

The
Wisconsin
"Bill Factory"



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I have seen recently some loose statements made about the Legislative Drafting Department by some of our politicians who are so good as to call it a "bill factory." Stand-patters are trying to make political capital out of this department. It is very natural that the ultra-conservatives would not like a department of this kind. When Ambassador James Bryce appeared before the Congressional Committee in Washington, supporting the work of this department, he said that those who were ultra-conservative would not favor a department for scientific drafting of legislation and have never done so. He is a great authority upon American government, and has endorsed this department without reservation after examination of it and of its work.

Specifically, one of the candidates at the present time has said that this department has led to too great a number of bills. If you look in the reports of the revisor of statutes, you will find that years ago Wisconsin had just about as many acts in a session as we have now and in many instances more pages of law. Take the year 1866. There were 733 acts. As far back as 1887 there were 1,709 pages of law, while in 1911 we had 1,092 pages. In 1891 we had 1,713 pages. In his introduction to the statutes of 1911 the Revisor says: "This unusual growth of general statute law is often cited as proof of an increasing bulk of hasty, ill-considered and unnecessary legislation of all kinds. The inference is not warranted. However broad and extensive the field for further

improvement may be, the record of achievement in the past is not in the least discouraging. The actual volume of legislation has been greatly checked and restricted since statehood began." That the number of Wisconsin bills is not excessive compared with other states is shown by the following list taken at random from different parts of America in 1913.

California	3,922
Connecticut	1,751
Massachusetts	3,167
Minnesota	2,226
Missouri	1,570
New York	4,081
N. Carolina	4,308
Pennsylvania	2,726
Tennessee	2,742
Wisconsin	1,759

Another absurd charge intended to discredit this department is that "it cooks up bills and hands them to the members." The fact is that no bill has ever been drafted by this department which has not been drafted by the rules of this department—"upon written detailed instructions from the member"—with his name to these instructions, or by instructions from the governor.

Some of the lawyers of this state have written to me about this department. For their benefit, I wish to quote here a letter from the Chief Justice of this state:

"I am not able to say that the Wisconsin bureau has been of direct service to the court in its labors. I can confidently say, however, that it has been of very material assistance to the legislative branch of the government in the careful drafting of bills and in placing within reach of the legislators the results of legislation in other countries, as well as the literature bearing thereon. The effect of this work is, of course, naturally helpful

to the court, because it tends to produce laws more scientifically drawn, and to prevent crudities in laws."

And for their benefit, also, I wish to quote the following resolution adopted at the American Bar Association meeting, September, 1913:

"Resolved, that in the opinion of the Association, an official legislative drafting and reference service, when properly organized and directed, forms an efficient agency tending to prevent the enactment of unconstitutional, obscure and otherwise defective statutes and to secure the utmost brevity and simplicity consistent with accuracy in the language of statutes, and we hereby recommend the establishment and generous support of such service at Washington and in those states not now having such service.

"Resolved, that the committee on Legislative Drafting be continued, with instructions to prepare for submission in the association, if further investigation shows such preparation to be practical, a legislative manual or code containing a collection of directions or suggestions for drafting laws, and model clauses for constantly recurring statutory provisions and problems, and that the committee be further directed to report what, if any, changes in existing legislative procedure, or procedure in connection with the operation of the initiative, will tend to the improvement of our statutory law, and that for these purposes the committee be authorized to co-operate with other organizations or individuals.

Respectfully submitted,

WM. DRAPER LEWIS, *Chairman*.
 ERNST FREUND,
 SAMUEL T. UNTERMAYER,
 LOUIS D. BRANDEIS,
 THOMAS I. PARKINSON,
 HENRY C. HALL.

"I concur in recommending the adoption of the resolutions submitted by the report.

F. W. LEHMANN."

I am not going back into a long history of the improvement of our bill drafting in this state. There is no need of defending the Wisconsin drafting department, but I am stating only some of the recent endorsements of the whole principles used here. Mr. Dahl wishes to have the drafting department separated from the reference department. The whole trend of the discussion of the Bar Association is against this. For the further benefit of Mr. Dahl, I wish to quote further the report of the Joint Committee of the Senate and House of Nebraska just gotten out in a bulletin:

"4. Bill-drafting.

"The establishment of a bill-drafting division of the legislative reference bureau on lines similar to the one now in service in Wisconsin. Service by this division shall be rendered to members of the legislature upon their signed requisition and without charge.

"Reasons: The recommendation with reference to bill-drafting is based upon the practical experience in Wisconsin and other states and upon the report of a distinguished committee of lawyers adopted by the American Bar Association at its annual meeting last September in Montreal.

