpretation. Similarly, it would be difficult to determine the scope of application of equal pay laws and other fair employment practices in the wake of rising unemployment without the Labor Relations Reporter (LAB. REL. REP. (BNA)).

<sup>47</sup> See, e.g., the Occupational Safety and Health Reporter (OCC. SAF. & HEALTH REP. (BNA)) which monitors statutory enactments as well as administrative rulings by OSHA and relevant court cases interpreting such enactments and rulings.

<sup>48</sup> See note 35 *supra*.

<sup>49</sup> The annotated channel's importance to decoders may, however, stimulate semantic accuracy by encoders. The serial nature of services and reporters offers a more efficient vehicle for encoders to integrate amendments and for decoders to retrieve such amendments when

tion exists as laws increase in complexity.<sup>50</sup>

The channels of Path One and Path Two contrast quite markedly regarding the match of the channel to the message. The annotated channel transmits the message more efficiently than the full text, unannotated channel with its bulk and lack of breakdown by subject. When annotated channels such as the *U.S. Code Annotated* are not dedicated to a particular subject area, substantive and detailed indexing relieves problems of access. The rationality of this indexing varies widely from the well-constructed index of California to the annotated statutes of Montana with their uneven and at times nonrational index.

Differences between the two paths in the manner of encoding lead to differences in the quality of decoding demanded. Decoding demands also vary depending on jurisdiction, major subject focus, and the stability of the law. For the meaning of a complex formal law to be understood, more expert decoders are required for the unannotated path. If changes in the economy or the social or political structure have an impact on how the law should be interpreted, only *specialized decoders* with a background in the specific legal subject can accurately interpret the law.<sup>51</sup> The anomaly here is that such skilled decoders are numerous *only* where, as with the tax laws, there are adequate economies of scale to support decoding of a particular subject area.<sup>52</sup>

3. *Effectiveness Level.* — At the federal level, in contrast to the state and local levels, the lawmaking source has somewhat more flexibility in transmitting law information via those Path One chan-

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formal laws are changing. The best-known example of this is the thorough, timely analysis provided by the Standard Federal Tax Reporter (STAND. FED. TAX REP. (CCH)), which provides detailed information on the morass of rules, regulations, and statutes involved in doing business with the federal government. However, what encoders cannot compensate for is the impact on the message of low internal homogeneity within the information source.

<sup>50</sup> At state and local jurisdictions, encoders may guide their interpretation by referring to a federal statute in order to handle complex messages or messages where internal consistency is a problem. This may introduce considerable semantic distortion when the intent of law drafters at state or local jurisdictions differs.

<sup>51</sup> The decoding step also suffers from the impersonal nature of the official channel and the encoders associated with it. Such a handicap may be anticipated whenever encoders must process large quantities of messages rather than those dealing with specific subject areas. With certain services, reporters, and specialized media (e.g., trade association publications), it may be possible for decoders to contact encoders *directly* when clarification is necessary.

<sup>52</sup> Economic resources sufficient to support such specialized decoding exist only for important law subjects at federal jurisdictions or where populous and industrialized states and cities are involved in the decoding process.



nels most conspicuous to intended destinations.<sup>53</sup> Path Two, as well as the signaling Paths Three (specialized media)<sup>54</sup> and Four (mass media),<sup>55</sup> is based upon the "original" communication produced by the lawmaking source and published in the official, full text channel of Path One. While encoders attached to channels of Paths Two, Three, or Four can select new or specially issued channels, it is the exception rather than the rule that resources exist to expand the scope of existing channels, especially at state and local levels.

The destination will perceive a law message as more important if the law's substantive focus corresponds to a subject important to the destination. Consequently, businesses consistently track laws, such as tax laws, which have a primarily economic impact and directly affect profit maximization, while remaining somewhat inattentive to the changing contours of political and social laws. At various stages of a nation's development, lawmaking bodies may emphasize a non-economic substantive focus in their output.<sup>56</sup> When vigorous enforcement follows such a regulatory emphasis, a higher destination response to laws pertaining to that subject area can be expected, regardless of a destination's "natural" interest. For example, active enforcement of minimum wage laws certainly results in business personnel paying more attention to subsequent increases in the base pay rate.<sup>57</sup>

One also can examine the destination's perception of message importance in connection with uniformity in drafting style. Greater uniformity in law drafting at the federal level can cause the destination to perceive the message as more rational. On the other hand, stylistic uniformity may dilute opportunities to optimize impact on specific destinations. For example, the application of uniform rules to the drafting process may prevent modification of the message to

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<sup>53</sup> Also, when capacity exists to design the content of laws to maximize destination response, such capacity is generally greatest at the federal jurisdiction. At this jurisdiction law makers can support committees and subcommittees whose staffs arrange contact with destinations. Through investigations and hearings, laws can be drafted to reflect the substance of such contact. This capacity is obviously more limited at state and local jurisdictions.

<sup>54</sup> See note 60 *infra*.

<sup>55</sup> See note 61 *infra*.

<sup>56</sup> See note 44 *supra*.

<sup>57</sup> Similarly, in a series of interviews by one of the co-authors with local managerial personnel and headquarters executives of a wide range of merchandisers, the Occupational Safety and Health Administration regulations were consistently mentioned as posing burdens on business operations. These interviews were conducted in the fall and winter of 1974-75 during the early stages of OSHA regulations and covered five types of instore retailers; 11 managers were extensively interviewed at the local level, as were six executives of multi-unit merchandisers at the headquarters level.

alert specific destinations. At state and local levels, tailoring the message so that it reaches “personalities” of certain destinations justifies uneven and less sophisticated draftmanship. An opposite problem arises when law drafters in certain states and cities fall into the habit of borrowing from federal model laws. Unless the locations are similar, the law may not fit the new environment in which it is to be applied.<sup>58</sup>

4. *Some Conclusions On Full Text Communications.* — In light of probable information loss in Paths One and Two at the technical, semantic, and effectiveness levels, Path Two channels should be more successful in transmitting formal laws to destinations, especially if destinations are physically distant from the sources of the law.<sup>59</sup> No annotated services exist for local laws, however, and certain subject areas will not be covered by an annotated service at federal and state levels. For the latter gaps, the *U.S. Code Annotated* and annotated versions of state laws must serve as surrogates despite their inadequacies, especially their limits on accessibility.

Because lawyer-decoders generally are required for both Path One and Path Two channels, nonlegal business personnel become aware of the law only by signals received from Paths Three or Four. Once a signaling path alerts nonlegal personnel to the law’s existence, the critical issue becomes whether such personnel contact lawyers who are capable of accessing Paths One or Two. This contact is essential for reception of the complete law text.

#### B. *Signaling Paths of Formal Law*

##### Path Three Examples (Specialized Media Signals):

trade and professional journals, newsletters<sup>60</sup>

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<sup>58</sup> The Montana Administrative Procedure Act, 82 MONT. REV. CODE ANN. §§ 4201-4229 (1977), is patterned after the Federal Administrative Procedure Act, 5 U.S.C. §§ 552-552(a) (1976), and the Model State Administrative Procedure Act (1961). However, the departures from courtroom practice which were sought by the federal and model state acts to facilitate administrative action and to take advantage of administrative expertise are not evident in Montana’s application of the Act.

<sup>59</sup> The path analysis assumes that the ultimate destination is proximate to the law source. In reality, this is often not true, especially for state and local laws. Multi-unit companies, while having facilities in such jurisdictions, are governed by a “headquarters” facility often many jurisdictions away from a law source seeking to exact behavior from a field unit within its jurisdiction. Most channels servicing the state or local law source are not developed to reach the distant headquarters unit.

<sup>60</sup> See, e.g., academic journals such as *Georgia Journal of International and Comparative Law* (GA. J. INT’L COMP. LAW), *Harvard Law Review* (HARV. L. REV.), and *Yale Law Journal*

## Path Four Examples (Mass Media Signals):

newspapers, general periodicals<sup>61</sup>

1. *Technical Level.* — Unless the law is short and simple, media paths carry only a signal or a summary of the law. An adequately written signal indicates only the existence and subject focus of the formal law,<sup>62</sup> but this generalization may not apply when channels are legal journals specialized by subject area.<sup>63</sup>

Because of formal law's single message structure, its message is potentially more perishable than informal or free law messages. Most mass media channels do not commit personnel to follow law developments, relying instead on "secondary sources," such as Associated Press (AP) or United Press International (UPI), for their law information. The integrity of signals selected by these media channels naturally depends on how well such news services have handled factors affecting the signaling process. Only a few mass media channels, such as *The New York Times* and *The Wall Street Journal*, directly cover many law subjects. Trade association and professional journals consistently track laws which are expected to

(YALE L. J.); general professional association journals such as the American Bar Association Journal (ABA J) and Journal of Accountancy (J. ACC'Y); and periodicals devoted to specific subjects of constituencies such as the Journal of National Conference on Referees in Bankruptcy (J. NAT'L CONF. REF. BANKR.), Lawyer and Banker (LAWYER & BANKER), Industrial Property (INDUS. PROP.), National Civic Review (NAT'L CIVIC REV.), CONGRESSIONAL QUARTERLY WEEKLY REPORT (CONG. Q. WKLY. REP.), United States Industrial Council Educational Foundation Newsletter (U.S. INDUS. COUNCIL EDUC. FOUNDATION NEWSLETTER), Administration and Society (AD. & SOC'Y), Journal of American Insurance (J. AM. INS.), the Trust Letter (TRUST LETTER), News and Views from the American Arbitration Association (NEWS & VIEWS AM. ARB. ASSOC.), Industrial and Labor Relations Forum (INDUS. LAB. REL. F.), Harvard Business Review (HARV. BUS. REV.), Industrial and Labor Relations Review (INDUS. LAB. REL. REV.), and Consumer News (CONSUMER NEWS).

<sup>61</sup> See, e.g., the range from such daily newspapers as *The Wall Street Journal* with national distribution and *The New York Times* with its wide metropolitan coverage, to such smalltown dailies as *Athens Daily News*. General periodicals include *Time* (TIME), *Business Week* (BUS. WEEK), and *U.S. News & World Report* (U.S. NEWS WORLD REP.). These periodicals often include special sections discussing current regulatory trends and new laws.

<sup>62</sup> In December, 1977, *U.S. News & World Report* reported on a recently enacted change in federal criminal procedure. The new law permits officials to obtain a search warrant by telephone from a federal magistrate when there is a risk that the delay involved in obtaining the search warrant will result in the destruction of evidence. Pub. L. No. 95-78, § 2(e), 91 Stat. 320 (1977). *U.S. NEWS WORLD REP.*, December 19, 1977, at 74.

<sup>63</sup> Such specialized legal journals may provide detailed analysis of particular laws as well as parts of law texts. For example, the *Community Property Journal* contains such entries as Bingaman, *New Mexico's "Community Property Act of 1973"—a Commentary and Quasi-Legislative History*, 1 COMMUNITY PROP. J. 213 (1974), and *Uniform Disposition of Community Property Rights at Death Act*, 1 COMMUNITY PROP. J. 56 (1974).

have an impact on their readership.<sup>64</sup> Laws receiving such coverage, however, are more often informal than formal in type.

The care with which encoders construct signals, either from wire services or from their own investigative reporting, also determines which signaling passes the technical level. The number of media encoders and channels at the federal level exceeds the number at the state and local levels.<sup>65</sup> With the possible exceptions of the most populous and industrialized states and cities, there are few *specialized* media channels at the state and local level. At these levels there are fewer mass media channels, especially periodicals, in part because cost/benefit ratios are inadequate to justify the existence of large numbers of channels. Below the federal level, the lower number of specialized media is even more noticeable, and is obviously due to the fact that the costs of supporting specialized encoders and channels exceed the benefits which inure to the potential users.

