

THE PUBLIC LAW CENTER

195

YEARS

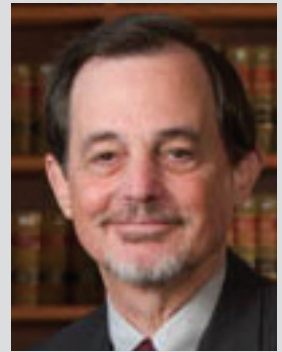
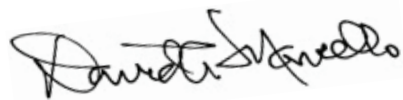


How to make meaningful 25 years of diverse advocacy activities—and do so in bite-size pieces that are readily digestible by the reader? That’s the challenge of this booklet.

We’ve chosen to render accounts in “silos” that describe various initiatives undertaken by The Public Law Center (TPLC) over the years: the legislative and administrative advocacy clinics, international training, governmental reform, blighted housing, community benefit agreements, land use and zoning, expungement reform, and the creation of website resources that protect and enable citizen oversight of government.

These are far more orderly accounts of accomplishments than the disorderly process that produced them. Change has come in fits and starts—haltingly and messily—but undeniably, in certain areas we are measurably changed for the better.

After a quarter of a century, it’s appropriate to look back, consider where we’ve gone, how we got here, and then look to the future—because the need for the work endures. It’s not important who does the work. It’s important that the work gets done. This booklet celebrates The Public Law Center, but more, it celebrates the changes won through its work.



David Marcello
Executive Director,
The Public Law Center



LEGISLATIVE & ADMINISTRATIVE ADVOCACY

The Public Law Center embraces two core purposes—delivering clinical education for second and third-year law students and rendering services to clients who have been traditionally underrepresented before legislative bodies and in state agency rulemaking proceedings.

Students in TPLC’s Legislative and Administrative Advocacy course learn about legislation and agency regulations—two law reform methodologies that are not well-represented in the traditional law school curriculum. Law students might graduate thinking that the vast majority of law in our society is produced by appellate judges, because that’s overwhelmingly what they read in law school—appellate judicial opinions. But in fact, legislators enact vast bodies of local, state, and federal law, and agency personnel promulgate even vaster amounts of administrative rules implementing statutory law. TPLC trains students to participate in these legislative and administrative law-making processes.

TPLC students have researched and drafted hundreds of bills, ordinances, regulations, and occasional court rules or executive orders for state, municipal, or judicial officials. Their instruments have made valuable new law for clients:

- A bill extending family health coverage for grandchildren living with a working grandparent, when parents are no longer on the scene due to death or incarceration, drug or alcohol abuse, mental health problems, or physical incapacity.
- Bills authorizing homeless or runaway youth shelters to provide medical services, food, and housing for minors during a “safe harbor” of up to 72 hours while parents are contacted.
- A bill prohibiting local housing authorities from terminating the tenancy of an entire household because of domestic abuse, dating violence, or family violence committed against a member of the household, while also providing for eviction of the perpetrator of the violence.

Leg/Ad students enter the legal marketplace with skills that are not readily available among other recent law graduates. They learn how language that is crafted to serve specific client interests can exert a powerful and enduring impact on our entire system of laws. TPLC also teaches students about professional responsibility—their overarching duty to clients and to the legal system within which they advocate for clients’ interests.

Classroom teaching feeds legal scholarship. Insights gleaned from the Leg/Ad course informed articles about ethics (“*The Ethics and Politics of Legislative Drafting*” in the 1996 *Tulane Law Review*) and about promulgation of agency regulations (“*Administrative Practice Under the 1974 Constitution: A ‘Silver Anniversary’ Review*” in the 2002 *Louisiana Law Review*).

Students in Legislative and Administrative Advocacy receive extensive personal feedback from instructors on their drafts of legislation or agency regulations.



