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Information for Authors	2
<i>Laura Leete and Steven Maser</i> Helping Legislators Legislate: An Executive Program for State Senators.....	3
<i>Norman Pidgeon</i> Removal by Address in Massachusetts and the Action of the Legislature on the Petition for the Removal of Mr. Justice Pierce.....	19
<i>Claire J. Clift</i> Three Minutes	22
<i>Timothy L. Coggins</i> Virginia Law: It's Online, But Should You Use It?.....	24
Professional Journal Index	28

Journal of the American Society of Legislative Clerks and Secretaries

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Contributions will be accepted for consideration from members of the American Society of Legislative Clerks and Secretaries, members of other National Conference of State Legislatures staff sections, and professionals in related fields.

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 Word 2000 or WordPerfect 8.0, 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.

Authors are encouraged to submit a photograph with their article, along with any charts or graphics which may assist readers in better understanding the article's content.

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Helping Legislators Legislate: An Executive Education Program for State Senators

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Abstract

This paper reports on lessons learned from designing and delivering a two-day executive education program to help state senators be better senators. We provide 10 lessons on the process of creating and delivering the program and five lessons about its content. We base these lessons on observations we made during the program and evaluations submitted by the participants. We frame the lessons in ways that apply to a range of legislative institutions.

A state senator asks you, a university professor versed in the ways of political science, public policy, and public administration, “Can you provide training to help my colleagues and me improve our performance?” How do you respond? The answer is, “Yes, of course,” without coming across as presumptuous. If your offer is accepted, the real work begins.

This paper reports on lessons learned from designing and delivering a two-day executive education program to help state senators be better senators. To our surprise, searching the literature for articles about custom-designing educational programming

for state legislators generated little. With 50 state legislatures, surely we were not the first university to be asked for assistance. Web searches identified programming, but nothing about “how to,” leaving us with names of people to call for advice at organizations such as the National Council of State Legislatures and the Eagleton Center at Rutgers University. If academics have produced programs of this sort, they have not published much about it.

The legislative body in question is the Oregon State Senate, which, with the Oregon House, meets every two years. It is a citizen legislature with a modest full-time staff that expands to include volunteers and temporary paid staff during each session. The 90 districts in the House fold into 30 Senate districts. Turnover means that the institutional history held by any set of legislators has been modest. During the past several sessions, no political party has had a veto-proof command of the legislature. Until 2007, different parties had majorities in the House and Senate, making at least one, sometimes both, different from the governor’s party. Furthermore, the Oregon legislature has had to deal with divisive issues resulting from events beyond its control, such as an economic recession, unemployment ranking among the highest in

the nation, and no sales tax and state funding for elementary and secondary schools following successful enactment of a ballot initiative. It also has had to deal with divisive issues within its control, such as a progressive state health plan that became increasingly expensive. Not surprisingly, the legislative sessions have been contentious, so much so that some legislators began promoting nonpartisan elections as a solution to gridlock. However unique as Oregon might be in the constellation of state legislatures in the United States, the lessons learned about designing an educational program to encourage effective legislating are not. The Oregon Senate is a group of individuals, elected from geographic jurisdictions and operating within a set of constitutionally mandated and institutionally crafted rules. It has committees, formal leadership positions, and other trappings of a collective, deliberative, decision-making body. Many factors contribute to the effectiveness of a legislative body, not least the personalities of the individuals and the leaders they select. If comity declines, partisanship increases and gridlock sets in. An educational program is not the sole solution, but it can be part of one. The problems of designing and delivering such a program are not daunting, but they are real. The lessons are best understood in two related categories: process and content.

Ten Lessons on Process

1. Ensure bipartisan Senate ownership of the program.

A request for executive education best comes from senators themselves. They have to be ready for it and to perceive value to themselves as individuals, if not to their institution. What creates value for a legislator is something that can help advance his or her agenda or career and that justifies

stepping away from innumerable demands to focus on decision-making within and as part of a group. In sum, if they are going to incur the costs, they have to reap the benefits. They have to own the program.

Furthermore, if the request for assistance comes from the member of one party, whether minority or majority, a precondition for success is co-sponsorship of the request from a member of the other party. Partisanship pervades everything that occurs in a state legislature. It cannot be eliminated, but it can be mitigated. Even if an executive education program intends to improve the political process, not by promoting changes in the rules so much as by encouraging the legislators to work more effectively within them, the participants must perceive that neither political party will gain an advantage from the changes or from the processes that generate them. Legislators learn early that process can dictate outcomes. Bipartisan support for expending time and resources on an educational program is one way to manage expectations about the program.

2. Treat the legislator as your client.

Clients have experience, if not expertise, in the topics on which they are seeking outside advice, and legislators are no different. Moreover, legislators are not seeking a general education for its own sake, but rather specific understanding and skills that demonstrably improve their performance. The legislators themselves, therefore, should play a significant role in establishing the training agenda. This entails interviewing the sponsoring legislators to understand their perception of their needs, proposing a training agenda, receiving feedback, redesigning the agenda, and receiving more feedback until it appears that the agenda has gelled. If the legislators want

to do a better job of negotiating without making disagreements personal, academics know how to teach those skills. If the legislators want their members to better understand the constraints that state constitutions place on their ability to legislate, academics know how to convey that knowledge. Academics, however, have to guard against the temptation of telling the legislators what they think the legislators need; instead, they must stick to what they know best: teaching the topics they know.

After interviewing senators, we understood that they wanted to develop a better understanding of how an elected official pursues an agenda—individual or collective—as one among many; how one best operates in a highly public environment where even perceived conflicts of interest can be fatal; and how one achieves legislative success while sustaining the values and mores of the legislative institution. We called the program a Senate Leadership Institute because we wanted to build on the senators’ perceptions of themselves as leaders. Typically, they have served in leadership roles in their jurisdictions before seeking elective office. They may have served in formal leadership roles within the legislature as committee chairs or whips or in informal leadership roles as leaders of coalitions trying to enact legislation.

3. Engage staffers.

Like administrative assistants and secretaries in organizations throughout history, legislative staffers hold the keys to the kingdom. They know and understand the institution better than anyone, in part because they carry on while elected officials come and go. They have a stake in its operation, efficient or otherwise. In addition, they can be crucial in managing communications during the process of

planning an executive education program. If the path to legislator’s policy heart is through constituents, the path to a legislator’s institutional behavior is through staff members.

Legislatures can have two types of staff: what amounts to the secretariat of the body, typically reporting to its president or leadership, and the personal staff who serve individual legislators. The secretary of the Senate was our liaison to the institution. Her advice proved to be invaluable in reading the sense of the leadership and the membership, advising us on ways of delivering a program that would be most credible and would best engage our audience. Each legislator’s staff members also have a unique perspective on the mechanics of the institution and the individuals who comprise it. Elected officials rely on them. If these staff members believe an educational program is folly, so will the legislators. On the other hand, if you ask staff members to suggest ways in which the legislators could act to make their institution run more smoothly—which will, typically, make staff members’ jobs easier—they will be at no loss for suggestions. We met during the planning stages as a group with two senators from each political party as well as staff members. Notes from our meetings and reviews of our email exchanges confirm that we asked quite a few questions and listened more than we talked. After our first meeting, we began formulating specific program agendas so that the group could react to concrete proposals. By exploring the reasoning behind group members’ reactions and by being responsive, we learned more about their needs. The final program they accepted looked little like the first one we proposed. The design process promoted engagement and ownership by the senators and their staffs.

