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All articles submitted for consideration will undergo a review process. When the Editorial Board has commented, authors will be notified of acceptance, rejection or need for revision of manuscripts. The review procedure will require a minimum of four to six weeks. Two issues are printed annually – one in the spring and the other in the fall.

STYLE AND FORMAT

Specialized jargon should be avoided. Readers will skip an article they do not understand.

Follow a generally accepted style manual such as the University of Chicago Press *Manual of Style*. Articles should be word processed in WordPerfect 8.0 or Word 2000, and double-spaced with one-inch margins.

Number all references as endnotes in the order in which they are cited within the text. Accuracy and adequacy of the references are the responsibility of the author.

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The South Carolina Legislature's Power Over Itself - Legislative Rules v. Statutory Laws

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I. Introduction

During the 2006 legislative session a conflict arose between the South Carolina media and the South Carolina House of Representatives concerning legislative caucuses (Democratic and Republican Caucuses) and the South Carolina Freedom of Information Act, SC Code Section 30-4-10, et seq. ("FOIA"). The media claimed legislative caucus meetings were required to be open to the public at all times because: (1) the House of Representatives provided office suites and equipment rent-free to legislative caucuses, and (2) a meeting of sixty-three members of the House Republican Caucus constituted a majority 124 member South Carolina House of Representatives. A long public debate ensued, and two members of the South Carolina House of Representatives asked the South Carolina Attorney General for an opinion as to whether FOIA required legislative caucus meetings to be open to the public.

On May 19, 2006, the South Carolina Attorney General issued his opinion and stated that legislative caucuses in the South Carolina House of Representatives were probably subject to FOIA. But, the Attorney General also stated that the House of Representatives, pursuant to Article III, Section 12, of the South Carolina constitution, could adopt a House rule exempting legislative

caucuses from FOIA. The Attorney General wrote:

*We point out that courts in other jurisdictions have concluded that a legislative rule exempting caucuses from FOIA is within the power of either branch of the Legislature pursuant to its authority to make rules under the Constitution. See also, Culbertson v. Blatt, 194 S.C. 104, 9 S.E.2d 218, 220 (1940) ("... it is not within the power of this Court to impinge upon the exercise by the Legislature of a power vested in that body ..."); Op. S.C. Atty. Gen., November 15, 1976 ("The South Carolina Courts have recognized that the power of the House of Representatives to determine the rules of procedure is absolute and beyond challenge of any other body or tribunal if the rule adopted does not ignore constitutional restraints or violate fundamental rights, and there is a reasonable relation between mode or method of procedure established by rule and result which is sought to be obtained.") Citing, State ex rel. Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936). Based upon these authorities, **if such a rule***

exempting caucuses from FOIA were to be adopted by the House, it is probable that our courts would defer to such rule pursuant to Art. III, Section 12 of the South Carolina Constitution (“Each house shall ... determine its rules of procedure...”). (emphasis added)

In response to the Attorney General’s opinion, and as a result of continued pressure from the South Carolina media to open all legislative caucus meetings to the public, on January 17, 2007, the South Carolina House of Representatives adopted an amendment to House Rule 4.5.¹ The amendment expressly exempts legislative caucuses from the Freedom of Information Act—thereby clearly allowing caucus meetings to be closed to the public. Subsequently the South Carolina media has repeatedly denounced the amended rule and has threatened, both privately and publicly, to file a lawsuit challenging the rule.

This conflict between the South Carolina media and legislative caucuses over FOIA exemplifies a broader issue that has affected legislatures throughout the United States. In recent years, the South Carolina General Assembly and other state legislatures have enacted statutes affecting or mandating legislative procedures and operations. The practice of using statutes to establish legislative procedures raises issues—most often in the application of “Sunshine Laws”, “Open Meetings Acts”, or, as in the case of South Carolina, the “Freedom of Information Act”. Ultimately, regardless of the subject in conflict, the pertinent questions are whether one legislature may statutorily bind a future legislature and

does the legislature’s constitutional authority to establish its own rules of procedure supercede conflicting statutes?

II. South Carolina’s History of Legislative Rule-Making

The legislative power to make rules of procedure is firmly rooted in parliamentary law, United States constitutional law, and South Carolina’s constitutional law. Since 1790 the South Carolina constitution has included language allowing the House and Senate to determine their rules of procedure. The current constitution states:

Each house shall choose its own officers, determine its rules of procedure, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause. S.C. Const. art. III, section 12. (emphasis added)

State ex rel. Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936) is South Carolina’s preeminent case concerning the legislature’s authority to establish rules of procedure.² In Coleman the South Carolina Supreme Court was asked whether the constitution allowed the House of Representatives to reconsider an earlier vote sustaining a gubernatorial veto. The Court held that House Rules, as authorized by Article III, Section 12, of the South Carolina constitution, governed the question and stated:

The Constitution empowers each House to determine its rules and proceedings. Neither

House may by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of procedure established by the rules and the result which is sought to be obtained, but within these limitations all matters of method are open to the determination of the House, and it is not impeachment of the rule to say that some other way would be better, more accurate, or even more just. The power to make rules is not one when once exercised is exhausted. It is a continuous power, always subject to be exercised by the House, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal. Coleman, at 630, citing United States v. Ballin, 144 U.S. 1, 5, 12 S. Ct. 507, 36 L. Ed. 321 (1892).

Since the Coleman decision no other South Carolina cases have interpreted the legislature's rule-making authority under South Carolina's Article III, Section 12.

III. Statutory Requirements v. Legislative Rules

It is a fairly common practice among many state legislatures, including the South Carolina General Assembly, to pass statutes concerning legislative procedures.³ Despite this practice, South Carolina has never had a judicial decision specifically determining which authority controls when a legislative rule conflicts with a statute. However, one case and

several Attorney General opinions have touched upon the issue and provide guidance as to how South Carolina Supreme Court might decide the conflict. See, Kalber v. Redfearn, 215 S.C. 224, 54 S.E. 2d 791, 797 (1949) (stating that Attorney General opinions are persuasive authority).

In State v. Brown, 33 S.C. 151, 11 S.E. 641 (1890), a criminal defendant challenged the constitutionality of the statute under which he was charged. The statute had received one of its constitutionally required three readings on the day the General Assembly adjourned. Brown argued that House rules prohibited the reading on the day of adjournment—therefore the act was unconstitutional. The South Carolina Supreme Court disagreed with Brown and stated:

We know of no provision in the constitution which forbids the reading of a bill on the last day of the session . . . both houses have rules of their own . . . forbidding the reading of bills on the last day; but these rules are under the control of the respective houses . . . and may be . . . suspended whenever, in the judgment of the body to which they apply . . . We do not think, therefore, that [the objection] to the constitutionality of the act can be sustained . . . Id. at 644.

In 1963 the South Carolina Senate refused to comply with a statute requiring a Senate committee to sit jointly with a House committee to consider an appropriations bill. The Attorney General was asked whether the Senate's violation

of the statute prevented the House from considering the legislation. The Attorney General stated the Senate's violation of the statute did not affect the House's constitutional authority to consider the legislation and wrote, ". . .the legislature by statute or joint resolution cannot bind or restrict itself or its successors as to the procedure to be followed in the passage of legislation." 1963 S.C. Op. Atty. Gen. 1471. In support of this opinion the Attorney General cited the case of Tayloe v. Davis, 212 Ala. 282, 102 So. 433, 40 A.L.R. 1052 (1924), where the Alabama court ruled a statute requiring a two-thirds vote of the legislature to amend a bill was unconstitutional because it "cut down the power" of both houses of the legislature. 1963 S.C. Op. Atty. Gen. 1471.

In 1979 the South Carolina Attorney General was asked whether a proposed statute set time limits for consideration of the Annual General Appropriations bill. The Attorney General opined that the statute "if enacted, would be binding until repealed or amended, **or until either house amended its rules to override the procedures set out in [the bill].**" 1979 WL 42831 (S.C.A.G.) (emphasis added). Subsequently, in 1985, the Attorney General was specifically asked, "Can one Legislature bind another concerning its procedure?" The Attorney General replied:

[I]t is the opinion of this Office that because the General Assembly is empowered, within constitutional limitations, to adopt any act it chooses and further because the power to determine procedural rules may be exercised by each house of

the Legislature on a continual basis, one Legislature may not necessarily bind a succeeding Legislature concerning its procedure. . . . 1985 S.C. Op. Atty. Gen. 85-61 (emphasis added).⁴

IV. Legislative Rules and the Freedom of Information Act

As stated earlier, on May 19, 2006, the South Carolina Attorney General opined that the legislature may adopt a rule exempting legislative caucuses from FOIA. Case law from other states with constitutional provisions strikingly similar to South Carolina's Article III, Section 12, have consistently ruled that legislative rules supercede conflicting statutory "Sunshine Laws" or "Open Meetings Laws" (similar to South Carolina's Freedom of Information Act).

Most recently in Hughes v. Speaker of the New Hampshire House of Representatives, 152 N.H. 276, 876 A.2d 736 (2005), the New Hampshire Supreme Court addressed a situation in which a member of the New Hampshire House of Representatives brought suit claiming that House and Senate conferees had met privately in violation of the state's "Open Meetings Act." The applicable portions of the Open Meetings Act stated "[a]ll public proceedings shall be open to the public, and all persons shall be permitted to attend any meetings of those bodies or agencies." RSA 91-A:2, II (Supp. 2004). The New Hampshire court ruled the Open Meetings Act did not apply to the legislature and stated that "[s]tatutes relating to the internal proceedings of the legislature are not binding upon the Houses **Either branch, under its exclusive rule-making constitutional**

prerogatives is free to disregard or supercede such statutes by unicameral action.” *Id.* at 285 (emphasis added).

In Mayhew v. Wilder, 46 S.W.3d 760 (Tenn. Ct. App. 2001), several newspapers brought suit against state officials claiming that legislation was void because it resulted from secret meetings in violation of the state’s “Sunshine Act”. The applicable provision of the Tennessee statute stated “[a]ll meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.” Tenn. Code Ann. Section 8-44-102(a). The Tennessee court ruled the statute did not apply to the legislature and stated:

We are of the opinion that even if the Legislature intended to bind itself when it passed the Sunshine Law, the act would not bind a subsequent General Assembly. Article II, Section 12, of our Constitution provides as follows: ‘Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member, but not a second time for the same offence’. . . . one legislature cannot restrict the power of its successor, at least on general questions of policy . . . Each successive General Assembly is a law unto itself in this regard. It is constitutional, and not statutory prohibitions which bind the legislature. The creator is greater than its creations . . . Binding the Legislature with procedural

rules passed by another General Assembly would violate [the] grant of the right to the legislature to determine its own rules . . .” Id. at 770. (emphasis added); *See also*, Coggin v. Davey, 233 Ga. 407, 211 S.E. 2d 708 (1975) (denying radio station’s claim that legislature’s private committee meetings violated “Sunshine Laws” and stating legislative rule conflicting with statutory Sunshine Laws was reasonable and valid exercise of legislature’s constitutional authority); *e.g.*, Aboud v. League of Women Voters of Alaska, 743 P.2d 333 (Alaska 1987) and Moffit v. Willis, 459 So.2d 1018 (Fla. 1984).

V. Nonjusticiable Political Question

It is important to note that cases discussing the legislature’s constitutional rule-making authority often hold that the judicial branch should not even address the issue of a legislative rule versus a statute because it is a “nonjusticiable political question”. In South Carolina Public Interest Foundation v. Judicial Merit Selection Commission, Op. 26164 (Filed June 8, 2006), the South Carolina Supreme Court stated:

The nonjusticiability of a political question is primarily a function of the separation of powers.... The fundamental character of a nonjusticiable ‘political question’ is that its adjudication would place a court in conflict with a co-equal branch of government

[T]his Court has declined to opine on issues where the Constitution delegates authority to the General Assembly.