BLIGHTED HOUSING

TPLC's involvement with blighted housing predated Katrina by more than a decade, but the storm's devastating impact on New Orleans' housing stock precipitated a deep and intense debate about the best legal strategies for addressing blight. TPLC joined issue with the New Orleans Redevelopment Authority (NORA) when NORA decided to make expropriation its central recovery and redevelopment strategy, and the battle played out over several years in scholarly journals, public presentations, op-ed articles, legislative reforms, and mayoral transition reports.

Expropriation vs. Code Enforcement: Throughout 2006, TPLC drafted a series of memoranda that were circulated among NORA and City officials and others, challenging expropriation as a viable legal strategy. A 2007 *Loyola Law Review* article about "*Housing Redevelopment Strategies*" explained that constitutional constraints eviscerated NORA's proposed use of expropriation and asserted that code enforcement was the more effective strategy.

The dialogue continued in numerous public presentations that were attended by NORA and City officials: a September 2007 panel on "*Reclaiming Vacant Properties*" at the National Vacant Properties Campaign conference; "*Housing Recovery: Mapping a Path Through the Landscape of Disaster*" at Loyola Law School's January 2008 Housing Symposium; a July 2008 panel on "*Housing Recovery in Post-K New Orleans: What Works? What Doesn't?*" at the National Conference of State Legislatures Annual Meeting held in New Orleans; and "*Opportunity Cost = Opportunity Lost*" at Tulane's Environmental Summit in April 2009.

TPLC originated a new legal concept that was later introduced as HB 796 by Rep. Cheryl Gray. Act 115 of 2007 created a new code lien procedure, expediting enforcement by empowering the City to apply directly to the Clerk of Court for a writ. The new legal procedure became law, ironically, just as the Nagin administration decided to abandon code lien hearings.

In a February 2008 op-ed article in *The Times-Picayune* ("*Whatever happened to the health code?*"), TPLC challenged the city's decision to suspend code enforcement hearings for what proved to be almost a year. TPLC collaborated with City Council members during the first quarter of 2008 on an ordinance that attempted to restart hearings by prioritizing code enforcement procedures within the City Attorney's Office—but these efforts were, unfortunately, all to no avail.

Transition Task Force Report on Blight: Code enforcement remained an underutilized strategy for attacking blighted housing until the 2010 municipal elections, when multiple candidates for Mayor and City Council pledged to enhance code enforcement, if elected.

Mayor-Elect Mitch Landrieu turned to TPLC to co-chair his Transition Task Force on Blight. The transition report laid out a blueprint for more effective use of code enforcement, and his administration embraced code enforcement as a principal housing remediation strategy after taking office in May 2010. Thereafter, TPLC met numerous times with the city personnel responsible for implementing a new code enforcement program drawn from the Blight Transition Report—recommendations that had been fully elaborated in memoranda, law journals, public presentations, and op-ed articles, but neglected during the prior administration. The transition report and TPLC's subsequent meetings with city officials informed the Landrieu administration's new code enforcement strategy that has since drawn kudos from national observers.

New Orleans' blight reduction strategy was recently named a 2012 Bright Idea by Harvard's Ash Center for Democratic Governance and Innovation at the John F. Kennedy School of Government. The City's housing strategy also received recognition with the HUD Secretary's Award at the 2012 Council on Philanthropy Conference.

GOVERNMENTAL REFORM

Government doesn't usually reform itself from within. It's often necessary for civic organizations to supply the "push" that makes government more open, accountable, and responsive to its citizens. TPLC has advocated from both "inside" and "outside" of government to achieve significant systemic reforms.

Charter Revision: During 1994-95, TPLC successfully led the first comprehensive revision of New Orleans' Home Rule Charter since its inception in 1954 by chairing and staffing a 40-member Citizens Advisory Commission on Charter Revision. TPLC staff and students produced research memoranda and multiple drafts to support the advisory commission's work. An exemplary public participation process of community hearings and numerous meetings with public officials generated overwhelming voter support for sweeping new charter changes that included the establishment of a Revenue Estimating Conference, an innovative system for reorganizing city government, limitations on the duration of moratorium ordinances for the first time, and an aspirational bill of rights that had not previously existed in the Charter.

