



Tulane Law School  
6329 Freret Street, Suite 216  
New Orleans, Louisiana 70118  
Telephone: (504) 862-8850  
Telefax: (504) 862-8859  
tplc@tulane.edu

## **INTERNATIONAL LEGISLATIVE DRAFTING INSTITUTE CURRICULUM**

**JUNE 10-21, 2024**

### **Monday, June 10**

- |                      |   |
|----------------------|---|
| <b>8:00 - 9:00</b>   | Registration and Continental Breakfast at Tulane Law School, 6329 Freret Street   |
| <b>9:00 - 10:15</b>  | Welcoming Remarks: Tulane Law School<br>Introduction and Overview of Institute: David Marcello  |
| <b>10:15 - 10:30</b> | Break   |
| <b>10:30 - 12:00</b> | David Marcello: "U.S. Bicameral Legislative Enactment Process and the Parliamentary System"—This lecture compares and contrasts parliamentary systems and U.S. state-federal legislative enactment procedures and how they relate to the drafting process. What can be learned from an understanding of the two approaches? |
| <b>12:00 - 2:00</b>  | Welcoming Lunch: Orientation  |
| <b>2:00 - 5:00</b>   | Bus Tour of New Orleans   |
| <b>5:00 - 7:00</b>   | Welcoming Reception   |

## **Tuesday, June 11**

- 9:00 - 10:00** David Marcello: "Getting Started: Overview of Legislative Drafting"—How does the drafter facing a blank page decide where to begin writing? This presentation gives suggestions about getting started and describes how each draft moves through steps and stages from "instructions" to final review, approval, and introduction.
- 10:00 - 10:15** Break
- 10:15 – 11:00** David Marcello and Michelle Daley: Explanation of Bill Drafting Exercise and Demonstration of "Whirlybird"
- 11:00-12:00** Michelle Daley: "Creating an Agency, Board or Commission"—New legislation to create an agency, board, or commission must address several issues: What entity should be given authority? How should members be selected or appointed and by whom? What are the responsibilities of the new entity? What enforcement mechanisms should be included? Should a sunset provision be added?
- 12:00 - 1:00** Lunch
- 1:00 - 1:50** "Introduction to Library Resources"—Participants will receive a tour of the law library and introduction to its international collections.
- 1:50 – 2:00** Break
- 2:00 – 3:00** Lothar Determann: "Drafting Laws Governing Use and Development of Artificial Intelligence"—AI is developing and expanding rapidly. Legal regimes need to keep pace.
- 3:00-4:00** Susan Hutson: "Police Accountability"—The former Independent Police Monitor for the City of New Orleans and current elected Sheriff of Orleans Parish will draw upon her years of experience in remarks about laws and regulations that subject policing to transparency and accountability.

## **Wednesday, June 12**

- 9:00 – 9:50** David Marcello: "Plain Language Drafting"—Even complex ideas can be expressed in an unambiguous manner. This lecture will demonstrate how active voice, base verbs, present tense, and singular number can be used to enhance clarity and readability in drafts of proposed legislation or agency regulations.
- 9:50 - 10:00** Break

- 10:00 - 10:50** David Marcello: "Plain Language Drafting" [Continued]—Gender-neutral drafting, language quirks, and the proper placement of conditions, exceptions, and lists are examined.
- 10:50 – 11:00** Break
- 11:00 – 12:00** David Marcello and Michelle Daley: "Ethics Bill Drafting Exercise Workshop"—We will review and discuss participants' outlines of a proposed bill. We will then distribute a draft of proposed ethics legislation and ask participants to revise it in the next phase of the drafting exercise.
- 12:00 - 1:30** Lunch: Participants' Roundtable Introductions
- 1:30 – 2:15** Kevin Gash: "USAID Program Objectives"—USAID's Legislative Strengthening Advisor for Democracy, Human Rights, and Governance will explain why USAID works with legislatures and how they define and measure a strong legislature by using various benchmarks and indicators.
- 2:15 - 2:45** Jose Alvarez: "Harmonizing IIAs and SDGs"—International Investment Agreements (IIAs) safeguard foreign investments and foster economic growth in developing nations. The UN's Sustainable Development Goals (SDGs) foster equitable development. IIAs and SDGs are sometimes viewed as incompatible with each other, but what if they aren't? This speaker suggests how SDGs and IIAs can work together in fostering both equity and economic growth.
- 2:45 – 3:00** Break
- 3:00 - 4:00** Sharonda Williams: "Drafting Open Meetings Laws"—The right of citizens to observe the deliberations of government is essential to maintenance of democratic systems. We cannot hold government accountable for what we cannot see. This presentation considers the statutory and constitutional origins and protections for open government and specifically for open meetings.

