

# New England Journal of Public Policy

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Volume 32

Issue 1 *Social Traps and Social Trust:  
Institutional Transformations in an American  
City following a Natural Disaster*

Article 5

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3-21-2020

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### Recommended Citation

Marcello, David A. (2020) "Legal Origins and Evolution of Local Ethics Reform in New Orleans," *New England Journal of Public Policy*. Vol. 32: Iss. 1, Article 5.

Available at: <https://scholarworks.umb.edu/nejpp/vol32/iss1/5>

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## **Legal Origins and Evolution of Local Ethics Reform in New Orleans**

**David A. Marcello**

The Office of Inspector General came first, and like many another reform in city government, it was born as a campaign commitment. When I met with state senator Marc H. Morial in September 1993 to discuss the issues component of his campaign for mayor, ideas poured out of him for an hour and a half, and I took copious notes. “We need an Inspector General,” he said, “and we need Charter Revision”—the two ideas linked from this first campaign convening. When he was elected mayor six months later and inaugurated in May 1994, charter reform became an early and important item of business in his new administration.<sup>1</sup>

This article focuses in Part 1 on the 1994–1995 charter revision process that was the initial vehicle for local ethics reform. Part 2 examines the stuttering, stop-and-go history of implementation after the successful charter revision process—a period during which enactment of formal legal instruments was followed by halting implementation steps, accompanied throughout by the need for further legal instruments to reform and restructure ethics entities. Part 3 draws some considered conclusions, taking a long perspective on the evolution of local ethics reforms.

### **Part 1. Home Rule Charter Revision: 1994–1995**

Mayor Morial made charter revision a centerpiece of his August 1994 State of the City address: “In the second of our centerpieces, I will by executive order reinvigorate the city charter process. . . . Other efforts to revise the charter have failed. We will not fail this time.”<sup>2</sup> A year after our September 1993 campaign meeting, I was back in a meeting with Marc Morial—this time, as the mayor—again taking notes as he shared his vision of needed Home Rule Charter reforms. He promptly followed through by naming a Charter Revision Advisory Committee in October 1994 and appointed me as its chair.<sup>3</sup>

### **History of Home Rule Charter Reform in New Orleans**

The city’s home rule authority derives from the Louisiana Constitution of 1921 as continued in force by the 1974 Constitution.<sup>4</sup> The city’s first Home Rule Charter, written and adopted during the administration of Mayor de Lesseps S. “Chep” Morrison, took effect on January 1, 1954, and continued in operation with very few amendments for more than four decades after its adoption.

Each of Marc Morial’s three predecessors as mayor attempted charter revision, and each attempt failed.<sup>5</sup> Mayor Moon Landrieu appointed a charter committee in 1975, but its proposed revisions never reached the ballot.<sup>6</sup> Mayor Ernest N. “Dutch” Morial (Marc Morial’s father) attempted twice to amend the charter in order to extend the mayor’s term in office beyond the two-term limit; his proposals were twice rejected by the voters.<sup>7</sup> Mayor Sidney Barthelemy appointed a charter committee in 1991; its report went to the voters on October 16, 1993 (within the last year of his term), as four separate ballot propositions, each of which the voters rejected.<sup>8</sup>

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These earlier charter revision efforts failed for various reasons. All of the previous mayors who fell short left charter revision until late in their terms. Some of these charter revision efforts dragged out over several years. In addition, some charter initiatives acquired suspect “political” overtones. And in one instance, dividing the charter into multiple propositions likely contributed to voter confusion and dissatisfaction.

Marc Morial sought to avoid many of these problems in his charter revision effort. He appointed the Charter Revision Advisory Committee within six months after his inauguration as mayor and charged the committee to accomplish its work within a very tight timetable, setting a deadline of December 15 for the committee’s draft of proposed charter revisions. He asked the committee to avoid some “hot button” issues that voters might perceive as politically controversial (e.g., advising the committee “not to tamper with the basic framework of the mayor-council form of government that was instituted in 1954 or with the two-term limits on the mayor or City Council members”).<sup>9</sup> And significantly, the committee presented its recommendations as a single set of proposed revisions, not fragmented among several different subject areas.

The Morial charter revision process benefited from the work of civic and business organizations that had identified their own priorities for charter reform, including the League of Women Voters of New Orleans and the New Orleans Business Council.<sup>10</sup> These earlier charter revision proposals all sounded the same theme: a need for greater flexibility in government.<sup>11</sup> The problem resided in the 1954 Home Rule Charter’s inflexible enumeration of executive branch offices, departments, boards, and commissions.<sup>12</sup> Any modification of this organizational structure could be accomplished only through voter approval in a citywide election.<sup>13</sup> Because the 1954 charter made it difficult to reorganize or consolidate existing city agencies or to establish any new city agencies, many functions that were not part of city government in the 1950s (e.g., transit administration, minority business development, environmental affairs) were created as “divisions” within the Mayor’s Office—an inadequate patchwork of ad hoc responses to rapidly changing political circumstances during the 1960s, 1970s, and 1980s.

### **Overview of Charter Revision Advisory Committee Meetings**

The Charter Revision Advisory Committee that convened at Gallier Hall in October 1994 was far different from the 1951 charter committee that produced the 1954 Home Rule Charter. The Morial committee was larger, consisting of thirty-eight members as contrasted with twelve on the 1951 committee. The Morial committee also exhibited greater gender and racial diversity<sup>14</sup>; the 1951 committee was all white and had only one female member.<sup>15</sup>

In his charge to the committee, Mayor Morial identified several aspects of the current Home Rule Charter that he thought should be left unchanged, including the basic mayor-council form of government, the two-term limit for mayor and council members, the prohibition on road-use or real-property service charges without a vote of the people, and the “one casino” provision. He also identified several innovations and charter reforms that he hoped the committee would consider, singling out the inspector general as one of his campaign pledges. Like earlier mayors and students of charter revision, he emphasized the need for greater flexibility in reorganizing city government. He called upon the committee to include a bill of rights in the Home Rule Charter.<sup>16</sup> Mayor Morial also directed the committee to conduct its business in compliance with the open meetings<sup>17</sup> and public records<sup>18</sup> laws.

Charter revision took place in three significant phases. In Phase I, the committee reviewed and suggested proposed revisions to the 1954 Home Rule Charter, beginning at meetings in October 1994 and concluding with its delivery of proposed revisions to the mayor and the members of the

city council on December 15, 1994.<sup>19</sup> Phase II consisted of elected officials' review and revision of the proposed charter amendments, beginning with the December 15 delivery of "Committee Recommendations" to the mayor and city council and ending at the August 17, 1995 council meeting that approved an ordinance placing proposed charter amendments on the ballot for a citywide election. The Phase III public information campaign launched even before Phase II ended, and its effectiveness was demonstrated when voters overwhelmingly approved the charter revision by a 68 percent to 32 percent margin of victory on November 18, 1995.<sup>20</sup>

Public information and citizen participation characterized every phase of the charter revision process. The committee conducted its meetings and subcommittee meetings in public, pursuant to Louisiana's Open Meetings Act, and treated all charter revision documents as public documents in accordance with Louisiana's Public Records Act. In every phase of the process, we solicited public input and shared information with the public through forums, newspaper articles, and public television and radio broadcasts. Before delivering its December 15 "Committee Recommendations" to Mayor Morial, the committee advertised and conducted two public hearings in the City Council Chamber (one on the evening of December 13, the other in the afternoon on December 14).<sup>21</sup> Throughout Phase I of the process, we met with members of the New Orleans City Council to solicit their views and suggestions for revision. Consequently, council members, the press, the public, and numerous civic sector organizations were already familiar with the direction of charter reform before the "Committee Recommendations" were delivered to Mayor Morial.<sup>22</sup>

### **Charter Provisions Proposing an Office of Inspector General**

The first substantial task was to divide this diverse group of committee members into appropriate subcommittees to review assigned portions of the charter and suggest revisions. Each member of the committee served on one of six subcommittees, with a designated chair and vice chair.

The Regulatory and Licensing Functions/Ethics Subcommittee was chaired by Gary Groesch.<sup>23</sup> His views were shaped by his daily working responsibilities as director of the Alliance for Affordable Energy, which monitored utility proceedings before the New Orleans City Council and championed the interests of consumers and ratepayers.<sup>24</sup> Gary Groesch was acutely aware of the potential for ethical conflicts within city government; as an outside observer and sometime critic of city government, he was also keenly protective of transparency and public participation. These attributes qualified him to chair the subcommittee that was charged with ethics and regulatory reform.

The subcommittee produced an entirely new chapter 4 in article IX ("General Provisions") of the Home Rule Charter entitled "Office of Inspector General; Ethics," which detailed the establishment of an "Office of Inspector General"; its "Purpose and Authority" and "Powers"; the "Selection, Term and Removal of the Inspector General"; a "Prohibition against Political Activities"; and a veto-proof "Budget" procedure.<sup>25</sup>

Embedded within these six new provisions were far-reaching powers of investigation<sup>26</sup> that the Office of Inspector General (OIG) could deploy at its own initiative or in response to complaints, including confidential complaints<sup>27</sup>; a guarantee of "complete access, to the fullest extent permitted by law, to all city records and public records and documents, including employee personnel records" (sec. 9-401[1]); the power to subpoena witnesses and compel the production of documents (sec. 9-403[2]); protection for investigations and documents to remain "confidential to the fullest extent permitted by law" (sec. 9-403[4]); authority to "recommend that appropriate corrective action be taken against the person who is the subject of the investigation or that departmental policy or procedure be modified to prevent subsequent acts of misconduct or mismanagement" (sec. 9-403[6]); and the discretion to refer possible violations of federal, state, or municipal law to the United

States attorney, the district attorney, or the city attorney (sec. 9-403[7]). The “Committee Recommendations” sought to establish without delay a vigorous OIG that would minimize politics in appointing the inspector general (sec. 9-404), insulate the office from political involvement (sec. 9-405), and insure “adequate annual appropriations” for its proper operation (sec. 9-406). These same provisions to establish a vigorous and nonpolitical OIG remained intact in the “Mayor’s Recommendations” released three months later.<sup>28</sup> On its way to the ballot, however, our powerful 747 of an ethics engine flew through a political time warp and emerged as the equivalent of a Piper Cub.

