**22nd Session of the International Legislative Drafting Institute[[1]](#footnote-1)**

**The Public Law Centre,**

**Tulane Law School**

New Orleans, Louisiana

13-24 June, 2016

**Introduction**

The June 2016 International Legislative Drafting Institute marked 22 years since The Public Law Center (TPLC) first launched the Institute in 1995. The International Legislative Drafting Institute for 2016 was held from June 13-24, 2016 in New Orleans, Louisiana with the educational agenda for the 2016 Institute including enjoyable events that made the visit to New Orleans unique and memorable. Participants at the 22nd Institute were drawn from seven (7) countries: Sri Lanka, Sierra Leone, Ghana, Turkmenistan, India, Kenya and Cayman Island.

The Institute responds to the worldwide demand on legislative drafters for new laws that support the emergence of free market economies and democratic forms of government. Diverse domestic and international faculty members with experience in the legislative process provided participants with two weeks of lectures, roundtable discussions, instructional site visits, and drafting exercises for an excellent intermediate-length training experience. The training is designed for both lawyers and non-lawyers engaged in legislative drafting, members of legislative bodies and the representatives of non-governmental organizations.

The 2016 Institute participants received instruction in diverse aspects of the legislative and administrative processes of government, such as the ethics of drafting, confidentiality, lobbying, and matters of style (gender-neutral language, grammar and punctuation). Trainees also received assistance in producing an office manual or “formulary” of drafting materials for use within their legislative offices.

In roundtable discussions, participants exchanged ideas and information drawn from their own experiences as legislative drafters or legislative contributors. They learned practical wisdom about “how we did it” from other participants and from speakers participating in the roundtable discussions.

A visit to the Louisiana State Capitol provided participants with a glimpse of the work of the State of Louisiana’s Parliament and how Parliamentarians interface with their constituents on state and national issues.

The following presentations among many others were made in this year’s drafting Institute: Constitutional Drafting, Regulatory Drafting, Parliamentary Drafting Instructions, Drafting Criminal Penalties, Drafting Election Laws, and Drafting for Compliance with International Trade Agreements, Drafting Environmental Laws, Drafting Agricultural Laws…etc.

**Sequence of Courses - Week One**

The first week of training was introduced by the Executive Director of the TPLC, David Marcello and Phil Knight who spoke about “Comparison of US Bicameral Legislative Enactment Process with the Parliamentary System” to discuss the parliamentary system and state-federal legislative enactment procedures; their interrelation to the drafting process and lessons to be learned by comparing both systems. This course was essential in situating participants in relation to the US federal system and the relationship between the federal state and the federation when it comes to drafting. The course on “Getting Started: An Overview of Legislative and Administrative Drafting” laid emphasis on how a drafter facing a blank sheet of paper decides where to kick-start his writing. The course presented various steps and stages necessary to be followed to ensure a fruitful brainstorming and drafting process. Similarities and differences were highlighted between drafting legislation and agency regulations.

The course on "Formulary Introduction" presented by the Assistant Director of TPLC explained the use of a formulary or office manual as a repository of acquired wisdom in standardizing good drafting practice. Participants received 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.

One particular course that brought excitement during the 22nd Institute lectures was the course on plain language drafting. "Plain Language Drafting Part I" revealed that even complex ideas could be expressed in an unambiguous manner. This lecture demonstrated 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.

To demonstrate the central part language plays in the writing process, the following sentence was given to be punctuated: **A woman without her man is nothing**. The presenter revealed that such a sentence had been punctuated to mean different things depending on the writer. This is how the sentence was punctuated by a man and a woman:

* Punctuation by a man: ***A woman, without her man is nothing*.**
* Punctuation by a woman: ***A woman: without her, man is nothing*.**

The use of the punctuation by a man or a woman gives a different meaning to the sentence and justifies the stance of the writer. Equally so is punctuation in the development of legislation.

The lecture also discussed the use of short sentences, attention to the placement of words, and choice of words as techniques in achieving clarity and readability in drafts. Gender-neutral drafting, language quirks, and the proper placement of conditions, exceptions, and lists in a draft were examined as well.

The course on“Technology for Drafting-Part I” revealed the key role of information technology in the provision of many valuable tools to 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 demonstrated new tools for getting instructions; researching, outlining, writing and editing; review and revision; and tracking and delivery of a Bill.