The most significant problem with both media paths is that because the full text message must be summarized into a signal, the information about the law that the encoder selects is critical for the message's transmission at all three communication levels. As the law's complexity increases, as the tax reform law on capital gains<sup>66</sup> well illustrates, the encoder's skills may not be equal to the encoding task, particularly at the state and local levels. Encoders serving large trade or professional organizations should be able to handle complex laws more adequately and may more often retrieve both the

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<sup>64</sup> The Tax Magazine (TAXES), published monthly by Commerce Clearing House (CCH), continuously scrutinizes particular sections of the Internal Revenue Code which are of major consequence to its readership. See, e.g., Rose, *Warren Jones Co.: The Ninth Circuit Distills the Legal Quagmire of Code Sec. 1001(b)*, 54 TAXES 410 (1976).

<sup>65</sup> Nationally, the number of mass media and specialized media channels is great. See, e.g., periodicals with general circulation such as Time (TIME), Newsweek (NEWSWEEK), U.S. News & World Report (U.S. NEWS WORLD REP.), and specialized media such as American Bar Association Journal (ABAJ), Harvard Law Review (HARV. L. REV.), Tax Law Review (TAX L. REV.), Natural Resources Journal (NAT. RESOURCES J.), Rutgers Journal of Computers and the Law (RUTGERS J. COMPUTERS LAW), and Public Utilities Fortnightly (PUB. UTIL. FORT.). At the state level, the number diminishes to primarily state bar journals, such as Georgia State Bar Journal (GA. ST. BAR J.), The Ohio Bar (OHIO BAR), New Jersey Law Journal (N. J. LAW J.), Missouri Bar Journal (MO. BAR J.), business journals such as Urban Georgia (URB. GA.), and metropolitan newspapers with a statewide circulation, such as The New York Times, Atlanta Constitution, Chicago Tribune, and Miami Herald. At the county and municipal level, the number of media channels is limited to local newspapers and local bar publications such as Carroll County Georgian, Athens Observer, New York Bar Journal (N.Y.B.J.), The Shingle, and Georgia Municipal Journal (GA. MUNICIPAL J.).

<sup>66</sup> Tax Reform Act of 1976, Pub. L. No. 94-455, §§ 1401-1403, 90 Stat. 1520 (codified at I.R.C. §§ 1211-1212, 1222).

full message and any pre-enactment messages concerning these laws that are important to destinations. With the revenues of such organizations based on servicing end-users, encoders are held to higher reporting standards.<sup>67</sup> Encoders, particularly those serving large trade associations such as the American Manufacturing Association, must be capable of meeting such demands. In contrast, the ability of mass media encoders to preserve message integrity is limited by the frequent need to popularize content to maintain and gain readership, and to cover a vast variety of subjects.<sup>68</sup> With such difficulties facing mass media encoders, a persistent possibility exists that distortion and omission can affect all communication levels.

A comparison of channel factors of each path reveals similar limits on the numbers and capacities of each. Specialized media channels at all levels more often cover laws having a predominantly economic focus. Thus, such channels may not as consistently cover a formal law having a social or political focus,<sup>69</sup> especially given formal law's single message structure.

While the capacity of channels of both paths is limited to signaling, directivity for mass and specialized media channels differs. Within mass media channels, the law signal appears among a clutter of unrelated, non-law information; specialized media channels with their narrower subject orientations provide a more focused backdrop for the law signal. Thus, signals carried by specialized media are essentially more directive for decoders looking for law information. Inadequate and often nonexistent indexing, particularly at state and local levels,<sup>70</sup> hinders later access to channels of

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<sup>67</sup> See, e.g., 191 U.S. EXPORT WEEKLY A-1 (1978) (BNA) for coverage of the Arab Boycott Regulations adopted pursuant to Title 2 of the Export Administration Act of 1969, 50 U.S.C. app. §§ 2401-2413, as amended.

<sup>68</sup> With such constraints, whether pre-enactment and full text messages are retrieved as background by encoders depends on the law's importance to media readership.

<sup>69</sup> Given the cost/benefit analysis applied by decoders faced with increasingly limited resources, the media must focus on that information which yields the greatest substantive advantage for the decoders' constituents. In our industrial society, the greatest yields per message are typically economic in substance. Thus, media channels devoted to taxation are relatively comprehensive and numerous at lower levels.

In contrast to the media saturation of information related to economics, subjects such as employment discrimination and environmental regulation of business receive either relatively sparse treatment or treatment in journals which do not deal with such subjects exclusively. See, e.g., Equal Employment Compliance Special Report (EQUAL EMPLOYMENT COMPLIANCE SPEC. REP.); Employee Relations Law Journal (EMPLOYEE REL. LAW J.); Race Relations Law Reporter (RACE REL. LAW REP); Civil Rights Digest (CIV. RIGHTS DIG.).

<sup>70</sup> Where it exists, cumulative indexing is inadequate for mass and specialized media chan-

both media paths. The limited coverage of metropolitan newspapers by microfilm indexes means that access after initial reading is extremely difficult.<sup>71</sup> Channel perishability is naturally affected by factors such as directivity and accessibility over time. Because specialized media channels are more directive than mass media channels, the former afford better initial and subsequent access to the signals.

The bulk of both media paths and problems of later access require that decoders regularly scan these channels, except possibly specialized periodicals having indexes and content tables designed for ready access. Without regular scanning, the potential for loss of a single signal summarizing a formal law is high. Although instances may occur where follow-on signals are sent, multiple signaling is definitely more characteristic of informal than formal law.

Decoders of both media channels, who may be lawyers (generalists or specialists) or non-lawyers, scan such media to keep informed on laws relating to their areas of responsibility and interest. Legal skills are required for decoding specialized legal journals. Particularly for mass media, in order for signals to pass the technical level, scanning must be simultaneous with the channel's issue to overcome the severe limitations of subsequent access.

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nels published at state and local levels. In Georgia, for example, the major metropolitan newspapers, *e.g.*, The Atlanta Constitution and The Valdosta Daily Times, do not publish indexes, relying instead on indexes prepared by the reference departments of the Georgia State University Library (Atlanta) and the Valdosta State College Library (Valdosta), respectively. These indexes are primarily concerned with Georgia, its counties and cities and, to a lesser extent, the southeastern region of the United States, and stress articles giving news on local and state governments and state business. Articles on laws are usually under the heading of "legislation," followed by the sub-heading "laws and legislation." It is necessary to consult individual stories in order to locate specific law messages.

The mass media periodicals carrying law signals in Georgia include, for example, Savannah Magazine (SAVANNAH MAGAZINE), Atlanta Magazine (ATLANTA MAGAZINE), Georgia Life (GA. LIFE), and Urban Georgia (URB. GA.). These periodicals do not publish their own indexes nor are their articles indexed in such publications as The Reader's Guide to Periodical Literature or Ulrich's International Periodical Directory. Thus, it becomes necessary to consult individual issues to locate law messages. The legal specialized media, *e.g.*, Georgia State Bar Journal (GA. ST. BAR J.), Georgia Law Review (GA. L. REV.), Mercer Law Review (MERCER L. REV.), and Emory Law Journal (EMORY L.J.), are well indexed, but such indexes are generally published only every few issues, with cumulative indexes appearing every few years.

<sup>71</sup> For example, The Newspaper Indexing Center at the Micro-Photo Division of the Bell & Howell Company in Wooster, Ohio, publishes a monthly index to the following newspapers: The Chicago Tribune, The Detroit News, The Houston Post, The Los Angeles Times, The New Orleans Time-Picayune, The San Francisco Chronical, and The Washington Post. These are available in pamphlet form and may be bound. They index copies of the newspapers, which are microphotographed. Bound copies of the New York Times Index are available back to September, 1851.

2. *Semantic Level.* — At the semantic communication level, factors relating to the information source (internal homogeneity) and to the message (external to internal consistency) affect the encoders' abilities to transmit signals without distortion.<sup>72</sup> The specialized media encoder generally is more capable than the mass media encoder of handling inconsistencies within the formal law message. Such inconsistencies may occur when the lawmaking process accommodates diverse interests represented by lawmakers.<sup>73</sup> Given their background in law subjects, specialized media encoders interpret the law's meaning as the environment relevant to its interpretation changes. Most specialized media encoders are more familiar with the law's subject area than mass media encoders who frequently cover a profusion of subjects. A critical deficiency of specialized media, however, is that the law's content must coincide with the subject orientation normally covered, while coverage by the mass media can be expected if the laws are "newsworthy."<sup>74</sup>

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<sup>72</sup> The encoder's ability to avoid distortion also relates to the subject, stability, and jurisdiction of the law. In terms of subject, certain encoders may be more familiar with economic type laws on the basis of their training. They may also be naturally reinforced in reporting certain subjects over others due to editorial policy of mass media or substantive orientation of specialized periodicals. With regard to stability, media encoders may have more problems in avoiding distortion when laws are either rapidly changing or new. Finally, with regard to jurisdiction, the potential for distortion may be greater at local and state jurisdictions compared to the federal jurisdiction, given less expertise on the part of encoders of both specialized and mass media paths, and frequently less systemization of the original message.

<sup>73</sup> The law recognizing the compulsory jurisdiction of the International Court of Justice over the United States in the area of international law is typical of a formal law message containing a subtle, yet crucial, internal inconsistency which a specialized media encoder is best able to transmit without false impressions. By the Declaration of the United States of America Recognizing as Compulsory the Jurisdiction of the Court, in Conformity with Article 36, Paragraph 2 of The Statute of the International Court of Justice, August 14, 1946, 61 Stat. 1218, T.I.A.S. No. 1598, the United States recognized as compulsory *ipso facto* and without special agreement the jurisdiction of the International Court of Justice in all legal disputes arising concerning the United States in treaty interpretations, questions of international law, the existence of international obligations, and the nature of liability for the breach of international obligations.

Despite this very clear obligation, the declaration provides that compulsory jurisdiction of the court does not extend to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States. Clearly, this large loophole could emasculate the intent of the Declaration given the uncertain frontier between domestic and international matters. The readily evident tension between those advocating an integrated world order and the adherents to principles of national sovereignty produced a formal law containing sophisticated and complex internal inconsistencies which only specially trained encoders can transmit without distortion.

<sup>74</sup> For example, trade journals may fail to pick up an important new law affecting the industries they serve when that law's subject is not an area usually covered. Many industry trade journals failed to cover adequately environmental type regulation beginning in the

Specialized media channels facilitate the transmission of signals especially when the media's substantive orientation parallels that of the message.<sup>75</sup> In terms of substantive match of law signals to channels, obviously when channels are broken out by subject, such as the *Air Law Review* or *The American Bankruptcy Journal*, there is a better match of signals on laws related to such subjects with channels. In contrast, the general nature of mass media channels and the broad range of subjects carried preclude focusing on information about laws or certain law subjects. Thus, a comparison of impedance of the two channels indicates a higher probability of information loss with mass media than with specialized media channels.