Councilmember-at-Large Jim Singleton led the council’s negotiations with Mayor Morial, requesting and receiving numerous changes in the evolving text. One of the most consequential eliminated two and a half pages of detailed provisions establishing a powerful OIG in the charter and substituted a single discretionary sentence: “The Council may by ordinance create an Office of Inspector General and otherwise provide with respect thereto.”<sup>29</sup> More than a decade elapsed before a different city council finally acted on this discretionary power, establishing the OIG by ordinance in 2006.<sup>30</sup> Two years more elapsed before the OIG and other local ethics bodies secured Home Rule Charter protection and a dedicated source of funding in a 2008 ballot proposition.<sup>31</sup> The six detailed sections that were deleted would have immediately established the OIG in the revised charter on its January 1, 1996 effective date.

Another city council suggestion delayed and complicated implementation of an important ethics reform—procurement of professional services.

### **Professional Services Procurement Reform**

New Orleans’ 1954 Home Rule Charter required public bidding of all procurements except for “unique or noncompetitive articles” and “professional services.”<sup>32</sup> Exempting *unique* or *noncompetitive* articles from bidding is unavoidable; they are effectively “sole source” procurements for which no realistic prospect of competition exists. The rationale for exempting professional services, however, is different: Professional services can—and should—be “competitively selected” (rather than “bid”), so that contracts can be awarded based on considerations such as experience and competence, rather than who submitted the lowest price.

Public bids typically go to the “lowest responsible bidder”—the respondent who satisfies all bid requirements and submits the lowest price. Bids work well when purchasing standard goods—for example, Number 2 pencils: Simply open the envelopes submitted by all responsive bidders and award the contract to whichever one offered the lowest per-unit price.

But a bid process is poorly suited to awarding contracts for professional services. If a public body wants its building to stay up, they may not be well served by hiring an engineer who offers the lowest price for engineering services. “Competitive selection” preserves an incentive for respondents to lower their prices, but it also preserves the discretion for public officials to award contracts based on a subjective evaluation of each respondent’s capabilities—not simply who submitted the lowest price.

The 1954 charter appropriately exempted professional services contracts from “bidding” but fell short by not requiring an alternative “competitive selection” process for professional services. Leaving this important decision to the unfettered discretion of public officials meant that professional services contracts could (and inevitably would) be used for patronage purposes. Public officials could exploit their discretion by awarding contracts to contributors, political supporters, and even to family members without fear of contradiction or complaint under the terms of the 1954 Home Rule Charter.

The “Committee Recommendations” proposed for the first time that, “Contracts for professional services shall be awarded on the basis of a *competitive selection process as established by ordinance*” (emphasis added).<sup>33</sup> During the first months of 1995, Councilmember Singleton and Mayor Morial discussed and ultimately agreed that the two branches of city government should set their own separate procurement processes—by council rule for the legislative branch and by mayoral executive order for the executive branch. Mayor Morial adopted this change in his proposed revision of Section 6-308(5):

Contracts for professional services administered by the offices, departments, boards and other agencies of the *Executive Branch* shall be awarded on the basis of a *competitive selection process which shall be established by executive order of the Mayor*. Contracts for professional services administered by the *Council* shall be awarded on the basis of a *competitive selection process which shall be established by rule of the Council*. Each such order or rule and any amendment thereto shall be published once in the official journal and shall be the subject of a public hearing at least seven days prior to its effective date. (Emphasis added)<sup>34</sup>

The city council made a few more changes before approving a ballot proposition at its August 17, 1995 meeting.<sup>35</sup>

Commission members hoped that Mayor Morial would set rigorous competitive selection procedures for the executive branch and that public scrutiny would exert pressure on the council to “ratchet up” its own procedures to meet this high standard. What ensued instead more resembled a race to the bottom—a story of implementation that we’ll consider in Part 2.

### **Elected Officials’ Consideration of Charter Revision**

The mayor distributed the December 15 “Committee Recommendations” to all department heads and the chief administrative officer and to many boards and commissions, requesting their review and comments during January 1995. In February, Mayor Morial met with the Charter Revision Advisory Committee to discuss changes he would make to the “Committee Recommendations” based on their feedback; his changes were later embodied in a new March 15, 1995 draft of “Mayor’s Recommendations,” which was delivered to all members of the city council and placed in each branch of the New Orleans Public Library system.

Mayor Morial asked the city council to conclude its consideration of his proposed charter revisions by early April so that charter reform could be included on a July 1995 citywide election ballot. When some council members repeatedly expressed reservations about this timetable, Mayor Morial postponed the target date to allow more time for council review.<sup>36</sup> Running on a parallel track in Baton Rouge, the Morial administration continued its efforts to secure amendments in state law that would be needed to implement some proposed charter changes.<sup>37</sup>

We used this window of opportunity to address concerns raised by civic groups during the comment period. The Bureau of Governmental Research (BGR) identified thirteen areas of concern, which were discussed and resolved in multiple meetings with BGR executive director Jim Brandt and other representatives of the organization. The commission also benefited greatly from detailed review and comment by the only surviving member of the 1951 charter committee, Moise Dennery, who met several times with Jon Eckert, director of the Mayor’s Office of Policy Planning. They suggested more than a hundred changes, ranging from typographical errors to substantive improvements. By the time charter revision returned to the city council’s agenda in early August, we had an improved document and BGR’s support for the package of proposed revisions.

Significant negotiations took place during early August between city council staff and charter committee representatives. We received from council members more than a hundred proposed amendments and agreed to present a package of seventy amendments at the crucial August 17 council meeting. The amendments divided into three categories: Morial administration amendments, council amendments acceptable to the Morial administration, and council amendments to which the Morial administration was opposed.

Some of Mayor Morial's separate negotiations with members of the city council led to modest changes but still preserved important reforms—creating new flexibility in the charter, for example, after altering the proposed council review process: Rather than requiring a supermajority vote (5 out of 7) to *reject* a mayor's proposed restructuring of city government, the council would vote to *approve* it by a simple majority.<sup>38</sup> The OIG, however, elicited far more contentious pushback from the council and its two at-large members: "Jim Singleton and Peggy Wilson are among the Council members who have said they oppose creating such a position."<sup>39</sup>

Significant changes arose out of last-minute negotiations between the mayor and members of the city council on August 16, 1996—the day before the council would decide whether to put charter revision on the ballot. Most significant was a proposed "amendment by Jim Singleton and Peggy Wilson to eliminate the Office of Inspector General, which would have broad power to investigate elected officials and city workers in an effort to root out corruption. Morial has strongly endorsed the concept."<sup>40</sup> The council prevailed: Their 7–0 vote replaced multiple pages of robust OIG powers with a single sentence that made creation of an OIG discretionary with the council and delayed implementation of this important ethics reform for more than a decade. It could have been worse: "Wilson proposed eliminating the inspector general and review board altogether but lost 6–1."<sup>41</sup>

Additional damaging changes were proposed—some successfully, some not, and others fell in between. A Singleton amendment "to drop language requiring the council to approve money for the review board passed 7–0," surely contributing to the ERB's moribund status during the next twelve years. Councilmember Suzanne Haik Terrell proposed an amendment "to leave to the Council the decision on whether to establish a Revenue Estimating Conference," which would likely have consigned this worthy fiscal reform to the same limbo that ultimately afflicted the OIG and ERB. Her amendment first passed 6–0, then failed 3–3 on a reconsideration vote. She did succeed in weakening the reform, when she and Singleton "offered an amendment to make the conference's revenue forecast only a recommendation for spending levels, not a binding limit. It passed 7–0." Wilson and Terrell struck another blow for the status quo when they proposed "to let members of the Board of Liquidation, City Debt, keep their current unlimited terms" rather than setting staggered twelve-year terms; they lost by a 5–2 vote.<sup>42</sup>

Ultimately, the council unanimously voted the proposed charter revisions onto a November 18, 1995 citywide election ballot. In the aftermath, reactions were mixed. Mayor Morial said, "It's better than not having (them) at all. It's not what we preferred." Jim Brandt said that the "overall document reflects most of the major proposals that BGR has supported." The charter committee breathed a sigh of relief that "voters will be asked to approve the hundreds of changes as one proposition."<sup>43</sup>

### **Securing Voter Approval of Charter Revision**

The entire Charter Revision Advisory Committee reconvened on October 12, 1995, to receive copies of the "Proposed Amendments" as finally approved by the council. Thereafter, committee members made many presentations to civic and community organizations as part of the Phase III public information campaign. Broad civic sector support coalesced as the November 18 election date neared: "The Bureau of Governmental Research, the Metropolitan Area Committee, the New

Orleans Council of the Chamber of Commerce, and Victims and Citizens Against Crime have all endorsed the package of revisions. The League of Women Voters, which has worked for many years to revise the charter, also supports the effort.”<sup>44</sup>

Ethics played a leading role in soliciting public support for every version of the proposed charter changes. The December 15, 1994 “Committee Recommendations” and the March 15, 1995 “Mayor’s Recommendations” both began with a “Highlights” page that put front and center two proposed new local ethics entities:

For the first time, an **Office of the Inspector General** is created pursuant to Charter mandate (pp. 155–57) and charged with the responsibility for investigating misconduct and mismanagement as it impacts city government.

Finally, an **Ethics Code** and **Ethics Review Board** are established by Charter mandate (pp. 157–158) to restore public confidence in the ethical conduct of city affairs. (Emphasis in original)

The August 18, 1995 “Proposed Amendments to the Charter” (widely distributed to press and public in the run-up to a November 18 charter election) placed “Ethics” first in its list of “Charter Amendment Highlights” and expanded the list of ethics-related reforms in the legislative and executive branches:

- prohibiting a person appointed to fill a vacant council seat from running for the seat at the next election, thereby preventing “insider” appointees from having an unfair advantage (sec. 3-105[2]);
- providing for removal from office of a council member (sec. 3-106) or mayor (sec. 4-205) convicted of a felony or recalled by the voters;
- extending the city council’s power to conduct investigations to any entity funded in full or in part by city revenues (sec. 3-124[1]);
- preserving the right to vote for a council member serving as acting mayor (sec. 4-204[3]);
- requiring the functions of a city notary to be performed in-house by salaried personnel of the Law Department rather than by outside counsel, thereby ending a costly patronage practice (sec. 4-404);
- requiring for the first time that city contracts for professional services be awarded only after a competitive selection procedure (sec. 6-308[5]); and
- retaining the charter restriction that permitted only one land-based gambling casino (sec. 9-310).

The “Ethics” highlights concluded with two familiar paragraphs championing the OIG and ERB and directing the city council to strengthen the city’s ethics code:

Section 9-401 authorizes the City Council to establish by ordinance an Office of Inspector General.