The lecture on "Bill Drafting Exercise Workshop" reviewed and discussed participants' outlines of a proposed bill. The lecture organized in the form of round table discussions in groups enabled participants to brainstorm on an ethics legislation to further make revision subsequently.

“Constitutional Drafting” presented to participants how do the challenges faced by a constitutional drafter differ from the challenges facing any other drafter? Professor Knight drew 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. The captivating lecture provided participants at the 22nd Institute with a vast range of issues to be taken into account in the constitutional drafting process, including ethnicity, minority groups, pressure groups, economic considerations…etc.

**The course on** “Regulatory Drafting” dealt with the organization and drafting of administrative and regulatory instruments, structuring complex provisions, use of pronouns, question-and-answer organizational strategies, such topics as the use of “if-then” tables, graphic presentations, tabulation, provisos and conditions, type size, boldface and italics, and staggered indentation of paragraphs.

“Plain Language Drafting Part III” includes discussions on definitions, appropriations, effective dates, marginal notes, tables of content, purpose clauses, repealer and severability clauses.

Participants were further exposed to exercises to enable them utilize their drafting skills. Through the course"Creating an Agency, Board or Commission", attendants were presented with questions to be asked in relation to establishing/creating an agency, board, or commission. These questions include the following: What is the entity’s authority? How should the 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?

"Drafting Criminal Penalties"—Drafting penal provisions it was revealed differs significantly from drafting civil laws. This presentation discussed creation of a criminal offense, appropriate punishment provisions, and the role of discretion in sentencing… etc.

Week One ended with an evaluation exercise to be completed by attendees to inform the organizers on the appropriateness of courses, shortfalls and room for improvement.

**Sequence of Courses - Week Two**

After a relaxing week end, the 22nd Institute resumed with additional insightful presentations.

The presentation on "Agency Rulemaking under the Administrative Procedure Act" highlighted that the US APA provides a useful model for public participation and comment on proposed agency regulations. The presentation also covered how the agency rulemaking process might be adapted for use in parliamentary and other jurisdictions.

**The course** "Drafting Election Laws" addressed laws regarding voter registration, ballot security, promulgation of election results, and post-election challenges. The course highlighted the need of an open and frank debate around electoral processes especially during the formulation of the law to ensure all facets of society are taken on board and reflected in the implementation of the law to avoid biases and tensions.

The “Legislative Policy Development” threw light on where legislative ideas originate and how policy is developed? This presentation examined 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?

“Drafting Agricultural Legislation**”** offered 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 reviewed the international context in which agriculture-related laws are drafted, and touched on some of the reasons countries choose to amend or draft new legislation on agriculture. In the face of developing countries with the massive use of arable land by multi-national companies and other groups of investors, this course presented insights on how relevant it is for agricultural resources (land, forests...etc.) can be preserved for posterity.

“Parliamentary Drafting Instructions” articulated that parliamentary systems rely on drafting instructions to bridge the gap between policy makers and legislative drafters. The quality of drafting instructions bears an important relationship to the quality of legislation produced by drafters. This presentation considered how drafters and policy makers can collaborate to improve the quality of parliamentary drafting instructions and by so doing the quality of resulting laws and policies.

The course on “Working with Members” offered tips for drafters in building a strong working relationship with the members of legislative bodies, drawing upon the presenter’s many years of experience as an international legislative trainer and consultant. Participants at the 22nd Institute had the opportunity to interface with Ms. Carpenter, a member of the House of Representatives of the Louisiana Parliament. The interaction with the MP was crucial in gaining first-hand experience on the relationship between an MP and her constituent members.

"Bilingual or Multilingual Drafting" presented challenges associated with drafting legislations in two or more languages. The lecture examined techniques for assuring consistency and quality in drafts of legislation prepared in different languages.

“Drafting Sunshine Laws”—Governmental transparency laws allow the public to observe the deliberations of public bodies and to examine public documents. State open meetings laws and the federal Freedom of Information Act (FOIA) are the two principal "sunshine" laws, shedding light on governmental operations. This presentation focused on effective strategies for assuring public access to public information.