Direct contact between encoders of some specialized media and decoders can clarify questions of how to interpret signals. For instance, a trade association representing a powerful industry sector may have a "hot line" on which its members may call specialized media encoders when pursuing clarification or background on a law.<sup>76</sup> Such contact upgrades the integrity of the signaling process, because encoders, knowing that the possibility for contact exists, generally will be more cautious in constructing signals. Contact also improves the quality of decoding and reduces the problem caused by formal law's consistency in a changing environment. The impossibility of clarifying contact between mass media encoders and decoders handicaps the quality of decoding at the semantic level, especially if the signal summarizes a complex law or a changing law.<sup>77</sup>

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1960's, leaving their subscribers unprepared for the trend. Now, of course, the field is well covered by such specialized channels as *Environmental Law (ENVT'L LAW)*, *Environment (ENVIRONMENT)*, *102 Monitor (102 MONITOR)*, *Harvard Environmental Law Review (HARV. ENVT'L L. REV.)*, *Environment Law Review (ENVIRONMENT L. REV.)*, and *Noise Regulation Reporter (NOISE REG. REP.)*.

<sup>75</sup> As in cases where there are great demands on mass media encoders to appeal to subscribers, however, semantic distortion can occur during the signaling process if the encoder shades the law's meaning to cater to the destination's attitudes on certain law subjects.

<sup>76</sup> For example, when the United States Congress is in session, the National Association of Manufacturers provides to congressional members prerecorded messages on daily legislative activities. This service is called "legislative dial." In the event that members require further information, they can consult directly by phone with the experts of the Association in the particular subject area of interest. Many such calls to experts are handled each day.

<sup>77</sup> Such problems of complexity and change in the environment relevant to the law's interpretation may be further aggravated by the substance of the law and by the jurisdiction at which the formal law is enacted. Changes to state income tax laws enacted by the Georgia General Assembly, GA. CODE ANN. §§ 92-3001 to 3010 (1978), are duly reported by the mass media. Many calculations and definitions critical to proper compliance with state law, how-



Mass media paths require more attentive scanning by decoders for signal reception. Thus, decoders must anticipate the need for information at the time they have the publication before them. Subsequent access to mass media channels is especially limited, due to the channels' bulk and inadequate indexing. The more directive, specialized channels may be more successful in capturing decoder attention, particularly when such channels are consistently relied upon for an understanding of developments in the law field.<sup>78</sup>

3. *Effectiveness Level.* — Specialized and mass media paths contrast markedly in respect to information flow at the effectiveness level. The destination's perception of signal rationality increases when specialized media channels that are habitually read for law information carry the signals. In contrast, conspicuous placement and adequate coverage of the law are necessary to insure that intended destinations attribute rationality to the signal carried by mass media. These requirements may be impossible to meet when laws are complex or changing.

The quality of encoding for both paths is crucial. Without satisfactory encoding of the signal which meets both technical and semantic requirements, the appropriate destination response cannot be expected. Capable encoders serving specialized media channels that mainly cover federal laws have a better opportunity to satisfy such requirements.<sup>79</sup>

The channel's importance or salience to decoders depends in part on the physical distance between the distribution point of the chan-

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ever, are contingent upon the process of making calculations and understanding definitions encountered in the completion of federal income tax forms. The extent to which changes made in federal tax laws undermine assumptions and calculations at the state level provides fertile ground for grievous errors by mass media encoders who transmit state income tax law messages and are unaware of this symbiotic relationship.

<sup>78</sup> The January 23, 1978, issue of U.S. News & World Report at page 71 under the heading "News You Can Use" contains a message about use of the "zero bracket amount," or ZBA, on the 1977 federal income tax form 1040. There is no mention of this item in the table of contents, although the heading is a regular feature of the magazine. One interested in ZBA, obviously, would only come upon this item by chance, while a tax journal or magazine would include the topic in its table of contents.

<sup>79</sup> Specialized media encoders are typically lawyers with some degree of familiarity or expertise in the field to which a particular periodical caters. For example, encoders at The Journal of Corporation Law (*J. CORPORATION LAW*) or the Labor Law Journal (*LAB. LAW J.*) are especially attuned to significant developments in those fields.

It can be assumed that specialized media publishers are aware of their constituents' expectations and of the economic importance that the public perceive that the quality of their publications is high. Given the greater audience for federal law topics, and the concomitantly larger financial base, resources for attracting competent encoders are greatest for those channels covering federal laws.

nel and the intended destinations. Consider, for example, a formal law which is enacted in a given municipal jurisdiction and covered by a local newspaper. In most cases, such mass media signals will not reach distant destinations located in another state. Naturally, exceptions to this generalization exist when coverage is provided by such newspapers as *The New York Times* or *Chicago Tribune*. With these few exceptions, the issue becomes the reading habits of distant destinations rather than the power of the mass media signal. Although the way in which physical distance between a particular law source and an intended destination affects information loss is beyond the scope of this Article, the law model potentially may be applied to determine the nature of this effect.

The perception of channel importance also depends upon the skills of the decoder or destination. For example, mass media may have less importance to businesses as signaling channels for law information when such organizations are staffed with lawyers who rely instead on Path Two or Path Three channels.<sup>80</sup>

The specialized media path also may reserve certain channels, such as irregularly issued bulletins or newsletters, for important signals,<sup>81</sup> thus enhancing the decoder's perception of the significance

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<sup>80</sup> On the other hand, given the time lag between the passage date of new statutes and their publication in Path One or Path Two channels, lawyers may use mass media because such media may carry law information first.

Generally, the Path One and Path Two channels which carry federal law messages, official and unofficial, are published as follows: Slip Laws (official), within three weeks of passage; United States Code Congressional and Administrative News (U.S. CODE CONG. & AD. NEWS) (unofficial), monthly; United States Code Annotated (U.S.C.A.) (unofficial), every three months; United States Statutes at Large (Stat.) (official) and United States Code (U.S.C.) (official), yearly.

The first officially published form of federal legislation is in a separate pamphlet for each law, termed a Slip Law. It is the same text as is later bound and indexed for each year as the official United States Statutes at Large (Stat.). The slip laws are available by subscription from the U.S. Government Printing Office and are issued within three weeks of the law's approval. Courts take judicial notice of slip laws. 1 U.S.C. § 113 (1964), as amended by Pub. L. No. 89-497, 80 Stat. 271 (1966). The slip laws are also published in the unofficial United States Code Congressional and Administrative News (U.S. CODE CONG. & AD. NEWS) in monthly issues later cumulated into annual volumes. The United States Code (U.S.C.) is the official compilation, by subject, of the "public, general and permanent laws of the United States in force." Preface, U.S.C. (1976). It is prima facie the law. *Royer's, Inc. v. United States*, 265 F.2d 615, 618 (3d Cir. 1959) (dictum). Complete editions of the Code are issued approximately every six years with annual cumulative supplements.

The United States Code Annotated (U.S.C.A.) is a private, annotated, unofficial version of the United States Code (U.S.C.), which is supplemented by a thrice-yearly cumulative pamphlet and a year-end compiled pocket part.

<sup>81</sup> For example, the American Arbitration Association publishes a regular newsletter, *Labor Arbitration in Government*, and on occasion publishes a special, irregular edition.

of the signal that such a channel carries. Mass media paths generally lack such flexibility and are confined to the relatively stable boundaries of each issue. Placement, size of headline, and extent of coverage are the major variables mass media encoders can use to alter perception of the signal's rationality and the channel's importance to the decoder and destination.<sup>82</sup>

Specialized and mass media signals at their best only provide decoders with an awareness of the law's existence and its subject focus. When decoders of such signals do not possess legal skills, they must contact lawyers who are equipped to retrieve the full text through either Paths One or Two. The complete text is essential for the destination's appropriate response to the law. If decoders present the signal in a way that accents its relevance to the business destination, follow-on contact with full text decoders is more probable. Naturally, the prestige and power such decoders have within the business organization have an impact on the organization's subsequent action.

4. *Some Conclusions on Signaling Paths.* — A law which reflects the heterogeneous interests of its source poses significant barriers to the development and transmission of signals that will efficiently stimulate citizens to become informed of legal rights and obligations defined in formal laws. These barriers to signaling are almost insurmountable in the case of complex laws having universal application over long spans of time. To deal effectively with complexity, signaling paths must involve highly skilled encoders and decoders. To deal effectively with long spans of time, channels must be well indexed, and even such indexing often is inadequate if significant changes occur in the social, economic, or political environment of the jurisdiction.

Below the federal level, economic factors normally preclude signaling that is effective and nonperishable, and even at the federal level such factors cause signaling paths to be inadequate from semantic and effectiveness standpoints. Unfortunately, the level of citizen responsiveness to formal laws is directly related to the adequacy of signaling paths.

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<sup>82</sup> Other techniques may include the use of graphics or pictorials. Selection of the class of mail used to reach destinations has significant, indirect impact on the factor of channel importance to the decoder.

## VI. FREE LAW COMMUNICATIONS MODEL

A. *Full Text Paths of Free Law*

## Path One Examples (Full Law Text):

*Statutes at Large, U.S. Code, Federal Register, Code of Federal Regulations, state session laws, city codes, specifically created channels*<sup>83</sup>

## Path Two Examples (Full Law Text Plus Annotation):

*U.S. Code Annotated, loose-leaf services or reporters*

1. *Introduction.* — In the United States free laws can originate in the legislature in the form of special legislation, private laws, or resolutions, and in the executive branch in the form of orders or proclamations.<sup>84</sup> Free laws resemble formal laws in their single message structure. Such laws are distinguishable from formal and informal law types by their narrow range of intended destinations. Many free laws have an impact only on one individual or entity.<sup>85</sup>

The nonprecedential nature of free laws explains the infrequency of their coverage within annotated channels. For this reason and because of free law's peripheral role in the American legal system,

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<sup>83</sup> For example, the New York State Traffic Commission once sought to sustain a speeding conviction based on the presence of a speed limit sign that was not registered with a central state office as required by the state constitution. *People v. Cull*, 10 N.Y.2d 123, 176 N.E.2d 495, 218 N.Y.S.2d 38 (1961). In *Berends v. Butz*, 357 F. Supp. 143 (D. Minn. 1973), the Secretary of Agriculture attempted to terminate prematurely emergency loan aid to disaster areas through teletyped messages. *Cf. Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380 (1947) (holding that respondent was charged with knowledge of regulations pertaining to the Federal Crop Insurance Act published in the Federal Register although he lacked actual knowledge of them). See also Griswold, *Government in Ignorance of the Law—A Plea for Better Publication of Executive Legislation*, 48 HARV. L. REV. 193 (1934); Newman, *Government and Ignorance—A Progress Report on Publication of Federal Regulations*, 63 HARV. L. REV. 929 (1950); Note, *The Federal Register and the Code of Federal Regulations—A Reappraisal*, 80 HARV. L. REV. 439 (1966).

<sup>84</sup> Examples of free laws from legislative information sources are that part of the Legislative Branch Appropriation Act of 1976, Pub. L. No. 94-59, Title II, 89 Stat. 269 (1975), which provides for payment of \$42,500 to each of two deceased representatives' widows; Priv. L. No. 94-27, 89 Stat. 1189 (1975), lawfully admitting Java Hlavaty to permanent residence in the United States; and S. Con. Res. 31, 94th Cong., 1st Sess. 62 (1975), providing that the prayers of the Reverend Edward L.R. Elson be printed as a Senate document. Executive free law messages are exemplified by Executive Order No. 11,923, 3 C.F.R. 132 (1977), providing that the United States flag be flown at half mast on June 21, 1976, to honor Francis E. Meloy, Jr. and Robert O. Waring, and Proclamation 4463, 3 C.F.R. 56 (1977), modifying the Tariff of Schedules of the United States, 19 U.S.C. 1202 (1976), on certain sugars, syrups and molasses.