Section 9-402 requires the City Council to establish by ordinance an Ethics Review Board, whose members will be nominated by the university presidents and appointed by the mayor subject to approval of the city council. Section 9-402 also requires the City Council to establish by ordinance a city code of ethics incorporating the ethical standards of the State Code of Ethics and whatever additional requirements the council may deem appropriate.

The charter highlights leave little doubt that city leaders and Charter Revision Advisory Committee members identified ethics reform as one of the strongest, most appealing themes for the public



information campaign. These ethics reform initiatives helped ignite overwhelming support among voters for the entire array of charter amendments.

The Home Rule Charter revision process officially ended on November 18, 1995, when voters approved the proposed amendments. A January 1, 1996 effective date left less than two months to prepare for implementation of numerous new charter reforms.

## **Part 2. Implementation of Ethics Reforms**

New Orleans might never have seen the implementation of local ethics reforms but for the devastating damage inflicted by Hurricane Katrina:

Ten years after New Orleans' 1994–95 home rule charter revision process, the city still had no ethics review board, no office of inspector general, and no reform in procurement of professional services. Ten years of no progress—and no progress in sight—provides us with a good test case. We must credit Katrina as the catalyst that led to implementation of the ERB, OIG, and professional services procurement reform in post-Katrina New Orleans.<sup>45</sup>

This pattern of first approving charter reform legal instruments, then encountering long delays and shortfalls in implementation unfortunately characterized ethics reform throughout subsequent decades.

### **Complications in Implementing Competitive Selection Procedures**

The original charter revision timetable contemplated that proposed revisions would be approved by public officials during the first quarter of 1995, followed by public hearings and widespread citizen review in the second quarter, then seeking voter approval in mid-July.<sup>46</sup> This original timetable allowed about six months for planning and implementation before the revised charter's January 1, 1996 effective date. An extended period of review by the city council, however, delayed the election to November and left less than two months to prepare for the newly revised charter's implementation.

Complicating matters, City Hall's attention was diverted (in fact, consumed) soon after voters approved the charter changes, when Harrah's Casino laid off twenty-five hundred casino employees and idled a thousand construction workers shortly before Thanksgiving.<sup>47</sup> Harrah's had just succeeded in cutting its \$100 million annual payment to the state to \$50 million, securing this 50 percent reduction with enthusiastic support from city officials and the local workforce, who all touted the casino's beneficial effects on employment in New Orleans.<sup>48</sup> City officials considered the casino's draconian dismissals of its employees an egregious breach of faith and directed every effort during the remainder of 1995 toward securing an enforceable commitment against Harrah's that would protect the workforce. Charter implementation fell off City Hall's radar screen.

During the second week of January 1996, implementation of the new charter provisions roared back onto City Hall's radar screen with a vengeance. When the city council attempted a "routine" renewal of its utility consultants' contracts, Gary Groesch and the Alliance for Affordable Energy pointed out that effective January 1, 1996, the council could no longer award utility consultant contracts with the same unfettered discretion as in the past.<sup>49</sup> The charter now required that such contracts be advertised and awarded through competitive selection procedures set by a council rule not yet promulgated.<sup>50</sup> When the city council persisted in efforts to renew the contracts, the Alliance sued to enjoin them until they complied with the new competitive selection requirements.<sup>51</sup>

It's often said, "Hard cases make bad law." When the Alliance launched its litigation, utility consultants had been working since the start of the new year without a current contract; by the time this lawsuit worked its way through the appellate courts, judges were unlikely to throw out the

consultants unceremoniously with no compensation for their months of labor. The Louisiana Supreme Court upheld a “grandfathering” provision written into Council Rule 45 that included the power to approve “Any contracts in existence prior to January 1, 1996 for: a) Renewal or extension of the contract, when continuity of service is essential.”<sup>52</sup>

Hard cases make bad rules, too. The city council—already badly burned by the new competitive selection requirements—was determined to avoid being hamstrung in the future. Council Rule 45 (“Competitive Selection Process for Professional Services Contracts”) was adopted in the midst of this controversy and was drafted permissively to maintain council control over the awards process; more than twenty years later, press coverage of the council’s utility regulatory contracts still identified problems that could be traced back to this early, troubled council implementation effort.<sup>53</sup>

The council’s proposed procedure elicited a vehement denunciation from Gary Groesch, who called the plan “a stab in the back of the voters in this city” and said that the council’s self-serving use of its own staff to rank candidates was “a weakening of an already pathetically weak process.”<sup>54</sup> A *Times-Picayune* editorial called the council’s action “a disappointing reversion to old politics as usual.”<sup>55</sup> Still today, paragraph 8 in (now renumbered) Rule 42 establishes selection review committees consisting of the council chief of staff, council research officer, and either the council fiscal officer or the chief of staff of council utilities, depending upon the type of professional service solicited.<sup>56</sup> All three of these members are salaried employees of the council and likely to be responsive to the council’s wishes.

After a BGR status report entitled “Implementation of Amendments to New Orleans City Charter” in September 1996 identified “competitive selection procedures for professional services contracts” as one of several substantive changes awaiting implementation,<sup>57</sup> Mayor Morial issued a September 5, 1996 executive order fixing competitive selection procedures for all executive branch entities.

MHM 96-020 displayed the same shortcomings as the council rule in terms of in-house control: Selection review rating groups were to “supervise the entire selection process” and would purportedly “conduct an independent, objective evaluation of applicants.”<sup>58</sup> But the selection review rating groups<sup>59</sup> and the grants provider selection review rating groups<sup>60</sup> were drawn from the unclassified service; all members of these evaluation groups held their employment at the pleasure of the mayor, who could undermine their independence at any moment. Theoretically, the chief administrative officer or an executive assistant could appoint to the rating groups “other persons with specialized knowledge or expertise” from the community at large or the university community; but these “outsiders” would be chosen by mayoral representatives—if chosen at all, since the executive order also provided, “Nothing herein shall be construed to require these additional raters.”<sup>61</sup>

When evaluation groups consist entirely of surrogates for the mayor or council, the professional services procurement process remains rich terrain for patronage politics: “Any contracting process in which elected officials or their appointees participate can be circumvented or manipulated for political purposes.”<sup>62</sup> A better solution, as I have pointed out elsewhere, would be to “let independent entities with specialized expertise designate evaluation committee members, thereby promoting politically independent evaluations” and producing evaluation committees that are “technically competent, politically independent and demographically diverse.” And I added, “We can accomplish all three of these objectives.”<sup>63</sup>

Mayor Morial’s successor demonstrated how the failure to implement procurement reforms not only harms the public but also exposes public officials to temptation and the risk of severe penalties.

As a candidate, C. Ray Nagin promised in his 2002 mayoral campaign to submit a ballot proposition to the city council within one hundred days after his inauguration, inviting voters to unite

the separate legislative and executive branch procurement policies into a single procedure fixed by ordinance.<sup>64</sup> He committed to this proposition in one of our earliest meetings about campaign issues, and he reiterated the hundred-day promise publicly many times thereafter.<sup>65</sup> But Mayor Nagin reneged on this commitment, as he frankly acknowledged in October 2002: “Times-Picayune reporter Frank Donze caught up with the mayor and asked him about the busted 100-day deadline for a ballot proposition. Yep, the mayor agreed, he’d missed it, and he wasn’t going to give a new deadline because he didn’t want to disappoint everyone again.”<sup>66</sup>

At a meeting in the Mayor’s Office two months before his public acknowledgment, I witnessed how this about-face on policy began:

I attended an executive staff meeting in August 2002, less than 100 days after Ray Nagin was inaugurated. I’d been invited there to present a proposal for reform in the procurement of professional services.

After my presentation, around the table they went, complaining that these “burdensome new procedures” would be “inefficient,” would “tie our hands,” would prevent the mayor’s brash and talented new staff from hiring “the best and the brightest.”

And Ray Nagin bought those arguments. “Procurement reform” remained for the rest of his administration merely a matter of “spin,” as illusory as those “cranes in the sky.”<sup>67</sup>

The one-hundred-day commitment was still within Nagin’s grasp during this August 2002 executive staff meeting, and he was still making hollow promises of progress to the public:

Although he pledged during his campaign to offer a plan for reforming the way the city awards lucrative professional services contracts within 90 days, Nagin said it likely will be another 90 days before a proposal is ready. He said a draft ordinance is being reviewed by “key stakeholders” such as the Bureau of Governmental Research and a coalition of minority contractors.<sup>68</sup>

Not even ninety days later, this campaign commitment was gone for good, with unforeseen consequences yet to be felt within his administration.

Nagin’s first executive order dealt with professional services procurement; it was not a promising start. CRN 02-01 added new jobs to the list of professional services, thereby enhancing mayoral discretion in awarding lucrative contracts.<sup>69</sup> Several of the new job listings were merely arbitrary (e.g., the change from “physicians” to “doctors” and from “attorneys” to “lawyers”) or inconsequential (e.g., the addition of “landscape architects” and “veterinarians” to the a list that included “architects” and “doctors”). Others were legally questionable: Adding “claim adjusters and/or administrators” and “insurance agents and/or brokers” to the list of “professional services” conflicted with successful court challenges holding similar services nonprofessional.<sup>70</sup> And some appeared to invite corruption: Two new terms, “telecommunications” and “data processing,” opened a door to discretionary abuses that later led to indictments for Nagin and his chief technology officer.<sup>71</sup>

Permissiveness continued two years later in CRN 04-02, which expanded “Exceptions” beyond “emergency situations” to authorize acquisition of “certain items and services” through federal supply schedules.<sup>72</sup> This change increased Nagin appointees’ discretion to award information technology contracts and likely contributed to the Nagin administration’s later difficulties with federal prosecutors.<sup>73</sup>

CRN 05-01 repealed MHM 96-020 and the two Nagin executive orders but retained their shortcomings and made the professional services procurement process even weaker:<sup>74</sup>

1. By empowering the city attorney to determine “whether a service constitutes a ‘professional service,’” the Nagin executive order expanded the number of contracts that could be exempted from public bidding wholly at the discretion of a mayoral appointee.<sup>75</sup>
2. A meaningless “monitoring” process in subsection 8(H) designated the city attorney to serve as an “independent” monitor of all *non-legal* procurements and the CAO to serve as the “independent” monitor for all *legal* services procurements—a reciprocal relationship between mayoral appointees that drained any value or meaning from the concept of “monitoring.”
3. Most egregiously, subsection 8(I) deemed Selection Review Panel “Deliberations Confidential” and prohibited panel members “from disclosing the contents of such discussions and/or deliberations to any third parties,”<sup>76</sup> all of which violated the state’s open meetings law.<sup>77</sup>