Absent a showing that the rule violated a constitutional requirement or a fundamental right, the separation of powers doctrine requires that a court refrain from ruling on a question challenging a legislative procedure or rule of procedure. See, Hughes, *supra*, (holding that state legislature's closing of meetings from the public in alleged violation of the "Right-to-Know" law was a nonjusticiable political question); Mayhew, *supra* (holding that closing of legislative meetings in alleged violation of "Sunshine" law was a nonjusticiable political question); Des Moines Register and Tribune, *supra* (holding that state Senate's refusal to release phone records requested by media pursuant to the open records act was a nonjusticiable political question).

The South Carolina House of Representatives adoption of a House rule exempting legislative caucuses from FOIA is an exercise of legislature's constitutional rule-making authority. It does not violate any constitutional or fundamental rights, and, therefore, the South Carolina Supreme Court could properly refuse to address a challenge to the rule because it is a nonjusticiable political question.

VI. Conclusion

The ongoing constitutional power of a legislative body to create its own rules of procedure can collide head-on with its power to create statutory law.

This conflict can arise in a variety of situations, but "Sunshine Laws", "Open Meeting Acts", and "Freedom of Information Acts" have often been the topic whereby the conflict comes before the courts. However, even though a legislature may sometimes choose to follow statutory rules of procedure, when a statute conflicts with a House or Senate rule of procedure, the rule clearly supercedes the statute. See, Board of Trustees v. Attorney General, 132 S.W. 3d 770 (2004) and Des Moines Register and Tribune Company v. Dwyer, 542 N.W. 2d 491 (1996) (stating the legislature has complete control and discretion to observe, enforce, waive, suspend, or disregard its own rules of procedure, including procedures codified in statute, and violations of such rules are not grounds for voiding legislation through judicial challenge), Mayhew v. Wilder, 46 S.W.3d 760 (Tenn. Ct. App. 2001) (stating that a legislature cannot bind a subsequent legislature by statute), Peoples Advocate Inc. v. California Legislature, 181 Cal. App. 3d 316, 226 Cal. Rptr. 640 (1986) (stating that a statute may not control a legislative rule of internal procedure and that a rule of proceeding made in the guise of a statute is nonetheless a rule adopted by the house and may be changed by an internal rule at any time), Manigault v. S.M. Ward, 123 F. 707 (S.C. 1903) (stating that a statute imposing conditions on the passage of legislation assumes a power it does not possess, and if any succeeding General Assembly passes a bill that does not meet these conditions this action "is either a declaration of its independence of these conditions, or it is a repeal of the previous act pro tanto"), and Mason's Manual of Legislative Procedure (2002) (The preferred source of parliamentary procedure for state legislatures).⁵

In conclusion, it is impossible to predict a future decision of the South Carolina Supreme Court. But, state courts with constitutions closely resembling South Carolina's Article III, Section 12, have routinely held that a legislative rule supercedes conflicting statutory law or, in some cases, even refrained from ruling on the issue because it presents a nonjusticiable political question. Thus, it

is reasonable to think that if the South Carolina media challenges the validity of House Rule 4.5, the South Carolina Supreme Court is most like to either: (1) uphold the House Rule and determine that it effectively exempts legislative caucuses from FOIA, or (2) decline to address the issue as a nonjusticiable political question.

¹ House Rule 4.5, as amended on January 17, 2007, states “[a]ll meetings of all committees shall be open to the public at all times, subject always to the power and authority of the Chairman to maintain order and decorum with the right to go into Executive Session as provided for in the South Carolina Freedom of Information Act, Title 30, Chapter 4 of the 1976 Code of Laws of South Carolina, as amended. Provided, a legislative caucus as defined by Section 2-17-10 of the 1976 Code of Laws of South Carolina, as amended, and its meetings are not subject to the provisions of Title 30, Chapter 4 of the 1976 Code of Laws of South Carolina, as amended. . . .”

² Although the power of the General Assembly to make its own rules is firmly established in the South Carolina constitution, there is little South Carolina jurisprudence on this topic - which is probably due to a “virtually universal acceptance of the power” that has prevented its consideration by South Carolina appellate courts. *See, Bruce v. Riddle*, 464 F.Supp. 745, 748 (1979) (proposing this explanation for the lack of South Carolina jurisprudence on the issue of legislative immunity).

³ The following are examples of South Carolina statutory laws that set forth rules of procedure for the legislature: S.C. Code Ann. Sections 2-1-180, 4-12-30, 4-9-55, 4-29-67, 11-11-410, 11-11-420, and 59-26-50 (all requiring a two-thirds vote of both houses for passage of specific legislation); S.C. Code Ann. Section 1-23-120 (setting forth specific requirements for legislative consideration of agency promulgated regulations); S.C. Code Ann. Section 2-7-71, 2-7-72, 2-7-73, 2-7-76, 2-7-78, and 2-7-110 (all requiring fiscal impacts or certifications prior to passage of legislation); S. C. Code Section 2-7-120 (establishing requirements for designating expenditures in appropriations bills); S.C. Code Ann. Section 2-7-105 (limiting the type of agency or institution that may be authorized in a bond bill); S.C. Code Ann. Section 6-27-30 (requiring the annual budget bill to appropriate a certain percentage of the budget to local government); S.C. Code Ann. Section 11-11-140 (limiting appropriation of surplus general fund revenues); S.C. Code Ann. Section 11-11-140 (prohibiting general tax increases in permanent provisions of the annual appropriations bill); and, S.C. Code Ann. Section 12-37-251 (setting statutory requirements upon the legislature's treatment of the Trust Fund for Tax Relief).

⁴The rule that one legislature may not bind a future legislature was probably explained best in *Manigault v. S.M. Ward & Co. et al.*, 123 F. 707 (1903) when the South Carolina District Court wrote, “[t]he legislative power in South Carolina is vested in the General Assembly. The Constitution fixes the power of the General Assembly. Each General Assembly possesses all these powers, and is subject to no limitation not found in the Constitution. One Legislature, therefore, cannot curtail or enlarge the power of any succeeding Legislature. . . .”

⁵ *Mason's* states that the constitutional right of a state legislature to control its own procedure cannot be withdrawn or restricted by statute, but statutes may control procedure insofar as they do not conflict with the rules of the houses or with the rules contained in the constitution. *Mason's*, at section 2.3. However, the house and senate each may pass an internal operating rule for its own procedure that is in conflict with a statute formerly adopted. *Mason's*, at section 3.2.

A STANDING COMMITTEE SYSTEM ON THE AMERICAN MODEL

*The visit of James R Odgers to the US Senate in 1955,
and its implications for parliamentary democracy in Australia*

Anthony S. Marinac*

ABSTRACT: Australia's cabinet system of government is much more like the British Westminster system than it is like the Presidential system of the United States of America. For this reason, the contribution made by the American experience of democracy is often unfortunately overlooked by Australian political science. This paper focuses on a little known yet absolutely pivotal event in Australian political history: the visit to the US in 1955 of one of the greatest Clerks of the Australian Senate, J.R. Odgers¹, who returned with an enthusiasm for parliamentary committees which has changed the face of Australian parliamentary politics for all time.

When Australians consider our parliamentary antecedents, we look instinctively to England. In more ways than we usually care to admit, England remains the "mother country" and our approach to parliamentary democracy remains, more than anything else, an Antipodean expression of a fundamentally English system (albeit weathered by 150 or so years of Australian colonial and national experience). None of this ought to be surprising. Unlike the United States, the colonies which formed Australia did not have to fight a war of independence to gain political self-determination.

Responsible government was, instead, granted to the Australian colonies rather in the manner of a coming-of-age gift:

[British] Ministers resolved to treat these southern communities as the daughters of a generous parent. They were to be entrusted with the full power of self-government and at liberty to work out their destiny each according to its own knowledge and expertise.²

The constitutions establishing self-government in each of the colonies (New South Wales, Queensland, South Australia, Tasmania Victoria, and Western Australia) were in fact statutes of the Imperial legislature in London. Most Australians of the time (and, indeed, probably right up until the Second World War) regarded England as Home, with an implicit uppercase letter. All of these circumstances combined to ensure that colonial Australians did not establish parliamentary institutions which marked a new form of democracy, specifically adapted to our circumstances. Rather, the early Australian parliaments did everything they possibly could to echo the institutions of England:

The colonists of 1856 ... had no alternatives to suggest to the British system of parliamentary government [and] they wanted

none. The British Parliament had cradled and nurtured the freedoms of the mother country for centuries and the colonists were, after all, Englishmen ... The outward trappings of their Parliament – the arrangement of the chambers, the bewigged presidents and speakers, the clerks at the table, the division bells, the modes of address and so forth – were but signs that an ancient institution was renewed in another land.³

The USA as a model for Australian federation

When the colonies began in earnest the process of moving towards federation, in about 1891, the representatives at each of the conventions and conferences established to draft a federal constitution, were themselves members of their colonial legislature. Given the gravity of the event, they were usually senior members of the colonial legislature. Consequently, the drafters of the Australian constitution shared the common, long experience of membership of essentially British legislatures. Experience and heritage combined to suggest that their instinctive response would be to establish a Westminster-style Cabinet government.

Contrary to this suggestion, however, the democratic model of the United States of America was widely discussed during the convention debates. The result was an Australian constitution which imported a significant range of its features from the constitution of the United States. Evans notes:

It is well known that the framers of the Australian Constitution drew extensively upon the United States Constitution for many

aspects of their creation. This is best demonstrated by the impressive list of the characteristics of the Australian Constitution drawn directly from the American model: the employment of special procedures, different from those applying to normal legislation, for consulting the people in establishing the Constitution and for amending it; the special legal status thereby given to the written constitution; the division of powers between the central and State Governments; the prescription of the powers of the national Government in the written constitution; [and] the establishment of a constitutional court to interpret and enforce the constitution⁴

One of the most notable features derived from the US constitution was the form and function of Australia's upper parliamentary chamber. The British model was fine for a unitary state (or, perhaps more accurately and with a deferential nod to the Welsh, Scots and Irish, a state with a unitary government) with an ancient heritage of monarchy and nobility. The new nation of Australia would be a federation based on a voluntary compact between the people of the various states; and it would be without any form of nobility upon which to base a hereditary upper house. Consequently, it was clear that the institutions of parliament would have to be modified from the British model to account for these two factors. The Australian Senate became the answer to both.

The question of nobility is easiest to deal with. An Australian form of nobility with a peerage-based house of parliament was suggested, at one point,

by a pioneer landholder and Member of Parliament, William Charles Wentworth, but the suggestion attracted derision, and the description of a “bunyip aristocracy.”⁵ The members of upper chambers of colonial legislatures had typically been appointed, and typically for life. When the time came to draw up the constitution, there was little doubt that the Senators would be in some fashion the product of a popular choice. Initially, Senators were to be appointed by the State parliaments, acting essentially as electoral colleges⁶ but eventually it was determined that nothing less than a popular vote would do.