4. Ensure that legislative leaders participate.

Legislators are notoriously independent, but requests from their formal party and institutional leadership get their attention. The designated legislative leaders can make or break an educational intervention. If the leaders tell their members to attend but do not themselves attend, the signal is clear: this program is not a high priority. The membership will feel as though something is “being done to them” and they will bristle. If the leaders schedule other institutional business at the same time as the training program, their signal is also clear: the program and the outcomes to which it aspires are optional.

If, however, the legislative leaders participate in the program, the members know their absence will be noted. If the legislative leaders make the program the legislature’s business, then the membership will get the correct message. We sought to involve the legislative leaders from both parties by giving them leadership responsibilities, at least symbolically (so that they would have little to prepare). We asked them to serve as masters of ceremonies, introducing the program and setting its objectives in terms of their expectations. We also asked them to close the program, summarizing the “take-aways” they wanted their members to have.

5. Set outcomes early and evaluate.

Evaluation is always left for last, even though we know it should not be. In this case, the design team needs to know where it’s going before it can start. A request for assistance is likely to come to the university in the form of a vaguely articulated problem: things aren’t working well. The question for the design team is, at the end of the program, how will the legislators know that things are working

better? Ideally, the answers will allow measurable outcomes, although that might be hoping for too much.

Based on our interviews with senators and staff members, we established several objectives, all under the rubric of encouraging a more productive and efficient legislative session. Our primary objective was not substantive: the members should have opportunities to get to know each other so that they will be more comfortable together and, if not build relationships, at least be civil in their interactions. The substantive objectives were secondary, but important. We wanted the members to understand

- the importance of setting priorities, individually and collectively, and their role in the session’s success;
- the ethical aspects of their decision-making and decisions;
- the constraints and opportunities under Oregon’s constitution;
- the nature of legislative conflict and negotiation; and
- the realities of moving a bill through the legislature, independent of the formal rules.

At the conclusion of the program, we asked the senators to evaluate the effectiveness of each session; those results are reported later in this article.

6. Apply principles of active learning.

Legislators legislate. They question. They decide. They inform. To get to the legislature they communicate—they sell themselves and their ideas. The best of them listen but then react or act. By nature, they are not passive; they are not empty vessels waiting to be filled. On the job, they learn from experience. The “sage on the stage” model of education will have limited

efficacy for them. In executive education in general, and legislative leadership programs in particular, the audience wants to leave with something more than a feeling that they enjoyed the lecture. They want to do something with it. They want to use it, which is good, because, as a rule of thumb, the half-life of learning in a program like this is 10 days: if the participant isn't using what he or she learned, half of what was covered is lost every 10 days. The lesson, then, is to design the program so that participants learn by doing.

In our case, no matter what the learning objective, we strived to replace lectures with interactive exercises whenever possible. We included role-playing exercises, discussions led by senators, and discussions facilitated by instructors. Want legislators to understand the impact of the state's constitution on their proceedings? Create a game of constitutional *Jeopardy!*, where law students design the questions and a professor of law plays the role of Alex Trebek. Want legislators to understand legislative-executive branch relationships? Use a concise case from the Electronic Hallway or the Kennedy School Case collection. Want legislators to conduct hearings productively? Cull existing audio or videotapes of past hearings for examples of appropriate and inappropriate behavior, then ask the participants to critique them.

In fact, we did not have sufficient time or money to build the infrastructure for the more complex experiential exercises suggested above, even if we thought they might be more effective for learning. We substituted simpler ones. In a few cases, like the matter of constitutional constraints, we asked a recognized expert and law school faculty member who had been an Oregon Supreme Court judge to lecture. We found that the senators appreciated a

speaker's or panelists' clear presentation of nuts-and-bolts information if the information was presented clearly and the senators felt that they could ask questions as the presentation went along. Examples of topics that matter to senators and can be covered this way include:

- the state budget process
- state ethics guidelines
- public records retention law
- legislative rules and procedures
- the relationship of the legislature role to that of state agencies
- the development of fiscal impact statements.

If a topic is likely to generate many questions on the part of the senators, including a knowledgeable moderator in the session helps.

Occasionally, our liaison felt the senators would be uncomfortable with an exercise we proposed and we relied upon her judgment. In all cases, we provided take-aways in the form of condensed, concise readings and materials. No matter what the topic, we related it to the decisions legislators face every day.

7. Use instructors with street credibility.

Among legislators, academics certainly have credibility by virtue of their subject matter and teaching expertise, but those who have actually lived in the world of the legislature have greater credibility. Like the business person who solicits advice only from someone who has had to meet a budget or hire and fire people, legislators will engage better with someone who has walked in their shoes rather than only studied them. Former legislators, judges, lobbyists, staffers: these experts have street credibility. The more they can be employed

in the educational process, the greater the likelihood that the message will be received, accepted, and internalized. The caveat here is to attend to politics, especially partisanship. Anyone in government with the sort of expertise that could contribute to an executive education program will have a past, and that past might interfere with the acceptance of the message. Candidates must be vetted. The best candidates will be seen as people who will engage in a good, fair fight and then go out for a drink afterwards, who are knowledgeable, who have fallen on the sword a time or two in the interests of the institution, and who will tell it like it is. In our Senate Leadership Institute instructor line-up, we drew on practitioners and faculty. All potential participants were reviewed and approved by our Senate liaison who, in turn, had checked with key senators before issuing an approval. In one case, for example, a person who was a private consultant specializing in dispute resolution, but had been a faculty member and a state representative, made his participation as an instructor conditional upon approval by our liaison because he had once served in the House with several of the current senators. He was approved. We also used a former justice of the state's Supreme Court, the head of the state's ethics commission, and several former legislators now serving as lobbyists or directors of state agencies. As one participant put it in an evaluation, "For me it was historical to have had three former legislators who were also very powerful give insight and feedback."

8. Hold the program off-site.

The idea is to create an environment conducive to reflection and learning. Removing participants from the site of their day-to-day business encourages them to focus on the way they conduct their business. It also encourages the participants to engage in the sort of informal exchange—

between formal sessions of the programs—in which considerable learning takes place. Of course, in the era of cell phones, wireless laptops, and Blackberries, physical distance will no longer guarantee a program free from interruptions and distractions—another reason to emphasize active learning, because it requires participants to focus on the issues at hand, lest they show disrespect to their colleagues. Had we held the program in a legislative facility, we could have made it work, but the psychology of some physical distance helps.

We held the Senate Leadership Institute on our university campus. The physical separation was more of a psychological than a physical barrier and was essentially symbolic. Still, in politics, symbolism is important and is understood by the players. Using our facilities also helped to keep expenses low and to avoid the appearance of boondoggle. Furthermore, this gave us access to the infrastructure of education: appropriately lit rooms with comfortable and moveable seating, audio-visual equipment, white boards, projectors, and so on. Although other venues can reproduce the equipment, they do not provide the ivy on the walls that says, "this is a place of learning, so...learn."