<sup>85</sup> See note 84 *supra*.

this Article will not examine the occasions when this law type appears in Path Two channels. Instead, the focus will be on free law's transmission by Path One. Such channels are either created by the information source to facilitate one law's transmission or exist as official channels and pick up all law types through their coverage of legislative proceedings.

In the United States a typical free law message might exempt specific individuals from application of immigration quotas, settle claims brought by or against the federal government, or waive the retirement age for specific employees. Such messages are nonterritorial,<sup>86</sup> unambiguous, and normally do not give rise to justiciable conflicts.

Free laws particularly concern business decisionmakers operating in foreign countries. First, free law messages may be arbitrary because they represent selective enforcement against specific entities, or, as is more often the case in the United States, because they render selective entities immune from operation of other laws.<sup>87</sup> Second, free law messages may result from personal mediation or intervention on behalf of potential destinations. Third, the creation and impact of free laws cannot be anticipated by destinations. These three characteristics of free laws are often present to a greater degree in foreign countries, especially in authoritarian systems. American analogues of foreign free laws affecting business operations are presidential orders placing specific industries under government control or freezing prices of goods produced by specific manufacturers.<sup>88</sup>

Free laws may be intentionally buried within a channel such as the Federal Register. The information source may choose to obscure

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<sup>86</sup> See discussion of this concept p. 197 *supra*.

<sup>87</sup> For example, Legislative Bill No. 20, passed by the 52d session of the Nebraska legislature (1937 Neb. Laws 455), waived the state's sovereign immunity and the statute of limitations, and in effect created liability on the part of the state for the negligence of its agents and servants which had caused injury to a particular group of would-be plaintiffs. See *Cox v. State*, 134 Neb. 751, 279 N.W. 482 (1938), in which the Supreme Court of Nebraska invalidated the law because it was in violation of a state constitutional provision prohibiting special legislation.

<sup>88</sup> See, e.g., Exec. Order No. 11,588, 3 C.F.R. 147 (1971), providing for the stabilization of wages and prices in the construction industry, and the Economic Stabilization Act Amendments of 1971, Pub. L. No. 92-210, § 215, 85 Stat. 743 (1971), requiring presidential approval of any fare increases by otherwise unregulated companies operating mass transportation facilities. During World War I, the federal government took over control and operation of United States railroads under the direction and administration of a Director General of Railroads, who issued certain general orders. The constitutionality of the federal legislation for such action was sustained as an exercise of the war power in *Northern Pac. R.R. v. North Dakota*, 250 U.S. 135 (1919).

free laws in order to prevent legal or militant resistance by unaffected parties. Also, because they want to preserve future options for arbitrary and selective enforcement, information sources may prefer that some destinations be unaware of obligations or rights created by free laws.

2. *Technical Level.* — The executive, the legislature, the judiciary, or an administrative body may be the information source. In free law's ideal form, there is a single information source and a single destination. For example, the message may be special legislation and the destination a specific individual thereby exempted from an immigration quota.<sup>89</sup> Distribution of the message may occur only once, thus increasing the hazard of message perishability.

An important characteristic of the free law process is its unpredictability. Minimal pre-enactment activity or the absence of any such activity contributes to a charged atmosphere of uncertainty, especially for the foreign business.

Ideal free law messages are highly directive, as is, for example, a message requesting specific behavior of a designated destination and a channel directed to that destination. When a channel optimized to reach the target destination transmits the message (such as when a telegram transmits a presidential order directly to the specific organization), perishability is minimized. In contrast, certain information sources may decide to "bury" the message within a bulky channel.<sup>90</sup> The message then would be highly perishable and unavailable except through interpersonal contact.<sup>91</sup> Such burying may occur when the objective is to change the destination's behavior without directly identifying the information source as the cause

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<sup>89</sup> One such example is Priv. L. No. 94-17, 89 Stat. 1179 (1975), providing for issuance of a visa and admission to the United States for Victor Henrique Carlos Gibron, notwithstanding the provision of § 212(a)(22) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101-1503, and rendering inapplicable § 245(c) of the Act.

<sup>90</sup> One characteristic of free law can be the source's motivation to avoid disclosure of the message. For this reason in some legal systems free laws are not written nor published in an official channel. This may be applicable to some United States laws at the local level, such as special zoning exceptions, or exercises of executive powers by police chiefs or mayors to excuse minor violations of local ordinances.

<sup>91</sup> Burying of the message within a bulky and inadequately indexed official channel is one means to skirt disclosure. Particularly by the way such laws are indexed, disguise is facilitated. For instance, special legislation in the United States Statutes at Large (Stat.) is accessible only through such devices as a List of Private Laws (arranged numerically by law number only, with no description of content other than the name of the individual offered relief) and an Individual Index (supplying only the page number where legislation affecting such individual is found), with no indexing entry under special legislation as a category, nor specification by subject.

of that change. Also, by "covering its tracks," the information source is less hampered if a future contradiction is required.<sup>92</sup>

The encoder's technical capacity to preserve the message's integrity depends on the amount of encoding required for the message to fit the channel.<sup>93</sup> Generally encoding is minimal, because official channels like the *Federal Register* or channels specifically created for the message are full capacity. Encoding skills are a potential problem when channels such as the signaling channels have a threshold size. When encoders index only by time or subject, as in the official channel, the barriers to accessibility which apply to formal law<sup>94</sup> also apply to free law.

The most direct approach to insure that the decoder and destination receive free laws at the technical level is for the information source to select the channel and to designate the target designation within the message.<sup>95</sup> This step-by-step designation may minimize information loss if the intended destination is physically distant from the law's source. In contrast, nondirective channels inhibit retrieval after time lapses and require more specialized decoders.

3. *Semantic Level.* — The source's internal homogeneity has less impact on free laws than on formal or informal laws because free law's subject matter and the number of affected destinations generally are limited. A powerful group or individual may push through a free law and see that the message is buried within a bulky channel like the *Statutes at Large*<sup>96</sup> so that semantic content is not obvious to opposing interests.<sup>97</sup> Such capacities to dominate

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<sup>92</sup> Reversals of law on the books may be more frequent in nations or jurisdictions within nations that are experiencing rapid change. If free laws are instable, high probability for information loss is predictable across technical, semantic, and effectiveness communication levels.

<sup>93</sup> Controls on encoding can be more rigorous when the source designates a specific encoder and channel to transmit the message; when this is the case the encoding step may be checked by the source for accuracy.

<sup>94</sup> See p. 204 *supra*.

<sup>95</sup> An obvious example is President Kennedy's intragovernmental action to enforce a freeze on price increases by the steel industry. See note 11 *supra*.

<sup>96</sup> In addition, such a group or individual may bury in the Congressional Record "legislative history" which they have specially manufactured. See H. LINDE & G. BUNN, *LEGISLATIVE AND ADMINISTRATIVE PROCESSES*, 363-89 (1976).

<sup>97</sup> CAL. BUS. & PROF. CODE §§ 20880-20886 (1960) illustrates the influence which a powerful interest group (here, perhaps a consumer-advocate group, or possibly an association of full-service gasoline station owners) can exert through special legislation. The Code dealt with the misleading advertising practices of a particular self-service gasoline chain (which used small lettering on its price signs to mislead passing motorists) by requiring all price signs (including any signs using the words "save," "off," "discount," "less," "below," etc.), other

the lawmaking process are more often found where power is centralized, as in a dictatorship.

Free law's consistency within an environmental context is erratic. For example, if legal authority is missing and the message cannot be placed within a statutory framework, decoders may find it difficult to interpret the law's meaning. Problems of interpretation also occur if the environment is changing and if the message is too brief to provide semantic "texture."<sup>98</sup>

The selection of a full capacity channel to reach the destination directly and the monitoring of the transmission process by the information source to insure accuracy optimize the encoder's ability to transmit without distortion. The channel enhances the message when it is especially selected for the transmission process; in contrast, transmission is impeded when the message is buried within a bulky, official channel. As already discussed, however, the intent of the source may be to preserve its own flexibility by such "burying."

Semantic demands on decoding decrease if contact points exist where the decoder may check the correctness of his interpretation. Interpretative problems may be resolved if the decoder can contact the executive staff, the legislator, or a key legislative staff member to clarify the message. Messages couched in command form, however, may restrict such opportunities for clarification because of minimal pre-enactment materials. Semantic loss is minimized

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than price signs on the gasoline pumps themselves, to set forth in detail and in lettering as large as other lettering thereon the total price of the gasoline, including tax and grade. See *Serve Yourself Gasoline Station Ass'n v. Brock*, 39 Cal.2d 813, 249 P.2d 545 (1952), *appeal dismissed*, 345 U.S. 980 (1953), in which the California Supreme Court upheld the constitutionality of the law.

<sup>98</sup> The 1965 session of the Nevada legislature enacted NEV. REV. STAT. § 4.020(3), for example, which reads:

(3) From and after the 1st Monday in January, 1967, there shall be one justice's court in each of the townships of the state having a population of 100,000 or more, as determined by the last preceding national census of the Bureau of the Census of the United States Department of Commerce, for which two justices of the peace shall be elected by the qualified electors of the township at the general state election to be held in November, 1966, and at each state general election held every 2 years thereafter.

Difficulty in interpretation arose as to the statute's application to what had formerly been Las Vegas township (pop. 106,755), but which had been partitioned on June 20, 1960, by the Clark County Board of Commissioners to create North Las Vegas township (pop. 18,422). The census was tabulated in April, 1960, and by the terms of the statute Las Vegas township appeared to qualify for election of two justices of the peace. A dispute arose when two defendants challenged the legality of the two justices' elections, and thus their exercise of jurisdiction. The Nevada Supreme Court eventually held that the township had properly elected two justices of the peace, *Fairbanks v. Pavlikowski*, 83 Nev. 80, 423 P.2d 401 (1967), despite the fact that since June, 1960, five years before the law's passage, Nevada had had no township over 100,000 in population.



when the information source monitors the destination response to insure conformity with the law's intended meaning.<sup>99</sup>

When the destination is not designated by the source, considerable decoder expertise is needed to interpret the message, especially if the message is complex and distributed without follow-on messages. If time has elapsed since the law originated, problems in interpretation may be compounded if environmental changes affect message meaning.<sup>100</sup>

4. *Effectiveness Level.* — At the federal level, where channel selection power is greatest, the information source can increase the likelihood that the message will evoke the desired response from the destination.<sup>101</sup> If the channel is directive and timely in reaching the destination, the potential for information loss is minimized.

The destination's perception of message rationality may increase if the source monitors the transmission process. Direct monitoring may overcome any questionable statutory authority behind the law message. Without such monitoring, the destination may explore risks associated with noncompliance. Noncompliance is more predictable when a free law message strains accepted standards of rationality, exceeds statutory authority, involves arbitrary enforcement, or depends on bribes or power brokering.<sup>102</sup>

Encoder effectiveness is optimal when the source follows the encoding step or special channels are used. If free laws are substantively focused and are carried by directive channels, the decoding step is similarly facilitated. Directive channels also increase the decoders and the destination's perception of channel importance.

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<sup>99</sup> See, e.g., Exec. Order No. 11,588, *supra* note 88, which established a Construction Industry Stabilization Committee "to assure generally conformance of any increase in any wage or salary in the construction industry to the provisions of this order."

<sup>100</sup> See note 44 *supra*.

<sup>101</sup> Subject matter imposes some restraints on channel selection power.