The question of federation was more problematic. Two of the former colonies – Victoria and New South Wales – had large populations and substantial economies. The others, though varying in population and wealth, were all far behind. There were consequently very real questions as to whether each of the states would sign up to the federation. The small states were concerned that their numbers would be swamped by the population base of the larger states in any popularly elected legislature; while the larger states were concerned that their substantial tax bases would essentially end up providing indefinite subsidies to the citizens of the less prosperous colonies. The following comment, from a convention delegate in 1897, gives a sense of the rhetoric:

The honourable gentleman wants the smaller colonies to hand over to the larger colonies their principal sources of revenue, their customs, their post-offices, and to place a child-like trust in the gentle way in which they will be handled.⁷

Australia had attempted a half-way-house of federation, the Federal Council of Australasia, in 1885. The Federal Council had not been a success, partly because it lacked any real powers, but mainly because key colonies had chosen not to participate consistently. The largest, New South Wales, had never participated at all. At one point, no two member states of the Federal Council had shared a border, leading Founding Father (and Federal Council enthusiast) Alfred Deakin⁸ to describe the Federal Council as a “patchwork realm”:

Owing to the abstention of New South Wales and South Australia, the colonies embraced within its control are nowhere contiguous one with another, but are separated in each case either by sea or the wide areas of their unfederated sisters.⁹

The learning experience from the Federal Council had been that for federation to be successful, at the very least all mainland colonies had to join.¹⁰ So, the early participants in the federal conventions began very deliberately looking at parliamentary models outside Great Britain. A form of upper house had to be discovered, which did not rely on nobility or appointment, and which would provide an enticement to the smaller states to join the federation, if the larger states were to be given numerical control of the lower house.

A number of models were considered. Canada, obviously, was ruled out from the start. The Swiss federal model provided some level of guidance. Quickly, however, the dominant model of discussion was the United States Senate:

I regard the Senate of the United States as being one of the grandest representative bodies in existence. It is quite equal to, if it does not surpass, the British House of Lords. It is the best elective House of Legislature in the world, the reason of that being that it represents the different states, and is composed of men who have had vast experience of political life in some capacity or other before entering the Senate.¹¹

What eventuated was a federal upper house which is in many respects familiar to that of our American cousins: the Australian Senate is popularly elected, with each state having the same number of Senators¹² regardless of population size. The election of Senators is under the constitutional control of the states¹³ and each Senator represents the entire state, which votes as a single constituency.¹⁴ Also like the US Senate, and unlike upper houses almost everywhere else, the Australian Senate has legislative powers virtually equal to those of the House of Representatives (equal in all matters other than money bills).

The American influence over the very gestation of the Australian parliament, then, is obvious, and political scientists in Australia have long described the Australian constitution as a “hybrid” constitution, oddly but aptly referred to as a “Washminster”¹⁵ system, combining elements from Washington with elements from Westminster.

Committees in the early Australian Parliament

The Houses of the Australian Parliament have always had the right to establish

committees. The powers and privileges of such committees are outlined in s.49 of the Australian Constitution, while s.50 establishes, for each House, the right to determine its own manner of operation (including the formation of committees). However from federation in 1901 until approximately 1930, few such committees were formed, and those which were formed undertook domestic tasks, such as the development and maintenance of Standing Orders, and the administration of the Parliamentary Library.

In 1930, a Senate Select Committee was established to consider the establishment of a standing committee system. The committee was asked to particularly focus on committees to oversee Statutory Rules and Ordinances; International Relations; Finance; and Private Member’s Bills. However the committee was also able to advise on committees to examine “such other subjects as may be deemed advisable.”¹⁶ The way was thus open for the committee to recommend a more expansive system of standing committees. The members almost did so, noting the range of national parliaments which had broad standing committee systems (and taking a paragraph to describe that of the US Congress) and quoting at length from Luce’s *Legislative Procedure* to the effect that “even the critics of the committee system admit it has various advantages.”¹⁷ Having extolled the virtues of standing committees, the committee then squibbed on its recommendations, stating:

Your Committee is well aware that the adoption by the Senate of a Standing Committee System, either identical with or based on

any of the systems enumerated above, would be an entirely new departure so far as Australian legislative procedure is concerned. Consequently it has approached the subject with the utmost caution, and with a fixed determination not to make any recommendations or proposals unless they are supported by an overwhelming volume of evidence given by highly qualified and experienced witnesses.¹⁸

The 1930 Committee did recommend standing committees on Regulations and Ordinances, and on External Affairs. From 1930 onwards, however, most committee activity was undertaken by a disjointed array of select committees and joint committees, usually appointed for specific inquiries and ceasing to operate once they had reported:

While Committees have been a recognized part of Senate Procedure for many years, they have been mostly on an *ad hoc* basis, appointed from time to time to inquire into specific matters such as television, road safety, the metric system, pollution, drugs, and securities and exchange.¹⁹

There was nothing like an actual committee *system*, and ad hoc select committees did not allow for the development of working relationships and fraternity among members which occurs in the context of a long-term standing committee. In addition, the ad hoc nature of the committees meant that secretarial and research staff were also appointed on an ad hoc basis, so that no specialist support staff were developed. In the period between the end of the second world war and 1967, very little committee activity took place at all.

During this period, the reputation and perceived usefulness of committees took a considerable beating:

Most of them have been regarded as lamentable failures, the most common explanation being that the increasing supremacy of the Executive and the invoking of party loyalties in committee have made the position of standing committees untenable.²⁰

The Australian Ambassador to the United States of America, the Honourable Howard Beale, observed in a 1960 lecture that “there are Committees in the Australian Parliament but nothing like those in Congress” and that the Australian committees were “but a pale shadow of the Congressional Committee system.”²¹ At the time, of course, the Ambassador was entirely correct. But by the time of his lecture, James Rowland Odgers had already been to the United States of America and returned home with a plan.

The Odgers Report in 1956

James Odgers is a towering figure in Australian parliamentary practice, largely because he produced the procedural bible for the Australian Senate, *Australian Senate Practice*, more commonly known simply as *Odgers*’. He provides an Australian peer to Thomas Erskine May in the United Kingdom, or Floyd Riddick in the United States, as a venerated figure of almost iconic status.

He first joined the parliamentary service in 1937 as a parliamentary reporter,²² and moved into the Department of the Senate in 1948. The first edition of *Odgers* was produced in 1953, by which

time Odgers had risen to the dual position of Usher of the Black Rod and Clerk of Committees. By 1954, then, Odgers had already produced the classic work which still bears his name, and had marked himself out as an officer of the Senate on the rise towards the Clerkship. He had also been in the position responsible for the administration of the Senate's committee system, such as it then was.

In 1955, Odgers was promoted to Clerk Assistant, and was, therefore, the second senior-most parliamentary official serving the Senate. He obtained a Smith-Mundt Leader Grant under the *US Information and Educational Exchange Act 1948* (the "Smith-Mundt Act") and used the grant as an opportunity to travel to the United States of America to observe the congressional committee system. The fact that Odgers chose to undertake this trip was, in itself, somewhat remarkable. Most rising Clerks undertook what Evans describes as "the pilgrimage to Westminster which was virtually compulsory for clerks of the British Empire."²³ Odgers, however, turned his gaze towards the United States, and in particular towards the US committee system. It is only possible to speculate on his reasons for doing so, but the speculation seems quite safe based on his later perseverance on this issue: having spent four years running the Senate committee system, frustrated by its limitations and becoming aware of its potential, it seems Odgers determined to take up the cause of a standing committee system, picking up the argument where it had been left in 1930. He looked to the most advanced committee system in operation for his model and, to borrow the words quoted above from the 1930 report, set out to

make himself the "highly qualified and experienced witness" necessary to carry the day.

The report of his study visit, simply entitled *United States Senate – Report* was presented in the Senate by the President of the Senate, on 15 May 1956. The early part of the report is quite general and descriptive, outlining in a few pages the basic shape of government and constitution in the USA, including the composition and powers of the Congress, and the legislative process. Soon, however, he turned to the real business at hand, describing the committee system's investigative functions in these terms:

The investigative power of the Congress is essential to the discharge of its legislative function. Through the medium of investigations, Congress is informed of the necessity for improvements in existing laws or the need for new laws.

The Congressional power of investigation is not unlimited. Each committee is confined to the subjects within its prescribed jurisdiction. Furthermore, an investigation must have a legislative purpose, whether it be to examine certain conditions such as the operation of the New York Stock Exchange to see if remedial legislation is necessary, or to supervise and check activities in the executive departments.²⁴

Perhaps anticipating rebuttal arising from Senators' criticism of the McCarthyist committees which had been so active in the early 1950s, Odgers noted that "there has been criticism of the conduct of certain Congressional

investigations, notably those which it was alleged invaded individual rights. But the conduct of those loyalty investigations was exceptional and in no way typified the dignified procedure of investigating committees generally.”²⁵

The report then goes into detail regarding the operation and support of the Senate’s committee system. His observations, edited for length, were as follows:

Each committee has the assistance of a large staff ... In addition, committees may ask assistance from the Legislative Reference Service of the Library of Congress.

Each committee has its own meeting room and administrative offices, either in the Capitol or in the Senate or House office buildings.

Committees have extensive and open sessions. Within the limits of security, most hearings are public, and they are well-attended. Protests are quick when committees overdo the closed door sessions ...

...each standing committee of the Senate (including any subcommittee of such committee) has power of subpoena ...

Committees are empowered to administer oaths to witnesses in any case under their examination.

Witnesses before Congressional committees are permitted to be accompanied by counsel ... [but] it is “a matter of privilege, not of right.”

Witnesses have privilege against self-incrimination.

If agreement is not reached on a Committee Report, minority views can be printed.²⁶

The similarity between Odgers’ observations of the US Senate in 1955 and the operation of the current committee system in Australia are so remarkable that they defy any suggestion of coincidence. The only one of these observations which does not apply to the Australian Senate committee system in 2007 is the second – because, while each committee has its own administrative offices, they share meeting rooms. Setting aside that minor point, Odgers’ dot point description of the US Senate in 1955 could well be replicated by an observer attending the Australian Senate today.

In his conclusions, Odgers set out his key question explicitly – almost bluntly: “What can the Australian Senate learn from the United States Senate which will add to its usefulness and prestige? The answer is additional functions.”²⁷ He continued:

The additional function suggested for the Australian Senate is a standing committee system on the American model to watch and appraise the administration of the laws in certain defined fields of governmental operation and to inform public opinion.²⁸

He then set out specific arguments in favour of such a standing committee system. The arguments were by no means unique, and Odgers was not their pioneer. In fact, many of them echoed the observations made (but not moved

upon) by the 1930 Report, and many of his arguments were, even in the 1950s, already accepted orthodoxy in the USA. His arguments included:

Government activities and responsibilities today are so complex that it is questionable whether the Houses of Parliament themselves are able in the time available to them to discharge completely the function of scrutiny of all the ramifications of government. The suggestion is made that standing committees, in open session, could make a considerable contribution to the discharge of this function ...

Committees have a legislative function – that is, to make recommendations, where necessary, for improvements in the law. Expressed in another way, it means that committees permit expression and fulfillment to the maxim that “the best law is the one which is based upon the most widespread human knowledge and proper ascertainment of the facts.”

Committees also serve to inform the public.

The educational value to Members of the committees.

Expert committees on particular subjects would develop, to which Ministers may be grateful to refer problems of long-term importance for inquiry and report.

The standing committee system would provide an admirable training ground for Senators for Ministerial promotion.

The report was tabled in the Senate, and received a polite but hardly enthusiastic response. The Minister for the Navy, Senator Neil O’Sullivan, who spoke for the government, scarcely engaged with the content, providing an almost farcical comment:

I should like to congratulate Mr Odgers on the obvious care, industry and skill that he has displayed in the production of this most interesting booklet. I make this suggestion: I think that for those of us who care to read it and keep it by us as a very valuable book of reference, its usefulness would be considerably added to if it had an index.²⁹

The most considered (and prescient) response came from then Leader of the Opposition in the Senate, Senator Nicholas McKenna, who stated:

I know that he [Odgers] has a burning ambition to see the Senate play a major role in the Parliament. I merely say to him that, whilst he need not despair, he must be patient. Speaking from an experience of politics extending over a considerable time, I know that it takes at least five years to secure the acceptance of a new idea. Certainly I should like to see some of the ideas mooted by the Clerk Assistant in operation in this Parliament, particularly the suggested extension of the Senate committee system.³⁰

Odgers clearly took the advice of both speakers – the printed version of his report has an index, and he bided his time on the question of a standing committee system on the American model, though it took closer to fifteen years to come to fruition.