**Thursday, June 13**

- 9:00 – 10:30** David Marcello: "Agency Rulemaking Under the Administrative Procedures Act"—The APA provides a procedural model for public participation and comment on proposed agency regulations. The presentation also considers drafting techniques that are uniquely well suited for use with agency rules.
- 10:30 – 10:45** Break

- 10:45 - 12:00** Machel Lee Hall: "Drafting Environmental Laws"—The presentation reviews the differing terminology and enforcement mechanisms in environmental laws that regulate air and water quality and the disposal of solid waste. The presentation considers the roles of courts and administrative agencies and the proper balance of statutes and regulations in achieving safeguards against environmental deprecations.
- 12:00 - 1:00** Lunch
- 1:00 - 2:15** Michelle Daley and Bruce Feustel: "Working with Members"—Drafters almost always perform their work in a relationship with members, but as in most relationships, communication can be challenging. Two experienced drafters will draw upon their careers in drafting to show how drafters can overcome challenges and build strong working relationships with members.
- 2:15 - 2:30** Break
- 2:30 – 4:00** Melissa Schmidt: "Drafting Public Records Laws"—Local, state, and federal governments guarantee public access to documents in the government's possession, whether in hard copy or electronic form. This presentation familiarizes drafters with statutory procedures governing public records requests; describes new developments (e.g., electronic delivery, website postings); and considers how public access can be maintained despite movements to "privatize" the management of governmental information.
- 4:30 – 8:00** Sculpture Garden & Café NOMA. This special outing celebrates the New Orleans Museum of Art Sculpture Garden followed by food and beverages in the Museum's Café NOMA.

**Friday, June 14**

- 9:00 - 10:15** Bruce Feustel: "Drafting Criminal Penalties"—Drafting penal provisions differs significantly from drafting civil laws. This presentation will discuss creation of a criminal offense, appropriate punishment provisions, and the role of discretion in sentencing.
- 10:15 - 10:30** Break
- 10:30 – 12:00** Davd Marcello and Michelle Daley: Ethics Commission Bill Drafting Exercise
- 12:00 - 1:00** Lunch
- 1:00 – 2:15** Diane Allison: "Legislative Auditor's Office"—The Legislature approves Louisiana's budget and monitors the subsequent use of those funds.

The Louisiana Constitution created an Office of Legislative Auditor to scrutinize how well (or poorly) state and local recipients manage their fiscal responsibilities. The Auditor conducts audits that hold public bodies accountable and, when necessary, may take over the administration of a poorly-performing agency.

**2:15 – 2:30**

Break

**2:30 – 3:45**

Kennon Wooten: “Drafting Judicial Rules”—Legislative drafters in some jurisdictions may be called upon to assist the courts in drafting judicial rules. Drafters need to know the legal framework that empowers courts to promulgate rules; the procedure by which rules are promulgated; and general drafting conventions for judicial rules. This presentation will focus on Texas as a case study.

**3:45 – 4:00**

First Week Evaluations

### **Monday, June 17**

**9:00 -10:15**

Pat Merloe: “Drafting Election Laws”—A timely presentation in a year of impactful elections worldwide will address international standards and frameworks for election laws; laws and procedures that comport with these standards in the areas of voter eligibility and voter registration systems; structure of election administration; and ballot security.

**10:15 – 10:30**

Break

**10:30 – 12:00**

Louisiana State Law Institute—The Law Institute performs two important functions in Louisiana’s Civil Code system: codification of recent acts into the revised statutes at the end of each legislative session; and major law revision projects that can play out over several years. This presentation describes how stakeholder task forces are constituted, how Law Institute staff interact with them in developing policy, and how their work product is presented for consideration by the legislature.

**12:00 - 1:00**

Lunch

**1:00 – 2:15**

Kathleen Allen: “Administration of Governmental Ethics Laws”—What mechanisms can government use to monitor and evaluate ethical implementation of governmental programs? This presentation by the Administrator of the Louisiana Board of Ethics will describe different approaches to encourage efficiency, combat corruption, and assure fiscal accountability in the actions of public officials.

**2:15 - 2:30**

Break

**2:30 - 4:00** Phil Knight: "Constitutional Drafting"—How do the challenges faced by a constitutional drafter differ from the challenges facing any other drafter? Professor Knight draws upon his experiences in several constitutional drafting projects, including South Africa, to address policy development, representational democracy, and a balance between flexibility and stability in the organic law of nations.

## **Tuesday, June 18**

**8:00** Board Buses for Field Trip to Louisiana Legislature in Baton Rouge

**9:30 – 10:00** Arrival in Baton Rouge and Photographs on Capitol steps

**10:00 - 11:00** Tour Legislative Committee Meeting Room—House drafters will explain the seating arrangements of legislators and staff, public's opportunity to speak, posting of notice and agenda, audiotapes, and House Caucus Offices.

