BACKGROUND REPORT FOR RECOMMENDATION 84-3

IMPLEMENTATION AND EFFECTS OF THE FEDERAL GOVERNMENT IN THE SUNSHINE ACT

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IMPLEMENTATION AND EFFECTS OF THE FEDERAL GOVERNMENT IN THE SUNSHINE ACT

Before the Government in the Sunshine Act went into effect in early 1977, members of the 50 or so boards, commissions, corporations and authorities subject to its provisions were free to gather, discuss and decide much as they preferred. After 1977 the act's provisions regulating the conduct of meetings circumscribed what could be dealt with collectively without an opportunity for the public to be present. Furthermore, meetings allowed by the act to be closed were regulated in various ways to make some information about their content available to the public. Based upon the severity of mandated change in core administrative processes of numerous agencies, clearly the sunshine law ranks among the most sweeping enactments in the history of the Federal administrative establishment.

The purpose of this analysis is to examine the implementation and effects of the portions of the act regulating meetings. Those pertaining to ex parte communications are not treated. Seven sections follow. The first sketches the background and major provisions of the law and the expectations of its advocates and those who expressed reservations regarding it. Research procedures are described in the second. The third and fourth focus on aspects of the act's implementation. Next the effects of the law on relations between agencies and their publics and on decision-making processes are examined, followed by an exploration of variations in effects and experiences. The last section contains a summary assessment of experience under the act.

The Sunshine Act

Essentially the Government in the Sunshine Act[1] does the following:

-Applies to agencies "headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate."
-Regulates meetings, defined as "the deliberations of at least the number of individual agency members required to take action in behalf of the agency when such deliberations determine or result in the joint conduct or disposition of official agency business."
-Requires that "every portion of every meeting of an agency shall be open to public observation" unless the subject matter is exempted.
-Specifies ten categories of exempt information which may be considered in meetings closed to the public. They pertain to:

--national defense and foreign policy;
--personnel rules and practices;
--information explicitly protected from disclosure by statute;
--trade secrets and privileged or confidential commercial information;
--accusations of criminal conduct or the formal censure of an individual;
--information of a personal nature the disclosure of which would be an invasion of privacy;
--investigatory records used in enforcement;

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[1] 5 U.S.C. 552b.

--information generated in the regulation of financial institutions;
--material the premature disclosure of which would produce financial speculation or threaten the stability of a financial institution, and that which would "be likely to significantly frustrate implementation of a proposed agency action;"
--issuance of subpoenas, participation in civil, international or foreign actions or proceedings, and dispositions of adjudicatory matters.

-Sets forth procedures for the announcement of open and closed meetings.
-Defines procedures for closing meetings.
-Specifies the record to be kept of closed meetings and procedures for public access to those records.
-Lays out ground rules for judicial review of alleged violations of the act.

Various analyses have explored the language of the law and grappled with uncertainties as to the precise meaning of certain of its provisions, especially the definition of meetings and the scope of several of the exemptions.[2] The purpose of this study is not to examine critically the structure and language of the act itself (except to the extent that particular provisions have been the source of major problems in implementation), nor to detail the rather complex legislative history that produced it. However, a delineation of basic positions expressed in the debate preceding near unanimous endorsement by both the House and Senate is useful as a backdrop for considering the implementation of the law and its effects.[3]

In the decade between 1966 and 1976, sensitivity to public access to government information and decision-making activities was clearly evident in the country and in Congress. Thus the notion of a sunshine law at the Federal level drew strength not only from a general concern about govenment secrecy, but also from a number of concrete, precedential steps dealing with access to government information. The idea of open meeting laws was pioneered at state and local levels, and when Congress began serious consideration of the matter, sunshine acts were in place in most of the states. At the Federal level, there had been the Freedom of Information Act of 1966 and the amendments that strengthened it in 1974,[4] the Advisory Committee Act of 1972,[5] and the movement beginning in the early 1970s toward open congressional committee meetings, all of which attested to growing concern about public access to government information.

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[2]The basic source is Richard K. Berg and Stephen H. Klitzman, An Interpretative Guide to the Government in the Sunshine Act (Washington, D.C.: Administrative Conference of the United States, 1978).

[3]The remainder of this section relies heavily on Terry Wayne Hartle, The Implementation of the Government in the Sunshine Act of 1976 (Unpublished Ph.D. dissertation, The School of Government and Business Administration of The George Washington University, 1981).

[4]5 U.S.C. 552(a).

[5]5 U.S.C., Appendix I.

The first sunshine bill in Congrss was introducedin 1972 by Senator Lawton Chiles of Florida. Other members of the Senate and House played leadership roles in the drive to enactment between 1972 and 1976, but Chiles remained in the forefront. Although the position of supporters of the legislation differ on particular points, they share a basic objective that was simple, obvious, yet profound: to open the processes of affected agencies to greater public scrutiny. Practical considerations resulted in allowance of some closed meetings, but closure was not mandated. Even when consideration of certain information could be closed under the act, openness in decision making to the maximum feasible extent clearly was viewed as desirable.

The ideals of open deliberation and collective decision making in public view rested on a rather straightforward hypothesis that was at the heart of the pro-sunshine argument: the greater the openness in government, the greater the public trust and confidence in government. Proponents did not present specific examples of situations in which "secrecy" in administrative deliberations had yielded poor or undesirable results. They did not argue that officials in the agencies to be affected were not trustworthy, although some may have thought it. Rather, they asserted as a general principle, with no empirical foundation, that conventional ways of doing business in the context of that particular time were themselves the cause of enervating suspicion. If the public could see more clearly how government actually worked, that suspicion would dissipate. And if sunshine revealed that in some instances distrust was justified, corrective steps would be facilitated.

Advocates of sunshine suggested a number of associated benefits to be realized in addition to increased public trust and confidence. Among the more important of these were

-Stimulation of broader participation in agency processes and more extensive public debate of agency policies.
-Agency responsiveness to a broader array of interests.
-Stronger lines of accountability.
-Reduced public misunderstanding resulting from partial information.
-Improved rates of compliance with agency rules and regulations.
-Higher quality of work resulting from greater public scrutiny.

Although generally stopping far short of rejecting the principle of open government, officials who would be responsible for implementation and adaptation of agency operations to an open meeting law expressed strong reservations. The most important were that

-Implementation would be costly and burdensome.
-The flexibility essential to administrative processes and the capacity for expeditious action would be limited.
-Information would be prematurely disclosed and information appropriately kept confidential would be inadvertently revealed in an open meeting, or in the release of records of a closed meeting.
-Communications among members and staff would be discouraged with negative consequences for the character and quality of agency judgments and decisions.

Clearly the debate attending passage of the Government in the Sunshine Act turned around a fundamental tension in democratic government, the public's right to know versus conditions conducive to sound and effective governmental per-

formance.[6] Advocates of an open meeting law, dissatisfied with the existing balance, were of the view that its negative effects, at the most, would be minimal. Those expressing reservations from an agency perspective saw the likely costs in effectiveness and sound decision making to be much higher. In the clash of these perspectives, alterations were made in statutory language that addressed some agency concerns, but not to the point of eliminating their foundations. When the process of implementation began, the act's consequences and effects could not confidently be foretold. The act has now been in place for seven years, providing a record of experience from which to develop at least some tentative conclusions as to the nature of the changes it has wrought.

Research Procedures

Analyzing--indeed, even simply describing--the particulars of agency experience with the Sunshine Act and its effects is a challenging task for at least three reasons. First, the law applies to more than 50 agencies that share certain structural features but differ significantly in other respects. Second, some of the more important possible effects, such as altered relationships among agencies and their various publics, are extremely subtle. Third, the sunshine concept has a powerful symbolic dimension and is capable of evoking highly subjective reactions based upon basic value orientations. In light of these difficulties, this section sets the stage for the study by describing the data employed and suggesting several points to keep in mind when reading the analysis.

Data Sources

The study is based upon data drawn from four basic sources: judicial decisions interpreting the act; annual sunshine reports required of agencies for the years 1977 through 1981; mail survey questionnaires; and personal interviews. The annual reports, complemented by an analysis of all agencies' sunshine rules, were especially useful in assessing agency practices in implementing the act. Selected interviews were employed to gain a closer view of implementation practices and to pursue questions suggested by survey results.

The survey concentrated on 27 of the agencies covered by the act. Selection was weighted toward agencies with regulatory functions, and 18 of this type are included. The others are agencies with program and enterprise management, credit, and conflict adjudication functions. Included in the sample are agencies of various sizes, and agencies with both full and part-time membership. No strictly advisory bodies are included. The particular agencies examined are identified in Appendix A.

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[6]See Norman Dorsen and Stephen Gillers (eds.) None of Your Business: Government Secrecy in America (New York: The Viking Press, 1973); Itzhak Galnoor, Government Secrecy in Democracies (New York: Harper Colophon Books, 1977); Morton Halperin and Daniel Hoffman, Top Secret: National Security and the Right to Know (Washington, D.C.: New Republic Books, 1977); and Francies E. Rourke, Secrecy and Publicity: Dilemmas of Democracy (Baltimore: The Johns Hopkins Press, 1961).

Two respondent populations were constructed for each agency. The first consisted of agency members and upper echelon staff whose names appeared in the Government Organization Manual for the years 1977 through 1981. The second population was made up of journalists, attorneys, and trade, labor and public interest group officials thought to be representative of the attentive publics especially interested in and informed about agency operations.

The questionnaires sent to the two groups were identical in most but not all respects to allow comparison of responses. For example, members of attentive publics were not asked about the conduct of closed meetings, but they were asked questions regarding the act's special utility to them.

Details regarding the populations and response rates can be found in appendices A and B. 667 questionnaires were sent to agency officials and 396 were returned in usable form for a response rate of 59.4%. The number sent to the second population was 840, and 314 were returned for a response rate of 37.4%. The combined response rate was 47.1%. The actual rate, especially for the attentive publics, is probably somewhat higher, because erroneous addresses may have precluded the receipt of questionnaires in some instances. Of those responding, a substantial proportion of the agency population (76.0%) served both before and after implementation of the Sunshine Act. Almost as many of the attentive public population (67.3%) indicated they had very closely observed agencies subject to the act, and most of the remainder (30.6%) reported close observation. Those who responded, then, seem clearly qualified to assess the workings of the law.

Several comments about the attentive public population are in order. The task of construction was frustrated by the fact that even attentive publics are diffuse and constantly shifting and changing, thus difficult to pinpoint. The major sources used for identification purposes were the sunshine mailing lists maintained by a number of agencies, directories of associations and Washington representatives, and in some especially difficult cases such as the journalists who cover particular agencies, agency officials themselves.

As Appendix B shows, more success was attained in certain areas than in others. For example, the populations in some instances are small. A larger number and better distribution of public interest group officials would have been desirable, although a strenuous effort was made to identify all relevant organizations. This, plus the level of response, may raise questions about the validity of findings. Still, the deficiencies in the responses are not as great as they might seem. A high level of consistency in responses across the attentive public populations for different agencies and across types of respondents in those populations lends credibility to the findings to be reported. An increase of substantial magnitude in the numbers of respondents probably would have caused no significant change in the overall results.

Guides to Interpretation

The survey data might be employed and presented in several ways. In most of the sections to follow, the emphasis (except where good reason indicates otherwise) is upon tracking central tendencies. At a later stage in the analysis, some important variations are explored.

The major reason for employing this option is that the effects of the act as they are perceived by both agency officials and attentive publics do not

greatly vary from agency to agency. To be sure the perceptions of respondents differ, but for the most part the pattern in the case of Agency X is not much different from the pattern in Agency Y.

Another preliminary observation bearing on the presentation of data is that the responses of the two basic populations are amazingly congruent in some respects and divergent in others. When questions pertain to what both groups can directly observe or experience, such as the conduct of open meetings, response patterns are very similar. Such congruence adds to the persuasiveness of the findings. When this kind of closeness is revealed by the data, differences are not always reported. But in other areas systematic, consistent differences do appear. Members of attentive publics are much more inclined than are agency officials to see positive benefits flowing from the act. They also are likely to suspect behind-the-scenes behavior that seriously compromises sunshine principles, such as unofficial meetings, to a greater extent than is reported by agency officials.