An idea whose time eventually came

During the late 1950s and up to the middle of the 1960s, committee activities in the Senate continued to be sporadic and ad hoc. In 1967, however, shortly after the election of Senator Lionel Murphy (later a judge on Australia's High Court, equivalent to the US Supreme Court) as Leader of the Opposition in the Senate, there began a period of vigorous committee activity. Murphy was a believer in the committee process, and could be champion and advocate for committees in ways which Odgers, who by then had been appointed Clerk, could not. In 1968, Murphy followed in Odgers' footsteps and visited the US Congress to study the committee system. He was already, prior to this visit, an enthusiast for the American form of democracy, and he came back with this enthusiasm confirmed. This enthusiasm was supported by senators from the government party, who saw committee activity as an opportunity to become more involved in actual policy and lawmaking. Roy Bullock, later a Clerk of the Senate, described the period:

The period 1967 to 1970 was a period of marked committee activity. Select Committees had reported upon such diverse matters as the Metric System of Weights and Measures, the Container Method of Handling Cargoes, Air Pollution, Water Pollution, the Canberra Abattoir, Medical and Hospital Costs; and committees were inquiring into Drug Trafficking and Drug Abuse, Off-shore Petroleum Resources, and Securities and Exchange. This activity had engendered a growing public awareness of the important role played by the Senate

Committees. The public hearings and the reports of these committees brought a realization that in the sphere of national inquiry, fact-finding and reporting, the Senate was specially equipped to exert a powerful influence for the public good.³¹

Allowing for Bullock's pro-Senate partisanship, his conclusions were doubtless correct. The renewed committee activity, the public interest in their hearings and reports, and the sense of value attached by senators from both sides of the Senate to their committee activity, all led to a greater appreciation of the potential for a committee system. It was no longer possible to describe most committees as "lamentable failures."³²

In 1969, fourteen years after Odgers' visit to the USA, this growing enthusiasm led to the Standing Orders Committee commissioning him to write a report suggesting a standing committee system for the Senate. His report, tabled in the Senate in March 1970, sets out the following reasons for the development of a standing committee system:

The need for Parliamentary committees, with power to send for persons, papers and records, is greater today than it has ever been, because of:

1. increasing governmental responsibilities and activities;
2. the impact of the tremendous progress in science and technology;
3. the complexity of legislation which cannot always be satisfactorily considered within narrow Parliamentary timetables;

4. the inadequacy of opportunities and means on the floor of the House to discharge fully Parliament's important duty to probe and check the Administration;
5. the inadequacy of present-day means for the ventilation of citizens' grievances against administrative decisions or acts;
6. growing Executive expertise and secrecy; and
7. the need, in an increasingly expert world, for parliamentarians to be able to call upon scholarly research and advice equal in competence to that relied on by the Administration.³³

These reasons are not dissimilar to the reasons expressed in his 1956 report, and are not altogether dissimilar (allowing for the passage of time) to those expressed in 1930. Curiously, however, in supporting these arguments Odgers did not refer to the United States at all – instead, he took as his examples the parliaments of the United Kingdom, Canada and New Zealand. For example, he wrote:

The Standing Orders of the Senate already provide for the reference of Bills to standing or select committees, but little use has been made of the procedure. It has even been regarded as a hostile procedure. In many overseas legislatures, including Canada, New Zealand, and the United Kingdom House of Commons, Bills are referred to standing committees and experience has shown that this leads to a more detailed examination of the legislation.³⁴

Odgers deliberately³⁵ avoided all reference to the committee system with which he was most familiar – and that which in reality formed the basis of his model, that of the United States of America. It seems clear that, having already failed in 1956 to obtain support for the implementation of the committee system, he sought to soften the apparent radicalism of the move by making it appear that the changes would bring the Australian parliament closer in form to the “Mother of Parliaments” in Westminster, and to her other colonial derivatives. Given that the party in power, the Liberal Party, represented the conservative tradition of Australian politics, his strategy may have been sensible. It certainly paid off. The report met with considerable public support. The major newspaper in Australia's capital, the *Canberra Times*, devoted an entire editorial to the report, stating:

The system of parliamentary committees, which is already applied on a limited scale in Australia, is used extensively and successfully in many other countries. The work load alone often makes the use of them a necessity for governments but a basic argument in their favour is that the members of any parliament, by and large, are ill informed. Members serving on committees would acquire and place at the disposal of the Parliament, through their power to call witnesses and to demand the production of papers and records, an expertise they do not themselves possess. The situation has long been that the executive makes policy and, through the numerical superiority of members committed to the ruling parties'

platform, makes the law with little more than token consultation with the supreme legislative body.³⁶

The idea's time had come. On 21 May 1970, Senator Murphy gave notice of his intention to move for a comprehensive system of eight standing committees, each with a broad policy remit and "the power to send for and examine persons, papers and records, to move from place to place and to meet and transact business in private or public session..."³⁷

The media, with Murphy's assistance, immediately saw through Odgers' attempt to frame the proposed changes as having Westminster origin. On 26 May, the *Sydney Morning Herald* published an article entitled "Canberra's American Accent", with pictures of Odgers, Murphy, and government maverick Senator Ian Wood, whose vote would be crucial to the outcome. The article read in part:

The American look in Australian politics came sharply into focus in Canberra last week. The most obvious sign was the move by the Senate Opposition Leader, Senator Murphy, for a system of standing committees ...

Senator Murphy's interest was stimulated by a visit to Washington in 1968, when he was impressed by the effectiveness of the committees of the United States Senate. He noted the way the US Committees built up permanent, expert staff. "The theory in the United States is that the Congress should have the best experts in the country," he said last week.

Another result of the US system is that Senators themselves become experts on subjects investigated by the committees on which they sit.³⁸

Murphy's proposal came on for debate in June 1970. Introducing it, he spoke for 45 minutes reflecting on the benefits of a standing committee system. On this occasion, he did not reflect directly on his learning experiences in the USA, though he did make an oblique reference to "the observations of the operations of standing committees which honourable senators have made in their journeys overseas [which] have brought almost all of us to the conclusion that the committees should be set up."³⁹ A rival proposal, suggesting a standing committee system to examine government expenditure only, emerged from the government party. A third proposal was tabled by a minor party, and the three proposals were debated simultaneously. In the course of debate, Odgers' concerns about having the committee system appear too American were borne out, as one Senator identified the proposal as similar to that of the United States. He was complimentary about the US committee system, but went on to express doubts as to whether such a system was compatible with Westminster parliaments.⁴⁰ In the end, government senator Ian Wood, who had served as Chairman of the Regulations and Ordinances Committee for years, and who was passionate about the value of committee work, voted with the Opposition and Murphy's motion was carried by the tightest of margins – just one vote.

One vote was enough, however, and by mid-1971 a system of standing committees had been established,

extremely similar in nature to the proposal which Odgers had initially put forward in 1956, for “a standing committee system on the American model.”

Some months later, at a Conference of Presiding Officers and Clerks held in Suva, Fiji, Deputy President of the Senate Thomas Bull was moved to report:

The expansion of the Committee system has already had considerable impact not only on the Senate as an institution, and its Senators and the Senate staff, but upon the Government, public officials and the public at large.

There can be little doubt that this expanded activity of the Senate has met with popular approval. The press have given the Committee activities a wide and favourable coverage. [...]

That the Committee system will continue to expand, there can be no question. That the new Standing Committees will be fully implemented, there can be no question. The Senate’s foray into the Committee field has set the pattern for its future activity. Gone are the days, not so far distant, when nearly all the work of the Senate was done on the floor of the Senate, when the tempo was a little more leisurely, and when the Senate, as an institution, did not loom so high in the imagination of the electorate at large.⁴¹

Since 1970, the committee system has continued to develop, and has become one of the defining characteristics of the Australian Senate. It is not the role of

this paper to provide a complete history of the thirty-five or so years which have elapsed since the system’s development. However, it is important to reflect for a few moments on the current place of the Senate committees, in order to demonstrate how important and enduring have been the effects of Odgers’ visit to the United States in 1956. Perhaps the best way to do that is to turn to the current (11th) edition of *Odgers’ Australian Senate Practice*, now edited by the current Clerk of the Senate, Harry Evans. The current edition of Odgers’ explains the importance of Senate committees in these words:

The Senate makes extensive use of committees which specialize in a range of subject areas. The expertise built up by those committees enables them to be multi-purpose bodies, capable of undertaking policy-related inquiries, examining the performance of government agencies and programs or considering the detail or proposed legislation in the light of evidence given by interested organisations and individuals. The scrutiny of policy, legislative and financial measures is a principal role of committees.

Most significantly, committees provide a means of access for citizens to participate in law making and policy review. [...]

An important outcome of committee work is the opportunity senators gain to pursue special interests and build up expertise in aspects of public policy, enhancing the quality of debate and providing a solid grounding for beekbenchers who may go on to be committee chairs, shadow

ministers, party spokespeople or ministers.⁴²

The point is so obvious that it is difficult to make without belabouring – the current description of the committee system could easily have been lifted directly from Odgers’ 1956 report, or indeed from his 1970 recommendations. It took 15 years for his plans to be implemented, but they have endured for thirty-six since then, and are still going strong.

Conclusions

It is easy, and in most senses accurate, to classify the Australian parliament within the general tradition of Westminster. The outward trappings of the parliament, the forms of debate, the legislative process, the role of the parliament in forming the government and holding it to account – all of these things are clearly derived from the United Kingdom, and they are all sufficiently dissimilar to American parliamentary practices that even experts from the US may find the experience of democracy in Australia very unfamiliar.

However, it is clear that at least one key characteristic of Australian parliamentary democracy — the development of a strong standing committee system in the Senate, with the full powers to investigate, research and report matters referred by the Senate itself — is derived principally from observation of experiences in the United States.

No single report, and no single person, can completely account for substantial institutional change. It is not the intention of this report to seriously suggest that Odgers’ 1955 visit to the

United States of America was, singularly, the event which led to the modern committee system. Murphy’s similar visit in 1968 might be picked out; the success of the select committees in 1967 and 1968 might be suggested; the coincidental presence in the Senate of two pioneering characters (in Odgers and Murphy) who shared a similar enthusiasm might be tendered.

However, it is clear that Odgers, by traveling to the USA in 1955, became convinced that a standing committee system on the American model was utterly necessary for good governance in Australia, and that it could restore the Senate – which had become a largely irrelevant political diversion – to centrality in the Australian parliamentary system. His 1956 report rings with this conviction. It did not shake the system immediately, but when opportunity arose – in the form of Lionel Murphy – Odgers was ready with a plan.

A visitor from the United States, then, may find themselves on unfamiliar territory in Australia’s national legislature, until they walked in to a Senate Committee Inquiry – at which point, I fancy they would feel right at home.