<sup>102</sup> Many such factors were at least potentially involved in Local Act No. 201, approved September 30, 1959 (1959 Ala. Acts 201), by the Alabama legislature, which, in pertinent part, provided: "An Act: To prohibit the use of nets for fishing in Limestone County, and making the possession of prohibited nets under described conditions prima facie evidence of their illegal use, prescribing penalties (including fines and/or imprisonment)." In invalidating the act, the Alabama Supreme Court noted that Limestone County bordered on a lake and three other counties, each of which had made fishing with nets illegal and had prescribed different punishments therefor. In light of ALA. CODE tit. 15, § 95 (1940), which permitted prosecution of an offense committed within a quarter of a mile of a county boundary in either county, a very real possibility existed that an arresting officer, apprehending a fisherman in a certain ill-defined half-mile strip on the lake, could take the defendant to the county having the more severe punishment if he so desired. *State v. Rogers*, 281 Ala. 27, 198 So. 2d 610 (1967).

In its ideal form, free law requires minimal decoding.<sup>103</sup> How the decoder presents a free law message to the destination is important, however, when laws do not have obvious relevance to that destination. If a decoder is external to the organization, his status with the destination may be critical in stimulating an appropriate organizational response. Timing of the presentation to the destination is also important, particularly when law messages are carried by general channels where perishability becomes a critical factor.

### B. *Signaling Paths of Free Law*

#### Path Three Examples (Specialized Media Signals):

trade and professional journals

#### Path Four Examples (Mass Media Signals):

newspapers and periodicals

1. *Technical Level.* — Specialized or mass media encoders only infrequently pick up information on free laws from official channels. Information about such laws generally comes from the target destination, either by an organization member's public discussion of the law's effects on operations or by the encoders' observing irrational or unusual behavior by the destination.<sup>104</sup> This generally restricts media encoders' opportunities to cover free laws. In the United States, encoders are already overloaded in processing formal and informal law information; therefore, capturing the attention of encoders requires more intense verbalization, more extreme behavior by destinations, or official notice publicly distributed by the information source.

When encoders process information, they typically prepare only a summary of the law's impact unless the law is short and simple. Access to the full text is difficult when messages are shrouded in

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<sup>103</sup> Such is the case with Exec. Order No. 11,869, 3A C.F.R. 176 (1975):

Arthur S. Flemming, Commissioner, Administration on Aging, and Chairman, Commission on Civil Rights, will become subject to mandatory retirement for age as of June 30, 1975, under the provisions of Section 8335 of Title 5 of the United States Code, unless exempted by executive order.

In my judgment, the public interest requires that Arthur S. Flemming be exempted from such mandatory retirement.

NOW, THEREFORE, by virtue of the authority vested in me by subsection (c) of Section 8335 of title 5 of the United States Code, I hereby exempt Arthur S. Flemming from mandatory retirement until June 30, 1976.

<sup>104</sup> Generally the destination must be an important organization or individual within the environment for signaling to be undertaken by encoders of either media path.

official channels unless encoders have strong contacts within the information source. Such contacts may be limited to encoders who are physically proximate to the law's source. When the law's text is unavailable, the encoder's signal represents a summary of the law's effects on the destination, and not a signal of the law message itself.<sup>105</sup> How the encoder constructs and places the signal determines whether the law's reach is expanded to destinations beyond those intended by the information source.

The quality of signals prepared by specialized and mass media encoders may differ.<sup>106</sup> Specialized media encoders construct a higher quality signal which is likely to overcome communication loss at the three communication levels if the law subject relates to areas normally covered. Although mass media encoders are generally confined to reporting on what interests their readership, they may nonetheless report on a free law if its effects on the destination are noteworthy or the destination is important to the readership. Signals of both media types are perishable because adequate indexing is often lacking, but this lack is particularly acute within mass media channels. Immediate scanning by decoders of mass media is required for the message to pass the technical communication level.

2. *Semantic Level.* — Incomplete information increases the potential for distortion even for the most well-trained encoders of specialized media. Because the law text is normally not accompanied by pre-enactment messages, the encoder is restricted to his own observations of the behavior and expressions of the destination. Such restrictions severely handicap both the semantic integrity of signaling and the quality of decoding.

Although mass media encoders have more limited training in processing law information, their channels are suitable for broadcasting signals to a wider readership than that of specialized media. Furthermore, to increase the likelihood of reception, mass media signals may be placed to stimulate attention. Such special placement of

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<sup>105</sup> The broad scope of unpublished law is noted in Note, *supra* note 83, at 445-49, although open information laws and related litigation since 1966 have reduced the breadth of such unpublished laws. Trade publications such as U.S. Export Weekly (U.S. EXPORT WEEKLY (BNA)), which focus in part on export licensing involving national security issues, often provide the only timely, public record of government positions on permitted exports to particular destinations. See, e.g., 207 U.S. EXPORT WEEKLY A-1 (1978). See also 210 U.S. EXPORT WEEKLY A-10 (1978); 211 U.S. EXPORT WEEKLY A-10 (1978); 214 U.S. EXPORT WEEKLY A-3 (1978).

<sup>106</sup> As jurisdiction changes from federal to state to local, limitations on encoding skills may condition signaling quality.

important signals can mitigate the clutter of unrelated, non-law information and the restriction of subsequent access.<sup>107</sup> With daily and weekly publication cycles, mass media can also “bombard” decoders with a series of closely timed signals.

One of the greatest semantic problems that confront media encoders is the interpretation of free law within a changing environment. Encoders must struggle with environmental shifts that might affect interpretation of the law as well as with the problems of incomplete information.

3. *Effectiveness Level.* — Both the specialized and mass media can increase the destinations’ perceptions of message rationality by enhancing signals. Mass media encoders can activate decoder attention by placement and adequate coverage; specialized media can send signals over a unique channel such as a specially issued bulletin or newsletter. Probability of signal reception by a decoder decreases, however, when the channel and the destination are physically distant or when the channels are not consistently relied upon for law information.

The effectiveness of the encoders is critically limited throughout the encoding process if information on the law is incomplete. Finally, decoders must overcome the requirement of all signaling channels: for access to the full law text, decoders must contact personnel with legal skills.

### C. *Some Conclusions on Free Law Communications*

Free law is essentially discretionary justice administered directly by the lawmaking body. It is an instrument for the selective distribution of both benefits and obligations. Because of its potential for creating inequality among similar classes of citizens, the lawmaking source normally seeks to insure effective communication to the intended destinations at all three levels while minimizing or avoiding communication to other persons.

The combination of the lawmaking source’s desire to limit reception to a few and the general lack of interest of individual citizens in laws not applicable to them significantly reduces the opportunity for development of either annotated, full text channels or specialized signal channels. The absence of such channels over time can

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<sup>107</sup> See, e.g., the front headline of *The New York Times*, September 9, 1974, which consists of the words: *Ford Gives Pardon to Nixon, Who Regrets “My Mistakes”*. The article focused on Pres. Proc. No. 4311, 3 C.F.R. 66 (1974).

pose significant problems for a democracy because of the resulting general citizen ignorance of the range of actions being taken by their lawmakers. Citizens are made aware of free laws, however, when the objects of such free laws stimulate mass and specialized media channels to report the presence of a free law. Unfortunately, this reporting normally occurs only for laws which impose burdens on the destination and not for laws which bestow benefits.

From a communications standpoint, the most interesting facet of free law is that a rather effective communication of law signals exists at all three levels. Generally speaking, this efficiency in the transmission process is directly related to the fact that lawmakers can design and transmit messages which are highly directive. This capacity for directivity is greatly reduced, however, in situations where the law source seeks to distribute complex free laws. In such situations, each element in the communication process is critically important, and thus the probability of general awareness of these selective obligations and benefits is increased. These factors restrict the use of free law to rather simple messages with substantial internal homogeneity of message content.

## VII. SUMMARY

For many decades, legal scholarship focused on the substantive and procedural aspects of laws and the lawmaking process. In recent years, special attention has been given to how citizens can affect that process and how they respond to its outputs. It is frequently assumed that if citizens do not respond to these outputs as lawmakers intend, the law's incentive or penalty structures are deficient. The thesis of this Article and the one to follow is that inadequate citizen behavior often results not from deficiencies in the law's substance but from deficiencies in the process through which the substance is transmitted to intended citizen groups.

Many factors affect the effectiveness of the law communication process; their relative importance varies depending on the nature of the law, the form of the law, and the jurisdictional environment in which it is transmitted. This Article has suggested how these different factors generally affect the communication process, but much work must precede a comprehensive understanding of how and to what extent these factors specifically affect the process.

For any given combination of topic, form, and environment factors, one can discuss the qualitative and quantitative features of the communications process with some degree of accuracy by relying on fundamental communication theory. Although the Shannon and

Weaver construct used in this analysis is old and simplistic when contrasted with contemporary research, its basic tenets remain valid and its simplicity makes it an excellent candidate for a tool to examine law communications which are complex in and of themselves.

The foregoing analysis can serve as an important starting point for serious analysis of how the communications process affects the quantity and quality of citizen compliance with legislative action. More important, it provides a framework for both lawmaking sources and destinations to improve systematically the effectiveness of the law communication process by making a selective modification of particular features within their control and to the extent of their resources.

Although lawmaking within the United States increasingly depends on the informal law format, rising implementation costs associated with this format and general citizen distrust of expanding administrative government make the formal and free law models valuable alternatives for lawmaking in particular areas. In environments where economies permit development of extensive full text annotated paths and specialized signaling paths, formal laws that are simple in content and highly salient to the general citizenry have a unique potential for directing citizen action with only modest implementation costs. Of course, this approach does place more responsibility on the lawmaking source, but the sophisticated staff of federal law sources makes it feasible for citizens to have renewed reliance on the formal law approach. Conversely, in jurisdictions where such sophistication is not inherent in the lawmaking process, informal law should be the primary medium for communication.

CHART 1  
Significant Factors Affecting Law Transmission

Information Source	Message	Encoder	Channel	Decoder
Technical				
# of sources <sup>a</sup>	# of messages perishability <sup>b</sup>	# of encoders technical capacity of encoder to preserve message integrity <sup>c</sup>	# of channels capacity <sup>d</sup> / directivity <sup>e</sup> / accessibility <sup>f</sup>	# of decoders technical capacity of decoder includ- ing technical expertise <sup>g</sup>
Semantic				
internal homogeneity <sup>h</sup>	external/internal consistency <sup>i</sup>	ability to transmit without distortion <sup>j</sup>	impedance <sup>k</sup>	quality of decoding <sup>l</sup>
Effectiveness				
channel selection power <sup>m</sup>	destination's perception of message rationality <sup>n</sup>	effectiveness of encoders <sup>o</sup>	perceived channel importance by decoder or destination <sup>p</sup>	decoder matching of message to destina- tion: presenta- tion: presentation form and decoder status <sup>q</sup>

NOTE: Chart footnotes can be found on the following page.

## CHART FOOTNOTES

<sup>a</sup>Factors across this first line relate to the statistical nature of the information source. Informal law is characterized by multiple sources that produce multiple messages, which affect all steps of the communication process. The character of the source thus determines the statistical nature of messages. See C. SHANNON & W. WEAVER, *THE MATHEMATICAL THEORY OF COMMUNICATION* 17 (1964).

<sup>b</sup>Message perishability is determined by systemization which in turn relates to jurisdiction and substantive focus of the law, among other features.