A major limitation of the study is that it does not directly weigh the effects of the act upon its major intended beneficiary, the public-at-large. To do so would be tremendously costly, even if it were methodologically sensible to try. Whether the views of attentive publics with their own special interests in the act may be extended to the broader population is subject to question.

Finally, the study should not be taken as attempting a precise cost-benefit analysis of the Sunshine Act's effects. No appraisal based essentially upon perceptions rather than upon verifiable, "objective" measures can perform such a task. What has been sought here is to draw upon questionnaire responses and interview data in order to assess broadly and with reasonable accuracy the act's consequences for an important set of governmental institutions and their publics.

The manner in which the act has been implemented is considerably easier to grasp than is its impact on ambiguous administrative relationships and internal processes of decision. Implementation is the topic of the next two sections. After examining the litigation the statute has generated, attention turns to questions of agency practice and performance.

The Courts and Implementation

Public policies emanating from Congress are usually the product of bargaining and compromise among competing interests. The process of mutual accommodation and adjustment leading to enactment often leads to vague and ambiguous provisions. Although the language of the Government in the Sunshine Act is comparatively precise, agencies have been required to read meaning into a number of its mandates. Their interpretations have been challenged in several instances. Though the volume of litigation has not been great, Federal courts have addressed a number of important questions about the act's definitions, exemptions, procedures, and enforcement.

Definitions

The Sunshine Act's provisions delimiting the scope of the meeting requirements have been described as among the more troublesome parts of the

statute.[7] Two key definitions, of "agency" and of "meeting," have precipitated controversies requiring judicial attention.

Specifying precisely which governmental bodies are to be affected by a statute such as the Sunshine Act poses a difficult problem in drafting legislation. Congress deliberately chose not to list agencies and instead defined generally those to be covered. They are all agencies headed by a collegial body of two or more members appointed by the President with the advice and consent of the Senate. Included within the scope of this definition are any "subdivisions" which are authorized to act on an agency's behalf.

The two leading cases dealing with the definition of agency are Symons v. Chrysler Corporation Loan Guarantee Board[8] and Hunt v. Nuclear Regulatory Commission.[9]

Symons dealt with the Chrysler Corporation Loan Guarantee Board, created by Congress in January, 1980 to administer a loan program to help the company avoid bankruptcy. The board was authorized to make commitments for and to issue loan guarantees under specified conditions. The board's members were the incumbents of specified official posts. The Secretary of the Treasury, the Chairman of the Federal Reserve Board, and the Comptroller General of the United States were designated as full members. The Secretary of Labor and the Secretary of Transportation were to serve as non-voting members. Though all members had been appointed to a government position by the President with the advice and consent of the Senate, they had not been appointed to the Loan Guarantee Board by him, but rather received this assignment from Congress.

Symons, a staff attorney and lobbyist for the public interest organization Congress Watch, sent a letter to the board in April, 1980 demanding that it open its meetings to public observation. The board refused on the grounds that it was not an "agency" as defined by the Sunshine Act, since none of its members had been appointed "to such position" by the President. Symons subsequently filed suit against the board in the District Court for the District of Columbia. The court held that the Board was subject to the Sunshine Act. It viewed the government's argument that the board was not covered by the Act since its members served ex officio as based on a "crimped, unduly restrictive view of the statute."[10] The legislative history, according to the trial court, revealed a "deliberate congressional choice in favor of a broad, all encompassing definition of agency."[11]

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[7]Berg and Klitzman, An Interpretative Guide to the Government in the Sunshine Act, pp. 3-4.

[8]670 F. 2nd 238 (D.C. Cir. 1981).

[9]468 F. Supp. 817 (N.D. Okla. 1979), affirmed, 611 F. 2d 332 (10th Cir. 1979).

[10]488 F. Supp., 874, 876 (D.C.C. 1980).

[11]Id.

On appeal, the D.C. Circuit reversed the lower court's ruling, holding that Congress intended a much narrower definition of "agency." Members who serve on multi-headed agencies ex officio do not count toward the majority required by the definition, since their appointment was not "to such position" by the President. Furthermore, "If Congress had wanted to subject the Board to the provisions of the Act, it could have so provided when the Board was established."[12] This reasoning was based on the fact that Congress had followed that route when it established the Depository Institutions Deregulation Committee in 1980. "When Congress wishes to extend Sunshine coverage to ex officio agencies, it will do so."[13]

Hunt involved a suit against the NRC alleging that the Sunshine Act precluded the commission's atomic safety and licensing boards from holding closed meetings. More specifically, Hunt challenged a licensing board's in camera hearing dealing with the so-called "Reed Report" on the safety of the nuclear steam supply system to be installed in the Black Fox nuclear power station scheduled to be built near Tulsa, Oklahoma.

The NRC argued in response that the Sunshine Act's mandate for open meetings did not apply to the adjudicatory hearings of a licensing board. The phrase "any subdivision thereof authorized to act on behalf of the agency" referred only to subdivisions composed of members of the collegial body, and no NRC commissioner served on the three member licensing board. It's position was upheld by the District Court for the Northern District of Oklahoma and by the Court of Appeals for the Tenth Circuit.

A more sensitive definitional problem is the types of agency gatherings that constitute a meeting. The act defines a meeting as: "The deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business."[14] Several basic elements must be present for a gathering to be a meeting. First, the phrase "at least the number of agency members required to take action on behalf of the agency" requires that a quorum of agency members (or a quorum of subdivision members) must be present. A quorum may be less than a majority of members, and as few as two. Second, the number of members required for a quorum must be in a position to exchange views. The phrase "joint conduct or deliberations" is intended to exclude such situations as when a member gives a speech concerning agency business, and other agency members are present. Third, the discussions among officials must be substantive in nature. Social gatherings or casual encounters are not encompassed if there is only passing reference to agency matters. Finally, the deliberations must involve "official agency business." It is the discussion involved, not where or how it is conducted that determines when a gathering becomes a meeting subject to the Sunshine Act.[15] Recognition of these elements, however, still leaves interpretative problems.

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[12] 670 F. 2d at 244.

[13] Id. at 245.

[14] 5 U.S.C. Sec. 552b (a) (2).

[15] Susan T. Stephenson, "Government in the Sunshine Act: Open Federal Agency Meetings," The American University Law Review 26 (1976/77), pp. 170-172.

Three major cases have dealt with the act's definition of meeting. One grew out of the distinctive functions of the Council on Environmental Quality. Located within the Executive Office of the President, it performs two major tasks. It advises the President on environmental matters, and it examines the programs of the government to ensure that they are administered in accordance with the National Environmental Policy Act of 1969. A restricted application of the Sunshine Act was necessary, the council determined, if it were to exercise its responsibilities properly.

The Pacific Legal Foundation, a non-profit, public interest organization, filed suit in January, 1979 against the council alleging that it had acted in proceedings that constituted meetings under the Sunshine Act since June, 1977, but had neither opened nor closed those meetings in accordance with the statute. The District Court for the District of Columbia dismissed the suit, concluding on the basis of sparse legislative history that, "the formulation and presentation of advice to the President on environmental matters, which is the CEQ's primary responsibility, is [not] 'official agency business' subject to the requirements of the Act."[16]

Prior to this ruling, CEQ decided to amend its sunshine regulations in two areas. First, the council changed the definition of meeting to limit the applicability of the Sunshine Act to those situations in which an affirmative vote was required by statute, regulation, executive order, or internal procedures. In addition, the amended regulations exempted from the open meeting requirement gatherings involving advice to the President.

The Pacific Legal Foundation petitioned the D.C. Circuit Court of Appeals for review of the portions of the CEQ's regulations which limited the applicability of the open meeting requirement and the district court's decision. The court found that the legislative history did not support the council's contention that the Sunshine Act permits an exception for advising the President. According to the court, the language of the act is "sweeping, unqualified, and mandatory."[17] It does not permit an agency to exempt from the open meeting requirement an entire category of its business.

The court also held that limiting the open meeting requirement to gatherings where a formal vote was required was inconsistent with the Sunshine Act's definition of meeting. It saw nothing in the act which allowed the CEQ to restrict the openness requirement to those meetings on business which required an affirmative vote of two members.

> The statutory test is whether the deliberations 'determine or result in the joint conduct or disposition of official agency business.' If they have that effect, the deliberations constitute a meeting, whether or not a formal vote is taken, and if it is taken, whether or not the vote is 'required' for there to be agency action. By adding the required-vote standard to the statutory definition of 'meeting,' the Council improperly has limited

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[16] Pacific Legal Foundation v. CEQ, 13 E.R.C. 1273, 1276 (D.D.C. 1979).

[17] Pacific Legal Foundation v. CEQ, 636 F. 2d 1259, 1265 (D.C. Cir. 1980).

> the reach of the broad open meeting mandate that Congress has specified.[18]

The second case is of somewhat broader significance as it concerned the rather common practice of decision making through the circulation of written communications, or by notation voting, rather than in meetings. The FCC's use of this device was attacked as a violation of the Sunshine Act.

Plantiffs contended that if the FCC were allowed to use notation voting to dispose of agency business, then the purposes of the Sunshine Act could be circumvented by agencies simply deciding not to hold meetings. Relying on the legislative history of the act, the D.C. Court of Appeals held that Congress intended to allow commissioners to act on agency business circulated to them "sequentially in writing." According to the court, notation voting permits agencies to accelerate consideration of "less controversial cases without formal meetings." Furthermore:

> If all agency actions required meetings, then the entire administrative process would be slowed - perhaps to a standstill. Certainly requiring an agency to meet and discuss every trivial item on its agenda would delay consideration of the more serious issues that require joint face-to-face deliberation. Clearly Congress did not intend such a result.[19]

Although holding that the Sunshine Act does not prohibit agencies from making final decisions on non-controversial and routine matters by notation voting, the D.C. Circuit left open the issue of whether lawful action by notation voting was limited to such situations. The question of whether the act allows a subsequent notation vote to result in a reversal of a substantive policy decision made in public by an agency is now awaiting judicial resolution.

The most important case dealing with the definition of meeting is Federal Communications Commission et al. v. ITT World Communications, Inc., et al., the first sunshine case to be decided by the Supreme Court.[20] At issue was whether the consultative process gatherings (CPGs) of the FCC's Telecommunications Committee and representatives of foreign telecommunications authorities were meetings within the meaning of the Sunshine Act.

Before 1979, the discussions in these periodic sessions were open to all interested parties. At a session in Dublin, Ireland that year, Telecommunications Committee members persuaded their foreign counterparts to discuss increased competition in international services following its certification of two new carriers not long before. European governments had not responded enthusiastically to this development, preferring instead to deal with the few large carriers with well-established services. Nevertheless, they agreed to talk about competition in international markets. Representatives of the carriers were excluded from these deliberations and from subsequent discussions in 1980. ITT and other carriers challenged their exclusion on the grounds that

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[18] Id. at 1266.

[19] Communications Systems, Inc. v. Federal Communications Commission, 595 F. 2d 797, 801 (D.C. Cir. 1978).

[20] _____ U.S. _____ (1984).

the discussions were subject to the Sunshine Act. They won on the point in the District Court for the District of Columbia, and the FCC appealed.