A related and important issue has to do with the role of the media. Should the program be open to reporters? Do state sunshine laws require that reporters have access? Should reporters be invited? On one hand, having reporters observe, if not engage in, an exercise with legislators to see them as human, professional, and cooperative, has its merits. On the other hand, having reporters present invariably puts a chill in a room where you are asking participants for candor in examining, critiquing, and improving their decision-making, and asking participants to engage in

experiential, active learning exercises in which, by definition, they learn by making mistakes.

For the Senate Leadership Institute, the president of the senate listed the activity as the business of the Senate for the two days involved and posted that on the public calendar with its location. We did not invite reporters. If any chose to attend, we planned to advise them that senators were speaking off the record and not for attribution, but, of course, that's not enforceable. As it happened, no one from the media attended.

9. Use the senators' time efficiently.

Time and timing matter. Getting legislators away from their jobs for any significant period of time is an accomplishment. We began planning a three-day program off-site that would allow participants to work together in the evenings. That ideal quickly met reality, and our liaison disavowed us of it.

If the program takes place well before the session begins, participants may be able to focus on the subject because their legislative duties have not begun, but they may forget much of what they learned by the time the session begins. If the program takes place well into the session, they may not be able to separate themselves from their duties; indeed, they likely will not participate. Keeping these things in mind, we ran the Senate Leadership Institute during the second and third days of the legislative session. (See the appendix for an outline of the agenda.) The pomp and circumstance of the opening day before had everyone in the mood to think broadly about what the session might accomplish. And legislative duties were imminent but not yet distracting.

10. Obtain independent financial support.

Many practitioners will contribute their time to a program like this. Some will do it out of the goodness of their hearts. Some will do it as a way to market themselves and help build relationships with the legislators. Some will do it for the fun of it. Some will do it because helping legislators understand a particular topic will make their own jobs easier. Faculty may contribute their time as part of their service obligations. Compensation helps, however. With food, facilities, and materials, if not instructors, you get what you pay for.

The university might be willing to support the program in the public interest. It is also possible to solicit support in the form of sponsorships from large lobbying organizations. The specter of conflict of interest, perceived if not real, hangs over both of these sources, perhaps more so for the lobbying organizations. Even if the funds from lobbying organizations are given through the university, if there is any sort of quid pro quo—like allowing representatives of their organizations to participate—the taint exists. Legislators live in a fishbowl, and everything they do, especially when it entails an expenditure of money, has to appear benign in the public's mind—not only in the way the public might read a headline, but in the way a conservative or liberal commentator might “spin” the story.

The ideal solution is to identify a private foundation or good government organization willing to provide sufficient resources to underwrite the program. These organizations have agendas, too, but they generally command broad public support. The Ford Family Foundation, an Oregon-based organization, provided a \$10,000 Leadership Assistance Grant to our university for the Senate Leadership Institute. The foundation's mission is to help individuals be contributing and successful

citizens through organized learning opportunities and to enhance the vitality of rural communities in Oregon and Siskiyou County, California. The values of its founders guide the Foundation in performing its responsibilities:

- Integrity—promoting and acknowledging principled behavior.
- Stewardship—responsibility to give back and accountability for resources and results.
- Respect—valuing all individuals.
- Independence—encouraging self-reliance and initiative.
- Community—working together for positive change.

Had we not received support from the foundation, the university could have provided funding, albeit less, through its Public Policy Research Center. None of the substantive programming would have changed, but we could not have offered as many supportive amenities or honoraria for the instructors.

Five Lessons on Content

The content of an educational program will in large measure depend upon the context-specific needs of the legislators. Some lessons, however, are generalizable. An overarching lesson is that unprogrammed interactions are as important as the programming itself. Informal exchanges help the participants know each other as people, the grease that allows the wheels of any organization to turn. As in a traditional classroom setting, a measure of the success of the formal program is the extent to which it stimulates participants to continue talking about the subject during breaks and meals. Especially in short-term, intensive executive education programs, scheduling breaks, meals, and social opportunities—including instructors—should be an explicit part of the plan.¹

Furthermore, learning exercises wherein legislators work jointly to solve problems unrelated to the specific policy disagreements of the session teach them that they can work with each other. These noncognitive experiences may, at the end of the day, be the most valuable ones.

1. Focus on basics and process.

To find substance behind the vaguely expressed desire for an educational program, we listened. We heard that legislators needed a sense of policy priorities and, with that, a sense of focus toward which they could channel their limited time and resources. Some have pursued political agendas at the expense of the institution; for example, at each session a set of proposals would make it to enactment, but their sponsors knew the governor would veto them or the courts would declare them unconstitutional. We became aware of a sense that some legislators were not treating each other or their constituents with the decorum and civility sufficient to sustain productive conflict resolution. Some legislators, especially the newest ones, did not understand the nuts and bolts of how bills become laws—what is required to get a bill through their own chamber, as well as through the other chamber—and not just the legal requirements, but also the political mechanics. We also became aware of a concern that some legislators were insensitive to perceived conflicts of interest, undermining the public's confidence in the institution.

From time to time, a legislator might try to direct the agenda of the educational program toward an objective near and dear to that legislator's heart, whether in terms of institutional behavior or a specific policy outcome. For example, one senator wanted us to teach economics. This kind of request appeals to a faculty member's basic

instincts: if decision-makers better understood the faculty member's discipline, policies would be better. And, of course, they would be.

This approach to designing an executive education program about leadership is risky, however. Unless demand for this subject is widely expressed, it hijacks the program for the policy agenda of a subset of the legislators, such as those who feel economic development or transportation investments should be priorities. Teaching learning theory might generate better policies on education; teaching epidemiology could inform public health policy. Unless consensus exists on the need for substantive programming about a particular subject, this approach will alienate legislators who have different policy agendas.

In designing a program such as this, one must decide what one cannot do. Teaching economics or psychology or learning theory in 90 minutes or three hours is not feasible. If legislators want to understand a subject better, they hold hearings, they read papers, and they talk to committee staff members. For the purposes of an educational intervention designed to help members of a political institution be more efficient and effective, focus on process.

Finally, the program has to remain fresh and add value, session after session, for seasoned and returning senators. This can be accomplished by adding new topics and activities in each Institute, discarding less popular or less effective sessions and updating others. For example, have at least one interactive exercise on a public policy problem that is likely to emerge as an important theme during the upcoming legislative session. In our 2005 Institute, an

exercise incorporated funding for K-12 education; in our 2007 Institute, an exercise incorporated the creation of a state rainy-day fund.

2. Incorporate public policy problems indirectly.

While the purpose of the program is not to resolve particular public policy issues, it can capitalize on the legislators' energy and enthusiasm for addressing them. The challenge is to frame the educational exercises so that the legislators do not engage in political debate so much as learn to debate productively. The underlying principle for accomplishing this is to separate the legislators from the issues in place or time so that they do not see themselves as accountable. Separating them in place means, for example, putting state legislators in the role of addressing the issues at a federal level, or asking them to role-play advisers to legislators in a different state. Separating them in time means asking them to address the issue as it might arise 10 years in the future or putting them in a hypothetical situation in which they are looking back in time on the issue.