<sup>c</sup>The highest technical capacity to preserve message integrity is possessed by the encoder who codes the message so that the information loaded onto the channel "has just those optimum statistical characteristics which are best suited to be used . . ." C. SHANNON & W. WEAVER, *THE MATHEMATICAL THEORY OF COMMUNICATION* 18 (1964).

<sup>d</sup>Channel capacity represents the amount of physical space generally available to carry law information.

<sup>e</sup>If a channel is nondirective for the organization, this means that access to it requires decoder or destination initiative. Directivity is a particular problem if the channel is not designed to carry law information. For example, a mass media channel is nondirective for the business organization, especially as a channel to transmit law information.

<sup>f</sup>Accessibility relates to the ease with which channels can be used after transmission of information. If a channel is bulky and the quality of indexing is poor, the channel and the information it transmits are more perishable.

<sup>g</sup>This factor is specific to the decoder's ability to receive the message carried by the channel at the technical level, and to preserve that message in transmission to the business destination.

<sup>h</sup>Internal homogeneity refers to the composition of the lawmaking source. For example, if there are numerous interest groups having an input into the lawmaking process, internal homogeneity is likely to be low. Diversity tends to diminish the internal consistency of the message produced by the information source.

<sup>i</sup>Changes in the environment (external consistency) relevant to a particular law can affect the law's interpretation and enforcement (the law's internal consistency).

<sup>j</sup>The encoder's ability to transmit without distortion depends on various factors at preceding steps at technical and semantic levels, and particularly on channel factors such as capacity, directivity, and impedance.

<sup>k</sup>The matching of the message with the channel affects preservation of the message's meaning. There is a better match and therefore less impedance if the channel is designed to carry laws; higher impedance if the channel is general and carries many subjects.

<sup>l</sup>This factor includes skills to decode the message and to pass the meaning along to the business destination if the decoder is external to the business organization. Such skills are improved if there is opportunity for feedback from encoders.

<sup>m</sup>Channel selection power is contingent upon the resources and freedom of the information source to choose a channel to carry the message.

<sup>n</sup>Illustrating this factor, the business destination is more likely to perceive the message as rational if its substance is objectively based and the channel is well-matched to transmit the message.

<sup>o</sup>Effectiveness of the encoder depends on the adequacy of the encoding process at technical and semantic levels, and the qualities of the channel to which the encoder is linked.

<sup>p</sup>The decoder's or destination's reliance on the channel is especially important at the effectiveness level in order to achieve the intended response to the message.

<sup>q</sup>Presentation form may accent the message's importance to the destination, particularly if the decoder's relationship with the destination is well established.



**Preface for Charts 2 - 10**

Charts 2, 5, and 8 depict the likely deterioration in the flow of a law text or signal caused by various elements in the communication chain at the technical, semantic, and effectiveness levels. Within each level the impediments to flow caused by each succeeding element are cumulated so that the curve's final point illustrates the probability of a law or signal reaching its intended destination through a particular path at *each* level. The broken curve represents information flow between information sources and destinations proximate to one another, while the solid line represents flow between sources and destinations not proximate. Charts 3, 4, 6, 7, 9, and 10 depict the likely deterioration in flow caused by particular factors within each element in the communication chain for a particular path.

