A proposal to institutionalize a legislative drafting programme jointly managed by University of Witswatersrand Schools of Law and Public and Development Management

http://hdl.handle.net/2144/19018
Boston University
December 5, 1998

Mr. Petro Morgos  
800 North Kings Highway  
Suite 307  
Cherry Hill, N.J. 08034  
Phone: 609-779-3397  
FAX: 609-779-0382  
e-mail: pmorgos0@counsel.com

Dear Mr. Morgos:

Thank you for your memorandum and that of Daniel Vignes. We have read both with interest. You really do have a challenging project!

Our own experience reinforces yours: "a systematic approach of copying the substance of a directive (indeed, any law or regulation) simply does not work at all." As our articles and books emphasize, whether the law's addressees will obey a new law's particular words depends to a major extent on whether the drafters have designed implementation measures in ways logically likely to alter or eliminate the country-specific non-legal causes of those addressees' past problematic behaviors.

In our experience, the kind of research report which we believe must accompany any significant bill -- like the one you propose on labor safety and health -- proves essential to ensure the bill's effective implementation. The report's major parts logically organize the available facts to demonstrate that it will likely achieve the desired results: Part 1 not only describes the superficial manifestation of the difficulty that law seeks to resolve, but especially identifies whose and what behaviors now perpetuate that difficulty; Part 2 analyzes all the possible interrelated causes (including the existing rules of law and the non-legal factors) of each social actors' problematic behaviors; and Part 3 demonstrates that the bill's legislative measures logically will actually overcome the causes identified in Part 2, and that its potential social benefits outweigh its social and economic costs.

Our experience indicates, for example, that if the Ukrainian drafters worked together with the personnel of the responsible government department (in the UNDP-China project, the drafters worked with Ministry of Labor officials on such a bill), they could undoubtedly provide most of those facts required for such a report. Together, drawing on available studies and documents,
they can design effective implementation measures which -- in the context of the constraints and resources inherent in the Ukraine's unique circumstances -- will likely ensure that the bill contributes to the attainment of levels of worker safety and health comparable to those in the EU.

Truthfully, given the inevitable historically-shaped constraints, as well as resources, inherent in country-specific circumstances, we do not see any other way to achieve the desired comparability. As a further implication, this reality underscores the importance of equipping each country's own drafters and ministry officials with the tools -- legislative theory and techniques -- to enable them to translate policy into laws likely to prove effectively implementable in their own countries. That premise underlies our focus on engaging them in drafting their own priority bills and reports in a learning process designed to empower them to draft the additional bills they will inevitably require to ensure democratic social change and good governance.

If there is any way we can be of help in your project, please let us know.

Sincerely,

Ann Seidman and Robert B. Seidman
Co-Directors, Legislative Drafting Program for Democratic Social Change
CONFIRMATION REPORT

12-07-98 10:15A  ID: 617 353 3077  NAME: BU SCHOOL OF LAW

TYPE : TRANSMISSION

<table>
<thead>
<tr>
<th>NO.</th>
<th>TIME</th>
<th>DIAL NO.</th>
<th>REMOTE STATION</th>
<th>PAGES</th>
<th>JOB NO.</th>
<th>RESULT</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>10:14A</td>
<td>MANUAL</td>
<td>916097779038295788</td>
<td>2</td>
<td></td>
<td>OK</td>
</tr>
</tbody>
</table>