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INTERNATIONAL LEGISLATIVE DRAFTING INSTITUTE: CURRICULUM

JUNE 13-24, 2022

Monday, June 13

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| 8:00 - 9:00 | Registration and Continental Breakfast in Tulane Law School's Multi-Purpose Room: 6329 Freret Street |
| 9:00 - 10:15 | Welcoming Remarks: Tulane Law School—Room 151
Introduction and Overview of Institute: David Marcello |
| 10:15 - 10:30 | Break |
| 10:30 - 12:00 | David Marcello and Phil Knight: "Comparison of U.S. Bicameral Legislative Enactment Process with the Parliamentary System"—This lecture discusses the parliamentary system and state-federal legislative enactment procedures, how they relate to the drafting process, and what can be learned by a comparison of the two approaches. |
| 12:00 - 2:00 | Welcoming Lunch: Orientation |
| 2:00 - 2:30 | Tour of Tulane Facilities: Meet in Room 151 for Walking Tour of Tulane Law School |
| 2:30 - 5:30 | Bus Tour of New Orleans |
| 5:30 - 7:00 | Manager's Reception at Fairfield Inn & Suites |

Tuesday, June 14

- 9:00 - 10:15** David Marcello: "Getting Started: An Overview of Legislative and Administrative Drafting"—How does the drafter facing a blank page decide where to begin writing? Each draft moves through steps and stages, which will be analyzed. Similarities and differences between drafting legislation and agency regulations will be described.
- 10:15 - 10:30** Bill Drafting Exercise: Explanation
- 10:30 - 10:45** Break
- 10:45-12:00** Idella Wilson: "Formulary Introduction"—This lecture explains the use of a formulary or office manual as a repository of acquired wisdom in standardizing good drafting practice. Participants will receive an introduction to copies of various drafting manuals that can be used as models in producing a formulary for use in their own legislative offices.
- 12:00 - 1:00** Lunch
- 1:00 - 2:30** David Marcello and Idella Wilson: "Plain Language Drafting Part I"—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.
- 2:30 - 2:45** Break
- 2:45 - 3:45** Phil Knight: "Technology for Drafting"—Information technology provides many valuable tools that can make life easier for the drafter. In addition to the many internet-based tools for research and cooperative work, software tools can assist the drafter at every stage of the drafting process. This presentation demonstrates new tools for getting instructions; researching, outlining, writing and editing; review and revision; and tracking and delivery of a Bill.
- 3:45 - 4:30** "Introduction to Library Resources & Computer Lab"—Participants will receive a tour of the law library and introduction to its international collections; then after the tour will visit the Computer Lab, where they will receive an orientation to the use of computers within the law school.

Wednesday, June 15

- 9:00 – 9:50** David Marcello and Idella Wilson: "Plain Language Drafting Part I" [Continued]—This lecture discusses the use of short sentences, attention to the placement of words, and choice of words as techniques in achieving clarity and readability in drafts.
- 9:50 - 10:00** Break
- 10:00 - 10:50** David Marcello and Idella Wilson: "Plain Language Drafting Part II"—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** "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—Multipurpose Room
- 1:30 - 2:30** "Bill Drafting Exercise Workshop"—Continued
- 2:30-2:45** Break
- 2:45 - 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 the balance between flexibility and stability in the organic law of nations.

Thursday, June 16

- 9:00 - 10:15** John Strylowski: "Regulatory Drafting"—This presentation deals with the organization and drafting of administrative and regulatory instruments, structuring complex provisions, the use of pronouns, and question-and-answer organizational strategies.
- 10:15 - 10:30** Break
- 10:30 - 12:00** John Strylowski: "Regulatory Drafting" [Continued]—Consideration of format matters, such as the use of "if-then" tables, graphics, tabulation, provisos and conditions, type size, boldface and italics, and staggered indentation of paragraphs.
- 12:00 - 1:00** Lunch

- 1:00 - 2:30** Kathleen Allen: "Administration of Governmental Ethics Laws"—What mechanisms can the government use to monitor and evaluate the 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.
- 2:30 -2:45** Break
- 2:45 – 3:45** David Marcello and Idella Wilson: "Plain Language Drafting Part III"—Topics include definitions, appropriations, effective dates, marginal notes, tables of content, purpose clauses, repeal and severability clauses.
- 7:30-9:30** Zydeco Night at Rock 'n' Bowl: This special outing celebrates a New Orleans institution: food and beverages, bowling, and great music. Put on your dancing (or your bowling) shoes.

Friday, June 17

- 9:00 - 10:15** Phil Knight: "Ambiguity and Other Hopeless Battles"—Careless mistakes can defeat the intent of a bill. This presentation will describe common ambiguities and how to avoid them in practice and will distinguish among ambiguity, generality, vagueness, and precision as they pertain to legislation.
- 10:15 - 10:30** Break
- 10:30 – 12:00** 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.
- 12:00 - 1:00** **Lunch**
- 1:00 – 2:15** Bill Drafting Exercise: Ethics Commission (Small groups)
- 2:15 - 3:15** Bill Drafting Exercise Review
- 3:15 – 3:30** Break
- 3:30 – 4:00** First Week Evaluations