When the city council tried to legislate greater transparency by unanimously approving an ordinance to require that evaluation committees meet in public, Ray Nagin vetoed it.<sup>78</sup>

Mayor Nagin and his chief technology officer later faced federal charges arising out of their manipulation of the professional services contracting process. Nagin’s technology chief entered a guilty plea and “signed a statement admitting he steered roughly \$4 million in no-bid city work” to a contractor who gave him “more than \$860,000 in bribes and kickbacks in return.”<sup>79</sup> Nagin went to trial and was convicted on twenty out of twenty-one counts, including fraud and bribery involving the award of city contracts.<sup>80</sup>

Nagin’s successor, Mitch Landrieu, got kudos for improving the city’s contracting process. He was praised for having evaluation committees meet in public, even though public meetings are already legally required under Louisiana’s Open Meetings Law: “Nagin’s committees [by contrast] did not meet in public; when the City Council tried to force them to, Nagin simply stopped using them.”<sup>81</sup>

Other persistent problems endured, even as the new administration took over at City Hall. As under Nagin, evaluation committees consisted wholly of mayoral surrogates: “The acknowledged weakness in this setup is that all of the committee members owe their jobs to the mayor to one degree or another.”<sup>82</sup> Another problem was the ephemeral nature of procurement reforms: “Like Nagin’s selection process, Landrieu’s new system is the result of an executive order, and a successor could undo the reforms with a simple rewrite.”<sup>83</sup> Landrieu later proposed and voters approved an amendment to put three-member selection committees into the charter, but those members were all still appointed by the mayor from within local government. Landrieu declined to entrust the selection process “to independent experts from outside City Hall, as was recommended more than a decade ago.”<sup>84</sup>

The most disappointing missed opportunity was in failing to unite the bifurcated system that set separate legislative and executive branch policies for procurement of professional service contracts. The political moment was propitious: The League of Women Voters of New Orleans had asked mayor and council candidates during the 2014 campaign, “Will you support a City Charter proposition that allows citizens to vote on unifying the processes for awarding professional services contracts, establishing a single procedure that applies citywide to all legislative and executive branch agencies, boards, and commissions?” Questionnaire responses were publicized in a newspaper column two months before the newly elected officials took office: “A majority of council members who take office in May have already pledged to support this Charter reform, and Mayor Mitch

Landrieu has promised a charter amendment soon.”<sup>85</sup> Regrettably, the amendment he put before voters later that year left this important work unfinished.

The fight for reform in professional services procurement goes on. At the time of the Landrieu proposals, BGR president Janet Howard identified a further need for improvement: “She would rather have the new chief procurement officer placed under civil service protection.”<sup>86</sup> In a 2014 op-ed column, I provided my own list of other professional services safeguards that should be embedded in the charter:

Here’s a good start: Assure OIG scrutiny of procurements from start to finish; hold evaluation meetings in public; make evaluation forms public; require weighted evaluation criteria; provide independence in selecting the chief procurement officer; and put independent technical experts on evaluation committees.<sup>87</sup>

Still today, we need a Home Rule Charter amendment that unites separate mayor and council procurement policies in a single citywide process covering all professional services contracts; this reform is “important because procurement policies approved by both branches of government can’t be changed thereafter without joint mayor-council approval.”<sup>88</sup>

The fight for reform remains “a history with multiple chapters written over two decades by many authors. And the final chapter has not yet been written.”<sup>89</sup>

### **Case Study in Procurement Reform**

We conclude this analysis of professional services procurement reform with a case study illustrating the use of “inside” and “outside” legislative strategies.

In the first months of 2011, a city council selection review committee met privately to consider the award of a professional services contract, claiming an exemption under the Open Meetings Act for “discussion of the character, professional competence, or physical or mental health of a person.”<sup>90</sup> This long-standing exemption makes sense; sensitive information about people’s private lives ought not be disclosed without good reason. This same provision does away with secrecy, however, in requiring that “discussion of the appointment of a person to a public body”<sup>91</sup> be held in public, which makes sense, too: If you want to sit on the City Planning Commission, you should be prepared to answer probing questions about your fitness for appointment to such an important public body.

The law had no similar requirement that the award of a public contract must be discussed in public, and this made no sense at all. Serving on a board or commission entails only a modest expenditure of public funds for per diem, travel, conference fees—“chump change” compared to potentially hundreds of thousands of dollars expended on a professional services contract. The Public Law Center drafted legislation to fill this gap, and Rep. Neil Abramson introduced it.<sup>92</sup>

Students in legislative and administrative advocacy learn about an “inside” game and an “outside” game in the legislative process. The inside game relies on a capable legislator to manage a bill quietly through the process. The outside game energizes the public and relies on indirect, grassroots lobbying to marshal support for the bill among legislators. It is possible to play both the inside game and the outside game—but only if properly sequenced. The inside game comes first: You can’t hold a press conference on the steps of the State Capitol on Monday, then ask your legislator to quietly noodle the bill forward during the remaining days of the week after having made it a high-profile issue.

Rep. Abramson set HB 449 for a committee hearing early in the session. When opposition appeared in the form of the Governor’s Executive Counsel, an amendment solved the problem,

adding some inelegant language that did no damage to the bill's overall objectives.<sup>93</sup> HB 449 came out of committee with a favorable report and passed the House floor unanimously.

The measure was now surely visible to public officials, and we feared some of them might view its transparency as inimical to one of their "perquisites" of public office. HB 449 could now be vulnerable to their inside games and behind-the-scenes machinations. An op-ed column deployed the outside game to draw public attention to the bill and make it harder for potential saboteurs to impede its progress:

Open meeting laws prohibit private discussions about appointment to a board or commission. Does it make sense to permit private discussions about awarding public contracts?

That's just wrong. HB 449 would make it right, by prohibiting executive sessions to discuss awarding a public contract.<sup>94</sup>

HB 449 passed the Senate on a vote of 37–1, returned to the House, and again passed unanimously, then was signed by the governor and became law on August 15, 2011.

When the city council's selection review committee next met in the fall of 2011 to consider the award of a professional services contract, they met in public.

### **Ordinances and Statutes Elaborating Powers of the Inspector General**

Professional services procurement became the leading edge of charter implementation, because it could no longer be ignored when the city council moved to renew its consultants' contracts in January 1996. Other aspects of ethics reform proved easier to ignore, however, including the Ethics Review Board (ERB) and the OIG.

The revised charter called for the council to pass an ordinance establishing the ERB within six months; the council met this goal on June 20, 1996.<sup>95</sup> The charter also called for university presidents to nominate and the mayor to name ERB members within the next six months. The university presidents each sent three nominees to Mayor Morial, who in turn appointed six of seven ERB members from those names. Inexplicably, he never named the seventh ERB member, who was to be a free mayoral selection.<sup>96</sup> Consequently, the ERB remained moribund during the remaining six years of the Morial administration and throughout four years of the first Nagin term.

The winds of Katrina blew through New Orleans in August 2005. In their aftermath, the winds of political change blew fiercely as well, and ethics reform came back onto the agenda. The OIG proved a catalyst in precipitating ethics reform, and once again, the implementation of an important ethics innovation grew directly out of a campaign commitment.

When I met with Shelley Midura, a candidate for the District A city council seat in the 2006 citywide elections, I said, "If you get the Inspector General up and running, you can roll up the sidewalks and go home! Your legacy will be complete." She took my comment to heart and campaigned on a platform of ethics reform.<sup>97</sup> Then, when elected, she championed an ordinance with single-minded determination. On the evening the OIG ordinance was finally approved,<sup>98</sup> my wife and I were at dinner in an adjacent state when I got a call on my cell phone from Shelley. She said, "Can I roll up the sidewalks and go home now?" But that would have been too soon, because more important work remained to be done.

The following year, two additional ordinances expanded the OIG's powers and strengthened its investigative tools.<sup>99</sup> One such tool, subpoena power, needed state legislation to be legally enforceable in state courts. In February 2008, a coalition of civic groups (including Citizens for 1 Greater New Orleans<sup>100</sup> and The Public Law Center<sup>101</sup>) appeared before the Municipal, Parochial,

and Cultural Affairs Committee in Baton Rouge to support HB 80<sup>102</sup> by Rep. J. P. Morrell. As later enacted, it granted the following important powers to local ethics entities: designation as a law enforcement agency with access to criminal justice databases<sup>103</sup>; power to apply for a protective order and enforcement of a subpoena<sup>104</sup>; confidentiality for investigative documents; and authority to meet in executive session when discussing confidential materials.<sup>105</sup> Additional laws passed during 2010–2012 also proved useful in the legal evolution of local ethics entities—not just in Orleans but in other Louisiana jurisdictions inspired by New Orleans’ example.<sup>106</sup>

### **Troubled Relationship between the Office of Inspector General and the Office of Independent Police Monitor**

In 2008 the city council created the Office of Independent Police Monitor (OIPM) as a division within the OIG,<sup>107</sup> and therein lay a contradiction: Could the police monitor live up to its titular identity as “independent” while functioning as a “division” of the OIG? Over the next several years, this structural deficit generated increasing tension between the inspector general and the police monitor, finally breaking into open warfare by 2015 and threatening to tarnish the public profile of all three local ethics entities.<sup>108</sup>

Years earlier, before the OIPM got up and running, an important ethics reform arose unexpectedly out of the abusive hiring process used for selecting the first short-lived police monitor. Interim Inspector General Len Odom first announced during July 2009 that he intended to hire Neely Moody as police monitor with no public input; then he backtracked in the face of withering public criticism, only to make the same decision to hire Neely Moody just one month later after purportedly conducting a national search.<sup>109</sup> A month after that, both Len Odom and Neely Moody were gone, after having resigned their positions.<sup>110</sup>