For example, among our objectives were 1) to help the senators understand the importance of creating an institutional agenda with priorities that would give individual senators focus during their session, and 2) to help them understand the importance of institutional rules and procedures, informal and formal, to keep them moving ahead. After talking with colleagues at other universities, we used an exercise designed by Professor David Harrison from the Evans School of Public Affairs at the University of Washington. Called "The Commission," the exercise has been used successfully for many years with many groups of executives and leaders. Professor Harrison, joined by former

legislators now serving as directors of state agencies, presented themselves as a federal commission working in the year 2014 charged with studying the successes of state legislatures in the past. In this scenario, the commissioners are visiting Oregon to learn how the 2005 state legislature did such a masterful job of dealing with public policy issues of the day. Participants are broken into smaller groups of five to six, asked to identify the key issues of the day and the ways in which their body managed themselves so that the public perceived them to be remarkably successful. Each small group testified before the Commissioners, who asked questions and then summarized their findings.

This was the first exercise in the program, immediately following welcoming remarks from the leaders of each party. By asking the participants to go to work immediately, we intended to send several messages: 1) this is your program, not ours; 2) what you get out of it will depend on what you put into it; and 3) you're going to have fun learning or we'll die trying. For the first 10 to 15 minutes, we observed the members settling into the role-play, some more comfortably than others. As the breakout groups dug into their assignments, we could see interpersonal and political dynamics at play, a certain amount of posturing and pontificating, and kidding, both gentle and sharp. Because we assigned one member of each group to be responsible for keeping it on task and kept the groups small enough that a nonparticipant would have to be drawn in, they soon fell into animated discussions and began thinking seriously about priorities and procedures designed to accomplish them. One of the things they discovered in this exercise was how much they had in common, despite their political and personal differences.

3. *Discuss civility.*

People working in close proximity as legislators invariably behave in ways that, intentionally or not, deplete or promote the social capital of the body. Legislators probably do not discuss these behaviors in their institutions because they may see them as uncomfortably personal, because they simply do not take the time, or because they do not think their actions can change these behaviors. These are not just the inevitable *faux pas* committed by new members; they include the tolerated foibles of the senior members. The history of incivility in American electoral politics is long, albeit episodic, and perhaps inevitable; its appearance inside the legislative arena as an impediment to effective government is unavoidable but not unmanageable (Cooper, 2005; Uslaner, 1993; Rosenthal, 2004).

Putting these behaviors on the table for discussion has several benefits. First, people may be unaware of the impact that their behaviors are having on others. Simply identifying the behavior, if not the people who engage in them, can induce changes. Second, discussing these behaviors openly in an educational program gives the members license to discuss them after the program, whether to request that a colleague refrain from a certain behavior or to compliment a colleague for being helpful. Third, open discussion helps new members learn acceptable behaviors that they would otherwise have to absorb by observing behavior that is tolerated or encouraged around them.

In 2005, we wanted to use a standard team-building exercise in which members of a group create a basic list of rules for their team to follow (such as arriving at meetings prepared and on time) and then having the legislators signal their commitment to the rules and to enforcing them by signing a list of the rules. This asked too much of the

senators. They were willing to identify and discuss, but not to sign. To be responsive, we chose again not to have an expert or a member of the Senate lecture on decorum, which could come across as formal and preaching. Instead, we stayed true to our commitment to active learning by designing a working lunch, setting an open, informal tone for a potentially uncomfortable topic. We relied on the senators to personalize the subject, to gently chide or encourage each other, and, thereby, to promote reciprocity.

We asked our liaison to the Senate to compile a list of behaviors that were either pet peeves of the senators or highly respected by them. For example, it bothered some senators that some members addressed each other respectfully during public hearings as Senator X or Senator Y but addressed members of the public giving testimony by their first name, such as Bob or Susan rather than by title, such as Commissioner or Director or by Mister, Ms., or Doctor. We distributed the list (Table 1) during lunch, and asked a senior senator who felt strongly about these behaviors to start a discussion by highlighting, illustrating, or adding to it, then inviting other members of the Senate to the podium to do the same.

We could not predict how the group would respond to the exercise. However, we trusted their natural proclivity to talk and critique. We hoped that the tone of engagement we set with the opening exercise in the program would induce them to participate in this one. We were rewarded with a steady stream of senators coming to the podium to tell stories, lots of heads nodding in agreement, and expressions of surprise and appreciation of the resulting candor.

In the 2007 Institute, we showed video clips from Senate floor sessions with

examples of bothersome behaviors. The clips were of specific instances recalled by the senators organizing the discussion and involved situations in which the poor behavior was attributable to virtually the entire body so that no individual senator was singled out. This drove home the point while not stepping on any toes. One example involved senators on the floor failing to pay attention while courtesy introductions were being made—in this case, for the mother of a fallen Oregon soldier.

In their evaluations, the senators gave this session a median score of four out of five for usefulness. Their comments were along the lines of “Too many times we, as a group, take it for granted that we’re on the floor and the cameras, because we don’t see them, are not rolling.” “It was great.” “Spontaneity was the best. Wish it could have been longer.” “Format prevented any one person from preaching.” “Good ownership of issue and concerns on part of members. Open mike worked.” Indeed, the respondents noted the credibility of the sessions were enhanced because they had been organized and moderated by senators who were considered paragons of good manners and politeness.

4. Discuss ethics early and often.

Discussing ethics with state legislators means discussing conflicts of interest, which are endemic in their work (Rosenthal, 1999). Because violations have become grist for the media mill, many states have strict and detailed laws, rules, and regulations that appear, at least on first inspection, to be more onerous than those imposed on businesses through Sarbanes-Oxley. The rules are often so detailed, however, that no one can easily master them and a well-intentioned state legislator can run afoul of them without realizing it. Whether they care about them or not—and

most with whom we dealt take them quite seriously—legislators need to know about them. The consequences of failing them can be expulsion from office, a lost election, civil penalty, or worse. Thus, teaching state legislators about ethics is a challenge on many levels. One can hope to create a degree of sensitivity to ethical issues and to provide rules of thumb for dealing with them. However, not much can be done in an educational setting of limited duration to give a legislator the motivation to be ethical or to have the character to act ethically.

Our initial plan called for scheduling a discussion of ethics on the second day of the program, but we were soon encouraged by experts and senators alike to place it earlier. No one knew how many of the senators would return after the first day. The issue was seen as too important to leave for later. We opted for a two-pronged approach. First, we found in the literature a variety of short cases that could be the basis for discussion (Allison and Liebman, 1980). We also found that asking current or former senators privately for examples of ethically questionable actions generated more than we could use. For example,

You are a newly elected senator and practicing attorney. On behalf of a client of your law firm, you intend to introduce a bill to amend state land use regulations, permitting a real estate development that would not otherwise be allowed. You can draft the bill so as not to attract widespread opposition by using language such that the only beneficiary will be your client.