CHART 2

Probable Information Flow of Formal Law Type-Federal Jurisdiction

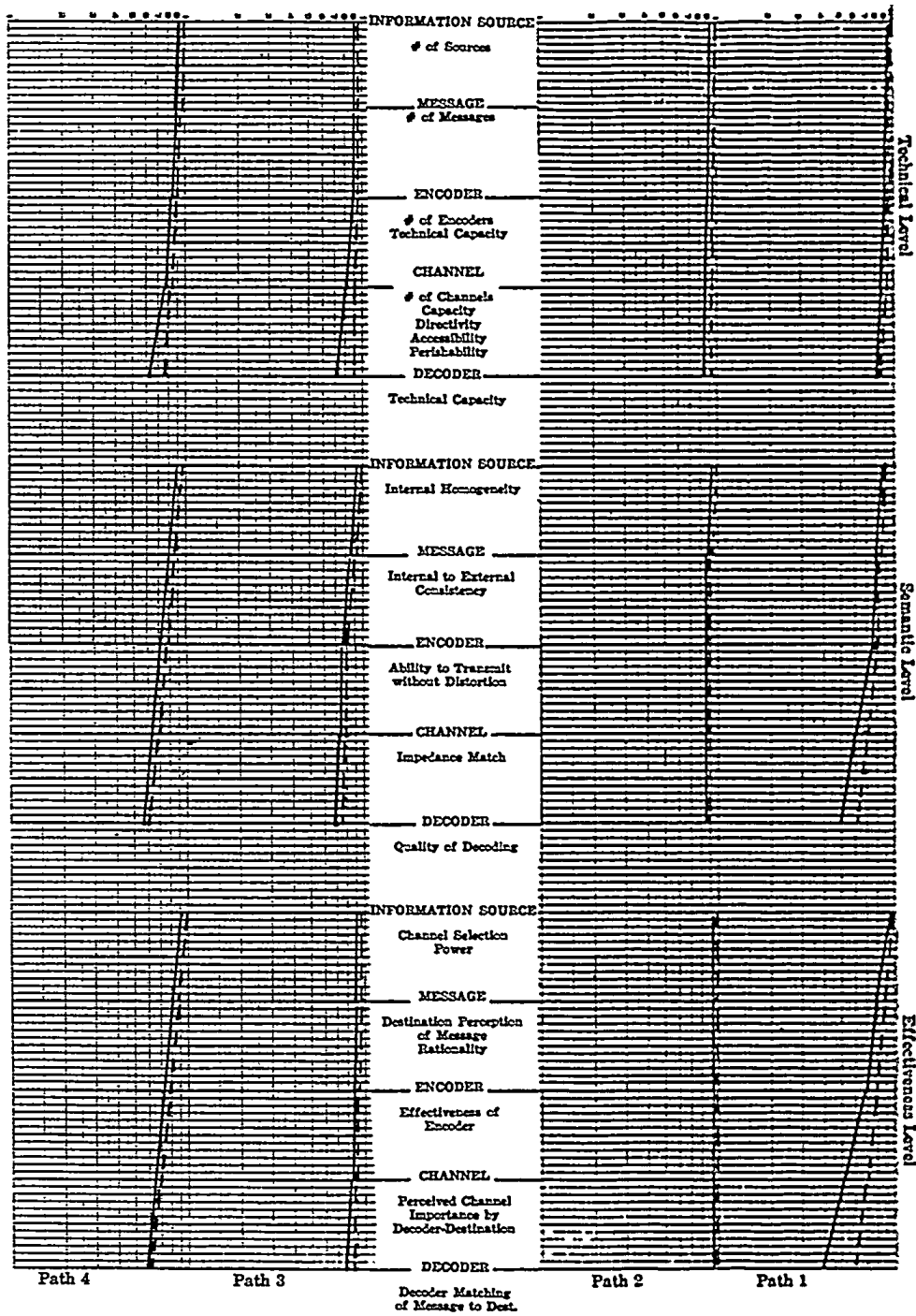


CHART 3

Formal Law: Federal Jurisdiction/No Distance

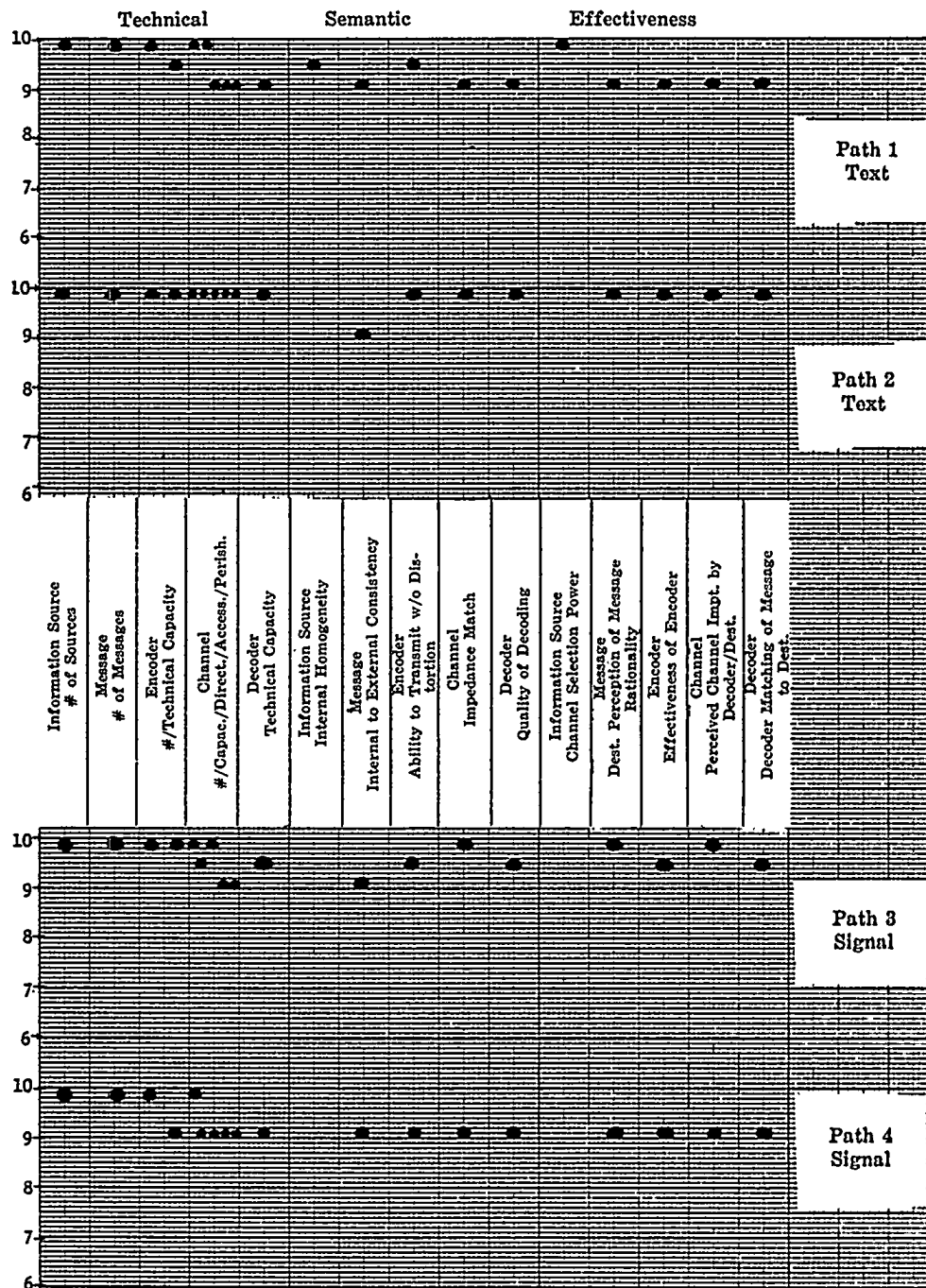


CHART 4

Formal Law: Federal Jurisdiction/Distance

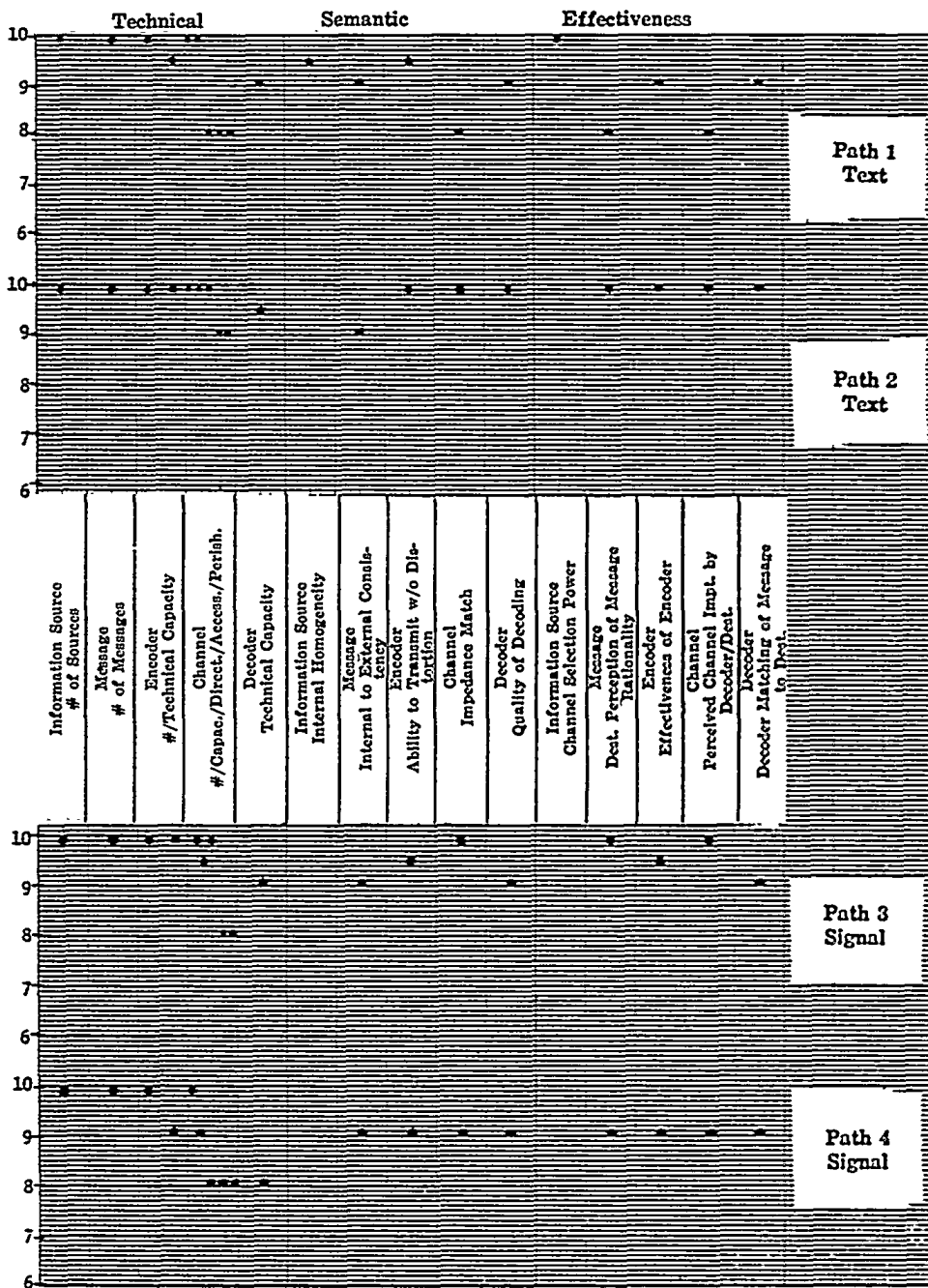


CHART 5

Probable Information Flow of Formal Law Type-State Jurisdiction

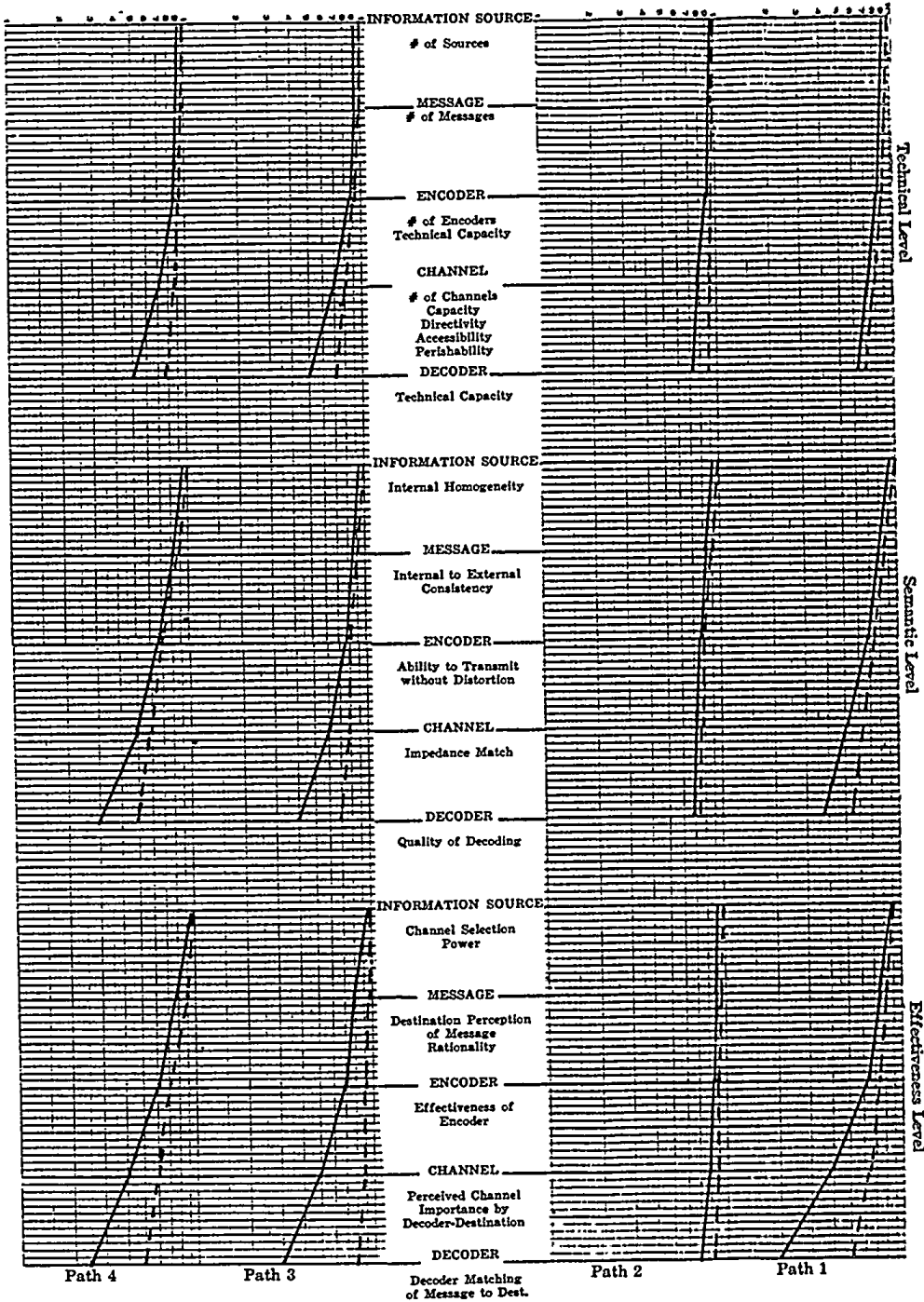


CHART 6