Postscript

In January of 2007, the professional development seminar of the Australian and New Zealand Association of Clerks-At-The-Table (ANZACATT) was attended by a range of valued international guests, including Ms Laura P. Clemens, Clerk of the Ohio House of Representatives and President of the American Society of Legislative Clerks and Secretaries. At that event, in

conversation with the author, Clerk Clemens expressed some surprise at how fundamentally different the practice of parliamentary democracy is in Australia, as compared to the United States. The conversation led to further discussion reflecting on the less obvious similarities between the two, and eventually to this paper. I hope that the Clerk's experiences in Australia, and my own

small academic contribution, continue to underscore the value which servants of parliaments around the world obtain from meeting one another and sharing experiences.

* B.A.(Hons) *Monash*, M.Mgt *ANU*, PhD *Queensland*, Director Research, Department of the Senate (Australia). This paper would not have been possible without the extensive series of papers and clippings preserved with extreme diligence by Mrs. Irene Inveen, Senate Resource Officer.

¹ b.1914, d.1985. Clerk of the Senate 1965-1979.

² Barton, E (1910) *Jubilee History of Queensland*, Diddams & Co, Brisbane, p. 49.

³ Hawker, G (1971) *The Parliament of New South Wales, 1856 – 1965*, 3.

⁴ Evans H (1998) "The Other Metropolis: the Australian Founders' Knowledge of America" *The New Federalist* 2 (December 1998) p. 30. Evans paper deals extensively with references to the USA in the convention debates, and the guidance derived from American academic sources, and from visits to the USA made by delegates.

⁵ The epithet was coined by writer Daniel Deniehy at the time of Wentworth's suggestion. The "bunyip" is a mythical outback Australian creature, analogous to the Yeti, noted for its ugliness, stupidity and incredible cunning. Nowadays, "bunyip aristocrat" is a mild insult directed toward any person who seems to be adopting airs. A reference to these events can be found in Clark, M (1978) *A History of Australia*, vol. iv, pp. 36ff.

⁶ According to the bill debated in 1891, they were to be "directly chosen by the houses of the parliament of the several states during a session thereof"

⁷ Downer, the Hon Sir J, Convention Debates, 9 September 1897, p. 267.

⁸ Later second, fifth and seventh Prime Minister of Australia, between 1903 and 1910.

⁹ Deakin, A (1895) "The Federal Council of Australasia" *Review of Reviews*, 20 February 1895, republished by the University of Sydney Library, 2001, p. 5 in the 2001 text.

¹⁰ In the end, all mainland colonies plus Tasmania joined. New Zealand, initially a party to the talks, went its own way into separate nationhood – a fact which still riles us when it beats us at rugby or cricket!

¹¹ Macrossan J, Convention Debates, 12 February 1890, p. 73.

¹² *Constitution*, s.7. There are 12 Senators for each state and 2 for each self-governing federal territory, giving a total of 76 Senators.

¹³ *Constitution*, s.7. However, it should be noted that while the writs for Senate elections are indeed issued by State Governors, the elections themselves are conducted by the federal Australian Electoral Commission, in accordance with the *Commonwealth Electoral Act 1918*, a federal statute.

¹⁴ *Constitution*, s.7. It should be noted, however, that the requirement for states to vote as single electorates is not constitutionally entrenched.

¹⁵ The term was coined by Professor Elaine Thompson, in her paper "The Washminster Mutation", in *Responsible Government in Australia*, Weller & Jaensch, Australian Political Science Association, 1980.

¹⁶ Journals of the Senate, 5 December 1929.

¹⁷ Luce R (1922), *Legislative Practice - Parliamentary Practices and the Course of Business in Framing Statutes*, quoted in the Report from the Select Committee Appointed to Consider, Report and Make Recommendations upon the Advisability or Otherwise of Establishing Standing Committees of the Senate (henceforth "1930 Select Committee Report"), para 10, p. viii.

¹⁸ 1930 Select Committee Report, para 11, p. viii.

¹⁹ Parliament of Australia (1971) *Committees of the Australian Senate*, Parliamentary Paper No. 32 of 1971, Commonwealth Government Printing Office, p. 7.

- ²⁰ Holmes J (1966) “The Standing Committee System in the Commonwealth Parliament From 1901 to 1950”, *The Australian Quarterly*, p. 30.
- ²¹ Beale, Hon. H (1960) *Congress and Parliament*, Woodward Lecture, Yale University, 28 November 1960.
- ²² This brief biography borrows heavily from the biography written by the current Clerk of the Senate, Mr Harry Evans, to be published in a forthcoming volume of the *Biographical Dictionary of the Australian Senate*.
- ²³ Evans H, biography of J.R.Odgers, *Biographical Dictionary of the Australian Senate*, forthcoming.
- ²⁴ Odgers J (1965) *United States Senate – Report*, tabled in the Senate 15 May 1956, para 63-64, p. 10.
- ²⁵ Odgers J (1965) *United States Senate – Report*, tabled in the Senate 15 May 1956, para 66, p. 10.
- ²⁶ Odgers J (1965) *United States Senate – Report*, tabled in the Senate 15 May 1956, para 71-78, p. 12.
- ²⁷ Odgers J (1965) *United States Senate – Report*, tabled in the Senate 15 May 1956, para 113-114, p. 17.
- ²⁸ Odgers J (1965) *United States Senate – Report*, tabled in the Senate 15 May 1956, para 119, p. 18.
- ²⁹ O’Sullivan, Sen the Hon N, *Hansard*, 15 May 1956, p. 702.
- ³⁰ McKenna, Sen the Hon N, *Hansard*, 21&22 June 1956, p. 1844.
- ³¹ Bullock, R (1971) “The Australian Senate and its Newly Expanded Committee System”, *The Table*, Vol XL, p. 39.
- ³² Holmes, *supra*.
- ³³ Odgers, J (1969) *Report on Standing Committees*, p.33.
- ³⁴ Odgers, J (1969) *Report on Standing Committees*, p.33.
- ³⁵ I am obliged to the Clerk of the Senate, Harry Evans, for confirming that Odgers' decision was deliberate and strategic.
- ³⁶ “Standing Committees” *Canberra Times*, editorial 23 March 1970.
- ³⁷ Murphy, Sen. L, *Hansard*, 21 May 1970, p.1653.
- ³⁸ Hutchinson, S (1970) “Canberra’s American Accent” *Sydney Morning Herald*, 26 May 1970.
- ³⁹ Murphy, Sen. L, *Hansard*, 4 June 1970, p. 2052.
- ⁴⁰ Davidson, Sen. G, *Hansard*, 4 June 1970, pp. 2071-2072.
- ⁴¹ Bull, Senator T (1971) *The Australian Senate’s Committee System*, Paper presented to the fourth conference of Presiding Officers and Clerks of the Parliaments of Australia, Cook Islands, Fiji, Nauru, Papua New Guinea and Western Samoa, Suva, Fiji, 22-24 June 1971.
- ⁴² Evans, H (ed) (2004) *Odgers’ Australian Senate Practice* (11th ed) pp. 345-346.

They Love Us. They Really Love Us — Factors Affecting Legislative Use of Policy Research

Gary VanLandingham

As we all know, legislators and legislative staff are regularly deluged with policy information from a wide range of sources. This includes glossy publications from private think tanks, media stories, reports submitted by the executive branch, studies from legislative research units, and materials provided by ever-helpful lobbyists.

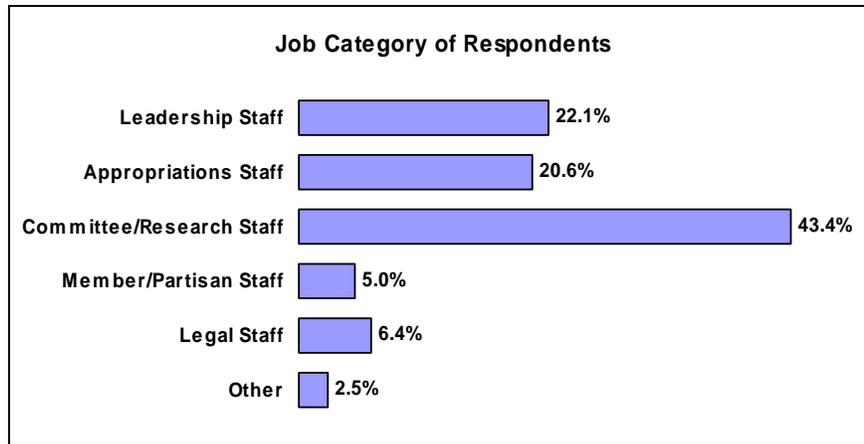
It is also generally acknowledged that the usefulness—and use—of this information is highly variable. Policy information from some sources is highly valued, while that provided by other sources is generally destined for the dusty shelf at best or immediate deposit into the recycling bin at worst.

What makes policy research from some sources valued within legislatures, and what are the most respected and used sources of this information? How does information provided by legislative staff units and the National Conference of State Legislatures (NCSL) stack up in this analysis? These are important questions. Legislative research units and NCSL exist to provide information to their state legislatures, and they would have an obvious problem if their work is not valued or used. Further, while long-

time legislative staff develop a good ‘feel’ for information they receive, newer staff need to be able to quickly assess the credibility and potential usefulness of policy research they are given.

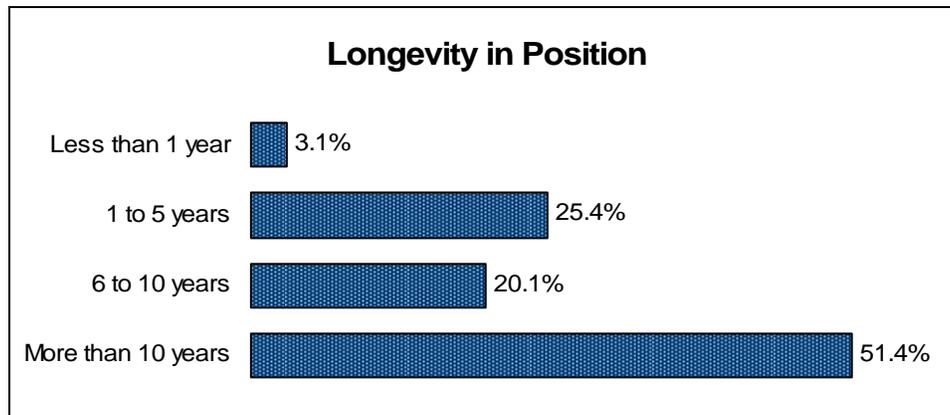
To address these questions, a nationwide survey of senior legislative staff was conducted between August 2005 and January 2006 regarding how policy research is used in the legislative process. The survey covered the factors that influence the use of policy research and the respondents’ perceptions of the quality and usefulness of research produced by different sources.

Survey respondents. Survey responses were received from 320 legislative staff, representing 46 states and Puerto Rico (see Appendix A for the number of responses received by state). As shown below, about half of the respondents worked in committee or research positions, while about a fifth worked in leadership or appropriations positions. The remaining respondents worked in a variety of positions such as member and partisan office positions, legal and bill drafting positions, and other positions such as legislative administration.



The survey respondents were generally senior-level staff. Over half had worked with their legislatures for over ten years, while another fifth had between five and ten years of experience. A quarter of the

respondents had worked with their legislatures for between one and five years. Only 3% of the respondents had less than a year of experience with their legislature.