Six months after this debacle, the city council passed an ordinance to prevent such abuses in the future, establishing a search committee that consisted of members from the local ethics entities (the inspector general and the ERB chair); the legislative branch (chair of the council’s Criminal Justice Committee); the executive branch (the police superintendent and a mayoral designee); and two city residents appointed by the council’s Criminal Justice Committee. The ordinance required a nationwide search for the police monitor and called for three finalists to attend at least two community meetings, where they would answer questions from the public.<sup>111</sup> The inspector general retained authority to hire but only from among three finalists who had been vetted by both branches of city government, by the local ethics board, and by the public. This process yielded Susan Hutson, who was hired as the second police monitor in 2010 amid a chorus of approving comments by ERB chair Kevin Wildes (“She has the right skills for the job”) and Inspector General Ed Quatrevaux (“She plays in the big leagues”).<sup>112</sup>

The search procedures worked well, but the structural deficit was unchanged; the OIPM remained a division within the OIG, a tumor perpetually threatening to metastasize as personal and institutional frictions intensified among the three local ethics entities. Structural reform emerged as the best solution—but separating the OIPM and OIG would require a charter amendment, which in turn required voter approval.<sup>113</sup>

A Home Rule Charter proposition overwhelmingly approved by 71 percent of voters on November 8, 2016, authorized three important reforms that (1) separated the OIG and OIPM, (2) apportioned funding among all three local ethics entities, and (3) required independent external evaluation of all three local ethics entities.<sup>114</sup>

A subsequent city council ordinance (approved on a divided 5–2 vote) separated the two offices but fell considerably short of ideal in its implementation of the charter proposition:

- The previous participatory search process for police monitor fell by the wayside, replaced with “Appointment procedures” that eliminated any role for the public or for the legislative and executive branches of city government.
- Gone was the written assurance of two community meetings at which the public could ask questions of the three finalists.
- Gone as well was any assurance that the search process would even yield multiple finalists; the public might see only a single applicant left standing.
- Finally, the implementing ordinance made no provision for independent external evaluation of the third local ethics entity, the ERB.<sup>115</sup>

In the last month before her departure from the council, District A councilmember Susan Guidry took a partial step toward implementing this last requirement with an ordinance repeating terminology from the charter: “the ethics review board shall be subject to an independent, external peer review every three years.”<sup>116</sup> With no details about how the evaluator was to be chosen, however, the measure fell far short of actual “implementation”; even so, it mustered only a bare 4–3 vote of approval.

### **Part 3. Conclusion**

Seafarers embarking on a journey without benefit of a compass employ a strategy called “point-to-point navigation” to keep themselves on course: Pick out a target and make your way to it, then pick another landmark and keep leapfrogging forward, stringing together a succession of advances until the journey is complete.<sup>117</sup> The 1994–1995 charter revision process initially charted an ambitious and far-reaching course, but the actual ethics implementation process has consisted of incremental, point-to-point gains over an arduous period of years. When blown off course, ethics advocates have repeatedly had to navigate “course corrections” by setting specific targets and working to achieve them.

The forty-member Citizens’ Advisory Group saw the ethics component of its “Committee Recommendations” diminished during an essential but frequently damaging dialogue with elected officials. First, the “Mayor’s Recommendations” rejected a single, citywide professional services procurement policy in favor of two separate procedures, one for the executive and another for the legislative branch. Then, the city council eviscerated powerful provisions to establish an OIG and removed mandatory funding for the ERB before voting its own version of “Proposed Amendments” onto the ballot,

In the wake of these troubling changes, ethics advocates set specific targets that have steadily strengthened the local ethics bodies:

- Shelley Midura accepted a short-term goal (“Get the OIG up and running!”), and her work precipitated the ERB’s first meeting—twelve years after the charter mandated its creation. (So much for mandates—or at least, mandates without money!)
- The city’s first inspector general, Bob Cerasoli, saw a target—enhanced powers for the OIG—then worked with the legislative coordinator Seung Hong in Shelley Midura’s council office to draft and secure ordinance improvements in 2007 that revitalized many of the original OIG provisions in the “Committee Recommendations.”
- Half a year later, a coalition of civic groups went to Baton Rouge in successful pursuit of state legislation that imparted legal force to local ordinance provisions on subpoena power, confidentiality, and access to criminal justice databases.



- Civic reformers produced a good outcome by advocating for the OIPM that was created in 2008. But again, remedial work proved necessary—first, by moving the OIPM out of the OIG, then by directing assured funding annually to each of the three local ethics entities.
- The second occupant of the IG’s office (an interim appointee, Len Odom) inadvertently improved selection procedures for the independent police monitor (IPM): The abusive hiring process by which he appointed (more accurately, “anointed”) Neely Moody as the initial IPM motivated the city council to pass a remedial ordinance that guaranteed transparency and public participation in any future IPM search process. Regrettably, these safeguards were lost in a later ordinance revision.

Thus, ethics advocates have a new target in this point-to-point navigation process: Pass an ordinance restoring two opportunities for members of the public to query multiple candidates in selecting a new inspector general or IPM.

As this newest target illustrates, not all ethics reforms require a frontal assault on corruption. Some reforms work simply by creating a healthier environment, such as the 2010 ordinance that insured public participation in hiring the police monitor or HB 449 in 2011, which enhanced public participation and transparency by bringing public scrutiny to bear on evaluating and awarding professional services contracts. Transparency is the key to accountability in government. We cannot hold public officials accountable for conduct we cannot see. Transparency laws lay the essential groundwork for accountability.

Complicating progress in this point-to-point navigation process are the diverse crew members who share the journey with us. Some pull one way, some in another direction, but all are acting in accordance with their own perspectives on the rule of law. How can we better understand the sources of their very different motivations? What follows is my attempt at a typology, first describing the four different perspectives (A–D) held by *disciples* and *subversives* and by *legalistic* and *personalized* interpreters of the rule of law, then ranking them (E) from best to worst on a rule-of-law spectrum.

(A) At the top of the heap (and a *rara avis* indeed) is the committed adherent to rule of law—the *disciple*, who values rule-of-law principles unconditionally. Rule-of-law disciples accept the discipline that rule of law imposes—constraints imposed not only on the conduct of others but also on their own conduct. Many people profess their commitment to rule-of-law principles as a matter of belief, but they suffer diminished enthusiasm when rule of law imposes limitations on their own conduct.<sup>118</sup>

(B) For example, a *legalistic* interpreter of rule of law could choose not to read the law liberally to accomplish the purposes for which the law was enacted—or could instead choose to apply a narrow reading, maximizing personal discretion while maintaining a plausible legal defense of compliance. Lawyers frequently adopt this posture in the service of their clients’ interests, and who can deny the legitimacy of this approach when lawyers are acting in a representative capacity? We should view matters differently, however, when a lawyer is acting not in the service of clients but in the lawyer’s own interest. This legal, analytical frame is seldom applied to broaden and strengthen the rule of law. It’s more often deployed to curb and undermine the robust expression of rule-of-law principles.

This legalistic attitude is certainly not restricted exclusively to lawyers. It’s a common mindset embraced by many a common man or woman: “Let me get as close to the line as I can get without going over—or at least not too far over.” With this sentiment, we’ve left behind the domain of the rule-of-law disciple; we’ve entered a realm of rule-of-law constriction—or worse, rule-of-law subversion.

(C) Rule of law *subversives* need not be engaged in corruption or outright criminality. Subtler and more insidious is their subversive assault on safeguards that protect the rule of law—safeguards such as the transparency in open meetings and public records acts; the distribution of power in a checks-and-balances political system; the accountability and conflict avoidance served by financial disclosure and campaign finance laws; and a preference for independent expertise over political influence in a well-crafted system for awarding professional services contracts.

We often refer to rule-of-law systems. The concept of a system is inextricably linked with rule-of-law principles. I once wrote in a similar context, “Ethics reform does not mean that people start behaving better. Ethics reform means that systems are put in place to deal with people who are behaving badly.”<sup>119</sup>

Respect for the rule of law requires respect for systems that protect the rule of law. The 1980s mantra about nuclear disarmament is pertinent: “Trust but verify.” We might trust a *person* while nonetheless championing *systems* to document that person’s compliance with the law—that person, and everyone else who holds public office.

Systems both verify good conduct and encourage it. Erode the system, and erosion of the law follows closely behind. Some public officials govern as if no one will ever follow them in office. They seek relentlessly to dismantle or undermine systems that limit their ability to maximize discretion; they single-mindedly accrete power unto themselves during their brief term in office. They give no thought to how dismantling systemic safeguards might enable their successors in office to use these enhanced prerogatives abusively, adversely impacting the public interest. These dismantlers of systemic protections are accurately and aptly described as rule of law subversives.

So rarely does a dismantled system get put back together again that Lt. Governor Billy Nungesser made headlines in 2019 when he announced his intention to reverse legislative changes muscled through by his predecessor, Mitch Landrieu. Before Landrieu’s legislation, “the state’s No. 2 official could appoint only three members” of the Louisiana State Museum Board; the 2008 law “transformed a 21-member board . . . into a group chosen solely by Landrieu, with some input from the various groups that support the museum’s mission.” The new law had a predictably disastrous effect on stable administration of the museum: “in the 11 years the law has been on the books, the museum system has had seven different directors, sparking criticism that politicizing the job has made it difficult to find and retain qualified candidates.” Nungesser’s decision to reverse this policy “heartened members of the Louisiana Museum Foundation, who ‘erupted in applause.’” Foundation president Melissa Steiner said, “It is a rare day indeed that we hear of an elected official giving up this kind of control, and we could not be more pleased.”<sup>120</sup>

(D) Systems exist to punish bad behavior, and here, perhaps, the appropriate image is Lady Justice, blindfolded. Rule of law in this context means a willingness to administer rules and dispense outcomes without regard to personal considerations. We put the blindfold on Lady Justice because we don’t want her to see and be influenced by whoever stands before her. Some people find it hard to resist a *personalized* rule-of-law perspective, surrendering an impartial commitment to rule-of-law principles for what they may think are the most benevolent of reasons: “We know this person!”

To give this rule-of-law principle of impartiality its most appropriate and broadest application, we need to lift it out of the adjudicatory context that may be implied by the Lady Justice metaphor. Judges are *expected* to be impartial arbiters of legal disputes, but the same expectation of impartial judgment should apply to government officials who administer their duties in an executive or legislative office rather than in a courtroom. A public official’s use of discretion to fix a traffic ticket—or to “fix” the procurement process in favor of a preferred contractor—would be judged an

abuse of public office in some jurisdictions, even if neither action quite involved an exchange of money or constituted a criminal quid-pro-quo bribe.