When the matter came to the Court of Appeals for the District of Columbia, the commission put forth three major arguments in support of its position. The first was that consultative process gatherings did not constitute an "official agency meeting." Only three of the seven members serve on the Telecommunications Committee. Since they had not been formally delegated the authority to act on behalf of the agency at the gatherings, the threshold requirement of a quorum of the agency was not met. The D.C. Court of Appeals emphatically rejected this argument, holding that the applicability of the Sunshine Act did not depend upon whether the agency formally delegated authority to a subdivision. Committee members attended the sessions in their official capacity, they attempted to reach a consensus with their foreign counterparts on the course of action to pursue, and they conveyed the information obtained at the gatherings to the full commission for its consideration. The court concluded, "Whatever the actual scope of the Committee's endeavor, there can be . . . no question that they (the meetings) are undertaken on behalf of the Commission."[21]

A second arguemnt advanced by the FCC was that for several reasons, the informal talks were not deliberations that resulted in the "joint conduct or disposition of official agency business." No official agency business was transacted at the consulative process gatherings; members simply exchanged information and views and did not "vote, 'negotiate,' or otherwise engage in a 'rump' FCC meeting.[22] The CPG exchanges furthermore, were not meetings of the Telecommunications Committee, but simply gatherings attended by committee members, so the discussions did not involve the "joint conduct" of business among members at the subdivision level. Finally, the commission contended that CPG gatherings were the kind of discussions that Congress intended to exclude from the meeting requirements, basing its position on the Senate report which stated that "[i]t is not the intent of the [Sunshine Act] to prevent any two agency members, regardless of agency size, from engaging in informal background discussions which clarify issues and expose varying views.[23]

The court rejected the FCC's argument that CPG exchanges were not deliberations involving the joint conduct of official agency business. It ruled that the commission had failed to rebut the presumption that the consultative process gatherings were an important mechanism for gathering information from foreign administrations, and that such materials were useful in the commission's policy deliberations. According to the court, the Sunshine Act does not support "a distinction between an agency's predecisional activities and its postdecisional efforts to implement, interpret, and promote its policies."[24] The sessions "focus on concrete issues and are conducted to build a 'consensus' that will have far-reaching effects on the structure of the communications industry. They are, in short, an integral part of the Commission's policy-

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[21]ITT World Communications, Inc. et al. v. Federal Communications Commission, 699 F. 2d 1219, 1241 (D.C. Cir. 1983).

[22]Id.

[23]Id. at 1243.

[24]Id. at 1242.

making processes, and as such they constitute the 'conduct. . . of official agency business.'[25]

The third major argument put forth by the commission in defense of its stance was that it would be extremely difficult to get representatives of foreign governments to engage in informal discussion if they were open to public observation. Given that the act did not deal with this issue explicitly, the FCC argued that the open meeting requirement should not be extended to cover meetings between agency members and their foreign counterparts. The Court of Appeals, however, found nothing in the history or structure of the Sunshine Act to substantiate the commission's claim. It noted that Congress had recognized that certain meetings should be closed to public scrutiny. The decision to close a meeting, however, had to be on an individual basis. Instead of closing the CPG exchanges by use of the exemptions in the act, the commission had attempted to exempt an entire category of agency business from meeting requirements. The court ruled that such an action was in violation of the Sunshine Act's presumption in favor of openness.[26]

The circuit court's decision was a victory for ITT and its allies in litigation and for those who support a broad interpretation of the act. Yet in its reading of the law to incorporate consultative process gatherings, the court left important points in a state of uncertainty. First, it appeared to interpret the "conduct or disposition of official agency business" to include any interaction involving the necessary quorum of members with one another or outsiders that plays "an integral role in the...policymaking process," whether before or after an agency decision.[27] Yet no principles were established that went beyond the particulars of this case to give clear meaning to the key concept, "integral role."

Second the court read the authorization requirement to include more than formal delegation of authority to act for an agency. What, then, would constitute authorization? Three criteria were proffered, drawn from the situation at hand: (1) members must be acting in their "official roles;" (2) in pursuit of an agency "goal;" and (3) later conveying information derived from the meeting to the full body.[28] Applying the criteria literally, it can be argued that a substantial portion of the interactions in which agency members engage could be defined as sunshine meetings. When members work they are in their "official roles," typically are involved in the pursuit of "goals" related to agency responsibilities, and the products of their interactions are commonly fed into agency considerations. Surely the court did not intend so broad an interpretation. The problem is, what did it intend? One can think of many examples of interaction previously considered to be outside Sunshine Act requirements the status of which was clouded by this decision.

The Supreme Court unanimously overruled the court of appeals in a rather spare decision, one based upon a narrow reading of the act's language, buttressed by references to the legislative history. The consultative process gathering discussions, it concluded, functioned to provide general background

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[25]Id. at 1244.

[26]Id. at 1244-45.

[27]Id. at 1244.

[28]Id. at 1242.

information to the FCC and to permit the members attending "to engage with their foreign counterparts in an exchange of views by which decisions already reached by the Commission could be implemented." Such discussions, according to the court, are not "deliberations (that) determine or result in the joint conduct or disposition of official agency business. Although they may play, in some sense, "an integral role in the . . . policymaking process," they do not bear a sufficiently close relation to determination of official action so as to fall within the statute's definition of meeting.[29]

On the related issue of authorization, the Supreme Court rejected the lower court's inferrence of "an undisclosed authority, not formally delegated, to engage in discussions on behalf of the Commission." The act instead, "applies where a subdivision of the agency deliberates upon matters that are within that subdivisions formally delegated authority to take official action for the agency." The Telecommunications Committee's only delegated authority was to approve applications for common carrier certification, and the committee did not consider or decide upon such applications at the international gathering. A broader reading than this, the court concluded, "would require public attendance at a host of informal conversations of the type Congress understood to be necessary for the effective conduct of agency business."[30]

Exemptions

The Sunshine Act recognizes that agencies often deal with sensitive matters that may justify an exception to the open meeting requirement. As noted before, the act sets forth ten exemptions which agencies may use to close all or portions of meetings. Common Cause v. Nuclear Regulatory Commission is a leading case in which an agency's interpretation of exemptions was challenged.[31] The issue was whether any of the statutory exemptions of the Sunshine Act were applicable to the NRC's budget meetings. In July, 1981, the U.S. District Court for the District of Columbia held that the commission acted contrary to the requirements of the act when it closed its budget deliberations under exemption 9(b), which permits closure if open deliberations would be "likely to significantly frustrate implementation of a proposed agency action." The court ordered the release of the transcript of the meeting and subsequently enjoined the commission from closing its budget deliberations.

Approximately a month after the district court's ruling, the NRC scheduled a series of meetings to discuss budget requests for fiscal year 1983. On the advice of its general counsel, the NRC divided these meetings into two categories: preliminary staff briefings and markup/reclaim sessions. The preliminary staff briefings were designed to provide commissioners with background information and staff advice, while in the markup/reclaim sessions the commissioners would decide on the specific funding levels to be submitted to the Office of Management and Budget (OMB). The commission voted to open the preliminary staff briefings, but decided to close the markup/reclaim sessions.

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[29] _____ U.S. _____, (1984).

[30] Id. at

[31] 674 F. 2d 921 (D.C. Cir. 1982).

The basis for closing the markup/reclaim meetings were exemptions 2, 6 and 9 (b). Upon learning of the NRC intention to close the markup/reclaim sessions, Common Cause filed suit asking the district court to enforce its injunction requiring the NRC's budget meetings to be open to public observation. The district court did not act immediately on Common Cause's motion, and on July 27, 1981, the NRC held its markup/reclaim meeting in closed session. Subsequently, the district court construed its injunction of July 2 as prohibiting the closure of any budget meeting under any exemption and ordered a transcript of the meeting of July 27 to be released to the public. Two weeks later, the district court issued an order holding the NRC in contempt of court for closing the meeting.

A stay was issued by the Court of Appeals for the District of Columbia. The commission also obtained a second stay from the Court of Appeals to permit a closed meeting for formulating an appeal of proposed budget reductions to the Director of OMB.

On appeal, the D.C. Circuit struck down the district court's injunction which permanently enjoined the NRC from closing "future meetings of a similar nature" on the grounds that it violated the specificity requirements of the Federal Rules of Civil Procedure.[32] But with regard to the substantive issues, it concluded that no blanket exemption existed for budget deliberations; none of the Sunshine Act exemptions relied on by the NRC to close its budget meetings--2, 6, or 9(b)--could be interpreted so broadly.

The court held that exemption 9(b) allows closure of agency discussion of proposals or negotiating strategies which could affect the decisions of third parties acting in a nongovernmental capacity--exporters, potential corporate merger partners, or owners of real property, for example. The court's reasoning was that the premature disclosure of information which could influence the actions of third parties might have an "adverse effect upon the government's financial or regulatory interests."[33] The NRC contended that opening budgeting meetings would mean that the commission would have to reveal its "time honored strategies of item-shifting, exaggeration, and fall back positions" in its dealing with OMB and the President. Such concerns did not fit with the courts reading of the exemption.

> If Congress had wished to exempt these deliberations from the Sunshine Act--to preserve the prior practice of budget confidentiality, to reduce the opportunities for lobbying before the President submits his budget to Congress, or for other reasons--it would have expressly so indicated.[34]

It also concluded that exemption 2, which concerns matters that "relate solely to the internal personnel rules and practices of an agency," could not be used to justify the NRC's approach to closing portions of a budget meeting. Although acknowledging that budgetary discussions inevitably bear on personnel

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[32]Id. at 927.

[33]Id. at 933.

[34]Id. at 934.

matters, the court ruled that they do not "relate solely" to internal personnel questions.[35] In addition, the court rejected the NRC's use of exemption 6, which protects information of a personal nature the disclosure of which would result in an "unwarranted invasion of personal privacy" could be used to close budget deliberations. The commission argued the need to protect discussions of an "individual managers particular qualifications, characteristics, and professional competence in connection with a budget request for that particular manager's program.[36] The court concluded, however, that the exemption was not intended to be used "to shelter substandard performance by government executives."[37] Such "policy considerations apply a fortiori in the budget process, in which the performance of individual executives may affect the Commission's willingness to allocate budgetary resources to particular regulatory programs."[38] No merit was found either in the NRC's contention that secrecy in the budgetary process was mandated by the Budget and Accounting Act of 1921 and implied in the separation of powers doctrine. The court went on to note that even though there was no blanket exemption of budget meetings, the NRC could justify closing portions of a meeting on an individualized and particularized basis.

The tenth exemption in the Sunshine Act became an issue in the 1981 case of Time, Inc., v. U.S. Postal Service.[39] The Board of Governors of the Postal Service had scheduled meetings to discuss the Postal Rate Commission's recommendation on changes in postal rates and announced that portions of them would be closed to the public pursuant to exemption 10. That exemption applies to meetings likely to concern an agency's issuance of a subpoena; participation in litigation or arbitration; or "the initiation, conduct, or disposition" of a case of formal adjudication or "otherwise involving a determination on the record after opportunity for a hearing."[40] The reason given for closure by the Postal Service was the possibility that litigation might arise over postal rate increases, and thus involve the board directly in a civil action.

Shortly thereafter, Time, Inc., along with Newsweek and the National Association of Greeting Card Publishers, requested the Court of Appeals for the Second Circuit to determine whether the closures violated the Sunshine Act. The court found that the board's decision was a proper one. The court based its reasoning on the final clause of exemption 10 which deals with an agency's participation in a proceeding "otherwise involving a determination on the record after an opportunity for a hearing." According to the court, the clause applied not just to adjudicatory matters, but also to rulemaking proceedings "involving

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[35] Id. at 937-38.

[36] Id. at 938.

[37] Id.

[38] Id.

[39] 667 F. 2d 329 (2nd Cir. 1981).

[40] 5U.S.C. Sec. 552(b) (c) (10).

a determination on the record after an opportunity for a hearing" (formal rulemaking).[41] (Under its statutory mandate, the Postal Rate Commission cannot make recommendations until a hearing on the record has been held.) The court explained that if the board had known that the last clause of exemption 10 applied to both formal adjudication and formal rulemaking, it would have relied on "a surer ground than the litigation" clause to justify closing its meetings.[42]

Procedures

The Sunshine Act requires agencies to announce meetings publicly at least seven days in advance, except in limited circumstances certain conditions if a majority of the collegial body so determines by a recorded vote. When closing meetings under this expedited procedure, agencies must notify the public "at the earliest practicable time." Also, agencies can add or delete items from the agenda after public notice if they announce such changes promptly and take a recorded vote. Agencies are required not only to issue public notice of all meetings in the Federal Register, but also to use "other reasonable means" to inform the public of upcoming meetings. In closing meetings agencies must take a separate recorded vote on the action, provide a written explanation of the decision, and supply a list of all persons expected to attend. In addition, the general counsel or the chief legal officer of the agency must certify that the meeting was properly closed. Finally, the act requires agencies to maintain "a complete transcript or electronic recording" of each meeting or portions of a meeting closed to the public. But in the case of meetings closed pursuant to exemption 8, 9(a), and 10, the agency need only keep full and accurate minutes. All records of closed meetings, excluding exempted materials, must be made "promptly available to the public." Agencies are required to maintain these records for a period of two years.