The 1994-95 charter revision produced two additional, very important reforms that TPLC subsequently helped to implement—the creation of independent *governmental oversight and ethics* entities and a requirement for competitive selection in the *procurement of professional services*.

Governmental Oversight and Ethics: The revised Home Rule Charter that took effect January 1, 1996, mandated creation of an Ethics Review Board (ERB) and authorized the City Council by ordinance to create an Office of Inspector General (OIG). More than ten years later, neither reform had yet been implemented.

In 2006, TPLC worked with Councilmember Shelley Midura's office to draft an ordinance that established for the first time in city government an ERB, OIG, and Independent Police Monitor (IPM). During their 2007-09 start-up years, TPLC served as pro bono legal counsel to the ERB and OIG, assisting them in drafting new operating procedures, additional ordinance changes, state legislation to empower the use of subpoenas, and an October 2008 ballot proposition that secured independent funding of more than \$3,000,000 annually for the oversight entities.

The fight for independent governmental oversight may never abate, but the ERB, OIG, and IPM are now safely up and running—new systems put in place

Leg/Ad students (including now-Judge Bernadette D'Souza) meet with Rep. (now-Mayor) Mitch Landrieu at the Louisiana Legislature.



Inspector General Bob Cerasoli, Ethics Review Board Chair Kevin Wildes, TPLC Executive Director David Marcello, and representatives of Citizens for 1 Greater New Orleans celebrate approval of state legislation strengthening local ethics initiatives.

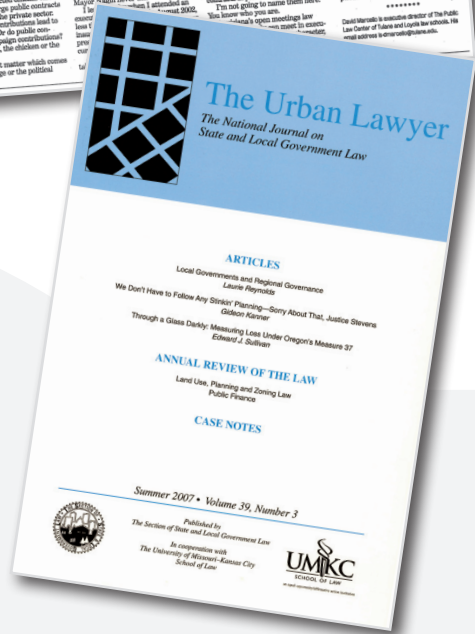
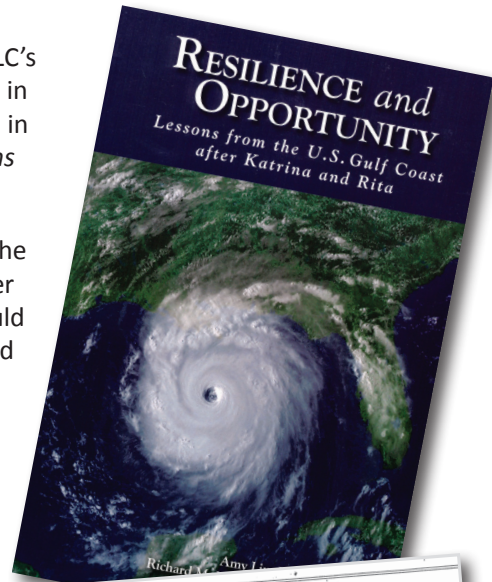
over a decades-long process that was informed throughout by TPLC's civic engagement and advocacy. These successes are documented in a chapter entitled "Systemic Ethics Reform in Katrina's Aftermath" in the Brookings Institution book, *Resilience and Opportunity: Lessons Learned from the U.S. Gulf Coast After Katrina and Rita* (2010).

Reform in the Procurement of Professional Services: Before the 1994-95 charter revision process, New Orleans' Home Rule Charter was completely silent on how professional services contracts should be awarded. Many lawyers, accountants, architects, engineers, and other professional service providers received sizeable contracts from City Hall without a hint of competitive selection, and the charter provided no legal basis for complaint by members of the public.