Breaking the participants into groups of five to six, we asked each group to discuss a different scenario and to be prepared to report to the larger group on whether they identified an ethical problem, whether they desired more information to help resolve it, and what action they would recommend and why.

We preceded this 20-minute exercise with a 10-minute lecture about understanding ethical problems as conflicts of interest, and followed it with a 15-minute discussion to tease out principles for analyzing ethical issues in terms of rights, justice, or social utility. We also provided written material in the form of a primer on ethics that they could use later. Again, the scenarios were so real to members of the audience that we had to assure them that we had not knowingly prepared them with knowledge about any participant's behavior. Discussions were animated and, at times, intense, as the participants disagreed about whether situations of the sort illustrated here constituted unethical behavior or the responsibilities of the job.

Second, the case discussion created more questions than answers, as it was intended to do, setting up a panel of authorities who provided more answers than questions about Oregon's ethics laws. The panel included the president of the Senate, the director of the state's ethics commission, and a deputy legislative counsel. These presenters clearly had street credibility. The members paid rapt attention and asked incisive questions. Had members of the media been present, perhaps participation would not have been so widespread and candid.

The senators perceived this to be one of the most useful parts of the program, giving it a median score of five out of five on their evaluations. The senators made suggestions about how to make it even more productive and concrete. Typical comments in their evaluations were: “I thought this was

the most thought-provoking session.” “Extremely important to look at real situations and to ask questions.” “Great information. Good panel. Could have been longer. Could have gone into public records more. Very good fact situations.”

Table 1.

<i>Bad Behaviors</i>	<i>Good Behaviors</i>
Chewing gum or candy while trying to talk.	Committee chair explaining process to public.
Unwrapping candy very loudly right in front of microphone.	Members explaining when they leave the committee that they have another meeting, etc.
Committee members carrying on private conversations with each other while someone is testifying.	Committee chair laying out process of allowing those who travel the farthest to testify first.
Abruptly leaving a committee meeting without explanation.	During controversial meeting, committee chair setting limits on testimony to give everyone a chance to make their views known and enforces limits.
Dressing inappropriately.	Dressing appropriately and giving attention to the witness.
Showing up late and being disruptive (e.g., asking a question that has already been asked and wasting the committee's and witness' time).	Committee members excusing themselves for private conversations just outside the hearing room, so staff does not have to hunt them down for committee actions.
Slumping in chair, yawning, staring with mouth open.	Committee members taking responsibility for their own committee materials, i.e., bringing their info to the meeting and taking it with them when they leave.
Reading unrelated material during committee meeting and not paying attention.	Listening to the debate of other committee members and public testimony.
Using cell phones and electronic devices while meeting is going on.	Always being aware that you are on camera! (Microphones are extremely sensitive, even to a whisper.)
Not taking the hint that the committee needs to move on with current agenda.	Committee members being aware of their body language.
Committee member is conducting business of one committee (of which he/she is chair) while participating in another committee.	
Scheduling other meetings on top of regular committee meetings and requesting staff to interrupt and take them out.	
Impugning the integrity of another member.	

5. *Treat conflict resolution as a skill.*

To legislate is to resolve conflict, because any government action invariably creates winners and losers (Baron, 2005). Whether drawing on game theory and economics or psychology, conflict resolution is now a well-regarded area of scholarship, complete with practical tools. Even legislators with reputations as excellent negotiators, coalition builders, and mediators can benefit from a structured exposure to the topic.

Recognizing the diversity of decision-making styles that underlie conflict—independent of substantive disagreements—is one of the first tools. In 2005, this was covered with a one-hour lecture and discussion. An alternative, which would require at least 50 percent more time, would be to administer one of several available instruments on decision-making style to the individuals and then to analyze their meaning and distribution within the group. Our liaison warned us away from this approach because legislators are inundated with and skeptical of anything that looks like a survey or questionnaire.

Next, a former state representative and consultant/trainer on negotiation (with an excellent sense of humor) spent almost two hours with the senators, creating a collective learning experience in which the senators and presenter empathized with each other. This session cut past the theory and went straight to practical skills, using the terms of art that legislators know. In such a short period of time, one can only hope to convey two to three points. That is true of almost every topic in the program, but if the points are well chosen, the time is well spent.

In 2007, we repeated the session on negotiation but supplemented it with an interactive unit on interpersonal

communications, taught by two consultants who had retired from the faculty of the University of Oregon. The senators clearly understood the value of the time they spent on both topics. They gave these sessions their highest evaluations. Their comments included: “Very useful discussion about things that are obvious but not. We engage in these behaviors without knowing it. [The instructor] gave me tools to think differently about the art of negotiation.” “I found this and the last session on personality traits to be the most valuable. Anything that gets us talking and learning about each other.” Other topics that might be worth addressing in similar interactive exercises include dealing with difficult people, developing working relationships in building coalitions, structured brainstorming, or ethical decision-making.

Final Thoughts

Not everything went as planned. Despite continually cutting back, we probably tried to do too much in the day and a half allocated to the program. The senators appreciated the session on constitutional law but it was sufficiently complicated that the takeaways likely were minimal. The senators saw the session on how a bill really becomes a law as more entertaining than adding value.

That said, at least some senators in every session expressed the desire that more time be allotted to it. Members of the leadership wished their colleagues in the House had gone through the same program. One senator told his staff early on the first morning that he was going to make an appearance so the leadership would see him but he would return to the office in an hour; he not only stayed throughout the first day, he also returned for all of the second. We’ll interpret that as the best testimony for the efficacy of the program.

Appendix: Schedule

Tuesday

8:30–8:45 A.M. Welcome and Overview

University Senate Leadership Institute Program Managers
Majority and Minority Party Senate Leaders

8:45–11:45 The National Commission on Legislative Excellence:
Looking Back from the Future

Chair: David Harrison, Evans School of Public Affairs, University of
Washington, with three Oregon executive branch officials and former
legislators as Commissioners

12– 1 Lunch—Group Discussion: Order, Respect, and Decorum

Facilitator: Senator

1–1:45 Identifying Ethical Issues

University Professor

1:45–2:45 Panel Discussion: Ethics Guidelines for the Oregon Senate

Panelists:

President of the Senate

Chair, Oregon Government Standards and Practices Commission

Senior Deputy Legislative Counsel

3–4 Decision-Making and Learning Styles

Director, Ford Institute for Community Building

4–5:30 Reception

Wednesday

8:45–9:45 Oregon’s Constitution

Professor, University School of Law

10–11:45 Effective Negotiation in the Legislative Arena

Negotiation consultant and former state representative

12:00–1:15 Lunch—Panel Discussion: How a Bill Really Becomes a Law?