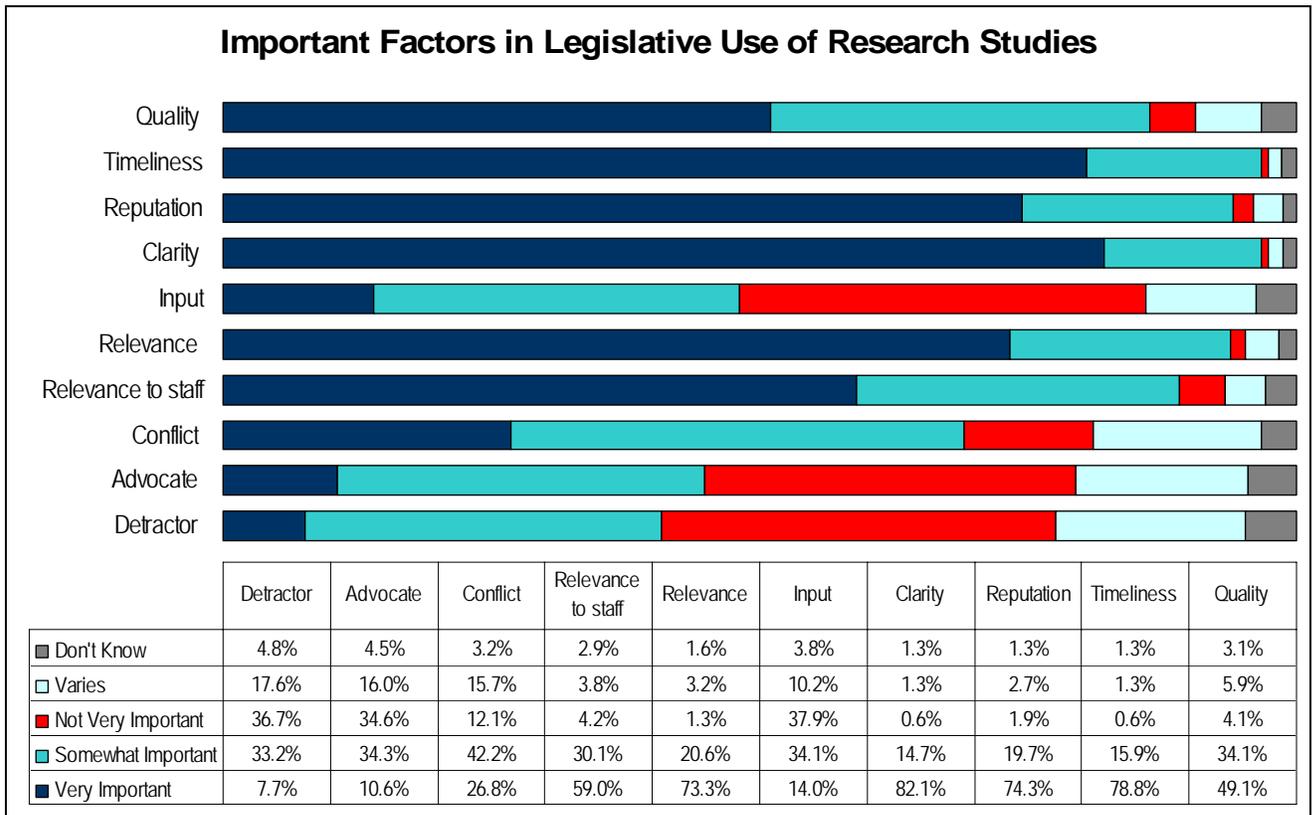
Thus, the survey respondents represented highly experienced legislative staff that

works in key positions that regularly receive, judge, and use policy research.

Factors important to legislative use of policy research studies

Survey respondents indicated that four factors are particularly key in legislative use of policy research studies—(1) the clarity of the reports’ findings and recommendations; (2) the timeliness of the studies; (3) the relevance of the studies to the legislature’s information needs; and (4) the reputation of the office publishing the studies. Each of these factors was cited as “very important” by over 70% of the respondents. The

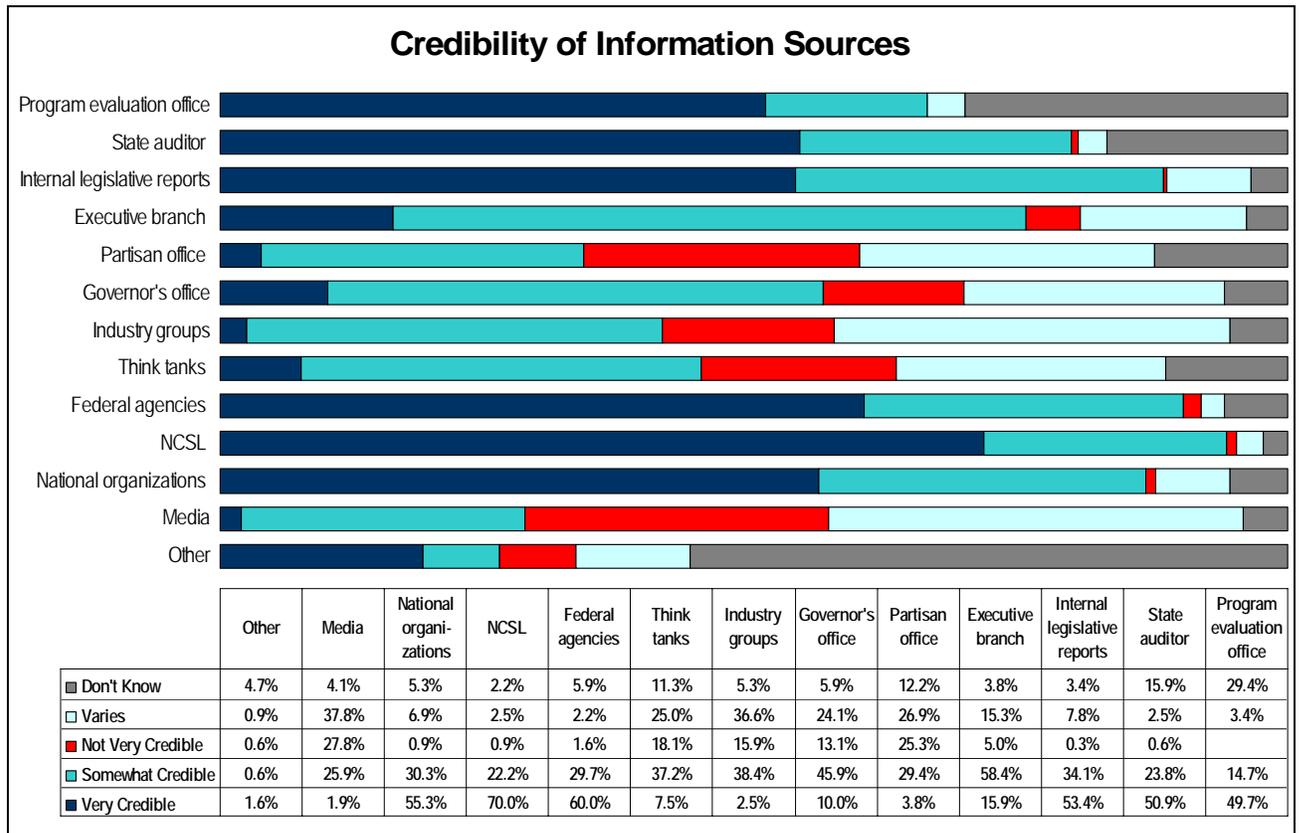
relevance of the studies to legislative staff and the studies’ methodological quality were cited as “very important” by about half of the respondents. The ability of state legislatures to provide direct input to the researchers doing the studies; the degree of conflict surrounding the studies’ topic, findings, and recommendations; and the presence of advocates and detractors of the studies were viewed as at least somewhat important but not as critical by the respondents.



Credibility of information sources

Survey respondents indicated that NCSL was the single most credible source of policy research—it was viewed as “very credible” by 70% of the survey respondents and at least somewhat credible by 92% of all respondents. The next most highly rated information sources were federal agencies, internal legislative studies by fiscal, substantive, and research committees, other national organizations such as the Council of State

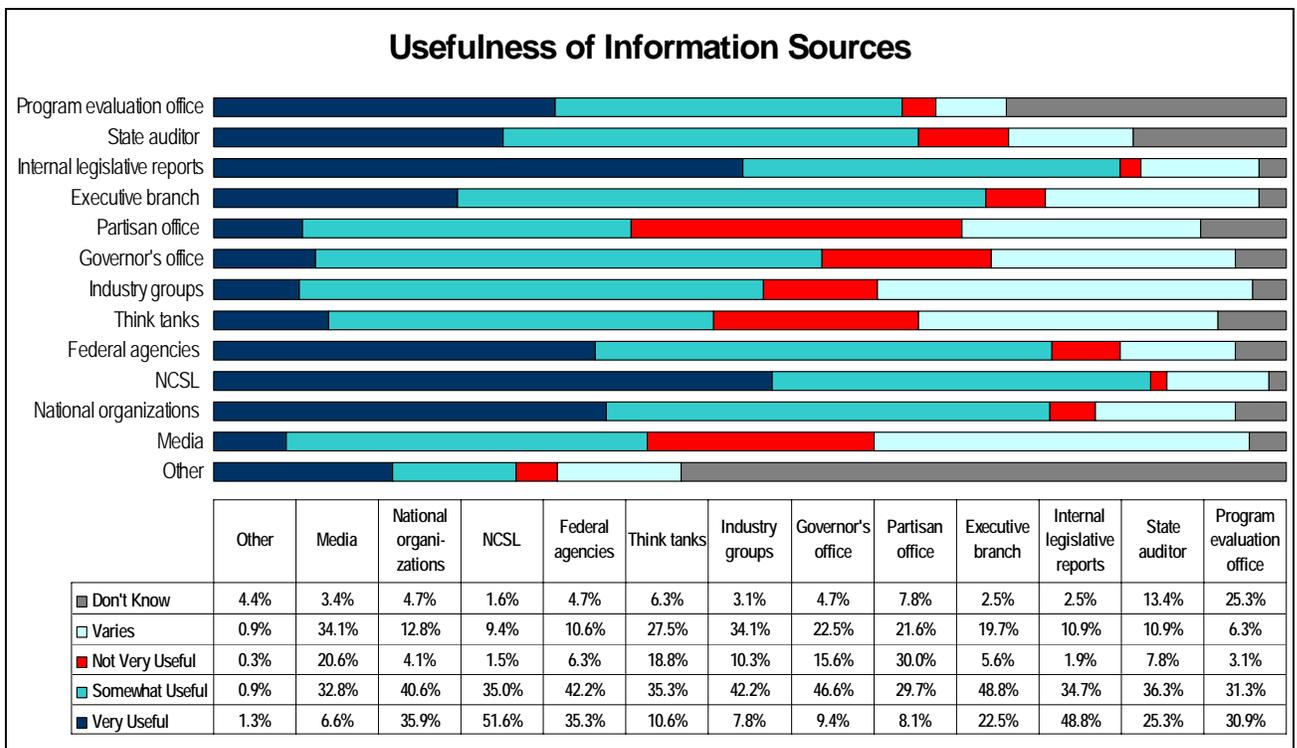
Governments, and state auditors and legislative evaluation offices (a relatively high percentage of respondents could not rate the evaluation offices). Executive branch agencies and governors’ offices were generally viewed as at least somewhat credible. However, private think tanks, industry groups, partisan offices, and the media were generally viewed to be substantially less credible information sources.



