Legislative drafting for democratic social change in South Africa

Seidman, Robert B.

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Boston University
January 2, 1997

Prof. Dr. Mathole Motshekga
NIPAM
Unit 2
50 Tonnetti Street
P.O. Box 341
Halfway House, Midrand 1685
Gauteng, South Africa

FAX: 011-27-11-805-1837

Dear Dr. Motshekga:

First of all -- and most important! -- HAPPY NEW YEAR!

We have been enjoying the seeing out of the old year, catching up on all kinds of reading, and especially enjoying having Annie Neo, Judy’s oldest daughter, visiting and working with us as a research assistant.

As we get back down to work, we have begun to wonder what, if anything, has been the fate of the NIPAM-BU proposal. Is it still on? What response, if any, have you received?

One of the reasons we would like to know is that various people have asked us about the proposed project’s progress. The latest is a letter from Prof. V. Singh, Dean of the Faculty of Law, University of Transkei. Originally, we had contacted Dr. Hlophe, but he has since joined the bench. Prof. Singh writes to expressed continued interest. Shall we suggest that he contact you directly?

We would very much appreciate knowing what is happening so that we can inform him and others who contact us about the next steps.

Again, best wishes for the New Year.

With warm regards,

Ann Seidman and Robert B. Seidman
Co-Directors, Program on Legislative Drafting for Democratic Social Change
October 4, 1996

Prof. David J. McQuoid-Mason
University of Natal
Private Bag X10
Dalbridge
Durban 4014
South Africa

FAX: 011-31-260-2559

Dear David:

As you may remember, we met last year at the INTWORLSA workshop.

Since then, we have been giving a lot of thought to possible ways of assisting South and Southern African institutions to strengthen legislative drafters' and legislators' capacities to draft and assess legislation in the context of drafting and enacting the kinds of transformational laws that South Africa -- like many third world countries -- requires to facilitate development. We enclose the brochure we have prepared for the Boston University Program for Legislative Drafting for Democratic Social Change.

We understand that funding agencies, like Ford and USAID, might well respond to a request for assistance in financing such a program, especially if it involved institutions from more than one Southern African Country. Do you think either your Law School or the Street Law Project would be sufficiently interested in participating in such a program to join in a request for funding from both Ford and USAID, perhaps together with the law faculties of South Africa's University of the North, UNISA, and Namibia's and Zimbabwe's universities' law schools as well as that of Mozambique's Eduardo Mondelane University?

Essentially, the proposed Program would involve:

(1) An introductory two to four week workshop for staff and advanced students of each participating law school, perhaps on a regional basis;

(2) A brief (one or two day) workshop in each participating country for senior law professors and senior law administrators and, if possible, provincial and local government leaders (senior civil servants and drafters from the Ministry of Justice, and other leading civil servants and Ministers);
(3) sending two members of each of the participating law schools' teaching staffs to the University of Boston's School of Law's four month Program for Drafting for Democratic Social Change (this might be expanded to four to include drafters and lecturers in local Schools of Administration); and

(4) institutionalizing an on-going legislative drafting program in the participating law schools in cooperation with and to meet the needs of ministries and law-makers.

If you think either your Law School or your Street Law Project would be interested, we will mail to you the draft proposal that the other institutions are considering. Once revised in light of their comments, those who agree to participate could then forward the proposal to the Southern African regional offices of Ford and USAID, and any other funding agency that they deem worthwhile.

We very much hope you will support and help to implement a proposal along these lines. We look forward to hearing from you.

Very sincerely,

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

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1 See footnote XX above.
Boston University
School of Law
Boston
Per Fax: 617-353-3077

Attention: Prof. Ann Seidman and
Prof. Robert B Seidman

Sir/Madam

We acknowledge receipt of your letter and confirm.

We have submitted our proposal to the Ford Foundation and have arrange an appointment to discuss this matter.

The SARDF have referred us to Mr Moosa for consideration.