This changed for the better when the newly revised charter took effect, requiring competitive selection of professional services contracts for the first time in city government. TPLC has consistently sought meaningful reform in the procurement of professional services contracts:

- TPLC, the Public Affairs Research Council of Louisiana (PAR), and the Bureau of Governmental Research (BGR) produced a November 2001 report and recommendations for reform, *Public Contracting for Legal Services*.
- TPLC's views about professional services contracting were incorporated into transition task force reports prepared for the incoming Nagin and Landrieu administrations in 2002 and 2010. At the request of each newly-elected Mayor, TPLC also drafted model executive orders for consideration in promulgating the administration's professional services procurement policies.
- A May 15, 2011 op-ed article in the Times-Picayune, "*Contracts should be done in the open*," discussed the links between campaign contributions and the award of professional services contracts and called for procurement reform to interrupt this unhealthy cycle.
- In 2011, TPLC's analysis of shortcomings in the Open Meetings Law led Rep. Neil Abramson to introduce HB 449, which closed a loophole. Act 188 of 2011 now prohibits public bodies from discussing the award of a professional services contract in executive session.

As with ethics reform, so also in the realm of professional services procurement, the battle may never be entirely won, but we've made major improvements over the 1954 Home Rule Charter that allowed professional services contracts to be awarded without competition for more than 40 years.



INTERNATIONAL TRAINING

The International Legislative Drafting Institute (ILDI) is TPLC's premier international training event. Launched in 1995, ILDI will convene its 19th annual session in June 2013. More than 500 participants from over 95 jurisdictions around the globe have attended the two-week Institute. Their presence in New Orleans generates millions of dollars for the local economy, and the value of what they learn here, when applied in their legislative drafting practices "back home," has been—literally—*priceless!* Institute graduates draft legislation that dramatically reforms governmental systems where public participation may never before have been known or valued.

Institute participants study open meetings and public records ("sunshine") laws, codes of governmental ethics, public participation in the promulgation of administrative rules (or "subordinate legislation" in the parlance of parliamentary systems), and they return to their countries schooled in "plain language" drafting—which has "transparency" implications of its own. As one of our Institute participants from the Republic of Georgia said, "I do not think I was well served by my legal education. We were taught to draft in flowery language. In retrospect, I think that was deliberate. In a system characterized by 'rule of edict' rather than 'rule of law,' government doesn't want substance at the heart of legislation. It's easier to conceal the vacuum at the heart of legislation if it's surrounded by flowery language of no substance." That's as good a statement of the "political" implications of plain language drafting as we've encountered in more than 20 years of international training.

We've trained legislative drafters in some very distant venues, including Central and Eastern Europe (Bulgaria, Georgia, Kosovo, and Moldova); Africa (South Africa, South Sudan); Asia (Tajikistan and—most distantly in Asia—Mongolia). Closer to home, TPLC took delegations of U.S. judges and other elected officials, law professors, members of the bar, and mediation professionals to the Dominican Republic in 1998, 2000, and 2002 for programs on alternative dispute resolution, judicial reform, and legislative drafting; we brought delegations of their Supreme Court and other judges, judicial staff, legislative drafters, law professors, and members of the practicing bar to the U.S. for study tours in Louisiana, Texas, and Washington, D.C. Read more about the Institute and other international training events at <http://www.law.tulane.edu/ildi/>.

Legislative drafters in the Republic of Georgia participate in a roundtable session.



TPLC conducted one of its earliest distant training events in the Moldovan Parliament.



TPLC's International training has improved legislative drafting skills and promoted public participation all across the globe.

Each year, Institute participants take a board-walk tour of the swamps in Jean Lafitte National Park.