“Human Trafficking” course was presented as a highly volatile, modern form of slavery and organized crime, which is difficult to control. Both international organizations and national governments have drafted legislation to assist victims and prevent the phenomenon from spreading. This presentation considered how action plans and new laws can combat human trafficking on an international, national, and regional level. The discussion also evolved around whether harsh punishment for traffickers could be a better way of stamping out the phenomenon.

**“**Drafting for Compliance with GATT, NAFTA & Other International

Trade Agreements”—This presentation discussed the role of drafters in achieving compliance with trade agreements.

**“**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? These are some of the questions discussed during this course that revisited some of the causes of global failure of justice systems around the world. Without pointing at any successful legal or democratic system, the presenter laid emphasis on how various interests and antagonistic forces have created a situation of unease across the planet with the resulting tensions and conflicts. The amassing of wealth and the egocentric nature of some dictators has enabled an environment of lack, discrimination and poverty.

“Demonstration of ADR Mechanisms”—It was revealed that Alternative Dispute Resolution (ADR) mechanisms enable jurisdictions to resolve conflicts quickly and economically. This presentation used role-play to illustrate different ADR strategies, such as negotiation, conciliation, mediation, arbitration, settlement conference, and other devices. The presenter was able to, in role-plays to demonstrate the various techniques utilized in ADR. He emphasized on the advantages of the ADR which include its cost effectiveness, timeliness, user-friendly and above all human friendly and just. Several jurisdictions are now encouraging the use of ADR especially in civil cases. “Drafting ADR Provisions” course that followed informed drafters about legislation governing ADR mechanisms such as mediation and arbitration. Provisions for confidentiality, impartiality, and disclosure of conflicts were discussed.

Week Two was concluded by an evaluation exercise which closed the

**The Visit to the Louisiana State Capitol, Baton Rouge**

The 22nd Institute apart of classroom training courses undertook a field trip to the Louisiana Legislature in Baton Rouge, a one and half hour journey from New Orleans. After a brief photograph session, participants had a tour of several structures within the Legislature building including the Legislative Committee Meeting Room where seating arrangements were explained seating arrangements of legislators and staff, public’s opportunity to speak, posting of notice and agenda, audiotapes, House Caucus Offices. Participants also had a tour of the 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 at sides of chamber.

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 described different approaches to anticipate the revenue, fiscal, and broader social implications of actions by public officials. The presentation also highlighted techniques law makers can use to help them anticipate the fiscal impact of a piece of legislation.

**Outing to the Jean Lafitte National Park and the Bayou Barn Restaurant**

This popular outing has become an Institute tradition we were told. Participants travelled to Jean Lafitte National Park, where they viewed a half-hour film about Louisiana swamp life, then walked some of the trails that wind alongside lush, moss-draped bayous before feasting on a variety of local seafood beignets and other nice things you get on an outing. On the way back to the hotel, the team made a stop at the New Orleans Central Cemetery where it was explained that people are buried not 6ft in the ground but 6ft on the altitude due to the constant flooding in the city. It was a pleasurable outing.

**Zydeco Night at Rock ‘n’ Bowl:** A special outing added to help celebrate a New Orleans institution: food and beverages, bowling, and great music. Participants had their dancing as well as their bowling shoes on as they interchanged constantly between dancing and bowling at the Zydeco. It was fun after classes.

**Graduation Ceremony**

The Graduation Reception was held at the ……. attended by the 22nd participants, the Chairperson of the Board of Directors (BOD) and the Executive Director of TPLC, some of the 22nd Institute presenters and several other guests. The brief ceremony highlighted the importance and key role the Institute has had over the years across the world, accommodating more than 600 participants from over 100 different jurisdictions. The Chairperson of the TPLC reiterated that the course is organized to assist practitioners in a global legal environment constantly evolving.

**Conclusion**

The International Legislative Drafting Institute is a course that is recommended to the Sierra Leonean Ministry of Justice especially government staff from the Law Officer’s Department to enable improve on their skills and simplify the overly legalese language used nationally in the drafting arena.

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Those interested in more information about the Year 2016 Institute should visit

http://www.law.tulane.edu/ildi to register online without obligation

1. To learn more about the curriculum, visit the Institute’s homepage at [www.law.tulane.edu/ildi](http://www.law.tulane.edu/ildi) [↑](#footnote-ref-1)