This principle of blindness toward the parties should also guide civic sector advocates and members of the press, who might otherwise rely on their personal preferences and apply a double standard when evaluating procedures that govern people in public office. In evaluating policies for the procurement of professional services, for example, it's not in the public interest to say, "Oh, we know this person is trustworthy and will administer these new procedures fairly." In today's fractured and fractious society, we needn't travel far to find someone else who would say of the same person, "Oh, that untrustworthy excuse for a public servant! Those new procedures better be foolproof!"

People are not policies and procedures. People change; policies and procedures endure—at least until they change through democratic, transparent procedures. We might trust certain people, but we should be blind to people when evaluating procedures: "Trust but verify." Systems and procedures supply the essential, verifying half of this mantra.

Do we go too far in suggesting that this duty of blind impartiality should also govern the conduct of private parties, such as civic sector advocates and members of the press? No, because these "private" players exercise important "public" influence. The BGR speaks with authority to its members and to the civic community. A newspaper columnist enjoys a privileged platform from which to tell a credible story to readers. Where and when these influencers of public opinion choose to invest their beliefs, so too do many others. These private parties should not "play favorites" when dispensing their wisdom. Comments on a policy for procurement of professional services should be based on an assessment of the policy, not the policy maker who promulgated it. Take that favored person out of the chair and drop in your worst nightmare of a public official: Does the policy withstand this test?

(E) How should we rank this diverse spectrum of actors who intersect with ethics and the rule of law? *Disciples* occupy one end of the spectrum. *Subversives* anchor the other end; their lack of respect for the systems that sustain rule of law constitutes an existential threat. Others, who *personalize* the rule of law or who subject it to a *legalistic* frame, inhabit the middle; their actions have a compromising but not a cataclysmic effect on the integrity and strength of rule of law.

Which is more important: good people or good laws? Truthfully, we shouldn't have to choose one over the other, and in fact, the two tend to go together. Good people in public office often produce good laws and should be expected to administer these laws fairly. When the occasional bad actor enters the room, however, we need to have done all we can to impose rigor and transparency under the rule of law. Ethics rules, transparency laws, procedural safeguards—all are compatible with the administration of government by good people. But when the need arises, they also serve as indispensable checks on abuse by bad actors.<sup>121</sup>

"Rule of law" means that everyone—the government and governmental officials included—obeys the law. Good people in government, bad people in government, all people in government must be equally bound to and judged by their compliance with the rule of law. Until this principle is uniformly embraced, ethics reform work must continue.

## Notes

<sup>1</sup> A front-page article on the day of his inauguration identified as one of the new administration's priorities "placing a revision of the 40-year-old City Charter before voters." See Frank Donze, "Morial's Flashy Rehearsal to Give Way to Reality," *Times-Picayune*, May 2, 1994.

<sup>2</sup> See Marc H. Morial First State of the City Address, August 11, 1994, <http://www.gnocommunications.com/marchmorial/speeches/firststateofthecityaddress.htm>.

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<sup>3</sup> See Frank Donze, “Morial Makes Good on Charter Change,” *Times-Picayune*, October 15, 1996.

<sup>4</sup> La. Const. of 1921 Art. XIV, §22, as amended by Act 551 of 1950; La. Const. of 1974 Art. VI, §§4 and 6.

<sup>5</sup> “Every mayor since Moon Landrieu promised to update the City Charter, but Morial was the first to deliver—and he did it just a year into his first term.” Clancy DuBos, “Marc’s Marks,” *Gambit*, May 6, 2002, [https://www.theadvocate.com/gambit/new\\_orleans/news/article\\_2ed3b5e6-4ba7-5dd7-a224-fd6dce2a1581.html](https://www.theadvocate.com/gambit/new_orleans/news/article_2ed3b5e6-4ba7-5dd7-a224-fd6dce2a1581.html).

<sup>6</sup> See James H. Gillis, “Power, Politics, and the People,” *Times-Picayune*, August 7, 1975.

<sup>7</sup> The first attempt launched early in 1983 with a petition drive to secure ten thousand voter signatures calling a charter election to repeal the two-term limit and authorize unlimited terms. See James H. Gillis, “Unlimited Terms for Mayor?,” *Times-Picayune*, March 1, 1983. The second attempt in 1985 sought approval for “Just One” more term, but this third-term drive also failed to win voter approval. See Susan Finch, “Vote Set on Allowing Third Term for Mayors,” *Times-Picayune*, June 21, 1985.

<sup>8</sup> The Bureau of Governmental Research supported proposition A (reinforcing home rule authority in New Orleans) and proposition D (making improvements to the city’s operating and capital budget process), opposed proposition B (changing the election process for at-large council members), and took no position on proposition C (restructuring city government by creating the Civilian Review Board and adding contradictory language about the Sewerage and Water Board and the Public Belt Rail Road). See Dawn Ruth, “Bureau Urges Rejecting Pair of Charter Issues,” *Times-Picayune*, September 30, 1993.

<sup>9</sup> See Donze, “Morial Makes Good.”

<sup>10</sup> “The League of Women Voters of New Orleans in 1986 and the New Orleans Business Council in 1989 actively sought to secure key changes in the city’s home rule charter. Both groups urged that the charter be amended to make it possible for the Mayor and City Council to save money by eliminating or combining existing municipal agencies.” “New Orleans Incorporated: 200 Years of the City Charter” in the Louisiana Division of the New Orleans Public Library (hereinafter, NOPL Charter Archives), 148, <http://nutrias.org/~nopl/exhibits/charter/chartercontents.htm>.

<sup>11</sup> Item #3 in the League of Women Voters of New Orleans’ “Charter Change Consensus” (1986) provided that except for “the Board of Liquidation, City Debt which should be mandated in the Charter, the Mayor may create, change, or abolish offices, departments, agencies, boards and commissions, by submitting an ordinance to the Council which provides a plan of city structure.” “New Orleans Charter Revision Business Council Presentation,” dated March 1, 1989, identified “Lack of flexibility” as the principal “Need for Charter Revision (slide #3) and recommended “Provide flexibility in organizing functions of city government” as one of the “Objectives of Charter Revision” (slide #4). See materials for the League of Women Voters of New Orleans and the Business Council in NOPL Charter Archives (<http://nutrias.org/~nopl/exhibits/charter/businesscouncil.htm>).

<sup>12</sup> See §4-102 of the 1954 Home Rule Charter.

<sup>13</sup> See article IX, chapter 2 (§§ 9-201 through 203) of the 1954 Home Rule Charter.

<sup>14</sup> See listing in the frontispiece of the Home Rule Charter for members of the 1994 Charter Revision Committee: David A. Marcello, chair; Charlotte G. Bordenave, vice-chair; Philip M. Baptiste; Cora Basile; Jane Booth; Bill Bowers; Ellenese Brooks-Simms; Wilbert E. Brown Sr.; Gilbert Buras; Dana Combes; Joseph DeRose; Henry A. Dillon III; C. B. Forgotston Jr.; Ronald J. French; Antoine Garibaldi; Moses Gordon II; Harold Green; Gary Groesch; Bobby M. Harges; Gladstone Jones III; Henry P. Julien Jr.; Diana Lewis; Lee Madere; Carla Major; Ronald Mason Jr.; Louis F. Miron; Geneva Morris; Joel Myers; T. F. Rinard; Dolores O. Robertson; Elsie Rose; Marty Rowland; Deborah Rhea Slattery; Fritz Wagner; Christian Washington; Charles D. Williams; Betty Wisdom; Warren G. Woodfork Sr. ([https://library.municode.com/la/new\\_orleans/codes/code\\_of\\_ordinances?nodeId=HORUCHNEOR](https://library.municode.com/la/new_orleans/codes/code_of_ordinances?nodeId=HORUCHNEOR)).

<sup>15</sup> See listing in the frontispiece of the Home Rule Charter for members of the 1951 Charter Revision Committee: Harry McCall, chairman; Lester J. Lautenschlaeger, vice-chairman; Moise W. Dennery, secretary; Denis A. Barry, treasurer; Robert A. Ainsworth Jr.; Clifton L. Ganus; A. P. Harvey; Eugene A. Nabors; Ralph P. Nolan; Mrs. Martha G. Robinson; Robert W. Starnes; and Edgar B. Stern Sr. ([https://library.municode.com/la/new\\_orleans/codes/code\\_of\\_ordinances?nodeId=HORUCHNEOR](https://library.municode.com/la/new_orleans/codes/code_of_ordinances?nodeId=HORUCHNEOR)).

<sup>16</sup> See Donze, “Morial Makes Good.”

<sup>17</sup> La. R.S. 42:11, et seq.

<sup>18</sup> La. R.S. 44:1, et seq.

<sup>19</sup> See Mayor’s Charter Revision Advisory Committee, “Committee Recommendations,” December 15, 1994 (hereinafter, “Committee Recommendations”), posted at The Public Law Center’s website: <https://law.tulane.edu/the-public-law-center>.

<sup>20</sup> “Orleans Charter,” *Times-Picayune*, November 19, 1995.

<sup>21</sup> See “Notice of Public Hearing” (published December 9, 12, 13, and 14) in the *Times-Picayune*, December 9, 1994.

<sup>22</sup> See, for example, Alfred Charles, “Panel Discusses Host of Changes to City Charter,” *Times-Picayune*, November 17, 1994.

<sup>23</sup> The following comprised the committee’s Scope of Responsibilities: §§4-1601, et seq. - Utilities; §§5-1001, et seq. - N.O. Alcoholic Beverage Control Board; §§3-124, et seq. - Investigations; §3-125 - Removal of Unclassified Employees; §§ 9-309 & 309.1 - Prohibited Activities; Just One Casino; Franchises & Permits; Ethics; Environment; Office of Municipal Investigations, Office of Inspector General, Human Relations Commission.

<sup>24</sup> See Alliance for Affordable Energy website: <https://www.all4energy.org/>.

<sup>25</sup> “Committee Recommendations, sections 9-401 through 9-406 at 155–157. Section 9-406 reads: “The Council shall make adequate annual appropriations to the Office of Inspector General to enable it to implement this Chapter efficiently and effectively. The amount so appropriated shall not be subject to veto by the Mayor.”

<sup>26</sup> The proposed new section 9-402 in *ibid.* authorized the OIG “to investigate *to the fullest extent allowed by law* any allegations of misconduct and mismanagement involving *any city officer or employee, including the Mayor and the City Council and their respective appointees, all boards and commissions* established, recognized or continued under this Charter, *all other municipal elected officials and their appointees, and all officers and employees of any person or entity receiving or expending City funds*” (emphasis added).