Seasoned Senators’ Insights into Effective Legislating

1:30–2 Wrap-Up

Senate Majority and Minority Leaders

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Removal by Address in Massachusetts and the Action of the Legislature on the Petition for the Removal of Mr. Justice Pierce.

by Norman Pidgeon

Casual conversation with a number of members of the bar, since the filing of the petition before the legislature for the removal of Mr. Justice Pierce, revealed the fact that many lawyers either did not know, or had forgotten, that the Massachusetts Constitution, ever since 1780, after providing in Chapter 3, that "All judicial officers duly appointed, commissioned and sworn shall hold their offices during good behavior,..." has contained in the same sentence the following provision: "provided nevertheless, the Governor, with consent of the Council, may remove them upon address of both houses of the legislature." Many lawyers appear to have thought that the proceeding against Mr. Justice Pierce was an impeachment proceeding. It is common for men to refer to Massachusetts judges as holding office "for life". This, of course, is not the fact and never has been the fact in Massachusetts. The tenure has always been "during good behavior". The reason for the insertion of that clause in the commissions of judges, by express direction of the constitution, is explained by the public controversy between General William Brattle and John Adams in 1773 (see Mass. Law Quarter. May, 1917, pages 397-398). In addition to the general provision for impeachment of public officers before the Senate, the special process of removal upon address was provided as applicable only to the judiciary.

This machinery for the recall of judges has, therefore, always been a part of the judicial system of Massachusetts. The process differs from impeachment in that it is a purely legislative proceeding in its nature. This fact was made clear in the statement by the committee prior to the opening of the recent proceedings on March 28th, 1922 above referred to as follows:

"It should be borne in mind that this is a Committee regularly appointed through the adoption of a joint order by the General Court for the purpose of conducting a legislative hearing, and is not to be considered as a trial court exercising or attempting to exercise judicial functions." While following the general course of a judicial hearing the Committee, whenever occasion arose for decision on matters of detail, referred to the legislative character of the hearing and followed out its announced plan of exercising "its discretion as to the admission or rejection of any evidence that may be offered".

From time to time there have been vigorous criticisms directed at the process for removal by address and regrets were recently expressed in the press that the procedure had not been abolished as archaic and cumbersome at the time of the recent constitutional convention. On the other hand, the provision has always withstood the

attacks upon it and the manner in which the powers have been exercised by the legislature under it since 1780 has justified its continued existence and the support which Levi Lincoln gave to it in the debate of the constitutional convention of 1820.

Of course, as no reasons are required to be specified either by the legislature or by the executive for a removal by this procedure (which differs in this respect from an impeachment) the machinery offers possibilities of abuse. In Maine where there is a somewhat similar provision, it appears to have been abused in the case of Judge Woodbury Davis in 1856. In that case, Judge Davis, a recently appointed member of the Supreme Judicial Court of Maine, decided a question of law as to the conflicting rights of claimants to the office of sheriff. The disappointed claimant instead of taking the case to the full bench, got possession of the jail by force. Political feeling ran high. A petition for the removal of Judge Davis was filed with the legislature. Judge Davis had among his counsel Rufus Choate and Henry W. Paine of Massachusetts and the case created much attention. The legislature voted an address and the governor removed the judge accordingly. It was purely political removal because the majority of the legislature did not like the judge's view of the law and the governor removed him on grounds which, as quoted in the Law Reporter, showed an utter misconception of the relations between the different branches of the government and seemed to show also a mixture of personal pique because the judge had disagreed with the Governor as to his legal power in attempting to remove the old sheriff and appoint a new one. (Sec.19 Law Reporter, N.S., pp. 61-77.) The legislature thereupon abolished the position which Judge Davis held. The next year, the political complexion of the legislature changed, the

office was recreated, and Judge Davis was reappointed. Nothing more was heard of the matter. (Sec. 19 Law Reporter, N.S. 652.)

The history of the proceeding for removal in Massachusetts may be found in Bulletin No. 36 prepared by the Committee to Compile Information for the recent constitutional convention of 1917; in chapter IX of the Constitutional History of the Supreme Judicial Court in the May number of the "Massachusetts Law Quarterly" for 1917, and in other discussions therein referred to. The nature and purpose of the proceeding was judicially determined by the Supreme Judicial Court of Massachusetts in an opinion by Chief Justice Morton in *Commonwealth v. Harriman*, 134 Mass. The case which followed the removal of Judge Day of the Barnstable Probate Court in 1882.

Briefly, the history of the exercise of this power in Massachusetts shows various removals of justices of the Court of Common Pleas at the end of the eighteenth century, various Justices of the Peace in the nineteenth century, and three cases relating to judges of the higher courts. In 1803 Mr. Justice Bradbury of the Supreme Judicial Court was removed because of incurable illness, his reason for not resigning being that he had no means of support. He died so soon after his removal that the problem of support did not continue. During the period of anti-slavery excitement, Judge Charles G. Loring, who was both Judge of Probate in Suffolk County and United States Commissioner, was removed by Governor Banks upon address of the legislature from his office of Judge of Probate because, in his capacity as United States Commissioner, he enforced the fugitive slave law, which was at that time unpopular in this neighborhood. This was an obvious abuse of the process as his act as commissioner was a simple

performance of his duty under the law. The legislature had voted an address in the previous year and Governor Gardiner had refused to make the removal. The next case was that of the removal of Judge Day of the Barnstable Probate Court already referred to in 1882. The celebrated trial of Judge Prescott, a judge of probate, in the early twenties, was an impeachment before the Senate and not a proceeding for removal by address.

The careful, serious and responsible manner in which the recent joint committee of the legislature attended and conducted the hearings on the petition relating to Mr. Justice Pierce demonstrated the fact that this constitutional process is a reasonable provision which can be, and has been, fairly and reasonably conducted in practice. The practical demonstration of this fact by the conduct of the hearing and the character of the report of the committee is likely to prove of lasting value to the people of Massachusetts in stabilizing public opinion and confidence in the Massachusetts system for the selection and tenure of judges. However, much men may sympathize with Judge Pierce in the matter and regret that the proceeding was brought, yet, it is important that the purely public and impersonal aspect of the matter should be realized.

The Joint Committee consisted of Hon. Leonard F. Hardy of Huntington, Hon. Lewis Parkhurst of Winchester, and Hon. Wesley F. Monk of Watertown, on the part of the Senate, and Messrs. Edwin G. Norman of Worcester, Richard B. Coolidge of Medford, James T. Potter of North Adams, Howard B. White of Ayer, Alfred P. Richards of Plymouth, Elijah Adlow of Boston, Owen E. Brennen of Lowell, and Michael J. Fitzgerald of Worcester on the part of the House.

The committee reported unanimously against removal. After the report (Senate 493) was made to the legislature, it was accepted in the Senate without a dissenting voice and without debate. (*Senate Journal, May 22, 1922.*) In the House there was a debate in which four persons took part. Representative Jordan, one of the petitioners for removal argued against the acceptance of the committee's report, but stated that in view of his position in the matter as a petitioner he should refrain from voting. The report was supported by Messrs. Norman of Worcester, the House chairman, and Adlow of Boston and Coolidge of Medford, all members of the committee. Mr. Adlow expressed severe criticism of the petitioners; Messrs. Norman and Coolidge, while strong supporting the findings and recommendation of the committee, express their belief in the sincerity of the petitioners in filing and presenting their case. The report of the committee as a whole made no comments on the motives of the petitioners, but stated that they were "Not Material." (Report, p. 44.) After the debate the committee's report was accepted in the House by a vote of 145 to 1. (*House Journal, May 23, 1922.*) The marked absence of sensationalism in the presentation of the case naturally and obviously, assisted the committee, and, through them, the legislature as a whole, in adding a valuable precedent as to the fair and reasonable manner of conducting such an inquiry.

