

# *Law Revision as a Teaching Tool and Public Responsibility of a Law School*

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[*This is the substance of a talk which was prepared for delivery at the alumni meeting at the American Bar Association convention in August.*]

From the beginning of the modern university law school, it has been a factor in statutory reform. In 1901 Dean Ames of the Harvard Law School in his address on "The Vocation of the Law Professor" spoke of the "wholesome influence which the professor may exert as an expert counselor in legislation, either by staying or guiding the hand of the legislator." Even a partial list of the state and national legislation of which a law professor was a counselor or draftsman is an impressive demonstration of the impact of the professor on law reform. Thus from our own law school we have the Uniform Trust Act and the Uniform Conditional Sales Act by Professor Bogert; the Uniform Illegitimacy Act and a proposed city charter for Chicago by Professor Freund; the Uniform Trust Receipts Act by Professor Llewellyn; and the Uniform Commercial Code drafted by many professors, among which were Llewellyn, Mentchikoff, and Dunham of our law school. This is not a complete list even of our own school's contributions, but it is sufficient to illustrate the point. Dean Ames envisioned this part of the law professor's occupation as primarily the personal activity of an individual professor of law and not as an organized institutional function. And such it has been with a few notable exceptions. Thus the Legislative Drafting Fund of Columbia Law School in 1911 is largely responsible for the Office of Legislative Counsel in each of the houses of Congress and of the similar agencies in some forty or more state legislatures. The thrust of the Columbia project and of the official agencies thereafter established was that expert draftsmen could ease the burden of the individual legislator and result in at least better-drafted legislation.

Almost simultaneously with the movement for legislative drafting services for legislators, however, came new insight into the legislative process: the sponsoring legislator was not the law-writer. The real proposer of legislation introduced by a particular legislator was some executive agency of government, a judicial conference, a civic group, or a trade association. These sponsors not only do not have access to the expert official draftsmen in the Office of Legislative Counsel but do not have their own expert draftsman but must rely on a lawyer or a law professor who, even if not serving in a *pro bono publico* capacity, finds law revision only one among many activities. Thus the official drafting agencies do not provide for the real

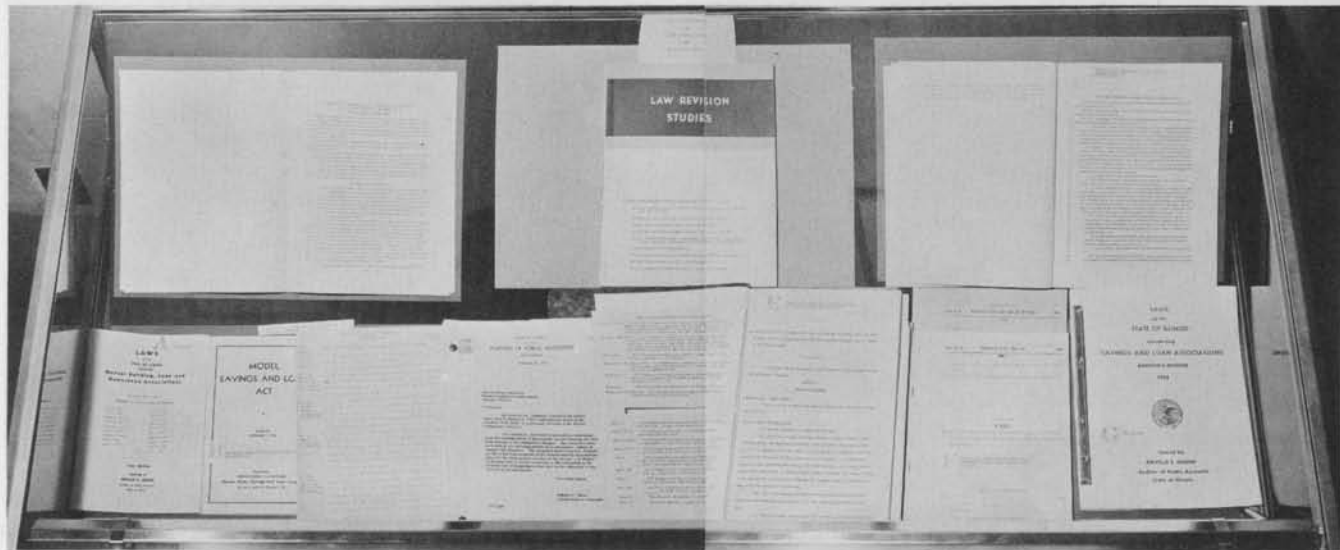
sponsors and drafting agencies the expert drafting services which it was thought that the legislators needed.