<sup>27</sup> “Such investigations may be initiated upon reasonable suspicion by the Inspector General or in response to an inquiry or complaint by a city officer or employee or a member of the general public, including confidential inquiries or complaints.” *Ibid.*

<sup>28</sup> See sections 9-401 through 9-406 at 160–162 in Mayor’s Charter Revision Advisory Committee, “Mayor’s Recommendations,” March 15, 1995 (hereinafter, “Mayor’s Recommendations”). A copy of “Mayor’s Recommendations” is posted at The Public Law Center’s website: <https://law.tulane.edu/the-public-law-center>.

<sup>29</sup> See section 9-401 in the Home Rule Charter, which was adopted without change from the version at 144 in “Proposed Amendments to the Charter,” August 18, 1995 (hereinafter, “Proposed Amendments”). A copy of “Proposed Amendments” posted at The Public Law Center’s website: <https://law.tulane.edu/the-public-law-center>.

<sup>30</sup> Bruce Egger, “Inspector General Plan Passed,” *Times-Picayune*, November 3, 2006.

<sup>31</sup> “Voters overwhelmingly approved an amendment to the City Charter to make the recently established inspector general’s office permanent and guarantee it a sizable budget.” “Election Returns—Orleans,” *Times-Picayune*, October 5, 2008.

<sup>32</sup> See section 6-307(5) of the 1954 Home Rule Charter of the City of New Orleans: “Except in the purchase of *unique or noncompetitive articles*, competitive bids shall be secured before any purchase, by contract or otherwise, is made or before any contract is awarded for construction, alteration, repair or maintenance or for the rendering of any services to the City, *other than professional services*, and the purchase shall be made from or the contract shall be awarded to the lowest responsible bidder after advertisement prescribed by ordinance or by applicable State law” (emphasis added).

<sup>33</sup> “Committee Recommendations,” section 6-308(5) at 128. The committee renumbered section 6-307 (“Contracts”) as section 6-308, so that a later addition to the 1954 charter (“Section 6-306.1. New Orleans Municipal Trust Fund”) could be renumbered in sequence in the revised charter. The newly renumbered section 6-308(5) mostly retained the earlier language of section 6-307(5) (with one minor modification not relevant for our purposes) but lettered the prior language subparagraph (a) and added the competitive selection requirement in a new subparagraph (b).

<sup>34</sup> “Mayor’s Recommendations.”

<sup>35</sup> As finally submitted to the voters, the relevant portions of section 6-308(5) in “Proposed Amendments” read as follows:

(b) Contracts for professional services administered by the offices, departments, boards and other agencies of the Executive Branch shall be awarded on the basis of a competitive selection process which shall be established by executive order of the Mayor.

(c) Contracts for professional services administered by the Council, pursuant to its Charter functions, legislative authority and responsibilities, and regulatory authority and responsibilities, shall be awarded on the basis of a competitive selection process which shall be established by rule of the Council. Such contracts shall be signed by the Council president upon authorization by Motion adopted by a majority of the entire membership of the Council, except that pursuant to Section 4-403(2), contracts to employ special counsel shall require a two-thirds vote of the Council’s entire membership. The Council rule may except contracts executed solely to assist the office of an individual councilmember.

(d) Each such order or rule and any amendment thereto shall be published once in the official journal and shall be the subject of a public hearing at least seven days prior to its effective date. The Executive Branch or Council competitive selection processes may include a threshold amount below which the competitive selection process shall not be required. The amount of the threshold shall be established by ordinance.



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- <sup>36</sup> See Frank Donze, “Charter Revision Critics Question Timing, Merger,” *Times-Picayune*, April 6, 1995; and Christopher Cooper, “New Orleans Charter Vote Is Delayed for Deeper Look,” *Times-Picayune*, April 11, 1995.
- <sup>37</sup> See Ed Anderson, “N.O. Charter Changes Get Panel’s Nod,” *Times-Picayune*, April 6, 1995, reporting on Municipal, Parochial, and Cultural Affairs Committee approval for HB 1021 (changing the appointment of Vieux Carre Commission members) and HB 1097 (broadening the nomination process and limiting the lifetime terms of members on the Board of Liquidation, City Debt).
- <sup>38</sup> See Bruce Egger, “Morial Pulls Charter Ideas,” *Times-Picayune*, July 21, 1995.
- <sup>39</sup> See Alfred Charles, “Morial Holds Fast on Inspector Post Issue,” *Times-Picayune*, July 28, 1995.
- <sup>40</sup> See Alfred Charles, “Charter Revision Faces Hurdles,” in *Times-Picayune*, August 17, 1995, B-1.
- <sup>41</sup> See Alfred Charles, “Morial Gets Most Wishes for Charter” *Times-Picayune*, August 18, 1995.
- <sup>42</sup> Ibid.
- <sup>43</sup> Ibid.
- <sup>44</sup> See Alfred Charles, “N.O. Charter Revisions on Ballot,” *Times-Picayune*, November 15, 1995.
- <sup>45</sup> See David A. Marcello, “Systemic Ethics Reform in Katrina’s Aftermath,” in *Resilience and Opportunity: Lessons from the U.S. Gulf Coast after Katrina and Rita*, ed. Amy Liu, Roland V. Anglin, Richard M. Mizelle Jr., and Allison Plyer, 82, 91–92 (The Brookings Institution: Washington, D.C., 2011).
- <sup>46</sup> Louisiana law provided for a proposition election on July 15, 1995. See Louisiana Secretary of State, Elections Division, “Schedule of Regular Elections for 1995–1999,” <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ElectionsCalendar1995-99.pdf>.
- <sup>47</sup> See Kevin Sack, “New Orleans Casino Project Is Halted in a Bankruptcy Filing,” *New York Times*, November 23, 1995, <https://www.nytimes.com/1995/11/23/us/new-orleans-casino-project-is-halted-in-a-bankruptcy-filing.html>. See also Tyler Bridges and Mike Hughlett, “Casino Shuts Doors, Files for Bankruptcy,” *Times-Picayune*, November 22, 1995.
- <sup>48</sup> In his Second State of the City Address delivered on June 6, 1995, Mayor Morial praised Harrah’s for its employment record: “Let me give credit where it’s due. Harrah’s has hired 3,000 workers to date and will hire 2,000 more next year.” Those hopes were dashed by Harrah’s pre-Thanksgiving dismissal of thousands of workers, <http://www.gnocommunications.com/marchmorial/speeches/secondstateofthecityaddress.htm>.
- <sup>49</sup> See Alfred Charles, “Hiring Utility Consultants May Violate New Charter,” *Times-Picayune*, January 13, 1996.
- <sup>50</sup> See Home Rule Charter sec. 6-308(5)(c).
- <sup>51</sup> *Alliance for Affordable Energy and Gary L. Groesch v. Council of the City of New Orleans, et al.*, 677 So.2d 424 (La. 1996).
- <sup>52</sup> Ibid. at 426.
- <sup>53</sup> Michael Isaac Stein, “Political Connections, Contributions Helped Utility Consultants Keep Lucrative Contracts for Decades, Former Council Members Say,” *The Lens*, March 28, 2019, <https://thelensnola.org/2019/03/28/political-connections-contributions-helped-utility-consultants-keep-lucrative-contracts-for-decades-former-council-members-say/>.
- <sup>54</sup> See Alfred Charles, “Council Contract Selection Process Criticized,” *Times-Picayune*, February 15, 1996.
- <sup>55</sup> See “Council Politics as Usual,” editorial, *Times-Picayune*, February 19, 1996.
- <sup>56</sup> See New Orleans City Council, “Rules and Regulations of the Council of the City of New Orleans,” as amended through May 9, 2019, <https://council.nola.gov/rules/#rule42>.
- <sup>57</sup> See “Implementation of Amendments to New Orleans City Charter,” *BGR Report*, September 1996, in NOPL Charter Archives, 50, <http://nutrias.org/~nopl/exhibits/charter/bgr1996.htm>.
- <sup>58</sup> For a detailed explanation of procurement procedures, see city of New Orleans, Chief Administrative Office, Policy Memorandum no. 8 (R), September 24, 2014, [https://www.nola.gov/chief-administrative-office/policies/policies/no-8-\(r\)-professional-services-contracts/no-8-\(r\)-professional-services-contracts-attachmen/](https://www.nola.gov/chief-administrative-office/policies/policies/no-8-(r)-professional-services-contracts/no-8-(r)-professional-services-contracts-attachmen/).
- <sup>59</sup> Ibid. Subsection 8(c) named as members of the selection review rating groups the chief administrative officer (CAO); deputy chief administrative officer; departmental director, or agency head requesting the contract; and city attorney.
- <sup>60</sup> Ibid. Subsection 8(d) named as members of the grants provider selection review rating groups the executive assistant to the mayor; deputy chief administrative officer; departmental director, mayor’s office division head, or other agency head requesting the professional services contract; and city attorney.
- <sup>61</sup> Ibid.
- <sup>62</sup> See Bureau of Governmental Research, “Contracting with Confidence: Professional Services Contracting Reform in New Orleans,” March 2010 (hereinafter, BGR Contracting Report), 3, [https://www.bgr.org/wp-content/uploads/2017/07/Contracting\\_w\\_Confidence.pdf](https://www.bgr.org/wp-content/uploads/2017/07/Contracting_w_Confidence.pdf).
- <sup>63</sup> See David Marcello, “A Way to Depoliticize Contracts,” *Times-Picayune*, November 29, 2013, [https://www.nola.com/opinions/article\\_411aba7b-6983-5f34-ba4e-c61956cd67e0.html](https://www.nola.com/opinions/article_411aba7b-6983-5f34-ba4e-c61956cd67e0.html).

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<sup>64</sup> See David Marcello, “Seeking Real Reform in City Procurement,” *Times-Picayune*, February 28, 2009: “In his Dec. 11, 2001, announcement speech, candidate Nagin promised to present a ballot proposition within the first 100 days of his administration, eliminating separate mayor-council selection procedures in favor of a single process fixed by ordinance.”

<sup>65</sup> “In January 2002, candidate Nagin signed a written pledge to issue an executive order creating selection committees within 90 days after taking office. He again promised a ballot proposition within his first hundred days to unite mayor-council selection procedures.” *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> See “Contracts Should Be Done in the Open: A Guest Column by David Marcello,” *Times-Picayune*, May 15, 2011, [https://www.nola.com/opinions/article\\_ca5b1b03-d159-58d2-bcd4-749f304203e5.html](https://www.nola.com/opinions/article_ca5b1b03-d159-58d2-bcd4-749f304203e5.html).