Usefulness information sources

NCSL was also viewed as the most useful information source by the survey respondents—86% of survey respondents indicated that NCSL’s information was either “highly useful” (51%) or “somewhat useful” (35%). Over half of respondents also viewed information by federal agencies, other national organizations, legislative committees,

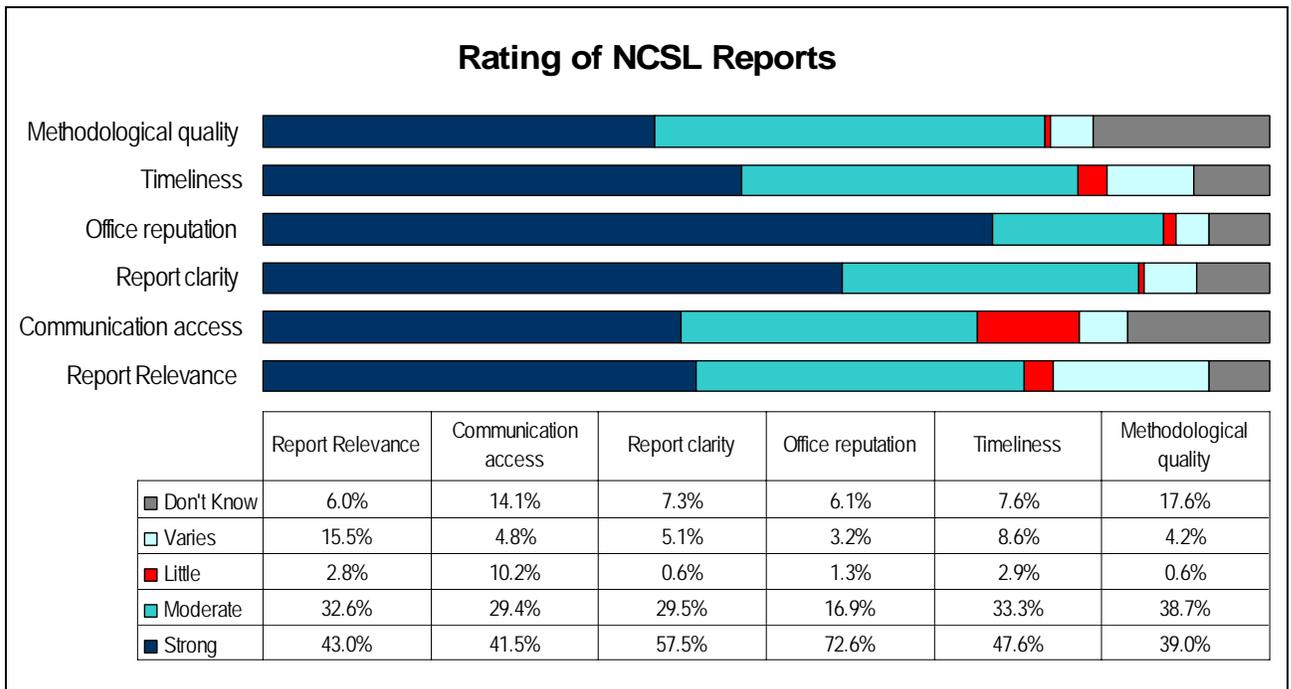
state auditors, program evaluation offices, executive branch agencies, the governor’s office, the state auditor, and industry groups as either highly or somewhat useful. Less than half of respondents viewed information provided by partisan offices, private think tanks, and the media as highly or somewhat useful to their work.



Overall rating of NCSL's research reports

Survey respondents gave NCSL's research reports highly positive ratings, particularly on the factors that they cited as most critical to legislative use. As shown below, almost three-quarters (72%) of the respondents indicated that NCSL had a strong reputation for providing quality research services. Over 70% of the respondents also gave positive ratings ("strong" or "moderate") on the relevance, communication access (ability to communicate with report researchers), clarity, timeliness, and

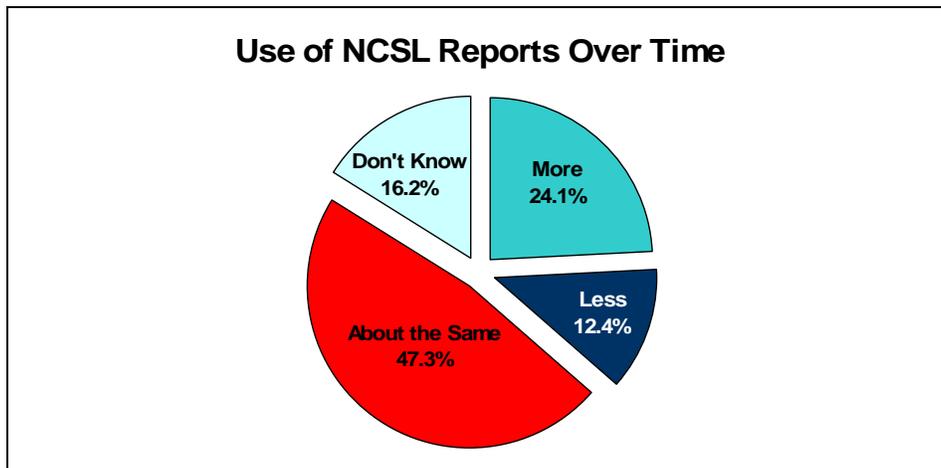
methodological quality of NCSL's reports. While a minority perspective, about a fifth of the respondents indicated that the relevance of NCSL reports to their legislature's information needs was variable or weak, and slightly over a tenth of the respondents cited similar concerns with the timeliness of NCSL's reports. This likely reflects the diversity in the issues being considered by the 50 state legislatures and the resulting difficulty in always being relevant and timely to them. About one in seven of the respondents cited concerns with being able to communicate with report authors at least some of the time.



Use of NCSL information over time

Survey respondents generally indicated that their use of NCSL information has either remained about the same as five

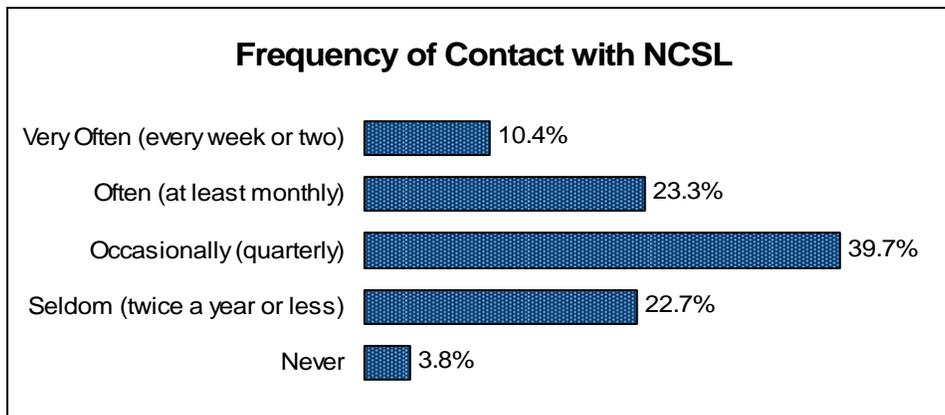
years ago (47%) or had increased (24%). Only 12% reported that use of NCSL's reports had declined over this period.



Frequency of Contact with NCSL

As shown below, survey respondents varied substantially in how often they contacted NCSL by phone, email, or in person. About a tenth of the respondents frequently contact NCSL, with interactions every week or two,

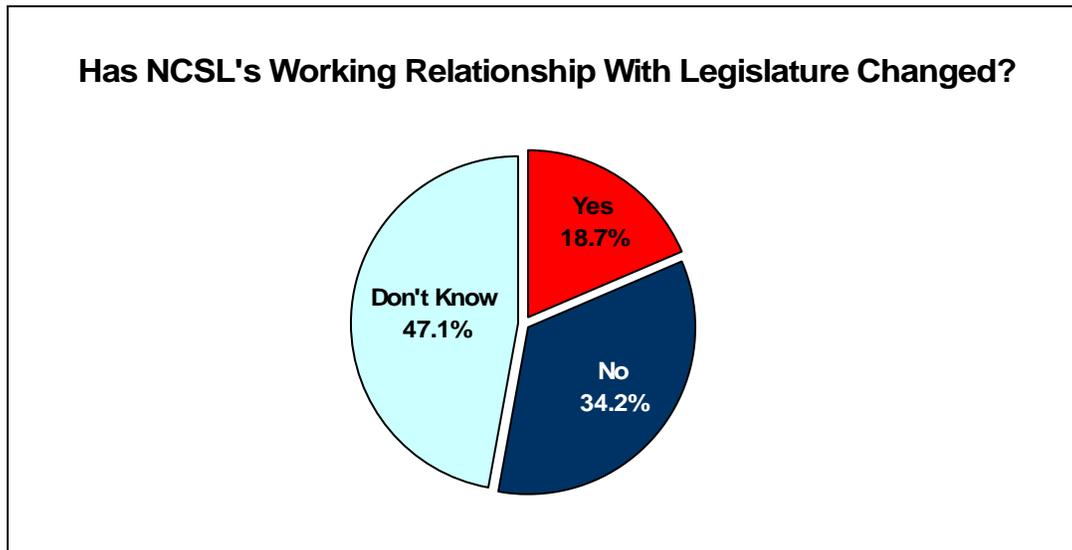
and about another quarter contact NCSL at least once a month. The largest group of the respondents (40%) contact NCSL about once a quarter, and the remaining quarter of respondents contact NCSL less than twice a year.



Overall working relationship with NCSL

Almost half of the survey respondents were unable to determine if their legislature's working relationship with NCSL had changed over the past five years. Most of the respondents who could respond to this question indicated that the working relationship had not

changed. Of the 19% of respondents who indicated that the relationship had changed, about equal numbers cited improvements and deteriorations in the working relationship. Respondents citing improvements noted increased contact with NCSL, while those citing deteriorations frequently cited member concerns that NCSL had a liberal bias.



Conclusion

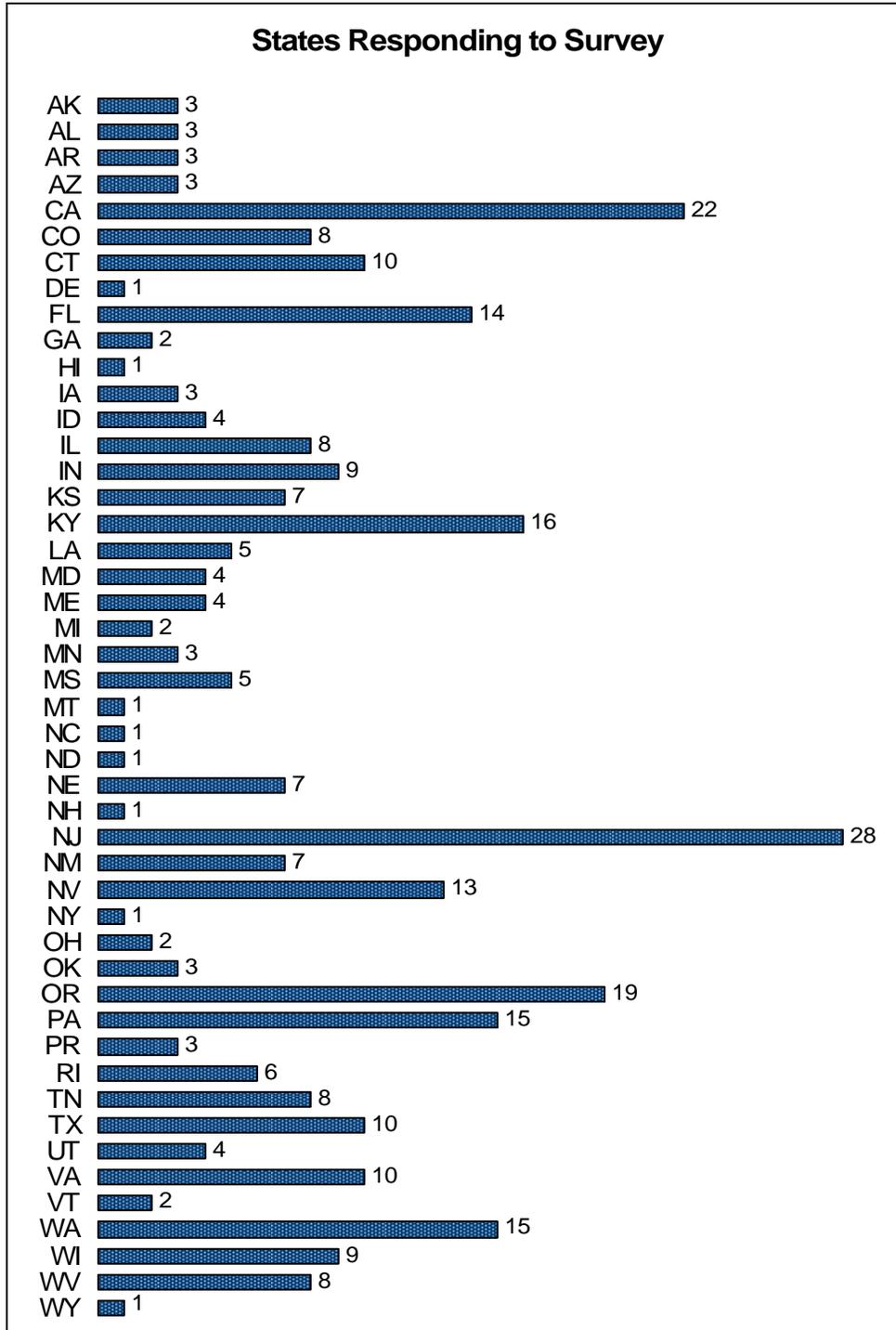
So what does this mean? Overall the results are good news for NCSL and internal legislative research groups. NCSL is viewed as a highly credible and highly useful source of policy research for key legislative staff. Internal legislative research units are also highly valued, although legislative evaluation