As I said before, Dean Ames regarded law revision as individual effort. He did not regard legislation and legislative drafting as part of the teaching process. It is true that the individual activity of a professor often resulted in employed or volunteer student assistants of the professor receiving training in statutory drafting. The courses on legislation first introduced to the law curriculum some forty years ago by Professor Freund of our law school have not had as their main emphasis working out principles of legislative drafting. For the most part these courses have been designed to train students in the art and professional skill of statutory interpretation and in the formalities of legislative enactment. These courses have not had the same emphasis on principles of legislative drafting and the application of such principles to particular legislative proposals as the more traditional law-school courses have had under the case method. Professor Freund was a notable exception. His book in 1916 on legislative drafting and its principles is almost the last and only book on this subject attempted in the United States.

During the last three years the Law Revision Group at The Law School has undertaken a pilot experiment in organized law-school activity in the service function of law revision. It has appeared to us that on the service side we have the most to contribute if we provide legislative drafting facilities for the judiciary, executive departments of government, and civic and trade associations that do not have access to the services of official legislative agencies. It further appeared to us that, the more student work in drafting approximated real-life experience, the better the training. Thus it would be better for students to work on legislation which is being prepared for introduction into a legislature than it would be for them simply to work on drafting model legislation embodying the "better" view of a particular legal problem. Thus the service function and the training function should and could be closely integrated.

In our pilot experiment we undertook to do drafting for the judiciary, for an executive department, for civic associations, and for trade associations in order to get some idea of the need for this service and also in order to get some idea of the problems involved when a law-school institution drafts for groups and persons who have more or less control over policy decisions inherent in any legislative drafting. We also undertook to offer each year three seminars in legislative drafting in which the students could get training in drafting real legislation.

The Law Revision Group consists of a faculty committee of which I am chairman and a legislative draftsman. The pamphlet entitled *Law Revision Studies No. 1*, which some of you have seen, embodies some of the results of our work over the last three years. This pamphlet



*A display of materials concerning the School's work in Law Revision, which is described elsewhere in this issue in an article by Professor Allison Dunham.*

contains a study and statute undertaken at the request of a member of the judiciary and a study and statute undertaken at the request of a civic group. The subject of the former was a new habitual offender act for Illinois, and the subject of the latter was a new type of eminent domain proceedings for Illinois. These studies were taken up by other agencies. The Joint Committee on the Criminal Code of the Chicago and Illinois State Bar Association became interested in the habitual offender act, and the Attorney-General became interested in the eminent domain act.

In addition to these two acts, we drafted other legislation. As a matter of fact, there were four bills in the Illinois legislative session of 1955 which were ours, and one of these passed. The one which passed was our most ambitious project—a complete revision of the Building and Loan Association Act of Illinois, which had been revised last in 1919. We did this act for the Illinois Savings and Loan League. We also did a rather ambitious job which is about to be introduced into the City Council of Chicago—a proposed housing code for the city of Chicago.

Each time a proposal has been submitted to the staff for consideration we have determined whether it was one which could be used for student drafting. The criteria of selection have been worked out from experience and need still further consideration. It would appear that the best proposals for student drafting are those which (1) need not be done under too much pressure; (2) will require consultation with the groups of the sponsoring organizations; and (3) are small enough in scope so that each student may do the entire act as a drafting exercise. In these seminars we have done work on a proposed uni-

form act for charitable trusts for the Commissioners on Uniform State Laws and the Council of State Governments and a uniform postconviction act for the Commissioners on Uniform State Laws.

We hope this fall to have a seminar on a proposed uniform formula for allocation of income to a state for income tax on a multistate business. This is being done for the Council of State Governments. We also hope to work with students on a proposed administrative procedure act for Illinois, which is being done for a committee of the Chicago Bar Association.

My own assessment of the project to date is that the experiment has been very successful on its service side and less successful on its pedagogical side. On the service side we have convinced ourselves, I believe, that there is a real need for a drafting agency to serve civic and trade associations and that we can successfully immunize ourselves from a role which we should not assume—that of promoting the passage of any legislation drafted. Our unique location near the American Bar Association headquarters and the headquarters of a host of public service agencies in the Public Administration Clearing House aids in our acquiring projects to work upon.

On the pedagogical side we have not yet tried to work out principles of legislative drafting which the students could apply in their legislative drafting, and we have not received projects with sufficient time to work upon them so that the students can participate in the meetings with the policy groups of the sponsoring organizations.

I think, however, that the financing of this pilot study made possible by alumni contributions has indicated that there is a real place for law revision in the activities of a great university law school.