**11:00 – 11:30** Tour House Chamber—Demonstration of electronic voting and recognition of members, presence of public in gallery, media coverage, system for lobbyists' and citizens' input, and access to legislators while in session.

**11:30 – 12:30** Senate Chamber—Briefing in the Senate Chamber regarding the organization and operations of Louisiana's upper chamber.

**12:30 - 1:30** Lunch

**2:30 - 5:00** Board Buses and Return to New Orleans

## **Wednesday, June 19**

**9:00 – 10:30** Mohamed Mattar: "Binding Rules and Guiding Rules in Drafting Human Trafficking Legislation"—Trafficking is a highly volatile, modern form of slavery and organized crime that is difficult to control. International organizations and national governments have drafted legislation to assist victims and prevent the phenomenon from spreading. This presentation considers how action plans and laws can combat human trafficking on an international, national, and regional level.

**10:30 – 10:45** Break

**10:45 - 12:00** Benoit Mayer: "Environmental Impact Analysis as a Tool for Climate Change Mitigation"—A typical Environmental Impact Assessment (EIA) might focus on local environmental concerns. Increasingly,

however, today's EIA process often considers transboundary and global implications. Integrating climate change into the preparation of EIAs is being recognized as a norm of customary international law.

**12:00 – 1:00**

Lunch

**1:00 – 2:15**

Judge Simone Levine: "Perspectives on Change in the Criminal Justice System"—Before being elected a Criminal District Court Judge, this speaker had diverse experiences in the criminal justice system as the director of NGO, a public defender, a prosecutor, and deputy director of a governmental "watchdog" agency.

**2:15– 2:30**

Break

**2:30 – 3:45**

John Mark Keyes: "Ambiguity and Linguistic Context"—Ambiguity takes many different forms. Drafters should strive to avoid ambiguity in all its incarnations. This presentation shows how drafters can use structural and linguistic analysis to unearth and avoid ambiguity.

#### **Thursday, June 20**

**9:00 - 10:30**

Bessie Daschbach: "Drafting for Environmental, Social, and Governance Objectives"—Guidelines, rules, and legislation on Environmental, Social, and Governance (ESG) policies are emerging with increasing frequency around the world and at every level of government. Some measures address what falls within ESG (such as investment funds, products, or processes). Others deal with how businesses might employ ESG or how laws may require that businesses disclose their use of ESG. Some others, particularly at the U.S. state level, prohibit public bodies or private entities from relying on ESG factors at all. This presentation looks at examples of different guidelines, rules, and legislation, then considers the characteristics of each set, pitfalls that may accompany them, and how they might be managed to create a workable framework for ESG.

**10:30 – 10:45**

Break

**10:45 - 12:00**

Jessica Vapnek: "Drafting Agricultural Legislation"—This presentation offers an overview of the diverse matters that fall under the umbrella of "agricultural legislation," including various agricultural inputs (such as seeds and pesticides), resources (land, water, fisheries, forests), as well as sanitary and phytosanitary measures (animal health, plant health, food safety). The presentation reviews the international context in which agriculture-related laws are drafted and touches on the reasons why some countries choose to amend or draft new legislation on agriculture.

**12:00 – 1:00**

Lunch

**1:00 – 2:15** Herb Larson: “International Law and Corporate Misconduct”—This presentation will consider how nations can enforce international norms brought against multinational corporations and addresses specifically the U.S. Foreign Corrupt Practices Act.

**2:15 – 2:30** Break

**2:30 - 3:30** Marta Tanenhaus: “Challenges in Creating the Consumer Finance Protection Bureau”—The speaker played an important role in first-year implementation of a new federal agency. She recounts how the new legislation’s statutory directives were implemented in regulations; how agency personnel were selected; and how the agency’s operations were affected by relationships with the media, the political sector, trade groups subject to agency regulation, and organizations advocating for consumer interests.

### **Friday, June 21**

**9:00 – 10:30** Lou Gieszl: “Demonstration of ADR Mechanisms”—Alternative dispute resolution (ADR) mechanisms enable jurisdictions to resolve conflicts quickly and economically. Drafters called upon to craft a supportive legal regime need to understand the dynamics of different ADR mechanisms. This presentation uses role-play to illustrate ADR strategies such as negotiation, conciliation, mediation, arbitration, settlement conferences, and other devices.

**10:30 - 10:45** Break

**10:45 - 11:45** Lou Gieszl: “Interest-Based Negotiation”—This presentation takes participants beyond the “positions” advanced by parties in a negotiation to examine their deeper “interests,” demonstrating how interest-based negotiations develop new opportunities to resolve disputes amicably. The speaker also describes other promising dispute resolution techniques including single-text negotiation, negotiated rulemaking, and collaborative problem solving.

**11:45 - 12:00** Week Two Evaluations

**6:00 - 8:00** Graduation Reception