offices have some work to do in terms of making sure that key leadership, appropriations, and committee staff are aware of their research products. New legislative staff would be well advised to look positively at legislative research sources, but cast a jaundiced eye at outside groups who purvey nicely packaged but often slanted research products.

Information on Survey Respondents

Responses were received from 320 legislative staff. As shown in the table

below, these staff represented 46 states and Puerto Rico; five respondents did not indicate their state.



PROFESSIONAL JOURNAL INDEX

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Administration

Fall	1997	Boulter, David E.	<i>Strategic Planning and Performance Budgeting: A New Approach to Managing Maine State Government</i>
Spring	2001	Carey, Patti B.	<i>Understanding the Four Generations in Today's Workplace</i>
Spring	2006	Hedrick, JoAnn	<i>Passage of Bills and Budgets in the United States System – A Small State's Perspective</i>
Spring	2001	Henderson, Dave	<i>Personnel Policies in the Legislative Environment</i>
Summer	2000	Jones, Janet E.	<i>RFP: A Mission Not Impossible</i>
Spring	1998	Larson, David	<i>Legislative Oversight of Information Systems</i>
Fall	1995	Rudnicki, Barbara	<i>Criticism</i>

ASLCS

Summer	2000	Burdick, Edward A.	<i>A History of ASLCS</i>
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Case Studies

Fall	2003	Bailey, Mathew S.	<i>The Will of the People: Arizona's Legislative Process</i>
Summer	2000	Clemens and Schuler	<i>The Ohio Joint Select Committee Process</i>
Fall	2006	Clemens, Laura	<i>Ohio Case Regarding Open Meetings and Legislative Committees</i>
Fall	2003	Cosgrove, Thomas J.	<i>First-Term Speakers in a Divided Government</i>
Fall	2005	Garrett, John	<i>The Balance Between Video Conferencing by The Virginia General Assembly and Requirements of Virginia's Freedom of Information Act</i>
Spring	1996	Dwyer, John F.	<i>Iowa Senate's Management of Its Telephone Records Is Upheld by State Supreme Court</i>
Fall	2003	Gray, LaToya	<i>Virginia's Judicial Selection Process</i>
Spring	2003	Howe, Jerry	<i>Judicial Selection: An Important Process</i>
Fall	2002	Jamerson, Bruce F.	<i>Interpreting the Rules: Speaker's Resignation Challenges</i>
Fall	2003	Morales, Michelle	<i>I Will Survive: One Bill's Journey Through the Arizona Legislature</i>
Fall	1995	Phelps, John B.	<i>Publishing Procedural Rulings in the Florida House of Representatives</i>
Fall	2006	Phelps, John B.	<i>Florida Association of Professional Lobbyists, Inc. et. al. v. Division of Legislative Information Services of the Florida Office of Legislative Services et. al</i>
Spring	2007	Reid, Charles F.	<i>The South Carolina Legislature's Power Over Itself – Legislative Rules v. Statutory Laws</i>

Fall	2006	Speer, Alfred W.	<i>The Establishment Clause & Legislative Session Prayer</i>
Fall	2001	Tedcastle, Ted	<i>High Noon at the Tallahassee Corral</i>
Spring	1998	Todd, Tom	<i>Nebraska's Unicameral Legislature: A Description and Some Comparisons with Minnesota's Bicameral Legislature</i>
Fall	2006	Wattson, Peter S.	<i>Judging Qualifications of a Legislator</i>

Historic Preservation

Fall	1995	Mauzy, David B.	<i>Restoration of the Texas Capitol</i>
Fall	2001	Wooton, James E.	<i>Preservation and Progress at the Virginia State Capitol</i>

International

Fall	2000	Grove, Russell D.	<i>The Role of the Clerk in an Australian State Legislature</i>
Fall	2000	Law, K.S.	<i>The Role of the Clerk to the Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China</i>
Spring	2004	MacMinn, E. George	<i>The Westminster System – Does It Work in Canada?</i>
Spring	2007	Marinac, Anthony S.	<i>A Standing Committee System on the American Model</i>
Spring	2006	Phelps, John B.	<i>A Consultancy in Iraq</i>
Fall	2000	Pretorius, Pieter	<i>The Role of the Secretary of a South African Provincial Legislature</i>
Spring	2002	Schneider, Donald J.	<i>Emerging Democracies</i>

Miscellaneous

Summer	1999	Arinder, Max K.	<i>Planning and Designing Legislatures of the Future</i>
Fall	2000	Arinder, Max K.	<i>Back to the Future: Final Report on Planning and Designing Legislatures of the Future</i>
Winter	2000	Drage, Jennifer	<i>Initiative, Referendum, and Recall: The Process</i>
Fall	2005	Hodson, Tim	<i>Judging Legislatures</i>
Spring	1996	O'Donnell, Patrick J.	<i>A Unicameral Legislature</i>
Fall	2006	Miller, Steve	<i>Where is the Avant-Garde in Parliamentary Procedure?</i>
Spring	1998	Pound, William T.	<i>The Evolution of Legislative Institutions: An Examination of Recent Developments in State Legislatures and NCSL</i>
Fall	2000	Rosenthal, Alan	<i>A New Perspective on Representative Democracy: What Legislatures Have to Do</i>
Fall	1995	Snow, Willis P.	<i>Democracy as a Decision-Making Process: A Historical Perspective</i>
Spring	2007	VanLandingham, Gary	<i>They Love Us. They Really Love Us – Factors Affecting Legislative Use of Policy Research</i>

Process

Fall	1996	Burdick, Edward A.	<i>Committee of the Whole: What Role Does It Play in Today's State Legislatures?</i>
Fall	2006	Clift, Claire J.	<i>Reflections on the Impeachment of a State Officer</i>
Spring	2003	Clapper, Thomas	<i>How State Legislatures Communicate with the Federal Government</i>
Spring	2004	Dunlap, Matthew	<i>My Roommate Has a Mohawk and a Spike Collar: Legislative Procedure in the Age of Term Limits</i>
Winter	2000	Edwards, Virginia A.	<i>A History of Prefiling in Virginia</i>
Spring	2002	Erickson and Barilla	<i>Legislative Powers to Amend a State Constitution</i>
Spring	2001	Erickson and Brown	<i>Sources of Parliamentary Procedure: A New Precedence for Legislatures</i>
Summer	1999	Erickson, Brenda	<i>Remote Voting in Legislatures</i>
Spring	2004	James, Steven T.	<i>The Power of the Executive vs. Legislature – Court Cases and Parliamentary Procedure</i>
Spring	1997	Jones, Jerry G.	<i>Legislative Powers and Rules of Procedure: Brinkhaus v. Senate of the State of Louisiana</i>
Spring	1998	King, Betty	<i>Making Tradition Relevant: A History of the Mason's Manual of Legislative Procedure Revision Commission</i>
Fall	2002	Maddrea, B. Scott	<i>Committee Restructuring Brings Positive Changes to the Virginia House</i>
Fall	1997	Mayo, Joseph W.	<i>Rules Reform</i>
Spring	2002	Mina, Eli	<i>Rules of Order versus Principles</i>
Spring	2003	Tucker, Harvey J.	<i>Legislative Logjams Reconsidered</i>
Fall	2005	Tucker, Harvey J.	<i>The Use of Consent Calendars In American State Legislatures</i>
Summer	2000	Vaive, Robert	<i>Comparing the Parliamentary System and the Congressional System</i>
Fall	2001	Whelan, John T.	<i>A New Majority Takes Its Turn At Improving the Process</i>

Staff

Spring	2001	Barish, Larry	<i>LSMI: A Unique Resource for State Legislatures</i>
Fall	2001	Best, Judi	<i>Legislative Internships: A Partnership with Higher Education</i>
Spring	1996	Brown, Douglas G.	<i>The Attorney-Client Relationship and Legislative Lawyers: The State Legislature as Organizational Client</i>
Fall	2002	Gallagher and Aro	<i>Avoiding Employment-Related Liabilities: Ten Tips from the Front Lines</i>
Spring	2003	Geiger, Andrew	<i>Performance Evaluations for Legislative Staff</i>
Spring	1997	Gumm, Jay Paul	<i>Tap Dancing in a Minefield: Legislative Staff and the Press</i>
Fall	1997	Miller, Stephen R.	<i>Lexicon of Reporting Objectives for Legislative Oversight</i>
Winter	2000	Phelps, John B.	<i>Legislative Staff: Toward a New Professional Role</i>
Spring	2004	Phelps, John B.	<i>Notes on the Early History of the Office of Legislative Clerk</i>

Winter	2000	Swords, Susan	<i>NCSL's Newest Staff Section: "LINCS" Communications Professionals</i>
Fall	1996	Turcotte, John	<i>Effective Legislative Presentations</i>
Fall	2005	VanLandingham, Gary R.	<i>When The Equilibrium Breaks, The Staffing Will Fall – Effects of Changes In Party Control of State Legislatures and Imposition of Term Limits on Legislative Staffing</i>

Technology

Spring	1996	Behnk, William E.	<i>California Assembly Installs Laptops for Floor Sessions</i>
Spring	1997	Brown and Ziems	<i>Chamber Automation in the Nebraska Legislature</i>
Spring	2002	Crouch, Sharon	<i>NCSL Technology Projects Working to Help States Share Resources</i>
Spring	1997	Finch, Jeff	<i>Planning for Chamber Automation</i>
Summer	1999	Galligan, Mary	<i>Computer Technology in the Redistricting Process</i>
Summer	1999	Hanson, Linda	<i>Automating the Wisconsin State Assembly</i>
Fall	1995	Larson, David	<i>Emerging Technology</i>
Fall	1996	Pearson, Herman (et al)	<i>Reengineering for Legislative Document Management</i>
Fall	1995	Schneider, Donald J.	<i>Full Automation of the Legislative Process: The Printing Issue</i>
Spring	2006	Steidel, Sharon Crouch	<i>E-Democracy – How Are Legislatures Doing?</i>
Fall	1997	Tinkle, Carolyn J.	<i>Chamber Automation Update in the Indiana Senate</i>