Three Minutes

by Claire J. Clift
Secretary of the Senate, NV

Scenario:

The majority membership in the Nevada Senate, the Governor and the Lieutenant Governor are members of the same political party.

A newly elected Lieutenant Governor is presiding in the Senate. On the second to last day of the 120-day Session—Day 119—Assembly Bill No. 595, a transportation funding bill, passes out of the Senate. A.B. 595 is very contentious as it does not fully fund the approximate \$5 billion need for future highway construction in the State. It funds only \$1 billion of transportation needs, and no taxes are created or increased by passage of the bill as the Governor has pledged to veto any new taxes or tax increases.

Earlier in the day, the Majority Leader makes a motion to hold all remarks not pertaining to specific debate on the final passage of bills until the end of a floor agenda for Order of Business No. 16: Remarks from the Floor; Introduction of Guests.

At the end of Agenda No. 3, the Lieutenant Governor proceeds to OB 16. The Majority Leader stands and asks the Secretary of the Senate how long until the next agenda. The Secretary replies, “three minutes.” The Majority Leader continues to speak under OB 16 re: the Governor’s position of “no new taxes” and the highway bill. He then makes a motion to recess until the next agenda is ready.

A minority member Senator stands and states that his light was on to speak. The Lieutenant Governor recognizes him to speak, and the Senator begins talking about the Governor and that challenging the Governor’s expected veto of A.B. 595 may be necessary.

The Lieutenant Governor interrupts the Senator and says: “You know, we’re under Order of Business 16 at this time. Do you have any remarks or introduction of guests. I think this has been fully debated.”

The Senator replies: “When you get used to the parliamentary rules, Mr. Lieutenant Governor, you will realize that under Order of Business 16, you can speak about any damn thing you want to. ... and I don’t intend to speak about any damn thing, just this ...”

Lieutenant Governor: “Mind your ...”

Senator: “Mind my what?”

Majority Leader: “Point of order. I made a motion to recess. That is the motion before the House at this time.”

Lieutenant Governor: “All those in favor of that motion, please signify by saying aye, opposed no. The motion’s carried. We are in a recess.”

Gavel sounds.

Questions of Procedure:

1. Does the Lieutenant Governor have the authority to interrupt the minority member for speaking the first time?

2. Does the Lieutenant Governor have the authority to interrupt the minority member after using the word “damn”?

3. Is there a motion to recess on the floor?

Conclusion:

Question No. 1.—Answer: No, the Lieutenant Governor does not have the authority to interrupt the minority member the first time.

- Senate Standing Rule No. 120—Remarks from the Floor states: A Senator may speak (on any matter) for a period of not more than 10 minutes.

- *Mason’s Manual*, Section 578-5: The presiding officer may not interrupt a member who has the floor, except for deciding points of order, considering questions of privilege or other matters requiring immediate attention, as long as the member does not transgress the rules.

Question No. 2.—Answer: Yes, the Lieutenant Governor does have the authority to interrupt the minority member the second time.

- Senate Standing Rule No. 1—President: He shall preserve order and decorum

- Senate Standing Rule No. 20.1: If any Senator, in speaking or otherwise, transgresses the rules of the Senate, the President shall, or any Senator may, call him to order. If a Senator is so called to order, he shall not proceed without leave of the Senate. ...

- Senate Standing Rule No. 21.2: If any Senator is called to order for offensive or indecorous language or conduct, the person calling him to order shall report the offensive or indecorous language or conduct to the presiding officer. ...

- Senate Standing Rule No. 21.3: Indecorous conduct or boisterous or unbecoming language is not permitted in the Senate Chamber.

- *Mason’s Manual*, Section 123: Use of Disorderly Words in Debate.

- *Mason’s Manual*, Section 575-1e: To preserve order and decorum.

- *Mason’s Manual*, Section 578-5: Presiding officer interrupting a member who has the floor.

Question No. 3.—Answer: No, there is no motion under consideration once the presiding officer recognizes the minority Senator to speak.

- *Mason’s Manual*, Sec. 156.2: A motion is entertained by the presiding officer by accepting it and stating it.

- *Mason’s Manual*, Sec. 156.3: A motion is not in the possession of the body nor available for consideration until it has been stated by the presiding officer. When a proper motion has been made, the presiding officer should state it or, if it is in writing, should order it read by the secretary or clerk, and it is then in the possession of the body. ...

This article was originally published in the Virginia Lawyer.

Virginia Law: It's Online, But Should You Use It?

by Timothy L. Coggins

An online official legal resource is defined as one that possesses the same status as a print official legal resource.

A judge asks you to present her with a copy of the *Virginia Code* section you are referencing in court, or she asks you to provide a copy of the Supreme Court of Virginia opinion you cited. You used Virginia state government websites to find both the code section and the court opinion. This is easy, right? You give her the copy of what you found online. But could there be a problem? Is the court opinion that you retrieved from the court website considered an official version of the court opinion? Has the *Virginia Code* section that you provided been authenticated to establish its legitimacy? Do these issues matter, and do they have any practical effect on your work as an attorney?

In 2006 the American Association of Law Libraries (AALL) completed a fifty-state survey that investigated whether legal resources on government websites are official and capable of being considered authentic. The AALL published the results of this survey in its report *State-by-State Report on Authentication of Online Legal Resources*¹ in March 2007. The survey investigated six sources of law: statutes and session laws, administrative codes and registers, and intermediate and court of last resort opinions. The survey sought to determine the veracity of state-level primary

legal resources on the Web. The AALL reported both good news and bad news:

A significant number of the state online legal resources are *official* but none are *authenticated* or afford ready authentication by standard methods. State online primary legal resources are therefore not sufficiently trustworthy. Citizens and law researchers may reasonably doubt their authority and should approach such resources critically.²

How did Virginia stack up on this survey and report? Are the documents that you provided to the judge official and authentic? Before discussing Virginia's situation, two definitions used in the survey are necessary, and it is important to note the key findings from the AALL report.

What does "official" mean? An online official legal resource is defined as one that possesses the same status as a print official legal resource.³ This means that an official version of regulatory materials, statutes, session laws, or court opinions is one that has been governmentally mandated or approved by statute or rule. It does not necessarily have to be produced by the government. This working definition of an official legal resource comes from the latest

editions of *Black's Law Dictionary* and *The Fundamentals of Legal Research*.

An authentic text has been verified by a government to be both complete and unaltered when it is compared to the version approved or published by the content originator. Authentic text typically will bear a certificate or mark that conveys information as to its certification—the process associated with ensuring that the text is complete and unaltered when compared with that of the content originator. An authentic text is able to be authenticated, which means that the particular text in question can be validated, ensuring that it is what it claims to be. Authentication could be done by encryption-based authentication methods, such as digital signatures and public key infrastructure.⁴

The key findings in the AALL report follow.