An important case in which an agency's procedures were challenged was A.G. Becker v. Board of Governors of the Federal Reserve System.[43] The plaintiff, a broker and dealer in securities, maintained that the board violated the Sunshine Act in two meetings held in 1980 to consider an alleged illegal sale of commercial paper. Both meetings were closed to the public pursuant to exemption 4 which protects commercial and financial information, exemption 8 which protects reports prepared for the use of an agency responsible for regulating financial institutions, and exemption 10 which covers adjudicatory matters. The Board of Governors did not provide notice of the meetings until approximately three hours after they were completed.

Becker's suit alleged that the board disregarded the letter and spirit of the Sunshine Act by not providing notice "at the earliest practicable time." In addition, it was contended that the board did not cite an exemption to the act which dealt with the particular matter scheduled for discussion and had included material not relevant to it in order to justify closure. Finally, the plantiff

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[41] 667 F. 2d at 334.

[42] Id at 335.

[43] 502 F. Supp. 378 (D.D.C. 1980).

argued that since the meetings had not been properly closed, the deletions made in the released minutes and transcripts of the meetings were illegal.

The District Court for the District of Columbia held that the board had properly closed the meetings. However, relying on the legislative history of the act, the court found that providing notice of a meeting after it was held did not satisfy the requirement that meetings closed under expedited procedure be announced "at the earliest practicable time." The court specifically rejected the board's argument that advance notice of the meeting to consider cease-and-desist action against the bank in question would have caused damage in financial markets. The court stated that such a closure without notice would have to be supported by "specific affidavits describing with sufficient justification the basis for such a claim, and not rest on conclusory hypotheses."[44] The court went on to hold that absent extraordinary circumstances, notice that that board will hold a meeting must be given prior to the beginning of the meeting.

To comply with the district court's holding in Becker, the board changed its procedures for notice of meetings. Except in instances where information is exempted from disclosure under the Sunshine Act, the board now provides prior notice of meetings proposed to be closed under expedited procedure. Such notice is ordinarily issued at the time the staff prepares the preliminary agenda, usually two working days before the meeting.

Another case involving procedures in Northwest Airlines, Inc. v. Equal Employment Opportunity Commission.[45] The plaintiff brought an action against the EEOC requesting that it make public the records of a portion of a closed meeting. At that meeting, members of the EEOC discussed a request by the Solicitor General of the United States to formulate a position on a case pending before the Supreme Court. That case, which involved Northwest Airlines, dealt with whether an employer was entitled to a contribution from the union for back pay accrued against the employer under various civil rights statutes administered by the EEOC. The commission denied Northwest Airlines access to the records of that portion of the meeting.

Northwest contended that the meeting had not been closed in accordance with statutory procedures. The law requires that an agency make publicly available within one day of any decision to close a meeting the votes of each member and a full written explanation of the action. The EEOC acknowledged that these requirements had not been met since the explanation given for closing the meeting was not available until eight days after the vote was taken.

The District Court for the District of Columbia upheld Northwest's contention and ordered the EEOC to make available the tape recordings, minutes, and any transcripts of the meeting. The court also criticized the commission for its failure to comply with the appropriate closing procedures. According to the court, it was "apparent that the EEOC and its staff seem to have what can be construed as a dim awareness of the statutory requirements."[46]

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[44] Id. at 385.

[45] 24 FEP Cases 255 (1980).

[46] Id. at 256.

Judicial Enforcement

Federal district courts are empowered to enforce the various provisions of the Sunshine Act. Any citizen may challenge an agency action. However, suits must be field within at least sixty days of the meeting at which the alleged violation occurred. The burden of proof is on the agency to justify its conduct.

In considering challenges brought under the Sunshine Act, a district court may examine in camera portions of a transcript or the minutes of a meeting to determine if there has been a violation of the open meeting requirement. District courts may order that a closed meeting be opened, require the release of transcripts of a closed meeting, or issue an injunction against future violations of the act. They do not have the statutory authority to invalidate, set aside, or enjoin substantive agency actions related to sunshine violation. This prohibition does not apply to courts otherwise authorized to review agency actions, and these may grant whatever remedy they deem appropriate under the act.[47] However, the Senate Report indicated that authority to set aside an agency action should not be used when the violation of the act was unintentional and non-prejudicial to the parties involved, or when the violation was of an inconsequential nature.

The scope of the enforcement power of courts is illustrated in Pan American World Airways v. Civil Aeronautics Board.[48] When Braniff Airlines sought reorganization in bankruptcy on May 13, 1982, the CAB had to quickly consider airline applications for temporary exemptions to operate the international routes left unserved. CAB announced late in the afternoon of May 13 that it would hold a closed meeting the next day to consider the applications received. The meeting was closed on the grounds that foreign policy concerns and other exempted materials could possibly be discussed in awarding the routes.

After the meeting, the CAB announced that the Dallas/Fort Worth (DFW) to London route had been awarded to American Airliens and the Central Zone (DFW, Houston, and New Orleans) to Venezuela route had been awarded to Continental Airlines. The CAB's order, however, did not contain an explanation of why it was in the "public interest" to grant the routes to these particular airlines, or why the exemption authority would continue until April, 1983, or until final board action, whichever came first. It was not until May 27 that the CAB issued an order which set out the basis of its May 14 decision.

Three airlines, Pan Am, Delta, and TWA, filed suit in the Court of Appeals for the District of Columbia challenging the CAB's order as a post hoc and arbitrary rationalization of its decision. With regard to the sunshine issue, the D.C. Circuit found that the CAB's closure of its May 14 meeting was "in patent violation of the law."[49] According to the court, the recent decision in Common Cause v. NRC should have put all agencies covered by the act on notice that all meetings were subject to the openness requirement, except those specific portions which were closed under the terms of one of the exemptions.

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[47] 5 U.S.C. Sec. 552b(i).

[48] 684 F. 2d 31 (D.C. Cir. 1982).

[49] Id. at 35.

The court concluded that no basis existed for the CAB to close the entire May 14 meeting because of a belief that some exempt material might be discussed.

> At a bare, absolute minimum, the CAB should have opened the entire discussion of the DFW-London route, for the transcript reveals that no foreign policy concerns, arguably exempt, were discussed in connection with this route. We also have serious doubts, based on our examination of the full transcript (which the Board filed under seal after oral argument), that exempt foreign policy discussions so pervaded the debate on the Venezuelan route that the agency could not have segregated exempt and nonexempt portions, closing only the former.[50]

The D.C. Circuit also rejected the CAB's contention that the meeting had been closed because no member of the public had requested the board to open it. The Sunshine Act, the court declared, speaks to the agencies, not to the public. The act establishes a broad presumption that meetings should be held in the open, "not a mere requirement that the Board accede to requests that it open its meeting."[51]

After condemning the CAB's failure to comply with the requirements of the act, the court then turned to remedies available for such violations. By unlawfully closing the meeting and offering no explanation for its actions, the court stated that the CAB had come "periously close" to forcing the court to set aside the agency's decision. The court declared, however, that the CAB's failure to comply with the Sunshine Act did not provide a basis for invalidating the agency's action. The court noted that such a decision would be to the detriment of American Airlines, Continental Airlines, and the traveling public, none of whom was directly involved in the board's "illegal closure." The court concluded that the release of transcripts would be the proper remedy for the Sunshine Act violations.[52]

In another decision involving the Civil Aeronautics Board, Braniff Master Executive Council, Inc. v. CAB,[53] the D.C. Circuit held that the agency's closing of a meeting in violation of the Sunshine Act did not warrant invalidation of the Board's substantive action. In that case, Braniff Master Executive Council, an organization representing former Braniff pilots, requested the D.C. Circuit to set aside a CAB order granting interim approval for the transfer of most of Braniff's South American routes to Eastern Airlines. The airline pilots wanted the order invalidated on the grounds that the CAB, in an illegally closed meeting, had failed to include labor protection provisions in granting the transfers. The court noted that it already had criticized the CAB's closure of meetings such as this in the Pan Am case. Moreover, as in the Pan Am decision, it held that release of transcripts, not invalidation of the agency's substantive action, was the appropriate remedy.[54]

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[50] Id.

[51] Id.

[52] Id. at 36.

[53] 693 F. 2d 220 (D.C. Cir. 1982).

[54] Id. at 226.

Agency Implementation

Although litigation has clarified several aspects of the law, agency continue to be troubled by some of its provisions. One is the definition of meeting and its application to special circumstances in which members are together, but are not engaged in formal deliberations. Examples of borderline situations mentioned by interviewees include staff briefings field trips, and the sessions of member-staff committees to "refine" measures following previous consideration by the full membership. Considerable variation in agency practices in such situations attests to uncertainty, some of which may be resolved by the Supreme Court's decision in the ITT case. Determing the appropriate scope of several of the exemptions is an additional problem, especially 2 pertaining to personnel rules and practices, 9 (b) pertaining to frustration of proposed agency action, and 10 pertaining to issuance of subpena, participation in civil action or proceeding, and formal agency adjudication. Finally, it is not clear how long the transcripts, recordings and minutes of closed meetings may be kept in confidence.

Agency officials also cite four procedural requirements as contributing to administrative inefficiency and delay without providing, in their view, any substantial benefit to the public. One is the requirement of a majority vote to delete or postpone an agenda item. The others relate to closed meetings and are the requirements for a "full written explanation" of the reasons for closure, for a list of persons expected to attend a meeting, and for a presiding officer's statement setting forth time and place of the meeting and the persons present.

An earlier study of implementation of the Sunshine Act concluded that, for the most part, agencies encountered few serious administrative difficulties in putting it into effect. The major reasons cited were the relative clarity of the law, the lead time it allowed, the ability of agencies to absorb the dollar costs entailed, and the positive response of agency leadership.[55] Despite the concerns just mentioned, from an administrative standpoint today, seven years after the initial period of adjustment, the act still appears to pose no fundamental administrative problems for affected agencies. It is now a part of agency life, and in the narrow administrative sense it functions smoothly. Rules are in place, routines for compliance are established, personnel are knowledgeable about its requirements, and the resources necessary to administer the act are modest. Consequently, the emphasis in this section is on larger questions of implementation, particularly basic questions of compliance, meeting patterns, and the conduct of meetings.

Calibrations of Compliance

When the act went into effect, some felt that it would be difficult to secure real, as contrasted with illusory compliance, because of the basic alterations it mandated in agency processes. Respondents were asked for their overall assessment of agency compliance. As shown in Table 1, agencies generally are perceived to be in essential compliance with the law and not

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[55]Hartle, The Implementation of Government in the Sunshine Act of 1976, 1981, p. 334.

attempting to circumvent its provisions, except in the eyes of a very, very few. The degree of enthusiasm brought to the task is seen somewhat differently by those associated with agencies and attentive publics. A much greater proportion of the former perceive a serious attempt to comply with the letter and spirit of the law than do the latter.

The two basic ideas in the Sunshine Act are that notices should precede meetings and that members should meet only in official meetings. Generally speaking, compliance with notice requirements is the norm. The act requires a notice to be forwarded to the Federal Register at least seven days in advance of a meeting, except under narrowly defined circumstances. In their annual sunshine reports for the 1977-81 period, most agencies indicated that the seven day requirement typically is met. The appearance of notices less than seven days before a meeting is often due to a time lag between submission and publicaton, agencies say, despite the adoption in 1977 of special Federal Register procedures for expediting the processing of sunshine items. However, the reports also reveal that a few agencies, most notably the Federal Labor Relations Board, the Federal Deposit Insurance Corporation and the Nuclear Regulatory Commission, failed to meet the seven day standard approximately half the time during the 1977-81 period.