Monday, June 20

- 9:00 -10:00** Bruce Feustel: "Legislative Policy Development"—Where do legislative ideas originate and how is policy developed? This presentation examines various actors in the policy development process, including legislative members, legislative drafters, agency or ministry personnel, "think tanks," academics, citizens, civil society organizations, and other policy makers. What is the drafter's proper role in policy development? How do text and policy interact with each other?
- 10:00- 10:15** Break
- 10:15 – 12:00** Jessica Vapnek: "Drafting Agricultural Legislation"—This presentation offers an overview of the subject matters that fall under the umbrella of "agricultural legislation" at the national level. This includes legislation addressing various agricultural inputs (such as seeds, pesticides) as well as resources (land, water, fisheries, forests) and sanitary and phytosanitary measures (animal health, plant health, food safety). The presentation will review the international context in which agriculture-related laws are drafted, and will touch on some of the reasons countries choose to amend or draft new legislation on agriculture.
- 12:00 - 1:00** Lunch
- 1:00 - 2:30** Pat Merloe: "Drafting Election Laws"—A timely presentation addresses international standards and frameworks for election laws; drafting election laws that comport with these standards in the areas of voter eligibility, voter registration systems and procedures; structure of election administration; equal access to the ballot; and ensuring ballot security.
- 2:30 - 2:45** Break
- 2:45 - 4:00** Idella Wilson: "Creating an Agency, Board or Commission"—New legislation to create agencies, boards and commissions 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?.

Tuesday, June 21

- 9:00 – 10:15** David Marcello: "Agency Rulemaking Under the Administrative Procedure Act"—The APA provides a useful model for public participation and comment on proposed agency regulations. The lecture also covers how the agency rulemaking process might be adapted for use in parliamentary and other jurisdictions.
- 10:15 – 10:30** Break

- 10:30 - 12:00** Daniel J. Solove: "Big Data, Big Breaches" —In this presentation Daniel J. Solove will share insights from his book "Breached!: Why Data Security Law Fails and How to Improve It." Professor Solove will propose practical solutions to a persistent problem: How to draft laws that improve the operation of data protection systems and the performance of personnel who administer them.
- 12:00 – 1:00** Lunch
- 1:00 – 1:50** Aaron Dunlap: "Drafting Open Meetings and Public Records 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 will consider statutory and constitutional protections for open government.
- 1:50 – 2:00** Break
- 2:00 - 2:50** Donald Revell and Jessica Vapnek: "Gender-Silent Legislative Drafting" —After starting in the 1970's, gender-neutral drafting has increasingly acknowledged the place of women in statutes that previously ignored them by using "he" to describe all persons subject to the law. Now, gender-silent drafting acknowledges the presence of non-binary persons subject to the law. This presentation suggests how drafters can accommodate this new awareness in their writing styles.
- 2:50 – 4:00** Panel: "Governmental Accountability Mechanisms"—Can government create offices that will hold government accountable? Yes, if structured properly to assure their independence. The Office of Inspector General scrutinizes government operations for fraud, waste and abuse, then renders reports recommending needed changes. The Office of Independent Police Monitor gathers and analyzes data on police operations to identify "hot spots" where systems can be improved. This presentation will examine how legal structure, appointment powers, and funding contribute to the success (or failure) of government accountability offices.

Wednesday, June 22

- 8:00** Board Buses for Field Trip to Louisiana Legislature in Baton Rouge
- 9:30 – 10:00** Arrival in Baton Rouge and Photograph on Capitol steps
- 10:00 - 11:30** Tour Legislative Committee Meeting Room—Explain seating arrangements of legislators and staff, public's opportunity to speak, posting of notice and agenda, audiotapes, House Caucus Offices.

11:30 – 12:30 Tour House and Senate Chambers—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.

12:30 - 1:30 Lunch

1:30 – 3:00 Panel: "Impact Assessment"—What mechanisms can the legislative and executive branches use to evaluate the impact of proposed governmental programs? A presentation by representatives of the Legislative Fiscal Office and other impact assessment specialists will describe different approaches to anticipate the revenue, fiscal, and broader social implications of actions by public officials.

3:15 - 5:00 Board Buses and Return to New Orleans

Thursday, June 23

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

10:30 – 10:45 Break

10:45 - 12:00 Mabelle Lee Hall: "Drafting Environmental Laws"—The presentation will review the differing terminology and enforcement mechanisms in environmental laws that regulate air and water quality and the disposal of solid waste. The presentation will consider the roles of courts and administrative agencies and the proper balance of statutes and regulations in achieving safeguards against environmental depredations.

12:00 – 1:00 Lunch

1:00 – 2:30 Frank Emmert: "Global Failure of 'Justice' Systems: Causes and Consequences"—Why do so few national justice systems provide fairness, predictability, and impartiality? How can we make better use of the resources supplied through international aid programs? What conditions are required to operate a successful system of justice?

2:30 – 2:45 Break

2:45- 4:00 Susan Hutson: "Accountability in Policing" —As a former Independent Police Monitor for the City of New Orleans and current Sheriff of

Orleans Parish, Ms. Hutson is uniquely well qualified to address the drafting of standards, policies, and procedures that govern police practices. Her remarks will include observations from her article in the *Guidebook* that each participant received at registration.

Friday, June 24

- 9:00 – 10:15** Lou Gieszl: "Demonstration of ADR Mechanisms"—Alternative dispute resolution (ADR) mechanisms enable jurisdictions to resolve conflicts quickly and economically. This presentation uses role-play to illustrate different ADR strategies, such as negotiation, conciliation, mediation, arbitration, settlement conference, and other devices.
- 10:15 - 10:30** Break
- 10:30 - 11:45** Lou Gieszl: "Interest-Based Negotiation"—This presentation will take participants beyond the "positions" advanced by parties in a negotiation to examine the parties' deeper "interests" and demonstrate how interest-based negotiations develop new opportunities for amicable resolution of disputes.
- 11:45 - 12:00** Week Two Evaluations
- 6:00 - 8:00** Graduation Reception