Yours Sincerely

Dr. Mathole Motshekga
NIPAM

IN ASSOCIATION WITH: UNIVERSITY OF SOUTH AFRICA (UNISA)
INSTITUTE FOR ADULT BASIC EDUCATION (ABET INSTITUTE)
VERLOREN VAN THEMAA'T CENTRE FOR PUBLIC LAW STUDIES
January 12, 1997

Dr. M.S. Motshekga
NIPAM
Unit 2, 50 Tonnetti Street
P.O. Box 341
Halfway House, Midrand 1685
Gauteng, SOUTH AFRICA

FAX: 27-11-805-1837

Dear Dr. Motshekga:

We wondered whether you received our FAX last week about the status of the proposals for Ford and SARDF, and the interest expressed by the UWC Legal Centre in participating. We are trying to work out our plans for the coming year, and we would very much like to know whether we need to set aside any time to work on the projects proposed.

In your FAX of 10.10.96, incidentally, you mentioned that the Department of Justice had agreed to sponsor four students for the fall, 1997, BU Program on Legislative Drafting for Democratic Social Change. We have heard nothing from them. We would appreciate it if you could suggest someone we might contact to make the necessary arrangements for their visas and enrollment in the program.

We are sorry to bother you. Since we are not sure that you are receiving our FAXes, however, we would be grateful if you would let us know if you get this one. If we do not hear from you in the next few days, we will assume we are not getting through, and try to reach you by phone.

Sincerely,

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

PROGRAM FOR LEGISLATIVE DRAFTING FOR DEMOCRATIC SOCIAL CHANGE

We refer to the above matter and wish to advise that your fax reached us when we were on the point of contacting you to inform you that we have already consulted with Comrade Pravin Gordon (Chairperson of Portfolio Committee on Constitutional and Provincial Affairs), Comrade Max Sisulu (Chairperson of Portfolio Committee on Reconstruction and Development Program), Mr. Vusi Pikoli (Justice) and several Members of the Executive Committee for Local Government. The project has support from all quarters.

We have already established ties with Faculties of Law in Namibia, Mozambique, Zimbabwe, Lesotho and Swaziland. Thus Nipam would be keen to act as convenor as we already introduced a course on the subject through UNISA.

The Department of Justice has already agreed to sponsor four students to study the course at your University at the same time next year. Should you find this in order please send us your proposal to enable us to facilitate the program as proposed by yourselves.

Yours faithfully,

[Signature]

PROF DR MATHOLE MOTSHEGKA
NIPAM

IN ASSOCIATION WITH: UNIVERSITY OF SOUTH AFRICA (UNISA) INSTITUTE FOR ADULT BASIC EDUCATION (ABET INSTITUTE) VERLOREN VAN THEMAT CENTRE FOR PUBLIC LAW STUDIES
Dear Prof Seidman

SUBJECT MATTER: PROGRAM FOR LEGISLATIVE DRAFTING FOR DEMOCRATIC SOCIAL CHANGE

I refer to your letter of 4 November 1996 regarding the above matter and wish to confirm that I shall serve as convenor for both proposals and I have already discussed the matter with both USAID and Ford. The proposals are now under preparation for submission and copies thereof will be sent to yourselves.

Both proposals are excellent and will be submitted with minor modifications, if any.

Best wishes.

Yours sincerely

[Signature]

PROF DR MATHOLE MOTSHEKGA
NIPAM

IN ASSOCIATION WITH:

UNIVERSITY OF SOUTH AFRICA (UNISA)
INSTITUTE FOR ADULT BASIC EDUCATION (ABET INSTITUTE)
VERLOREN VAN THEMAAT CENTRE FOR PUBLIC LAW STUDIES
6 November 1996

Dear Dr Motshekga

LEGISLATIVE DRAFTING

I am the contact person at UWC with regard to the programme for legislative drafting. I was requested to contact you directly with regard to the proposals. I was unfortunately not able to get hold of your telephone number but only have your fax number. I also have two versions of your surname: Motshekga and Motshekga. I unfortunately do not know which one is correct. Please contact me at tel: (021) 9593299/83 (W) or (021) 8866928 (H) or or fax: (021) 9592960.

I will be sending a copy of this letter to the School of Law at Boston University.

The draft proposals are generally very interesting and the project will, I think, be a worthwhile one.

I have a few queries with regard to the proposals:

1. Is the September 28 proposal the 'Ford' proposal?

2. There are numerous spelling and/or printing errors (see eg footnote 7 of the Ford(?) proposal). These will presumably be rectified once the proposal is finalised.