Table 1

Assessment of Agency Implementation Efforts

	Agency Officials	Attentive Publics	Total
Serious attempt to live up to letter and spirit of law	82.2%	53.0%	69.4%
Attempt to meet requirements in minimal fashion	15.7	39.6	26.2
Attempt to conduct business as usual	2.1	7.3	4.4

A number of agencies involved in the regulation of financial activity, especially the Federal Reserve Board, the Farm Credit Administration, and the Federal Home Loan Bank Board, frequently hold meetings under expedited procedures where there is some discretion in giving notice. Such meetings, as has been noted are to be announced "at the earliest practicable time." For most agencies, this has meant the day of the meeting and for others a day or so after a meeting. It was pointed out in the previous section that post-meeting notification has met with judicial disapproval. Still, observers feel that agencies still are inclined to take advantage of expedited procedures.

The act allows changes in agendas after notice if such changes are announced, again, "at the earliest practicable time." Records of individual agencies show that most announcements of changes do not appear in the Federal Register until after a meeting is held. This is perhaps an unavoidable weakness in notice procedures. Furthermore, the notices of changes are such that it is often difficult to interpret them without going back to the original notice.

Agencies are encouraged by the act to go beyond formal notice in ensuring that the public is informed of upcoming meetings. Annual reports show that most make it a practice to post notices on agency bulletin boards, send notices to individuals on the agency's mailing list, and issue releases to newspapers and the wire services. Several agencies, in particular those engaged in health and safety regulation such as the Nuclear Regulatory Commission and the National Transportation Safety Board, publish notices in trade association periodicals and magazines. Several provide notices by means of recorded telephone messages. Most of the agencies involved in economic and health and safety regulatory matters, including the Commodity Futures Trading Commission, the Federal Trade Commission, the Nuclear Regulatory Commission, and the International Trade Commission, to name but a few, utilize this technique. A number, such as the Federal Communications Commission, the Interstate Commerce Commission, the Securities and Exchange Commission, and the Consumer Product Safety Commission, publish a weekly or biweekly public calendar which contains notices of meetings. Of all of the agencies, those engaged in regulatory activities have developed the most extensive mechanisms for publicizing meetings.

Members of attentive publics generally give the agencies high marks on questions of notification. Almost all (89.3%) evaluate agency performance as at least adequate. Indeed, almost as many (75.3%) say that they are usually aware of upcoming meetings before the appearance of notice in the Federal Register.

Respondents were asked to estimate the frequency of substantive discussions among a majority of members outside the act's notice and meeting requirements as preludes to both open and closed meetings. A very large number from the attentive public group indicated they did not know, although those who did respond were inclined to suspect a higher rate of questionable interaction than the agency respondents, whose views are reported in Table 2.

Table 2

Frequency of Non-Sunshine Meetings

	Often	Sometimes	Seldom	Never
Planned prior to open meetings	9.9%	15.3%	25.4%	49.4%
Spontaneous prior to open meetings	5.5	19.8	45.1	29.6
Planned prior to closed meetings	8.0	16.6	27.7	47.7
Spontaneous prior to closed meetings	4.4	24.8	41.4	29.5

The evidence suggests that while compliance is not total, it is substantial. Three quarters of those reporting say that questinable gatherings occur infrequently at the most. Others see them as more common, although only a small number perceive non-compliance to be the norm. The difference in the apparent incidence of spontaneous versus planned interactions also suggests the difficulties of absolute compliance, given the proximity of members to one another and the nature of the settings in which they work. Furthermore, it appears that a good bit of substantive interaction that might be viewed as prohibited by the act is accidental, not calculated circumvention.

Varieties of "shade" meetings may be held, however, that are not prohibited by the act but which are complementary to or substitutes for meetings of agency members. One type which has been employed in some five member agencies involves the chairman, one member participating on a rotating basis, and assistants to the three absent members. Another and more common type is a meeting of staff assistants to members. Meetings of assistants were not unknown before the Sunshine Act, but more than half the agency respondents (57.8%) feel that their incidence has increased since it became law. They also report, as shown in Table 3, that such meetings take place with substantial regularity particularly before open meetings.

Table 3

Staff Assistant Meetings

	Often	Sometimes	Seldom	Never
Prior to open meetings	56.4%	29.4%	8.7%	5.5%
Prior to closed meetings	39.9	39.2	12.2	8.8

Meeting Patterns

Two other aspects of implementation that relate to compliance concern the number of meetings held and the incidence of closed meetings. Meeting data for the 1977-81 period are presented in Appendix C. Judging from the large number of meetings, it does not appear that, overall, the act has discouraged holding them to any great degree, the question of the nature of their substantive content aside. Furthermore, in almost all cases agencies have not varied a great deal from year to year in the number of meetings held. A rather dramatic exception to this generalization is the Interstate Commerce Commission, where in recent years there have been practically no meetings of any sort.

The incidence of open, closed, and partially closed meetings from 1977 through 1981 is shown in Table 4. During this period, 39.6 percent of all agency meetings were open to the public, 41.3 percent were fully closed, and 19.1 percent were partially closed. The percentage of closed meetings held during this period remained relatively constant. In 1977, 40.3 percent of the total number of meetings were closed to the public. This increased to a high of 42.2 percent in 1980 and dropped slightly to 41.7 percent in 1981.

The data in Table 4 also indicate that the percentage of open meetings held during the five year period fluctuated somewhat. In 1977, 36.5 percent of all meetings were open to the public. This rose to a high of 43.3 percent in 1980 and dropped slightly to 38.4 percent in 1981. Offsetting the increase in open meetings between 1977 and 1980 was the decline in the percentage of partially closed meetings from 23.3 percent in 1977 to 19.5, in 1980, although the figure crept upward to 19.9 percent in 1981.

Table 4

Meetings of Sunshine Agencies: 1977-1981

Status of Meeting	Year					
	1977	1978	1979	1980	1981	Totals
Open	36.5%	40.3%	38.7%	43.3%	38.4%	39.6%
Closed	40.3	39.6	42.1	42.2	41.7	41.3
P/C	23.3	20.0	19.1	19.5	19.9	19.1
Totals	100% (N=1763)	100% (N=1602)	100% (N=-2191)	100% (N=-2096)	100% (N=1353)	100% (N=9005)

Individual agencies show considerable consistency in meeting patterns, but there is variation among agencies. Those engaged in advisory and planning activities are more likely to hold open meetings than agencies which perform other functions. Seventy-nine percent of the meetings of advisory and planning agencies were open to public observation during the period examined. One agency, the Mississippi River Commission, held no closed or partially closed meetings. Two other agencies, the Council on Environmental Quality (95.7%) and the National Commission on Libraries and Information Sciences (88.5%), also held a high percentage of their meetings in open session.

In contrast, agencies with financing and credit functions and those regulating financial institutions have opened very few meetings to public observation. Only 2.2 percent of the meetings of credit agencies and 21.7 percent of the meetings of financial regulatory agencies were open in the 1977-81 period. One credit agency, the Export-Import Bank of the United States, held 511 meetings, but only three (0.6 percent) were open. Moreover, only 11 percent, 20.6 percent, and 22.7 percent of the meetings of the Federal Deposit Insurance Corporation, the Federal Home Loan Board and the Federal Reserve Board, respectively, were open to public observation.

Although most agencies report a relatively constant rate of open meetings during the five year period, certain changes are evident. Two agencies, the Federal Reserve Board and the Federal Election Commission, show a significant increase in the proportion of open meetings. In the first year of the act, 11.4 percent of the FRB's meetings were open, as were only 4.3 percent of the FEC's. By 1981, the percentage of open meetings held by the FRB and FEC increased to 46.3 percent and 40.2 percent respectively. In contrast, a number of agencies, most notably the U.S. Postal Service Board of Governors, the Civil Aeronautics Board, and the Federal Home Loan Mortgage Corporation, reported a substantial decrease in the percent age of open meetings. In 1977, for example, the USPS governors opened 91 percent of their meetings, but in 1981 the figure was dropped to 6.2 percent. For the CAB and the FHLMC, the decline was from 1977 highs of 85.9 percent and 40.9 percent, respectively, to lows of 28.6 percent and 2.7 percent in 1981.

There probably are greater threats to sunshine principles in the inappropriate closure of meetings than in overt non-compliance, such as meeting without regard to the act at all. One reason is that many of the exemptions leave much room for interpretation, especially 9(b) which allows closure if discussion in an open meeting would be likely to significantly frustrate implementation of a proposed agency action.

It is difficult to draw conclusions about the degree to which agencies misuse the various exemptions. Fragments of evidence suggest, however, that if there is misuse, it is not of epidemic proportions. Hartle studied the exemptions employed by agencies in 1977, 1978, and 1979. He found that 9(b), perhaps the one most open to abuse, was cited in only about 10 percent of closures each year, ranking behind 10, which concerns subpoenas and adjudication, among other matters, and 4, protection of trade secrets, commercial and financial information.[56] Furthermore, there has been little litigation alleging improper closure, indicating an absence of complaints about agency practices on the part of those with stakes in proceedings. Finally, interviews suggest that general counsels typically take seriously their responsibilities to see that exemptions are not misapplied.

In most agencies the recommendation for closed consideration of a matter comes at the initiative of the staff bringing it forth. Although members must vote to close, the key step is the certification of the general counsel that an item involves exempt information. Interviews indicate that general counsels tend to be vigorous in their application of the law at this stage, more so at times than members and staff appreciate. In one agency the role played by the general counsel's staff in relation to line staff was described as "adversarial" on closure decisions. General counsels also have been known to cut off discussion among members in closed meetings when it veers toward subjects that are not closable. Instances are also reported in which the general counsel's office advises against the use of notation voting on important items and encourages open consideration of matters that could probably be closed. Nevertheless, there seems to be a general tendency, often stronger now than in the immediate period after the act was passed, to close discussions when an exemption applies.

Clearly a substantial amount of agency business is conducted in closed meetings. This does not necessarily mean, however, that open meetings are not important settings for decisions. Agency officials were asked to estimate the proportion of important agency decisions made in open meetings. Just more than half (50.9%) judge the number to exceed 50 percent. A bit more than half of that group think the figure is 75 percent or more. At the other extreme, a smaller group (35.4%) gave an estimate of from 0 to 24 percent. This question related to the formal adoption of an agency position through the votes of members. Decision making involves much more than this. The nature of the processes and meeting dynamics leading to that vote are also of particular importance.

To the extent that meetings, especially open meetings, are not authentic and comprehensible, the purposes of the act are frustrated. And if member behavior is distorted in substantial fashion by reason of being on public view, questions arise as to possible perverse effects on agency decision making.

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[56]Id. at p. 225.

The Conduct of Meetings

Agencies have responded to the problem of comprehension in varying degrees and in a variety of ways. Experience in planning and conducting open meetings has been an important common factor, however. Practically all the respondents (91.5%) think that meetings now are always or usually well planned. There are indications also that staff presentations,so often a key element in meetings, over time have become sharper and clearer.

In addition to simply becoming more practiced in the business of open meetings, agencies also facilitate public understanding through specific rule requirements. Of course, agencies can and do employ the various techniques although there is no specific provision for them in their rules. Numerous agencies, particularly those involved in regulatory, advisory and planning, and program and enterprise activities, provide in their ruler for a clear, non-technical summary of agenda items to be discussed at open meetings. Most of them also distribute staff papers and other background information dealing with agenda items prior to or at the beginning of meetings. In addition, several regulatory agencies--the Federal Energy Regulatory Commission, the Federal Maritime Commission, and the International Trade Commission to name just a few--expressly have adopted a policy of discussing agenda items in a manner that makes them understandable to the general public.

At least two regulatory agencies, the Federal Communications Commission and the Nuclear Regulatory Commission, have published pamphlets describing for public attendees the seating arrangements of participants at the conference table, the functional responsibilities of those individuals, the procedures for voting on agenda items, and the rules for public conduct at open meetings. The FCC's brochure additionally includes a glossary of technicaal terms.