When TPLC began operations in January 1988, we never anticipated teaching legislative drafters from so many international jurisdictions. We've introduced concepts of public participation into systems where democratic governance is a new phenomenon. But we've also imported wisdom from these international training events back into the law school classroom, where it enriches clinical instruction of second and third-year law students. It's a genuine two-way street—international insights and domestic U.S. drafting techniques informing each other.

It's also a "small world" commentary on an increasingly interconnected globe that's growing smaller every year. At the dawn of a new millennium, TPLC has been privileged to participate in the democratization of formerly totalitarian systems. We've equipped students, here and abroad, to participate meaningfully in these international advances, and that's a gift that keeps on giving.



In Baton Rouge, Louisiana's legislative staff members generously share their wisdom with international drafting colleagues.



COMMUNITY BENEFIT AGREEMENTS

Direct negotiations between community groups and developers produce Community Benefit Agreements (CBAs) in which the developer agrees to deliver improvements that will strengthen the neighborhoods surrounding a major project. CBA's might include a local hiring preference, a living wage and benefits, child care for area residents working in the project, or recreational facilities for youth. In return, developers reduce their risk by getting a valuable commitment of community support for the project.

TPLC pioneered the negotiation of CBAs in post-Katrina New Orleans, collaborating with the Crescent City Renaissance Alliance and other community groups to seek neighborhood improvements from a proposed Home Depot on Earhart Boulevard. The CBA failed to materialize when the City's Economic Development Czar poured cold water on negotiations. We concluded that it would first be necessary to build an informational base among public officials, the press, and the public in order to launch CBAs successfully in New Orleans.

A Summer 2007 article in *The Urban Lawyer*, "*Community Benefit Agreements: New Vehicle for Investment in America's Neighborhoods*," described how CBA's can be used as a tool for community empowerment. The article reached an even wider audience when it was selected for inclusion in the Thomson/West 2008 Zoning and Planning Law Handbook.

TPLC and the Urban Land Institute co-sponsored a CBA Symposium at Dillard University in May 2011: *Win-Win-Win: The Advantages of CBAs for the Community, Developers, Government and You!* Approximately 125 community members, developers, real estate professionals, lawyers, and city officials heard about a case study from Wilmington, Delaware, as described by the City Council member, neighborhood leader, and developer who successfully negotiated a CBA for a controversial composting plant. A video record of the symposium on TPLC's website continues to educate and inform visitors about the value of CBAs.

TPLC has also pursued its CBA informational campaign by delivering PowerPoint presentations to neighborhood associations and community groups, and CBAs have increasingly gained traction in the dialogue about how communities engage with developers. TPLC is currently working with the New Orleans Coalition on Open Governance and the Isaiah Institute to enhance the impact of CBAs through community organizing.

LAND USE AND ZONING

TPLC sits as a member of the Zoning Technical Advisory Committee (ZTAC), reviewing periodic drafts of the Comprehensive Zoning Ordinance (CZO) as it undergoes its most substantial rewrite since adoption in the 1970s.

TPLC's role has been both stylistic and substantive. During 2009-2011, TPLC's close reading of CZO Draft 3.0 suggested numerous revisions that were incorporated into CZO 4.0. In addition, during October 2011, TPLC submitted to the CPC a research memorandum, transmittal letter, and discussion draft of proposed "early notice" procedures to inform area residents about major zoning applications before they are filed.

Early notice originated as a 2007 Leg/Ad research paper, was developed further in another student's directed research project, and culminated in the work of TPLC's John R. Kramer Public Interest Fellow. Early notice promotes a dialogue between neighborhood associations and zoning applicants during the pre-application stage, when they can identify and resolve issues before more adversarial relationships arise in the zoning approval process. A CPC staff report in July 2012 indicated that it remains under active consideration for the next CZO version, which will be presented to the City Council in 2013.

EXPUNGEMENT REFORM

TPLC's earliest involvement with expungement reform dates to 1997, when the Children's Code clarified and improved the procedures governing juvenile criminal records. In general, however, laws governing expungement remain needlessly complicated, frequently ambiguous, sometimes inconsistent—and expungement proceedings themselves are unduly expensive.

