Laos Legislative Drafting Programme

Seidman, Robert B.

http://hdl.handle.net/2144/22398

Boston University
June 23, 1997

Mr Valloph Sisopha, Director,
The National Legal Framework Project
Ministry of Justice
% UNDP
Vietiane, LAO P.D.R.

FAX: 011-856-21-214-819 or 212-029

Att: Ms Yvonne Helle

Dear Mr Sisopha.

Enclosed please find materials relevant to the proposed critique groups to be held early in July on the four bills under discussion in the Spring workshop; we understand that some of this might not have gotten through in our earlier FAX.

Do let us know how the bills progress; we sit here gnawing our fingernails, wondering about them!

Kindest personal regards.

As ever,

Ann and Bob Seidman
ON THE ORGANIZATION OF A CRITIQUE GROUP

I. At least 24 hours before a critique group, copies of the Research Report and Bill under discussion MUST be distributed to all the participants.

II. In general, each participant must return to the drafter a marked-up copy of the research report and the bill.

III. Prior to the critique group, individuals who have not otherwise had contact with the bill are assigned tasks. These are:

   A. The Introduction
   B. The statement of the difficulty
   C. The explanations
   D. The solution
   E. The form and style of the research report
   F. The substance of the bill
   G. The structure of the bill (grouping and ordering)
   H. The syntax of the bill (language, grammar, clarity of sentences, etc.)

IV. In preparation for the critique group, I read the research report and bill very carefully, and prepare a detailed written critique under the following headings:

   A. Structure and form
   B. Adequacy of the research
   C. Statement of the difficulty
   D. Explanations
   E. Solutions
   F. Bill

I enclose a couple of reports (chosen by sheer happenstance) to show what I give each drafter at the end of the critique group).

V. At the critique group, the person assigned to critique a
particular aspect is first asked to giver the critique. The critique should in general follow the outline for a research report. For example, the critique on the Difficulty would first state whether the research report adequately describes the social harm, and whether it includes adequate data to show its scope, and whether it includes a discussion of the seriousness of the social harm. It should then discuss whether the research report analyzes correctly whose and what behavior is involved, describes both the role occupants and their behaviors, and supplies data to support the bill's assertions.

VI. After the designated parson has given the critique, I go around the room asking whether anyone has something to add (Almost invariably, somebody has). Only after all the other participants have given their critique do I give mine.

VII. Somebody must be assigned to take notes for the drafters; they are usually too engaged in the discussion to make useful notes.
March 25, 1996

BRUCE LINTON: REVISED STANDARD FOR COMMITMENT

Form and style: Form: Your mini-conclusions need more work. Their function is to put into concise form the essential message of the preceding section. For example, the essential message of the 'difficulty' section is whose and what behaviors the bill will address. Yet the mini-conclusion to that section (pp. 13-14) does not tell us whom you have earlier identified. Form: You use 'to be' and the passive voice much, much too much. -- The most important word or concept belongs at the end of the sentence. Usually, that requires that conditions and subordinate phrases must go at the beginning of the sentence. -- Conditions, adjectival phrases and subordinate clauses also do not belong between subject and verb, or verb and object. Try to keep these very close together. -- Avoid throat-clearing phrases, like 'there is' or 'In fact' (or, even worse, 'It is the fact that' -- although you did not use that one).

Research: Seems quite good.

Introduction: You start much too blandly. Why not start with the anecdotes abut Blechard (p. 6), and the striking statistics on p. 7? That would get the reader involved from the outset.

Difficulty: I am not at all sure that you have identified the appropriate actors. To say that the legislature is a role occupant implies that your legislation will address their behavior, in the sense that it will restructure legislative decision in a way likely to solve the social problems identified. Your legislation does nothing of the sort. The legislature cannot be a role occupant. -- Surely the principal actors here are (a) the physicians, who are not provided with an opportunity to treat people who desperately need it, and (b) the courts (as implementing agency), who, unless they can find 'dangerousness', currently lack power to send people in need of treatment to the physicians. Self-evidently, of these, the most important is the courts, for if they commit people, the physicians will have opportunity to deal with them. -- What behavior of the courts is at issue? If, as you say, (p. 3, l. 62) Mass Gen Laws, Ch. 123 §§8 and 12 perm, it commitment if the person presents 'a likelihood of serious harm to themselves or the community' (emphasis supplied), why is a refusal to take lifesaving drugs not a ground for commitment? If I understand you correctly, Ch. 123, § 1 requires proof of 'specific acts of violence' in order to demonstrate 'serious harm' (you use the word 'dangerous'; I had understood that the key phrase was 'likelihood of serious harm') (p. 3, l. 70). I had also understood, however, that at least the director of a facility or a hospital could petition for temporary commitment to take medicine of a person already in hospital; is that incorrect? Perhaps you might want to go more deeply into the case law, to demonstrate that the courts
Explanations: The central question then becomes: Why do the courts require that the person petitioning for commitment prove dangerousness to the community when the statute on its face permits commitment for dangerousness to the patient; and why do they require that even dangerousness to the patient be demonstrated by specific acts of violence? The only reasons that you give is that the courts (i) undervalue the need for treatment, (ii) they underestimate dangerousness to the community, and (iii) are suspicious of physicians' ability to diagnose mental illness (p.13, ll. 267-70).
November 5, 1996

R. PERRYMAN: ATHLETE AGENTS

FORM. (a) In general. This fails to follow the recommended outline for memoranda of law. There is no 'table of contents' paragraph; nothing about methodology. The other sections are equally incomplete. I doubt that there is enough here to warrant a critique group session. (b) Structure. Connectives are insufficient. You do have a mini-introduction and mini-conclusion to the 'Difficulty' and 'explanations' sections, but not to the 'solutions' section. Other connectives are woefully missing -- Overall introduction; explanation of methodology; connectives between sentences; topic sentences to paragraphs. (c) Sentences. This is obviously very first draft; the sentences, like the structure, is scatty. Se comments throughout.

Research. None apparent. Not a whistle of data about anything.

Difficulty. You keep stating that the relationship between the agent and the athlete is 'exploitative', but never explain why it is that. The only difficulty you mention is the threat to college and player eligibility, but then immediately weaken that by suggesting that these sanctions are rarely levied, as evidenced by the Camby case. What is evil about these contracts? Why do you label them 'exploitative'? Why should 27 states and one Congressman think it important enough to legislate about? Nothing you state persuades me in the least that these contracts are anything that Massachusetts should worry its little head about. -- You do not specify who are the role occupants, or precisely the behavior at issue. Is the player a role occupant? If so, what behavior is at issue? Plainly the agent is a role occupant; but precisely what behavior is at issue? Who is presently the implementing agency, if any?

Explanations. In general, woefully thin and incomplete. -- You state that MA 'currently has no law pertaining to this issue'. Of course it has law pertaining to the issue: Absent anything to the contrary, these contracts are wholly enforceable by the ordinary laws of contract. Do those laws contain anything making these contracts illegal? If they are 'exploitative', what does the common law of contracts say to the enforceability of the contract? -- You mention only the Rule as an explanation for behavior; what about other explanations for behaviors? What hypotheses do the other categories call to your mind (opportunity, capacity, communication of the law, interest, process, ideology)?

Solution. Need much more detail about the 27 state laws -- just saying that they provide for registration of agents tells us almost nothing. Ditto re the proposed fed legislation. -- How do scholarship stipends and interest free loans constitute an alternative to laws concern