Another mechanism utilized to aid understanding, one not required by the Sunshine Act, is actual public participation, in which members of the public, usually with prior approval, may speak during meetings. Most agencies allowing participation are involved in advisory and planning functions. They include the Council on Environmental Quality, the Mississippi River Commission, the National Commission on Libraries and Information Science, and the U.S. Metric Board. Among the more visible agencies, only the Consumer Product Safety Commission and the Commodity Futures Trading Commission provide for public participation in open meetings. Others may do so in practice, as is the case with the Tennessee Valley Authority.

Communicating the results of meetings with clarity is also a matter of some importance. The rules of several agencies--the Federal Deposit Insurance Corporation, the Tennessee Valley Authority, the Federal Reserve Board, the National Credit Union Administration, the National Transportation Safety Board, the Parole Commission, the U.S. Railway Association, and the Foreign Claims Settlement Commission--provide for questioning of staff about the proceedings after a meeting is completed. A few agencies, most notably the Tennessee Valley Authority, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, and the National Transportation Safety Board, require the issuance of news releases summarizing the major actions taken in open meetings.

The rules of agencies which tend to do a major part of their business in closed meetings, such as those primarily involved in credit and conflict adju-

dication functions, are omparatively limited in regard to aids to public understanding. Means to help the public better comprehend what is discussed at open meetings are not addressed at all in the rules of two of the credit agencies, the Federal Home Loan Mortgage Corporation and the Export-Import Bank. A third agency involved in credit matters, the Overseas Private Investment Corporation, does provide for oral presentations on agenda items disposed of in open meetings. However, none of the credit agencies release staff papers or allow public participation. The Federal Home Loan Mortgage Corporation is the only one of the three which, in its rules, provides for a detailed explanation of matters acted upon by the board during the open meeting portion of a meeting. Among the conflict adjudication agencies, only the National Labor Relations Board makes allowance for public attendees at open meetings to receive background information on agenda items. In fact, the Merit Systems Protection Board has a stated policy of withholding pre-deliberative materials, such as staff papers and reports, from the public. Nor do any agencies within this group provide for public participation in open meetings, and only one, the Foreign Claims Settlement Commission, by rule makes staff available after a meeting to discuss the actions taken.

Two of the most important aids to comprehension are agendas and explanatory material dealing with matters under consideration. Journalists and others attending meetings were asked about their availability and utility. Agendas are provided all or most of the time according to a substantial number (73.0%) and some of the time in the experience of a considerably smaller group (21.9%). When made available, almost all the respondents (88.6%) consider them to be helpful. Explanatory materials are provided less frequently, some of the time according to just about half (46.8%), most of the time according to a third (32.9%), and never according to the remainder. When they are made available, again almost all (88.7%) consider such materials to be helpful.

Given the complexity of much that is discussed in open meetings and the mixed pattern evident in agency approaches to aiding comprehension, some limitations on the ability of those attending meetings to understand the proceedings might be expected. To a degree this is the case. Respondents were asked to evaluate the frequency with which discussions in open meetings were such that reasonably knowledgeable persons could understand them. The perceptions of agency officials and observers were almost identical. More than half (52.3%) felt that discussions were understandable most of the time, and most of the remainder (38.6%) judged them to be understandable sometimes. Comments indicate that the most serious impediments to comprehension are the disposition of agenda items with little or no discussion at all, the use of verbal shorthand by agency officials, and the frequent unavailability of documents discussed, referred to or relied upon.

Comprehension is of limited value to the extent that what is said in discussions does not accurately reflect the thinking of members and staff and reveal the information that shapes their views. The manner in which members and staff behave in open meetings is important for this reason. It is also important for the results obtained, for presumably there is a relationship between the scope, depth, candor and vigor of exchanges among members and staff and the quality of decisions, or so advocates of collegial processes argue.

Those who were unconvinced of the desirability of sunshine feared that forced public discussion and decision making would produce dysfunctional behavior with negative consequences for the conduct of agency affairs. Table 5

shows that those fears have been borne out to some degree. It reports the perceptions of all respondents of behavior in open meetings, of agency respondents of behavior in closed meetings, and of agency respondents who served both before and after the act of behavior in pre-sunshine meetings. The key findings are that members tend to behave somewhat differently in open and closed meetings, and that behavior in closed meetings does not differ much from behavior in pre-sunshine meetings.

Several specific points should be underscored. As expected by sunshine advocates, members are inclined to prepare thoroughly for open meetings, more so than for closed meetings. There is a certain amount of posturing, or casting comments to appeal to particular audiences in open meetings. And in various

Table 5

Member Behavior in Open, Closed and Pre-Sunshine Meetings

	Open	Closed	Pre-Sunshine
Prepare more thoroughly than before the act	61.2%	24.4%	NA
Often or sometimes cast comments to appeal to special interests	75.3	31.6	39.1%
Often or sometimes extensively expresses views	81.7	93.4	92.8
Often or sometimes state views with candor	77.1	96.5	96.4
Often or sometimes avoid conflict with other members	86.3	64.7	73.8
Often or sometimes refrain from asking important questions	67.6	24.1	20.5
Often or sometimes sharply define and debate differences	62.7	89.3	89.3
Often or sometimes attempt to reconcile conflicting views	77.3	89.7	93.3
Often or sometimes call upon the expertise of staff	92.0	97.4	96.5

ways members are restrained and inhibited in what they say in a public forum, compared to their behavior in closed meetings. There are indications that in some instances being in public may affect basic positions as well as rhetoric the reasons are political, as when a member feels a certain identification with a particular group or interest, perhaps because of support received in appointment. A member of an agency going through a process of regulatory reform described one such case, a colleague who felt obliged "to talk old regulation" in public sessions and then to vote that way, whereas there is reason to believe that if the public were not present, he might have cast reform votes from time to time.

Inhibited behavior is probably a more significant substantive consequence in most agencies than posturing and the influence of an audience on views. One form of inhibition is stylistic in nature. Open meetings were often described by respondents in terms suggesting the absence of meaningful exchanges, such as "stiff", "formal," "set pieces," and "staged presentations." Also dimished is the "kidding around," one general counsel noted, that can contribute to a productive work climate. There also may be restraint in the content of what members say, according to interviews. Some of the reasons are substantive uncertainty and a desire not to appear uninformed, apprehension or uncertainty about market and political repercussions, a reluctance to embarrass staff, and fear of tipping the agency's hand or revealing weak points in a proposed action. Staff members, interviews indicated, at times are inhibited in their contributions in much the same way and for the same reasons. Another form of inhibition concerns the adjustment of positions or a change in views in the process of deliberation. In some agencies it is reported that members can and do alter positions in open meetings as a result of what is said there and may adjust stances to facilitate accommodation of contrasting views. But there are counter pressures in support of the maintenance of a position after it is announced, even if there is an inclination to alter it. They include an unwillingness to appear weak, indecisive, or unprincipled.

The inhibitions commonly associated with open meetings appear to have several effects. Among the more important of them reported by participants are to "take the sting out of debate," as one member put it; to contribute to divisiveness among the membership by making the attainment of a consensus more difficult; and to limit the exchange of views, the flow of relevant information, the depth of critical collective scrutiny given to matters before the agency, and strategic speculation and planning.

There are slight and probably insignificant indications of inhibition in closed meetings as compared to pre-sunshine meetings. When the act was passed, there was a modicum of fear that the necessity of a record would have a dampening effect. Most agency respondents (73.4%) noted some inhibition. Interviewees generally felt, however, that the effects are on style, not substance. Transcripts and tapes result in the exercise of care in the statement of views and in the avoidance of "colorful" language, as one agency member put it. The fact that over the years most agencies have received very few requests for transcripts of closed meetings no doubt has lessened whatever restraint may have been felt initially.

The survey data and interviews indicate that in various ways the quality of interaction among decision makers more often than not is higher in closed than in open meetings. Discussion or debate of the issues is likely to be more thorough and substantive when the public is not present. This conclusion about behavior in meetings suggests that the Sunshine Act carries with it some costs

in the conduct of governmental affairs. The following section examines more directly the question of its positive and negative effects.

Effects

The agencies subject to the Sunshine Act, though all are headed by a group appointed by the president, differ in their functions, history, customs, and in other respects. It is reasonable, then, to expect that they are affected differently in their operations by the requirements of the law. In this section, however, an effort is made to assess its broad impact in regard to agency publics, agency capacity, and decision-making processes.

Agency Publics

Agencies are linked to the mass public through attentive publics that have more than a passing interest in their activities. Attentive publics include those individual and group interests with immediate and in many cases large particularistic stakes in what agencies do or do not do, groups which present themselves as representatives of a broader public interest in governmental affairs, the media, and other parts of government.

Few, if any, advocates of sunshine probably expected the general citizenry to appear in significant numbers at meetings of the Harry S Truman Scholarship Foundation or even the Federal Reserve Board of Governors. It was expected, however, that the law would enlarge the access of attentive publics to information of interest to them which then would be disseminated through various means, resulting ultimately in diffuse benefits to the public-at-large and, as said before, increased accountability and public trust and confidence in government. Attentive publics do use notices and open meetings to follow agency activity. Although the typical open meeting apparently attracts only a small number of observers, at times meeting rooms are filled to overflowing. The extent to which the greater access enjoyed by attentive publics serves larger public interests is much less evident than their presence at meetings.

Although the central concern addressed in sunshine legislation is information availability, there are two aspects of the relationship between agencies and their publics associated with, but distinguishable from, information per se: participation and influence in agency processes. At the time the act was passed, there was some explicit sense that sunshine might stimulate greater and more varied public participation in proceedings. Less clearly expressed was the sense in some quarters that the influence of narrow, particularistic interests might be reduced by closer public scrutiny of decision-making activity. The extent to which these two objectives have been realized is extremely difficult to determine. For now, the best that can be done is to examine the relevant perceptions of agency officials and members of attentive publics.

It is clear that the Sunshine Act has enlarged the "window" through which to view agency activities. Since the law was passed, the overall openness with which agencies conduct their affairs has increased or greatly increased according to a substantial number (69.9%) of respondents. As a result, the amount of available information has increased significantly, according to a slightly higher proportion of observers.

The effects of the act become less certain as one moves from attentive publics to the public-at-large, although according to the respondents it seems that they decline. There are fairly sharp differences between the views of agency officials and the other group about the extent of the decline. Members of attentive publics are much more inclined to perceive diffuse public benefits than are agency officials. The following figures should be read with this in mind. More than half the respondents (54.2%) conclude that the amount of information available to the general public has increased or greatly increased, while just under half (45.0%) see no impact. By a narrow margin, more respondents (53.0%) see no change in the level of general public understanding of the work of the agencies than feel there to be some degree of increase (45.1%).

To recapitulate briefly, although the two populations differ in their views to an extent, together their responses suggest that the act has brought a measure of additional sunlight into the agencies and enlarged the amount of information available to attentive publics and through them, possibly, to the public-at-large. To what extent does this make agencies more accountable and increase public trust in them? Again keep in mind that agency officials are prone to be less positive in their perceptions of effects. Almost half the total group (46.1%) judge there to be an increase or great increase in accountability because of the act. Just over half (50.3%) see no impact at all. An even larger number (64.2%) see no impact on the level of public trust in government, as opposed to a much smaller group (24.5%) who see a positive effect. These responses indicate that whereas sunshine has increased the availability of information, commensurate gains may not have been realized in general public understanding of agency affairs, agency accountability, or public trust and confidence in government.

If the major beneficiaries of the increased access to information are the attentive publics, as seems to be the case, what do they gain? One benefit clearly is more timely knowledge about agency activities. Several journalists noted that it is now easier for them to plan their work. Whereas prior to sunshine, only a relatively small number of observers (30.7%) indicated they usually were aware of the consideration of important issues before action was taken, more than three-quarters (76.8%) say that they now know beforehand. Most representatives of attentive publics (78.4%) say that the act makes their reporting tasks easier to perform. Another benefit is sharper awareness of the basic forces at work in an agency. A large number indicated that their ability to understand the influences shaping decisions increased or greatly increased as a consequence of the Sunshine Act. Many reinforced the point in comments. For a journalist, a prime benefit was "greater insight and understanding of agency members' views, abilities, and personalities." An attorney noted, "One learns a little more about how little agency members know about their cases. But one <u>might</u> gain a glimmer of how a member thinks." Another pointed to "greater understanding of the real basis for decisions." For a trade association official, open meetings were important as a means "to identify the power brokers on the staff."