"All competent persons now agree that the careful drafting of bills is one of the most important steps in good government, that it should be done by trained and impartial persons, and that the work of drafting bills should be in close connection with the reference library which furnishes the material upon which the

bills are based. This has been secured in Wisconsin by a division of the reference library working in a separate, adjacent room with a sufficient force of trained helpers employed during the legislative session only. Hitherto in Nebraska this work has been done in very crowded quarters, with constant interruptions of persons engaged in the work. We believe that a separate room and additional trained help should be provided by the next Nebraska legislature for doing this highly important work under proper conditions.

"This service, in our judgment, should be furnished free to members. The last session of the Nebraska legislature placed a fee of \$5 per bill upon this work, chiefly upon the theory that the fee would reduce the number of bills introduced. The very complete information secured from all the states for the use of your committee, and printed in the tables which follow, shows that the increase of bills introduced in American legislatures is not primarily due to the services of bill-drafting bureaus, but to other social and economic causes. We believe that legislative members should have the best service possible in putting their ideas into good legal and literary form and that this service should be furnished without cost to the members, thereby putting the poorest member and his constituents upon equal terms with the most wealthy."

I wish to quote further the report of the American Political Science Association, February, 1914, based upon the most careful examination of the whole question of bill drafting. This committee is headed by Ernst Freund, one of the most profound scholars in this line in the whole world.

"The legislative reference bureau and the drafting bureau should be under one

single director. They must co-operate closely and it is visionary to expect that two separate heads will work together in the peculiarly close manner required for the greatest efficiency in this work. The primary purpose of the legislative reference bureau is to supply the drafting bureau with the exact data and models required for drafting. It must be the collecting and classifying agency to serve the drafting bureau. To do this, it must have intimate touch with the actual work and needs of the bill drafters. On the other hand, the draftsmen should at times be a part of the reference bureau, in order that they may have their grasp of the subjects more firmly fixed and be able to utilize better the fruits of research made available through the reference work, and in order that they may, by suggestions from experience, strengthen the reference work. The point of view of each must be kept constantly before the other. The reference bureau's work will be ineffective if it is not organized with fine precision to meet the needs of the drafting bureau and the drafting bureau will bring few of the good results which should come unless it is willing and able to profit by the researches of the reference bureau.

"It should be emphasized that no library, no matter how exhaustive its collections, can be effective for the drafting bureau. It requires only a small working collection of the essence of things in books, reports, pamphlets, etc., drawn off from the great masses of information and so arranged as to do the exact work desired. The legislative reference library should be one which serves the workers and not merely the thinkers. The man who uses its materials has not the time or the inclination to make exhaustive researches. If he had, there would be less need of this kind of a library.

"The work of the two bureaus requiring such intimate relations and such precise co-operation should in the very nature of things be under one control. It is presuming too much upon the pliability of human nature to expect independent bureaus to work harmoniously for the best ends. Mutual jealousies and misunderstandings are almost certain to mar the work if the two bureaus are made separate.

"The best method would seem to be to have one director supervise the whole operation with a bill drafting department and a legislative reference department under him.

ERNST FREUND,
JOHN A. LAPP,
FRANK A. UPDYKE."

This department has the almost unanimous endorsement of the bar in America, of foreign writers, and of the greatest authorities upon American government, of the leading business men through the National Chamber of Commerce, favoring the passage, by congress, of Senator La Follette's bill providing for a legislative reference department. If the business men have any doubt this worth, I would refer them to Bulletin No. 67 of the General Series of the United States Chamber of Commerce (Dec. 29, 1913) for the vote on Referendum No. 6, affirmative votes 625, and negative votes 16.

Farmers and representatives of labor in the legislatures of every state have supported the provisions for legislative bill drafting departments. Without this aid a farmer or a mechanic has to depend on lawyers in the legislature or, because of his want of technical legal help, hire attorneys out of his own pocket. Legislative drafting departments give him

the legal help he should have and give the organizations which he represents a power which they would not have otherwise.

Business men, lawyers, farmers, and citizens can compare the above with the sayings of E. L. Phillips, Andrew Dahl, Levi Bancroft, and other reactionaries, stand-patters, and fake Progressives.

CHARLES McCARTHY,
Legislative Reference Librarian.

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* No rule or law compels a member *
* of the legislature to use the refer- *
* ence library, or have his bill drawn *
* in the drafting department. Every *
* member is free to put his bill to- *
* gether in the old way if he chooses *
* to do so. *
* * * * *

“I can only say that it seems to me highly important that a legislative reference department should be established in the Congressional Library. The experience of several of our States in this matter is conclusive as to the great usefulness of such a department. Indeed, I think if once established, everyone who had any knowledge of it would deem it indispensable.”

WOODROW WILSON.

(Quoted by Senator La Follette before the U. S. Senate Committee on the Library, February 4, 1913.)