In May 2011 TPLC convened an expungement working group that meets regularly to champion several worthy public policy objectives.

Expungement is a social justice issue: People—disproportionately, young people—should not be forever burdened by a “criminal record” that may be outdated and irrelevant to their current worth in society.

Expungement is an economic development issue: If Louisiana expungement laws are more restrictive than other states, our citizens will be excluded from jobs that go instead to people from Arkansas, Mississippi, Texas, or elsewhere.

Expungement is a crime issue: Mayor Landrieu's anti-crime package identifies expungement as an important crime-fighting tool that opens doors of opportunity into the marketplace and thereby diminishes the economic appeal of an “alternate lifestyle” that might otherwise beckon.

TPLC partnered with the Justice and Accountability Center of Louisiana (JAC), the Isaiah Institute, Puentes, Mary Queen of Vietnam CDC, Vietnamese American Young Leaders Association, Southeast Louisiana Legal Services, Neighborhoods Partnership Network, and others to produce expungement “one-pagers” that were translated into Spanish and Vietnamese and widely distributed in the community. JAC collaborates with other members of the working group to run expungement clinics that ease the burdens of an earlier arrest or a misdemeanor conviction.

In 2011, the Louisiana Legislature called for the Louisiana Law Institute to study expungement laws and recommend improvements. Members of TPLC's working group are participating in the Law Institute's meetings.

Expungement reform is a work in progress, but the progress promises to be real and substantial over the next two years. TPLC will continue its collaboration with a broad-based group of community partners to reform this important remedy and extend its benefits to a wide audience.

WEBSITE RESOURCES: “LET THE SUN SHINE IN”

TPLC’s 25th anniversary year saw the launch of three web-based resources that are advancing governmental reform: the New Orleans Satellite Government database, Document Cloud’s searchable repository of city contracts, and the American Legislative and Issue Campaign Exchange.

New Orleans Satellite Government: Numerous “satellite” entities revolve around New Orleans city government, administering millions of dollars in municipal revenues. Some were well illuminated by “sunshine,” while others operated egregiously off the public radar screen. New Orleans Satellite Government (NOSG) consolidates in an internet database information about more than 150 governmental and quasi-governmental entities. Since its “rollout” in October 2011, the NOSG database has been acclaimed as a major vehicle for transparency and has attracted thousands of users: www.nolasatellitegovernment.tulane.edu.

We have begun using the NOSG database affirmatively to promote openness and accountability among satellite entities: (1) A notice in April 2012 urged satellites to remind their board members of the May 15 deadline for filing personal financial disclosure statements with the Ethics Administration; (2) A notice in early June reminded all satellite entities of the July 1 deadline for filing Comprehensive Annual Financial Reports with the Legislative Auditor; and (3) We posted a report on the appointment of women to boards and commissions in the second quarter of 2012, seeking to provoke a broader conversation about equitable representation in New Orleans. We will continue using the NOSG database to encourage reform and full compliance with the law by satellite government entities in New Orleans.

Document Cloud: During 2011-2012, TPLC worked collaboratively with the award-winning online journalism enterprise, The Lens, to create a new database of city contracts, which had been posted on the city’s website for some years, but not in a searchable format. The City recently instituted a limited search capability, but the work of TPLC and The Lens has now made these contracts fully searchable: <http://thelensnola.org/>. TPLC and The Lens will continue to build and update the website and will ultimately link Doc Cloud to the NOSG database for ease of use in researching contracts let by satellites in city government.

ALICE: The American Legislative Issue and Campaign Exchange (ALICE) launched in September 2012 as a response to the American Legislative Exchange Council (ALEC), which has operated since the 1970’s as a database for conservative “model” legislation (e.g., the “Voter ID” or “voter suppression” laws that were much in the news in this presidential election year). ALICE offers an alternative database of progressive legislation. TPLC’s expertise informed the creation of ALICE, and TPLC students are contributing drafts of legislation and informational materials to ALICE’s growing database.