Several qualifications raised in interviews must be entered in regard to benefits gained. Increased openness may yield confusing and misleading information. Open meetings, as one agency member generally in favor of sunshine noted, at times can be marked by "disarray, confusion and misunderstanding that can cause the public to pick up the wrong signals." To the extent that discussion and debate are guarded or colored by political purposes, the actual basis for decision may remain unarticulated. Puzzlement about the future course of policy

may be created to the extent that split votes are caused by inflexibility rooted in public exposure or, as another member suggested, by the barriers raised by the act to negotiating unanimity. Also, inappropriate information may escape that unfairly harms parties, although most respondents (69.0%) do not see this as a serious problem. Finally, the greater access enjoyed by journalists does not necessarily lead to more extensive or better reporting, it was suggested several times. Stories are enlivened by the opportunity to observe meetings directly and by the color this may yield, but substantive content is not always better than in the pre-sunshine period. Knowledgeable reporters, in this view, provided good and accurate coverage before the act. Now their job is made somewhat easier, but qualitative improvements in their products are difficult to discern.

The relationship between the informational benefits enjoyed by attentive publics and effects on the direction of agency affairs are not clear cut. A majority of respondents perceive no change in patterns of participation or influence in agency processes. Among the minority who see alterted levels of participation as a result of the Sunshine Act, gains by representatives of particularistic interests and by public interest groups are viewed as basically of the same magnitude. In regard to influence, the largest number of respondents see gains by the media (42.7%), followed by public interest groups (42.5%), and particularistic interests (36.4%). The general public is considered to have derived increased influence by about one quarter (25.6%) of the respondents. In sum, to the extent that there are winners, they appear to be those with the resources to closely follow agency affairs. What they learn as a result of increased openness, respondent comments suggest, is of real assistance in the advancement of their interests.

Agency Capacity

An agency's capacity to function effectively in carrying out its assigned responsibilities, of course, is not determined by any single factor. It is shaped by a complex of political, organizational and other conditions. Yet limited prescriptions such as those found in the Sunshine Act may have a bearing, because of the way in which they regulate decision-making procedures and enlarge the information resources of others with whom agencies must deal, including interests inclined to frustrate them in the pursuit of legitimate governmental objectives. Several particular ways in which the act might impair agency effectiveness have been mentioned in discussions of it.

One is that notice requirements may limit the ability to act expeditiously in emergencies. It is not clear whether this is actually the case to any great degree, although there may be selected instances in which difficulties arise, such as when the CAB was faced with Braniff's bankruptcy. The respondents are mixed in their views. Under half the total number (44.8%), and in this a bare majority (53.9%) of agency officials serving both before and after the act, think there is a problem. That apprehensions have not been realized fully may be because the act's expedited meeting process works better than was expected, and because agencies with a frequent need for quick response, such as regulators of financial institutions, have developed techniques for moving quickly within the context of the act.

Another possible problem is that information appropriately confidential may be forced or fall into the open prematurely, thus tipping an agency's hand in enforcement or some other sensitive endeavor. As in the case of impediments to

expeditious action, there is no clear indication that premature disclosure is a serious generic problem. Well more than half the respondents (59.6%) do not think so. While more than half the officials with agencies before and after implementation of the act (52.9%) feel that premature disclosure occurs at times, only a few (14.3%) judge it to be often.

Yet another impairment suspected is that agencies may be hampered in negotiations or other aspects of necessary relationships with other institutions. Respondents were asked whether sunshine was an impediment to effective working relationships with other agencies. The overall response was in the negative, with more than half (60.2%) seeing no impact and a small number (9.4%) reporting positive benefits. On the whole, agency respondents were somewhat more inclined to see difficulties. But aggregate figures may present a deceptive picture and mask discrete problems because of differences in missions and operating requirements among agencies, or so interviews suggest. In some settings potentially useful discussions have not been held, it is reported, because agencies not subject to the act were reluctant to meet in open sessions. Furthermore, when classified or sensitive material is involved, there may be a reluctance to engage in even a legitimately closed meeting. Interviews also pointed to similar problems with non-governmental groups and representatives of foreign governments.

Ties to Congress are important for all agencies. A substantial portion of respondents (70.3%) are of the view that sunshine either has no effect upon or aids in the conduct of effective congressional relations. Agency officials are a bit more likely to see a negative impact. Again, this is an area in which some agencies may be seriously affected and others hardly at all, interviews and respondent comments indicate, depending upon the amount of legislative business at hand and the level of controversy associated with it.

That there are some differential effects is further suggested by the data presented in Table 6. It focuses on major regulatory agencies and rank orders the perceptions of agency officials and attentive publics on two of the variables associated with capacity. They are the ability to work effectively with Congress and with other agencies. (An index employing these and several other variables shows basically the same pattern. The simpler of the two is used here in the interest of measurement comparability.) A score of 4 indicates that the act has had no impact on capacity, a score of more than 4 means a postive impact, and a score of less than 4 indicates a negative impact.

Agency respondents report that 15 of 18 agencies have been affected negatively. The most severely affected are the Commodity Futures Trading Commission, the Federal Reserve Board of Governors, the Nuclear Regulatory Commission, and the Securities and Exchange Commission. Agency publics see negative effects, generally in less severe terms, in eight of the 18 cases. On the whole, the perceptions of the two groups for particular agencies are not far apart, but there are some discrepancies. The most striking concerns the Nuclear Regulatory Commission. Its officials see a distinct impairment, whereas its public reports that effectiveness is enhanced by the act.

It does not appear that there are serious generic impediments in the act to agency effectiveness in regard to moving expeditiously, disclosure of information and to managing relationships with other agencies and Congress.

Table 6

Two Variable Capacity Index

Agency Officials			Attentive Publics		
Agency	Mean	N	Agency	Mean	N
All Respondents	3.41	298	All Respondents	3.95	205
1 EEOC	4.86	7	1 USPRC	6.5	2
2 USPRC	4.25	8	2 NRC	4.74	19
3 NTSB	4.14	14	3 FMC	4.43	7
4 FEC	3.83	12	4 FCC	4.43	21
5 CAB	3.68	25	5 FTC	4.36	11
6 FHLBB	3.67	9	6 USITC	4.20	5
7 FMC	3.58	19	7 FERC	4.05	17
8 FTC	3.56	16	8 EEOC	4.00	2
9 CPSC	3.56	25	9 FDIC	4.00	1
10 FDIC	3.55	11	10 NTSB	4.00	1
11 USITC	3.53	17	. . . . .		
12 ICC	3.50	20			
. . . . .			11 CAB	3.92	24
			12 CPSC	3.89	9
13 FCC	3.38	24	13 CFTC	3.81	16
14 FERC	3.33	18	14 FEC	3.80	5
15 CFTC	2.87	15	15 FRB	3.64	22
16 FRB	2.77	13	16 FHLBB	3.33	9
17 NRC	2.67	21	17 SEC	3.29	14
18 SEC	2.50	24	18 ICC	3.15	20

Because of special circumstances, some agencies, it should be emphasized, may be affected differently and experience trauma of a sort in these areas. A larger concern related to effective performance is the character and quality of agency decision making processes. It is in this area that the Sunshine Act may have its most profound impact.

Decision Making

Agencies subject to the Sunshine Act perform a variety of functions and have two types of membership structures. Some are headed by a group of full-time members ranging in number from three to seven who share basic responsibility for the direction of agency operations. Others are governed by part-time boards with a more restricted, though critical, role. Presumably both types of agencies were constructed as they were by Congress because collective leadership and collegial decision making in their areas of responsibility were deemed to be appropriate, desirable, and preferred to the concentration of authority in a single administrator. The comparative advantages and disadvantages of these competing approaches to government organization have been debated for decades. Congress historically has indicated a persistent preference in certain circumstances for the collegial option, as the number of such agencies shows. It has

usually rejected the advice of those who, from time to time, have urged the conversion of collegial agencies to the alternative form. Furthermore, it continues to create collegial agencies, as in the recent cases of the Consumer Product Safety Commission and the Commodity Futures Trading Commission.

There are a number of particular justifications for employing collegial arrangements. They allow the direct representation of varied interests, views, backgrounds, political orientations, and geographical areas in governemntal affairs. Continuity in policy without rigidity is served by staggered terms for agency leadership. But perhaps the most important justification has to do with decision making in difficult and sensitive areas.

One of the strongest defenses of collegial decision making was provided by the First Hoover Commission's Committee on Independent Regulatory Commissions. It emphasized two key points. First, it argued, decisions are improved when there is a melding of the diverse and general perspectives of an agency leadership group and the specialized expertise of the staff. Second, decisions are improved as a consequence of interaction among a group of members. The committee elaborated on the point as follows.

> A distinctive attribute of commission action is that it requires concurrence by a majority of members of equal standing after full discussion and deliberation. At its best, each decision reflects the combined judgment of the group after critical analysis of the relevant facts and divergent views. This provides both a barrier to arbitrary or capricious action and a course of decisions based on different points of views and experience.
>
> This process has definite advantages where the problems are complex, where the relative weight of various factors affecting policy is not clear, and where the range of choice is wide. A single official can consult his staff but does not have to convince others to make his views or conclusions previal. The member of the commission must expose his reasons and judgments to the critical scrutiny of his fellow members and must persuade them to his point of view. He must analyze and understand the views of his colleagues if only to refute them.[57]

During debate prior to passage of the Sunshine Act, some attention was given to the possible effects of its strictures on collegial decision making. Congressional proponents of the bill appeared to acknowledge the possibility of some impairment. Their view was that some adjustment in exemption provisions would lessen negative efects, that there were no objective reasons for non-exempt information not to be dealt with in public, and that to the extent bureaucratic proclivities for secrecy did interrupt collegial interactions, this was a tolerable exchange for more openness in government. There is, of course, no way to know how much in the way of diminished collegiality would fall within the Congress' tolerable range. It may be that the law's provisions have caused alterations in the complex network of interactions among agency leadership and staff that sacrifice many of the advantages of collegial decision making beyond that which Congress anticipated, especially in agencies

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[57]Commission on Organization of the Executive Branch of Government, Task Force Report on Regulatory Commissions, Appendix N. (Washington, D.C.: (Government Printing Office, 1949), p. 21.

with full-time membership. Before pursuing the point, however, a word is necessary about those with part-time membership.

The role of part-time boards is basically to provide general guidance to agency staffs and to focus on major policy questions. Lacking day-to-day decisional responsibilities, meeting relatively infrequenly, with members spread across the country, and with considerable authority located in the staff, such organizations, one suspects, are less affected by the Sunshine Act than those with full-time membership. Survey results show this generally to be the case. However, a majority of respondents (58.3%) from agencies in this category see impediments to the collective development of policies and strategies located in the act, and almost as many (46.3%) report that the act hinders board direction of staff.

A discussion of effects in agencies with full-time membership requires some understanding of the degree to which the collegial ideal was realized prior to 1977. The brief answer is, only partially. Important matters might be decided without the authentic exchanges so central to the concept of collegiality. There is reason to suspect the decisions frequently reflected more the influence of staff or of chairmen in association with staff than a true amalgamation of member views informed by staff expertise. Yet the impressionistic evidence is that to varying degrees, at many times, and on central issues, the kind of collegial process described by the Committee on Independent Regulatory Commissions was a reality.

Respondents serving in these agencies before and after implementation of the act provide some empirical underpinning for the impression. They suggest that prior to 1977 there was extensive and consequential interaction among members acting as a collective. Almost all (80.1%) say that the important matters were often discussed in formal meetings of agency members. Informal sessions on such matters involving at least a majority of members also occurred with some frequency, according to almost half (43.0%). Furthermore, a very high proportion (85.8%) characterized members as making up their minds on issues, most or some of the time, <u>after</u> discussion in meetings.