<sup>68</sup> See Frank Donze, “Mayor’s Happy with His First 100 Days—City Hall Investigation Continues, Nagin Says,” *Times-Picayune*, August 14, 2002.

<sup>69</sup> Executive Order CRN 02-01 (June 2002), section 4, “Definition.”

<sup>70</sup> *Ibid.* See *Council of City of New Orleans v. Morial*, 390 So.2d 1361 (La. App. 1980).

<sup>71</sup> Two new terms, “telecommunications” and “data processing,” may have laid the groundwork for corrupt contracting practices that led to indictments of Nagin administration personnel. Executive Order CRN 02-01 (June 2002), section 4, “Definition.”

<sup>72</sup> Executive Order CRN 04-02 (June 23, 2004), section 14.

<sup>73</sup> See David Hammer, “Public, Private Lines Blur at City Hall,” *Times-Picayune*, April 5, 2009.

<sup>74</sup> See BGR Contracting Report, note 11 ([https://www.bgr.org/wp-content/uploads/2017/07/Contracting\\_w\\_Confidence.pdf](https://www.bgr.org/wp-content/uploads/2017/07/Contracting_w_Confidence.pdf)).

<sup>75</sup> See “Definition.”

<sup>76</sup> The last sentence of subsection 8(I) declares: “the completed evaluation forms shall be a public record and, as such, shall be made available for review and/or copying upon request,” and section 9 (C) similarly provides: “Each completed evaluation form shall bear the signature of the reviewer and it shall be maintained by the Chief Administrative Officer for review as a public record.” *Ibid.* These two concessions to transparency and the Louisiana Public Records Act must have been an unintended oversight, because later versions of the Nagin procurement procedure eliminated any requirement that individual evaluation forms be released as a public record.

<sup>77</sup> La. R.S. 42.11, et seq.

<sup>78</sup> See Frank Donze, “Nagin Vetoes Bill on Hiring of Firms,” *Times-Picayune*, February 17, 2009.

<sup>79</sup> See David Hammer, “Greg Meffert, Former City Tech Chief, Pleads Guilty in Kickback Scheme,” *Times-Picayune*, November 2, 2010, [https://www.nola.com/news/politics/article\\_d1589801-6a53-5f12-a142-7ceaeabb975.html](https://www.nola.com/news/politics/article_d1589801-6a53-5f12-a142-7ceaeabb975.html).

<sup>80</sup> See Ginny LaRoe, “Ray Nagin, Former New Orleans Mayor, Convicted of Federal Corruption Charges,” *Times-Picayune*, February 12, 2014, [https://www.nola.com/news/crime\\_police/article\\_cfc47a26-db20-5bcc-8f8c-4302e4eb1692.html](https://www.nola.com/news/crime_police/article_cfc47a26-db20-5bcc-8f8c-4302e4eb1692.html).

<sup>81</sup> See Andrew Vanacore, “City Contract Process Improved,” *New Orleans Advocate*, February 23, 2014.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> See David Marcello, “N.O. Contract Reform Has Long History,” *Advocate*, March 5, 2014.

<sup>86</sup> See Vanacore, “City Contract Process.”

<sup>87</sup> Marcello, “N.O. Contract Reform.” See similar reforms called for in BGR Contracting Report, 6: “an objective proposal evaluation system that includes the use of detailed criteria, weights and grading”; “all documents should be considered public records and made readily available for public inspection”; and “maintain written evaluations.”

<sup>88</sup> Marcello, “N.O. Contract Reform.”

<sup>89</sup> *Ibid.*

<sup>90</sup> La. R.S. 42:17(A)(1).

<sup>91</sup> *Ibid.*

<sup>92</sup> See HB 449 in the 2011 Regular Session (which later became Act 188): <http://www.legis.la.gov/Legis/BillInfo.aspx?s=11RS&b=HB449&sbi=y>.

<sup>93</sup> The amendment inserted into La. R.S. 42:17(A)(1) the following language: “except as provided in R.S. 39:1593(C)(2)(c).” The cited provision no longer exists.

<sup>94</sup> See David Marcello, “Contracts Should Be Done in the Open,” *nola.com*, May 15, 2011, [https://www.nola.com/news/crime\\_police/article\\_cfc47a26-db20-5bcc-8f8c-4302e4eb1692.html](https://www.nola.com/news/crime_police/article_cfc47a26-db20-5bcc-8f8c-4302e4eb1692.html).

<sup>95</sup> M.C.S., Ord. No. 17,612, enacting City Code section 2-719.

<sup>96</sup> In an article published just days after he left office, Mayor Morial shed some light on what may have motivated his failure to launch the ERB and OIG: “He says the need for an Ethics Commission all but evaporated when the state Ethics Commission was strengthened in 1996 by getting authority to launch its own investigations instead of having to wait for a formal complaint. Moreover, he says, it will cost millions to establish and staff an office of Inspector General and an Ethics Commission—money the city does not have” (DuBos, “Marc’s Marks”). The lack of money is always a compelling reason—or an excuse—for not doing something in city government. But the first of these two reasons overlooked dual state-local jurisdiction to enforce the separate state and city ethics codes. See David A. Marcello, “Ethics Reform in New Orleans: Progress—and Problems Ten Years Post-Katrina,” *Loyola Law Review* 63 (2016): 435, 450–452.

<sup>97</sup> See James Varney, “Batt Battles 7 for Council Seat,” *Times-Picayune*, March 30, 2006): “Midura calls for the creation of a local inspector general and board of ethics. The two watchdogs would improve the stewardship of the public purse and help detach politics from planning decisions, she says.”

<sup>98</sup> M.C.S., Ord. No. 22,444 (November 2, 2006).

<sup>99</sup> M.C.S., Ord. No. 22,553 (March 1, 2007) and M.C.S., Ord. No. 22,888 (November 11, 2007). The 1994 “Committee Recommendations” provided a useful template for drafting these 2007 ordinances, which revived many of the powerful provisions that were extinguished by the city council in its “Proposed Amendments.”

<sup>100</sup> For a description of Citizens for 1 Greater New Orleans, visit their website at <http://www.citizensfor1.com>.

<sup>101</sup> For a description of The Public Law Center, visit their website at <https://law.tulane.edu/the-public-law-center>.

<sup>102</sup> HB 80 became Act 18 of the 1st Ex. Sess. 2008, now codified as La. R.S. 33:9611, *et seq.*

<sup>103</sup> La. R.S. 33:9612.

<sup>104</sup> La. R.S. 33:9613.

<sup>105</sup> La. R.S. 33:9614.

<sup>106</sup> See, e.g., Acts 2010, No. 98 (expanding coverage beyond New Orleans to include parishes of a certain size); Acts 2011, 1st Ex. Sess., No. 20 (explicitly encompassing the city of New Orleans and the parishes of East Baton Rouge Parish and Jefferson); Acts 2012, No. 838 (detailing procedures for the issuance and enforcement of a subpoena or subpoena duces tecum).

<sup>107</sup> M.C.S., Ord. No. 23,146 (July 18, 2008).

<sup>108</sup> See Jim Mustian and Matt Sledge, “New Orleans Inspector General Moves to Fire Independent Police Monitor as They Wage Political Warfare,” *New Orleans Advocate*, September 28, 2015, [https://www.nola.com/news/politics/article\\_774723dc-0481-5837-888e-1e6675e42724.html](https://www.nola.com/news/politics/article_774723dc-0481-5837-888e-1e6675e42724.html).

<sup>109</sup> See Brendan McCarthy, “Independent Police Monitor Named in New Orleans,” *Times-Picayune*, August 11, 2009, [https://www.nola.com/news/article\\_cdeb7170-4e9f-57de-8a06-f476eacefb74.html](https://www.nola.com/news/article_cdeb7170-4e9f-57de-8a06-f476eacefb74.html).

<sup>110</sup> See “A Year of Crisis: A Timeline of Upheaval at New Orleans’ Ethics Review Board and Office of Inspector General,” Louisiana Justice Institute (blog), October 29, 2009, <http://louisianajusticeinstitute.blogspot.com/2009/10/year-of-crisis-timeline-of-upheaval-at.html>.

<sup>111</sup> See M.C.S., Ord. No. 23,886 (Feb. 25, 2010).

<sup>112</sup> See Brendan McCarthy, “New Orleans Independent Police Monitor Is a California Lawyer,” *Times-Picayune*, April 24, 2010.

<sup>113</sup> See Matt Sledge, “Relationship between New Orleans Watchdog Agencies Fragile, ‘Divorce’ of Departments Would Need Voter Approval,” *Advocate*, May 9, 2015, [https://www.nola.com/news/politics/article\\_a90e957b-7202-591f-a790-7e13f6f693a2.html](https://www.nola.com/news/politics/article_a90e957b-7202-591f-a790-7e13f6f693a2.html).

<sup>114</sup> The referendum text identified three purposes: “(1) to apportion funding among the three local ethics entities; (2) to establish each such local ethics entity as financially and operationally independent; and (3) to provide for annual independent external evaluation procedures for each such entity.” *Ibid.*

<sup>115</sup> M.C.S., Ord. No. 27,308 (March 9, 2017).

<sup>116</sup> M.C.S., Ord. No. 27,746 (August 19, 2018).

<sup>117</sup> I owe my acquaintance with this terminology to Gore Vidal and the second volume of his memoirs, *Point to Point Navigation: A Memoir* (New York: Doubleday/Random House, 2006).

<sup>118</sup> “Discipline” comes from *discipulus*, the Latin word for “pupil,” which also provided the source of the word “disciple.” See “The Root and Meanings of *Discipline*,” in Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/discipline>, accessed February 29, 2020.

<sup>119</sup> Marcello, “Systemic Ethics Reform,” 82–83.

<sup>120</sup> Jessica Williams, “Lt. Gov. Billy Nungesser Supports Loosening His Authority over State Museum,” *nola.com*, July 2, 2019, [https://www.nola.com/news/article\\_73031636-9c1a-11e9-b8b3-dfaf74bd5163.html](https://www.nola.com/news/article_73031636-9c1a-11e9-b8b3-dfaf74bd5163.html).

<sup>121</sup> I address the implications of “Municipal Ethics Reform” in an international context in *The International Legislative Drafting Handbook: A 25th Anniversary Celebration* (Durham, NC: Carolina Academic Press, forthcoming 2020).