

National University of Ireland, Maynooth

From the Selected Works of Seth Barrett Tillman

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Extract from John Cannan's Points of Order in Law Library Lights citing Tillman's Noncontemporaneous Lawmaking

Seth Barrett Tillman



Available at: https://works.bepress.com/seth_barrett_tillman/153/

Working with Isaac: A Visually Impaired Law Clerk and the Supreme Court

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I. Introduction

During the October 2008 Term, retired Justice Sandra Day O'Connor employed the Supreme Court's first blind law clerk, Isaac Lidsky¹. During his time at the Court, Isaac worked on circuit court cases assigned to Justice O'Connor, as well as cases before the Supreme Court with Justice Ruth Bader Ginsburg's chamber. His unique needs presented the Library's staff with both opportunities and challenges. Our traditional methods of providing services often did not work well, and sometimes not at all, for Isaac. Several existing procedures had to be adapted and new processes had to be developed in order to deliver information to him in a useful format. Because of the nature and volume of the law clerks' work, prompt implementation was critical.

II. Background

The official start of each Court Term is the first Monday of October. However, law clerks from the prior term begin to leave the Court in July and new clerks arrive to take their places. Upon

arrival, the law clerks receive training from the Office of Data Systems as well as the Library. These training sessions are designed to introduce the law clerks to the resources available to them during their tenure at the Court. The Library utilizes PowerPoint slides, video, discussion and handouts to introduce various Library services and their access points. At the conclusion of the presentation the clerks are taken on a Library tour.

A basic explanation is in order to understand how the Library staff generally serves sighted law clerks. There are four Library departments
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¹Isaac J. Lidsky is an associate in the Supreme Court and Appellate Advocacy group of Akin Gump Strauss Hauer & Feld and currently works in their London office. He clerked for Justices Sandra Day O'Connor (retired) and Justice Ruth Bader Ginsburg during the 2008 Court Term. As a child actor, Isaac played Barton 'Weasel' Wyzell in the first season of *Saved by the Bell: The New Class*, before leaving Hollywood to attend Harvard College and Harvard Law School. An extensive biography can be found here: <http://www.akingump.com/ilidsky/>



Isaac Lidsky surrounded by members of the support team at the Supreme Court of the United States. © Steve Petteway, Collection of the Supreme Court of the United States.

Notwithstanding these limitations, would it be possible for the OLRC to create an e-USC along the same lines of the e-CFR? Peter LeFevre thinks it is. LeFevre says the idea has been discussed, and he intends to revisit the issue when the editing backlog has been worked off.

LeFevre notes that a number of procedural challenges would have to be overcome before an e-USC could go online. Among them, creating an e-USC would require modifying the workflow at the OLRC, where USC Titles are currently worked on sequentially. Second, due to time constraints, it would mean publishing

the updated text without many of the editorial notes. Omitting the notes could create confusion in certain situations, especially where the OLRC staff had to correct the updating instructions in a law.

It is also possible that producing both an official USC and an unofficial e-USC could require additional staff at the OLRC. In our estimation, it would be money well spent. The federal government is currently spending billions in stimulus funds to improve our nation's highways. Our nation's information highways are worth improving, too. ■■■

Points of Order: Congressional Rules Governing the Legislative Process

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The rules governing the House and Senate are—probably—some of the most important documents today and—probably—among the least read and little acknowledged. Test this statement by asking a few questions about the health care bills moving through Congress. Why was it comparatively easy to muster votes in the House while even getting to debate on a Senate bill was a nail-biter? Why were several measures introduced from the House floor while one Senate version was introduced by committee and the bill that made it to the Senate floor in November was cobbled together by the majority leader? Why will all of these bills die if not passed by the end of this Congress and the whole procedure have to begin all over again? The answers to these and other questions (well, most of these and other questions about Congressional process) can be found in the House and Senate rules, making these documents an important part of understanding legislative history and legislative present.

Congress has rules for the same reason as any other institution—to ensure stability, efficiency of process, and the legitimacy of decision making. At their best, rules lead to consistent results and egalitarianism (everyone receives similar treatment under their decrees). At their worst, they can be means of obstruction and solidifying power. Good or bad, the most effective

Congressional leaders have learned how to use them and anyone that has to conduct legislative research should know how they work.

The genesis of the rules for Congress originates from the U.S. Constitution itself. Article I, Section 5, empowers each house of Congress to create its own rules. In the early years of the Republic, Congress relied on British parliamentary procedures as its members began to develop their own rules. Thomas Jefferson, when vice president in the Adams administration and, thus, president pro tempore of the Senate, wrote the first manual on Congressional procedure, *A Manual of Parliamentary Practice* commonly known as *Jefferson's Manual* to guide him in his duties. (Incidentally, *Jefferson's Manual* (§§ 516 & 588) contains the mandate that legislation “dies” or has to be reintroduced if it does not pass by the end of a Congress. One scholar has suggested in a law review article that the rule could be ignored because of this provenance.²) Since then, rules have evolved as Congress itself has changed, growing in members and in political power.

The rules that govern the House and Senate nowadays are not a single document, but a combination of several. The “source material”
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¹ The views expressed in this article are Mr. Cannan's own and not those of his employer.

² Seth Barrett Tillman, *Noncontemporaneous Lawmaking: Can the 110th Senate Enact a Bill Passed by the 109th House?*, 16 Cornell J.L. & Pub. Pol'y 331 (2007). My colleague Luis Acosta is skeptical of Tillman's argument.