3. The programme(s) in the two proposals differ in some respects. For example, the first component of the Ford(?) proposal is an introductory workshop for staff and advanced students, of each participating law school whereas the first 'set of activity' in the SARDF proposal is a regional workshop. Are these differences
intentional, ie will there be two different projects that run simultaneously? The remaining parts of both programmes appear to coincide.

4. On page 3 of the SARDF proposal (see also page 6 of the Ford(?) proposal) it is implied (although the word 'typically' seems to qualify it to some extent) that in SADC countries the cabinet simply imposes its will on the legislature insofar as the passing of legislation is concerned. This is not the case in South Africa where parliament has played a very important role in the adoption of legislation since the 1994 election. The statement 'at the end of the day Cabinet gets what Cabinet wants' cannot therefore be said to apply in South Africa. The rest of the difficulties sketched in the proposals appear to be quite accurate.

Yours sincerely

[Signature]

Prof Jacques de Ville
Proff Anne Seidman & Robert Seidman
School of Law
Boston University
Fax: 091-617-353-3077

6 November 1996

Dear Proff Seidman & Seidman

I was requested by Prof Darcy du Toit to act as contact person for the legislative drafting programme and have willingly agreed to do so. I have sent a fax to Dr Motshekga with a few comments on the proposal. I include a copy of this fax. Please contact me with regard to any further queries you might have.

Yours sincerely

Jacques de Ville
21 October 1997

The Co-Directors
Program for Legislative Drafting for Democratic Social Change
School of Law
Boston University
Fax: 617 353 3077

Dear professor Seidman,

Your fax of 4 October addressed to Sandy Liebenberg of Community Law Centre has been passed on to me for reply. The CLC is appreciative of your suggestion but feel that a programme of this nature could not easily be accommodated within their existing priorities and that it might be more appropriate for the Faculty of Law as a whole to consider participation in the project. As Dean-elect for 1997, I have discussed the matter with my colleague, professor Jacques de Ville, whose research and teaching interests are closely related to the question of legislative drafting. We both feel that the idea is interesting and potentially of considerable benefit to our Faculty, and would like to study the draft proposal referred to in your fax. Could you kindly fax or mail us a copy as soon as possible? We would also like to know more about the time frames involved. As soon as we have this information, we undertake to respond promptly.

The above also serves to explain the delay in answering your fax, for which I apologise.

Yours sincerely

Professor Darcy du Toit
Dear Prof. Seidman

PROGRAM FOR LEGISLATIVE DRAFTING FOR DEMOCRATIC SOCIAL CHANGE

We refer to the above matter and wish to advise that your fax reached us when we were on the point of contacting you to inform you that we have already consulted with Comrade Pravin Gordon (Chairperson of Portfolio Committee on Constitutional and Provincial Affairs), Comrade Max Sisulu (Chairperson of Portfolio Committee on Reconstruction and Development Program), Mr. Vusi Pikoli (Justice) and several Members of the Executive Committee for Local Government. The project has support from all quarters.

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The Department of Justice has already agreed to sponsor four students to study the course at your University at the same time next year. Should you find this in order please send us your proposal to enable us to facilitate the program as proposed by yourselves.

Yours faithfully,

[Signature]

PROF DR MATHOLE MOTSHEGKA
NIPAM

IN ASSOCIATION WITH:
UNIVERSITY OF SOUTH AFRICA (UNISA)
INSTITUTE FOR ADULT BASIC EDUCATION (ABET INSTITUTE)
VERLOREN VAN'THEMAAT CENTRE FOR PUBLIC LAW STUDIES
November 18, 1997

Ms. Aruna Vasusdevan
Macmillan Press, Ltd
FAX 011-44-1256-20109

Dear Ms. Vasusdevan,

Just after we talked last week, the books we had ordered on Legislative Drafting for Market Reform - Some Lessons From China (1997) arrived. We would be most grateful if you could cancel the order for that book which I gave you last week, and send only the ones on State and Law in the Development Process, (1994).

I tried to reach you by e-mail about this, but somehow either my machine or yours didn’t work. I only received notice today that my e-mail had not gone through.

Anyway, thank you again for your help.

Incidentally, has Mr. Farmiloe made any decisions about the book we have been working on with Prof. Thomas Waelde on legislative theory and methodology? We would be grateful if we could know his decision in order to proceed to the next steps.

Sincerely,

Ann Seidman