Formal Law: State Jurisdiction/No Distance

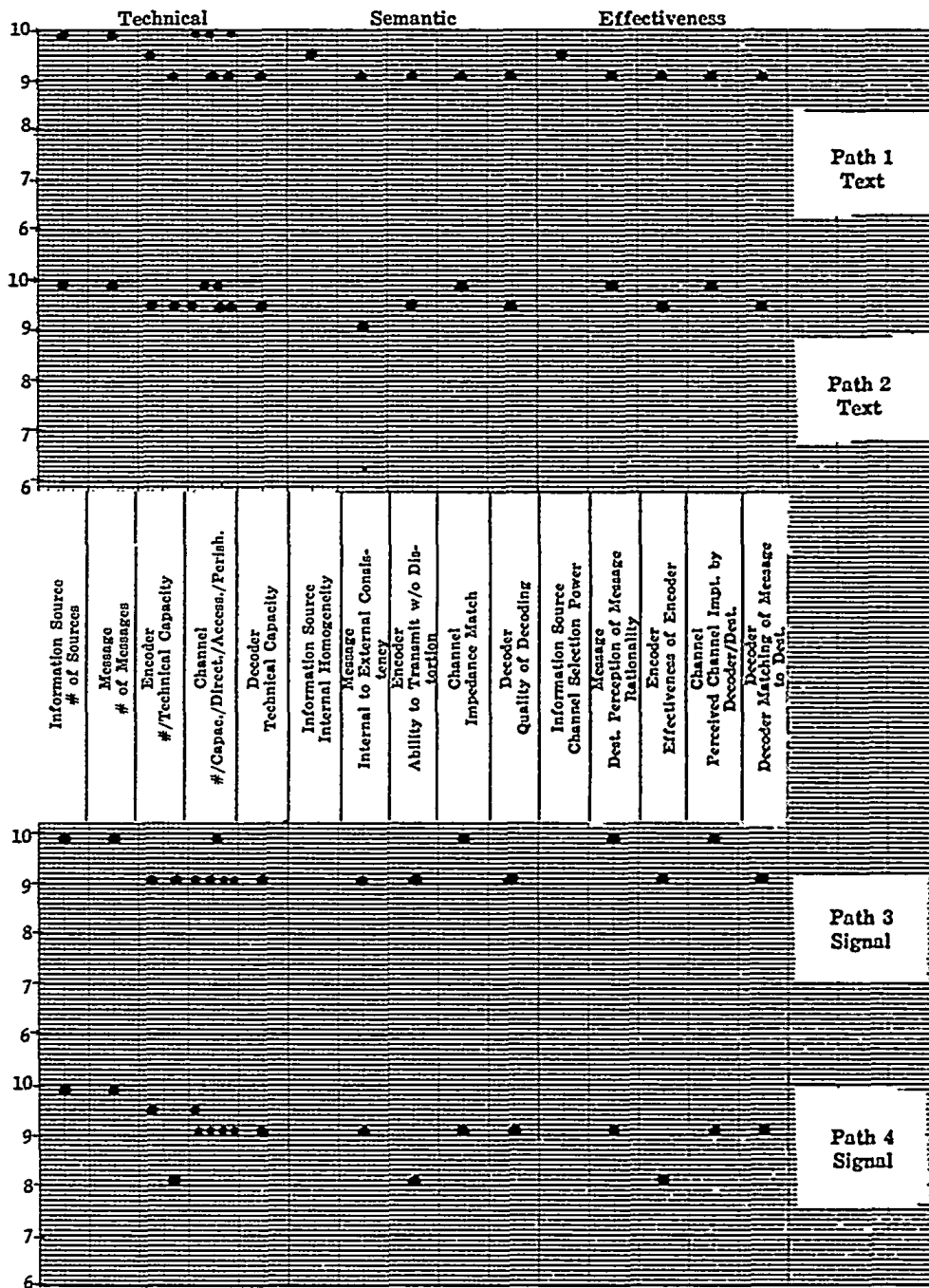


CHART 7

Formal Law: State Jurisdiction/Distance

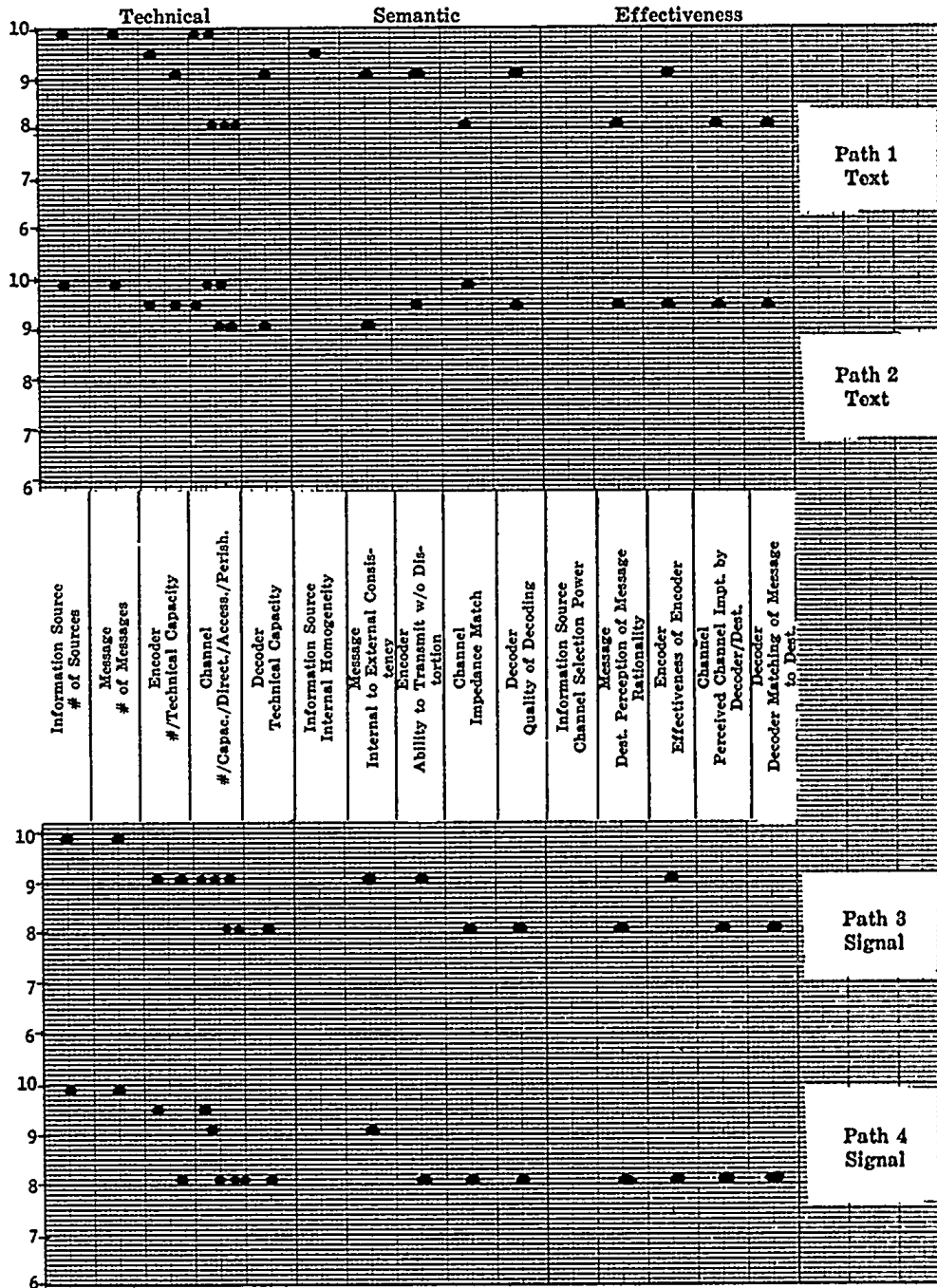


CHART 8

Probable Information Flow of Formal Law Type-Local Jurisdiction

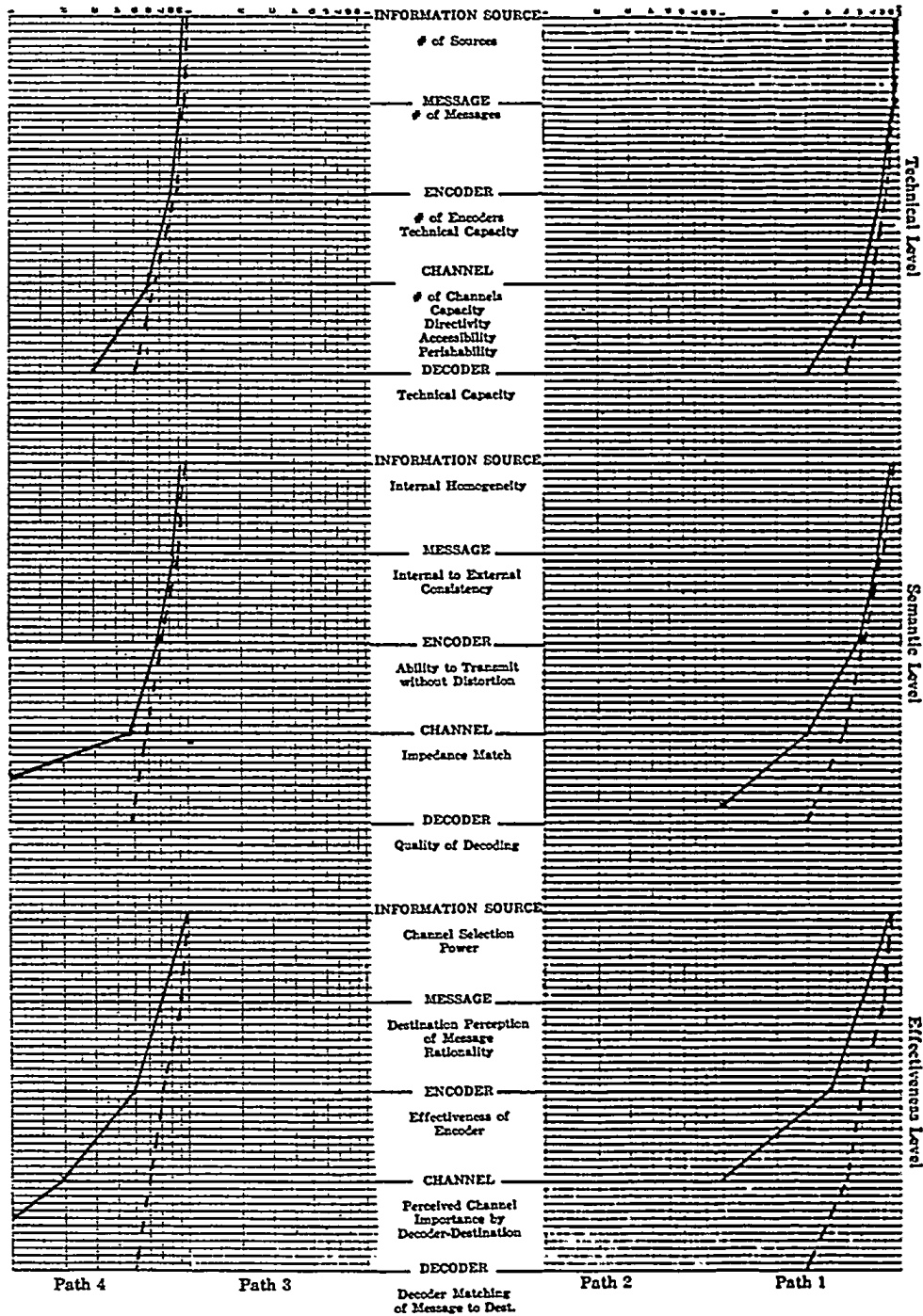




CHART 9  
Formal Law: Local Jurisdiction/No Distance

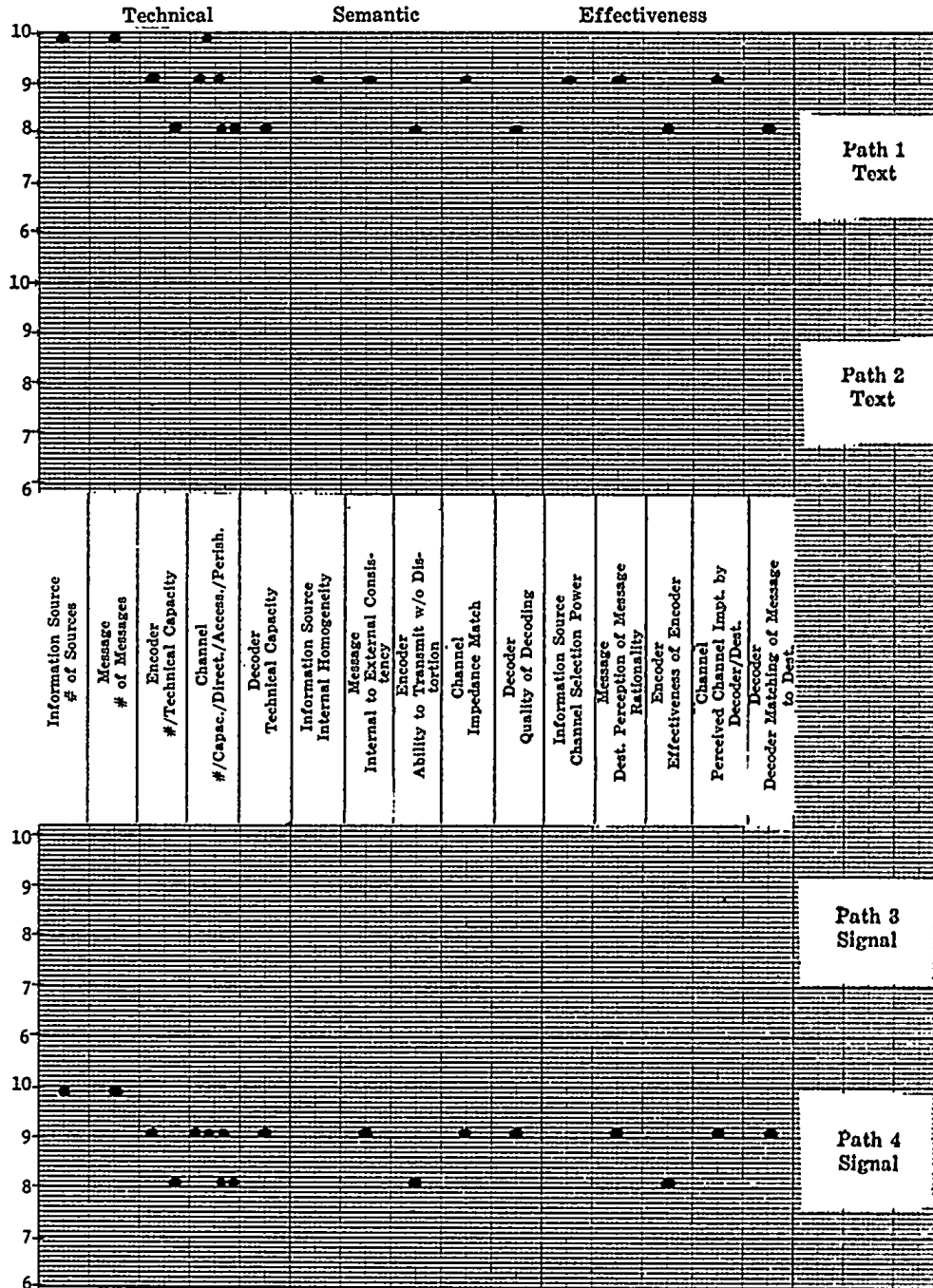


CHART 10  
Federal Law: Local Jurisdiction/Distance

