Most attorneys have at one time or another in their careers resorted to the use of so-called “drafting history” to explain the meaning of a particular law or even to clarify the meaning of a particular phrase in a single provision of a law. This usually involves reviewing reports written by legislative committees or occasionally by sponsoring legislators that purport to disclose the intent or purpose of the legislation. Sometimes, especially with Federal laws, there are even statements made on the floor of Congress and recorded in the Congressional Digest, which become part of the “lore” of the legislation. These are, of course, secondary sources, to be used, according to judicial direction, only when the “plain language” of the statute is not clear on its face. In large degree the presumption that a single “legislative” intent can be discerned from the give and take of the political process (where some bills become law without even being read by some or all the legislators), is itself a legal fiction.

The process by which a uniform act is first proposed and then drafted, discussed and redrafted, stands in stark contrast. Uniform acts are the products of the National Conference of Commissioners on Uniform State Laws (“NCCUSL”), headquartered in Chicago, Illinois. There is a drafting group with an assigned Reporter, who is the principal statutory scribe and who is frequently a law school professor with particular expertise in the substantive legal area at hand. Interested outside parties, typically representatives from American Bar Association groups and sometimes from State bar associations are invited to participate. And participate they do. Draft uniform acts are chewed up and worried over like old bones by a pack of diligent bloodhounds. There are oral presentations, colloquies, letters, memoranda and the like. Yet all of that is merged into the uniform act as finally adopted and approved by NCCUSL and the explanatory concepts and (sometimes even argumentative) commentaries from the drafting process are almost always consigned to forgotten file cabinets.

In 1987 the Partnerships and Unincorporated Business Organizations Committee (now the Limited Liability Company, Partnership and Unincorporated Business Entity Committee) of the American Bar Association’s Business Law Section proposed to NCCUSL, that NCCUSL take on the project of revising and modernizing the Uniform Partnership Act, originally adopted
and approved by NCCUSL in 1914. NCCUSL agreed. The NCCUSL Drafting Committee was appointed in 1987 had ten full meetings and numerous hours of subcommittee meetings and conference calls culminating in: (i) a July-August 1989 first reading of about half of a draft of the revised Act in Hawaii; (ii) the July 1990 Draft of the revised Act (reflecting in its first half some of the colloquy from the first reading in Hawaii the prior Summer); and (iii) the inception of a four plus year process, “staffed” by lawyers from NCCUSL, the Partnership Committee and others (many of the participants were volunteers, not only giving freely of their time in endless hours of meetings and writings, but also funding the travel and lodging costs for drafting sessions scattered about the country). Fortunately for posterity all of the NCCUSL meetings at which the drafts and commentaries were discussed were recorded and the transcripts of those sessions are available on a fee basis from NCCUSL. Finally in 1994 the Revised Uniform Partnership Act (or “RUPA”) was ready for “prime time,” (although it was further revised two years later to add provisions allowing for limited liability partnerships).

Those four years of preliminary work and those four plus years of drafting, discussions and debate produced prodigious quantities of discussions at NCCUSL Meetings (all dutifully recorded in transcripts) and of documents: both draft acts and lengthy commentaries. Together those discussions and documents constitute a series of explications and dialogues on points of law culminating in RUPA. With the kind cooperation of NCCUSL, members of the ABA Partnership Committee and the RUPA Reporter, edited transcripts of those NCCUSL discussions and copies of those documents have been collected and are presented here.

The edited transcripts and the documents were organized and the detailed Table of Contents were put together by me with the assistance of two former associates of mine, Debra Snyder and William MacKnight, and of my legal assistant, Laura Shamy. Any insight into RUPA and the process leading to it which are provided by the Table of Contents are due to their efforts; ambiguities and errors (including in the editing of the NCCUSL transcripts) are solely my doing.
This collection of Concepts and Commentary Leading to the 1994 Version of RUPA is dedicated with gratitude to the efforts of all those who worked on RUPA and especially to those who gave so generously of their time and money as volunteers, who answered the call to serve their profession in the advancement of the Law.

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