- States have begun to discontinue printing official legal resources. They are substituting online official legal sources.
- Ten states and the District of Columbia have deemed as official one or more of their online primary legal resources.
- One or more of the online primary legal sources of eight states have “official traits,” where evidence as to the actual status of the resources is conflicting.
- States have not acknowledged important needs of citizens and law researchers seeking government information; they have not been sufficiently deliberate in their policies and practices.
- No state’s online primary legal resources are authenticated or afford ready authentication by standard methods.
- Eight states have made arrangements for permanent public access to one or more of their online primary legal resources.⁵

Results from the survey show that online legal resources are more frequently the sole official published source. The laws referencing those resources and other online official sources are seriously deficient; they fail to require certification of completeness and accuracy for online resources that is comparable to that required for print official sources. The laws also do not recognize the authentication piece of the equation, which the survey indicates is essential to online official sources. The report, therefore, questions the fundamental trustworthiness of online legal information and raises concerns that need to be addressed by states at both the policy and practical levels.

Virginia is a leader in one area: it is one of only three states ... that had considered the authentication issue at the time that the survey was completed.

How did Virginia rate in the survey? Is the judge in Virginia going to accept your website-retrieved documents as official and authentic versions of the court opinion and the code section?

Gail Warren, state law librarian at the Virginia State Law Library, provided the survey information for Virginia. Warren concludes that “[g]enerally speaking, the Commonwealth of Virginia has not taken steps to designate legal resources on the Web as *official*.”⁶ She notes one exception: the state administrative register. The *Virginia Register of Regulations* was created by statute, and the code section that created the *Register* requires that it be published on the Web.⁷ Thus, following the definitions set out in the AALL report, the *Register* is considered official. Other Virginia online primary law sources are a little less certain. The online *Code of Virginia* is “the actual text of the print version,” but the website

includes no notice that addresses the status or accuracy of any of the three electronic publications: statutory code, session laws, and administrative code.⁸ Warren points to a notice at the Division of Legislative Automated Systems website regarding the statutes: “The Virginia General Assembly is offering access to the *Code of Virginia* on the Internet as a service to the public. We are unable to assist users of this service with legal questions nor respond to requests for legal advice or the application of the law to specific facts.”⁹

The Virginia judiciary website offers electronic access to the opinions of the Supreme Court of Virginia and the Virginia Court of Appeals. Warren notes the opinions are uploaded to the website on the day that the court releases them. But there is no notice for users about the official or unofficial status of the opinions or about their accuracy. She reports that the text on the website is pulled from the original slip opinion electronically prepared by the court, but currently there are no steps taken to ensure that the slip opinion as released on the Web is the same as the final opinion published in the official bound *Virginia Reports*.

Virginia is a leader in one area: it is one of only three states—Minnesota and Vermont are the other two—that had considered the authentication issue at the time that the survey was completed. Eight other states—Alabama, Arkansas, Connecticut, Maryland, Montana, Ohio, South Carolina, and Tennessee—indicated that they perceive authentication as a concern. Warren notes that a joint

subcommittee of the General Assembly in 2004 studied issues relating to providing official authentication of state electronic records, as well as permanent public access to those documents, but it did not specifically address online legal sources.¹⁰

What’s the conclusion about Virginia and the answer to the questions posed in the first paragraph of this article? Warren concludes: “Virginia still publishes print *official* versions of its statutory code, session laws, administrative code, administrative register, and appellate court opinions.”¹¹ She continues, “[U]ntil the legislature and judiciary address the authentication or permanency of electronic legal information produced by their respective branches of government, the use of legal information appearing on these websites is limited to locating relevant code sections, but not citing the electronic resource or relying on it as an *official* source.”¹² If the judge is looking for authentic and official copies of the documents that you presented in court, the copies that you supplied will not suffice.

The Honorable Herbert B. Dixon Jr. of the Superior Court of the District of Columbia, a leader in the area of technology in the judiciary, agrees with Warren. In a 2007 article about the “authentication” and “official” issues and the AALL report, he thanks the American Association of Law Libraries for its work, stating that “[t]he AALL study is a timely wake-up call for work that needs to be done to ensure the integrity and trustworthiness of electronically transmitted and maintained legal documents and information.”¹³

Endnotes:

1 Richard J. Matthews and Mary Alice Baish, *State-by-State Report on Authentication of Online Legal Resources* (Chicago, IL: American Association of Law Libraries, 2007). The report can be purchased from the AALL or can be viewed in full at the AALL website—<http://www.aallnet.org>.) [hereinafter cited as *AALL Report*].

2 *Id.* at 7.

3 *Id.*

4 *Id.* at 8-9.

5 *Id.* at 10-14.

6 *Id.* at 185.

7 *Va. Code Ann.* § 2.2-4031.

8 *AALL Report* at 186.

9 *Id.*

10 H.J. Res. No. 6, Gen. Assem., Reg. Sess. (Va. 2004).

11 *AALL Report* at 186.

12 *Id.*

13 Herbert B. Dixon Jr., *The Lack of Effort to Ensure Integrity and Trustworthiness of Online Legal Information and Documents*, *The Judges Journal* (volume 46, no. 3, Summer 2007).

PROFESSIONAL JOURNAL INDEX
1995 – 2008

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	2008	Leete and Maser	<i>Helping Legislators Legislate: An Executive Education Program for State Senators</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	2007	James, Steven T.	<i>Government by Consensus- Restrictions on Formal Business in the Massachusetts Legislature Inspire Innovative Ways to Govern</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	2008	Regan, Patrick	<i>The True Force of Guidance Documents in Virginia's Administrative Agencies</i>
Fall	2006	Speer, Alfred W.	<i>The Establishment Clause & Legislative Session Prayer</i>
Fall	2001	Tedcastle, Tom	<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	Wootton, James E.	<i>Preservation and Progress at the Virginia State Capitol</i>
Spring	2008	Wootton, James E.	<i>Restoring Jefferson's Temple to Democracy</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	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	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>

Process

Fall	1996	Burdick, Edward A.	<i>Committee of the Whole: What Role Does It Play in Today's State Legislatures?</i>
Spring	2003	Clapper, Thomas	<i>How State Legislatures Communicate with the Federal Government</i>
Spring	2008	Clemens, Laura	<i>Ohio's Constitutional Showdown</i>
Fall	2006	Clift, Claire J.	<i>Reflections on the Impeachment of a State Officer</i>
Fall	2008	Clift, Claire J.	<i>Three Minutes</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>
Fall	2008	Pidgeon, Norman	<i>Removal by Address in Massachusetts and the Action of the Legislature on the Petition for the Removal of Mr. Justice Pierce</i>
Fall	2007	Robert and Armitage	<i>Perjury, Contempt and Privilege –Oh My! Coercive Powers of Parliamentary Committees</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 Ziem	<i>Chamber Automation in the Nebraska Legislature</i>
Fall	2008	Coggins, Timothy L.	<i>Virginia Law: It's Online, But Should You Use It?</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	2007	Sullenger, D. Wes	<i>Silencing the Blogosphere: A First Amendment Caution to Legislators Considering Using Blogs to Communicate Directly with Constituents</i>
Fall	1997	Tinkle, Carolyn J.	<i>Chamber Automation Update in the Indiana Senate</i>