TPLC is also participating in an “outreach” campaign to familiarize users with the database. We recently joined an October 6 panel presentation at the Society of American Law Teachers conference in Baltimore, discussing “*ALICE as Applied: Legislative Clinics and Social Change.*” Learn more about ALICE at its website: alicelaw.org.

The worldwide web enables local enterprises like TPLC to extend their impact among state, regional, national, and even international communities of interest. TPLC’s 25th year has been particularly fruitful, witnessing the rollout of NOSG, Doc Cloud, ALICE, and including an overdue update of our own website: <http://www.law.tulane.edu/tlscenters/PublicLawCenter/index.aspx>.

IN THE PUBLIC INTEREST

TPLC expresses a point of view. We know it's not "the only" point of view. We don't believe that it's the exclusive "public interest" point of view. But we do believe that we're acting "in the public interest" when we express these views, for reasons embedded in fundamental democratic theory.

Arguably, the "public interest" emerges from a cacophony of voices urging different points of view. Out of the clamor comes consensus. Thus conceived, the "public interest" is a dynamic product of the public will—but achieving this theoretical ideal depends utterly upon the vitality of voices heard in the public debate. When all voices are not equally well represented, inequality in the debate produces inequities in the outcome.

Since its inception in January 1988, TPLC has represented "traditionally underrepresented" interests. By giving voice to views that would otherwise be inadequately represented in the policy formation process, TPLC is acting "in the public interest." That's been our role for a quarter of a century; it remains our mission.



Graduation Remarks

1999 International Legislative Drafting Institute

RAMON GUILLERMO AVELEDO

Member, Chamber of Deputies

Congress of the Republic of Venezuela

David said today this was going to be a fairly short ceremony. But participants did not make a likely contribution to achieve that goal by selecting to speak, on their behalf, a legislator who has not made one single speech in two weeks.

It could be very dangerous.

Our first words are of gratitude for David Marcello and Idella Wilson, for the professors and speakers, the people of The Public Law Center, our friends of the W.T.C., the City of New Orleans, all of you. Your dedication and kindness made us feel always welcome.

We are not familiar with the Civil Code of Louisiana, but somehow we were taken in adoption by Idella during two weeks. Thanks Idella, very specially.

We have learnt a lot, understood a lot, and enjoyed a lot. And among the several earnings we made, one by no means small is meeting new friends from different countries and cultures from all over the world.

Perhaps this beautiful city of New Orleans is one of the best places to understand the legislative process. Societies are not dull, nor uniform. They are rich, plural, complex, just like this city that lives by its big river. Sailors, soldiers, merchants, priests, artists, come and go, give and take. So complex is also the task of drafting rules for them.

Interests, legitimate or not, march upon the Legislature, sometimes masked, like in Mardi Gras. And beware! There could be an alligator in the swamp.

Drafting a law is like a visit to the French Quarter: You know the beginning, but not how it will end.

People of different kind, it is their right, would want each piece of legislation to be their own and therefore add something for them to its provisions. And there comes the risk of bills like Muffulettas: There is plenty in them, but they are rather difficult to handle.

Everyone wants bills urgently but, let's face it, the process has more stops than the St. Charles Streetcar.

You see the surface of the Mississippi River and everything seems calm and orderly. But down there, in those brown heavy waters there are diverse currents, invisible but quite real. So is the challenge of drafting, passing, and enforcing legislation. One must recognize and deal with those currents, but the river goes one way: to meet the ocean. So is our work, whose ocean is the common good.

An American leader, Senator Robert Kennedy, said three decades ago, "In a democratic society law is the form which free men give to justice. The glory of justice and the majesty of the law are created not just by the Constitution – nor by the courts – nor by the officers of the law – nor by the lawyers – but by the men and women who constitute our society, who are the protectors of the law as they are themselves protected by the law." Let us never forget.

Dear friends, we will always remember the warm New Orleans hospitality. If there is a next time, I wanna be in that number.

Let's say it in plain English and without ambiguity: Thank you very much!

THE PUBLIC LAW CENTER

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