There are reasons to believe that there has been a shift in patterns of decision-making behavior, at least in a number of agencies, away from collegial processes toward segmented, individualized processes in which, in the words of one commissioner, "members are isolated from one another." One reason is a decline of the importance of meetings as decisional vehicles, a dynamic which is suggested in two major ways.

First, an increase in notation voting is perceived by more than half (54.0%) the agency respondents. It is probably true that some of the increase is to dispose of minor items previously handled in meetings in order to avoid the red tape involved in including them on a meeting agenda. But a part of it appears to result from an aversion to public discussion of certain topics. Second, although open meetings in which collegial interactions are quite evident do take place, meetings often have no bearing on results. The inhibitions which mark the behavior of many members and staff, previously discussed, obviously imply diminished collegiality of the type described by the Committee on Independent Regulatory Commissions. A more direct indication is the perception of a large number (83.1%) of respondents from agencies with full-time membership that members now typically make up their minds on matters dealt with in open meetings <u>prior</u> to collective discussions. The expectation that members would

prepare better for meetings held in the open appears to have been realized, but at some cost to collegial processes. Many respondents (44.3%) see the same phenomena prior to closed meetings. The substantial difference in the two figures suggests that closed meetings are much more meaningful vehicles for decision making than are open ones. This finding squares with reports entered from time to time by those who attend open meetings that some matters decided are not discussed, and when there is discussion it often appears to be for the record rather than for deliberative purposes.

Another reason for suggesting diminished collegiality is an indication of a sense that collegial bodies are impaired in the performance of the agency leadership responsibilities placed in them by statute. Most agency respondents serving both before and after the act (68.3%) judge that members are hindered or greatly hindered by it in the joint development of policies and strategies. A lesser but substantial number of officials who arrived afterward (58.2%) and external observers (39.5%) are of the same view. Although the effects of the act are not judged to be quite so severe, a similar pattern is evident concerning the collective direction of work at the staff level.

A more detailed examination of 18 regulatory agencies in Table 7 provides further evidence of diminished collegiality. The data here combine and rank order responses by agency regarding the effect of the act on the collective development of policies and strategies and the collective direction of staff work. (Again, an index incorporating more variables gave essentially the same results). As in the case of the previous table, a mean response of 4 means no impact, more than 4 means a positive impact, and less than four means a negative impact. Only officials associated with the Federal Election Commission think that the act has strengthened the collegium. Members of attentive publics perceive increased collegiality in one instance and no impact in three others, and a decline is shown for the remainder. All in all, they see the negative effects to be less severe in degree than do agency officials. There are some widespread differences in the perceptions of the two groups in regard to particular agencies, with the Nuclear Regulatory Commission again serving as a case in point, but the general direction of the results is of greatest interest. The table clearly reinforces the assertion that the collegial character of agency processes has been modified.

The essential underlying problem appears to be that policy and strategic planning and the provision of meaningful direction to the staff commonly require the speculative exploration of sensitive matters at an early stage if there are to be productive results. This is difficult to do in public when there are uncertainties about the dimensions of problems, the options, and staff and member views, and when public reactions to speculative discussions and tentative strategic thinking might cause undesirable and unwarranted reactions. Consequently, collective discussions of important matters often do not take place, or they come so late in the process that the positive effects of free collegial interaction are substantially forfited.

As the incidence of meaningful collective debate and negotiation among members has declined, the focus of decision-making activity has shifted toward the offices of individual members and to the staff level and involves three key sets of interactions. The first is between staff at the operating level who are handling a particular matter and the offices of the chairman and other members. The second is between members one-on-one, except presumably in three member agencies. The third is among staff assistants to members acting as surrogates

Table 7

Two Variable Collegiality Index

Agency Officials			Attentive Publics		
Agency	Mean	N	Agency	Mean	N
All Respondents	2.62	306	All Respondents	3.52	217
1 FEC	4.09	12	1 CFTC	4.19	16
2 USPRC	3.75	8	2 FDIC	4.00	1
3 EEOC	3.43	7	3 NTSB	4.00	1
4 NTSB	3.07	15	4 NRC	3.90	20
5 CPSC	2.96	26	5 FHLBB	3.90	10
6 FDIC	2.91	11	6 FMC	3.89	9
7 FHLBB	2.89	9	7 FTC	3.85	13
8 FTC	2.88	17	8 CPSC	3.67	9
9 CAB	2.88	25	9 FEC	3.67	6
10 FRB	2.85	13	10 FERC	3.59	17
11 FMC	2.76	21	11 FCC	3.58	24
. . . . .			. . . . .		
12 USITC	2.61	18	12 EEOC	3.50	2
13 CFTC	2.53	15	13 CAB	3.44	27
14 ICC	2.48	21	14 ICC	3.05	21
15 FERC	2.06	18	15 FRB	3.05	21
16 FCC	2.00	25	16 USPRC	3.00	1
17 SEC	1.79	24	17 USITC	3.00	5
18 NRC	1.67	21	18 SEC	2.71	14

for their principals, and exercising, as one member put it, "proxies of a sort."

All have distinct limitations as substitutes for collegial discussions. Processes of essentially individual interactions as a means for reaching accord in particular decision situations are cumbersome and time consuming. The chain of communications is elongated, risking the filtration and distortion of views. Members may not be exposed to the full range of staff advice and expertise, and staff may experience difficulty in ascertaining clearly the thinking of members and relating the views of one to those of others. Members may also find themselves in this situation. It is difficult for a member in the position of being a swing vote to forge accommodations under such circumstances, as one who at times has been in that position observed. Also addressing the point is the comment of a former activist member of the Interstate Commerce Commission about the utility of the members' dining room when less than a quorum was present and discussion of agency affairs could be free: "I could not have functioned without it." Reaching understandings would appear to be even more difficult when responsibility falls upon staff intermediaries, as it often does.

An enlarged role for the personal staff of members in processes of decision is one of the more important effects of the Sunshine Act. Staff efforts are useful in many respects, but despite close relationships with their members, there are certain liabilities which may attend their efforts, according to interview data. One is the exacerbation of conflict through the imposition of conflictual relationships among the staff members themselves on the process. Another, probably of greater importance, stems from the staff role as the representative of the perceived views of a superior. Assistants rightly feel obligated to reflect their principal's position as they understand it. It is not their place to independently compromise that position as they work with other assistants, whereas in private discussions involving members themselves, more flexibility might be manifest. Still another problem is the possible loss of spontaneity and momentum in the processes of decision. At critical monents, it is reported, when it seems that agreement is in sight if certain adjustments in position are made, discussions must be broken off for consultation with principals. This, according to interviews, not only slows the process but breaks concentration and a sense of movement which are difficult to regain.

If it is true that the Sunshine Act tends to encourage staff reticence in meetings, discourages the interaction among members collectively and with staff in policy and strategic planning, and enlarges the importance of individualized member-staff relationships which limit the access of members to staff expertise and the diversity of staff veiws, another attribute of collegial processes is diminished. Together these developments increase the difficulty of effectively conjoining the diverse generalist views of members and their collegial judgments with the specialized expertise of the staff in decision making.

To the extent that a collegial body is impaired in its ability to function, it might be expected that there would be spillover effects on the influence of chairmen and staff. Comments proffered by respondents suggest that this may be the case to some degree. According to a staff member, "The chairman meets with staff and hammers out staff positions." A member of a different agency noted that because of the act, consideration of important matters often did not start with discussion among members but with the chairman's paper on the subject, giving the chariman's position a strong advantage. The chairman of another agency listed "near abdication of decision making to staff absent the 'heavy hand of the chairman' (in the words of another commissioner)." A member of still another agency, after noting his view that the act had strengthened the chairman in management but not in substantive decision making, complained that members were not able to assert their prerogatives collectively, because they were reluctant to do so in a formal, open meeting. His chairman, incidentially, listed as one of the virtues of sunshine that it prevented members from "ganging up" on him. A member of another agency complained that sunshine is used as an excuse to keep information held by the staff and chairman from members, thus diminishing their role and influence. These limitations on the collegium are associated with strictures on the flow of information. In addition, some chairmen have been able to employ the open environment of public meetings as a means for moving their colleagues toward a preferred position.

No clear cut picture emerges from the survey data, however. Approximately half the respondents say that the act has no impact on the influence of chairmen in agency management (53.5%) or in substantive decision making (50.1%). Among those who see some effect, considerably more perceive an increase than a decrease. Interestingly, officials coming after implementation of the act and external observers are more inclined to see increases in both areas than are

officials who were in an agency before 1977 and who presumably were aware of the considerable potency of agency chairmanships prior to sunshine.[58] A similar pattern emerges concerning the influence of staff. Just under half of all respondents (49.8) perceive no impact at all. But a notable number see an increase, more among observers (47.4%) than among officials of post-sunshine vintage (40.9%) or the pre-sunshine group (33.0%). Again, it may be that those in the last category understand better the traditional strength of staff in agency processes.

That the Sunshine Act has caused major changes in the internal decision-making processes of many agencies appears to be fairly certain. Its consequences for the substance, character and quality of agency decisions is less clear. One cannot know, obviously, the nature of the decisions that would have been made sans the act. Nevertheless, respondents were asked to assess the effects of the law on the quality of agency decisions. Quality is a subjective phenomenon. For some it may mean the craftsmanship evident in the decisions themselves, and for others the wisdom of their substance, and for still others a different construct. Thus it is difficult to evaluate the responses with precision. But whatever their sense of quality, a substantial number of respondents see no impact on quality at all, according to the data in Table 8. This is particularly the case for agency officials serving before and after implementation of the act. This group also is less likely to see improvement in quality than the others. Agency officials in general judge there to be a decrease in quality to a slightly greater degree than do members of attentive publics.

An examination of the findings reported in Table 9 shows that there is considerable variation from regulatory agency to agency. In this table, a mean

Table 8

Sunshine Effects on Quality of Decisions

	Greatly Decreased	Decreased	No Impact	Increased	Greatly Increased
Attentive publics	3.6%	14.9%	43.0%	37.1%	1.4%
Officials after	4.5	18.2	44.3	23.9	9.1
Officials before and after	.5	22.9	58.4	16.4	1.9
Total	2.5%	18.7%	49.5%	26.4%	2.9%

[58] David M. Welborn, Governance of Federal Regulatory Agencies (Knoxville, TN: University of Tennessee Press, 1977).

score of 2 indicates no impact on the quality of decisions, above 2 a positive impact, and below 2 a negative impact. Agency respondents see a positive relationship between sunshine and the quality of decisions in seven instances and no impact in two. In the remaining nine cases, a negative effect is reported. As might be expected, members of attentive publics are much more inclined to associate the Sunshine Act with an improvement in the quality of decisions and do so in 12 instances. The law is seen as having no effect in two cases, and a negative effect in only four. Setting aside the National Transportation Safety Board whose ranking is determined by only one response, it is interesting to note that the attentive publics of the Federal Maritime Commission, the Interstate Commerce Commisssion, and the Federal Communications Commission see more negative effects of sunshine on the quality of decisions than do agency officials.

At least in the view of agency officials there appears to be a relationship between diminished collegiality and a lowered quality of decisions in some instances, based upon a comparison of tables 7 and 9. Five of the six agencies reporting the most severe decline in colegiality are among the six reporting the

Table 9

Sunshine Effects on Quality of Decisions in Major Regulatory Agencies

Agency Officials			Attentive Publics		
Agency	Mean	N	Agency	Mean	N
All Respondents	2.03	289	All Respondents	2.17	217
1 EEOC	2.71	7	1 USPRC	3.00	2
2 NTSB	2.53	15	2 USITC	2.67	6
3 CAB	2.46	24	3 CPSC	2.56	9
4 FHLBB	2.40	10	4 EEOC	2.50	2
5 CPSC	2.33	24	5 FTC	2.39	13
6 FEC	2.17	12	6 FHLBB	2.33	8
7 FDIC	2.09	11	7 CFTC	2.20	18
. . . . .			8 NRC	2.29	21
			9 FEC	2.20	5
8 FTC	2.00	13	. . . . .		
9 ICC	2.00	20			
10 FMC	1.95	21	10 FERC	2.12	16
11 FCC	1.90	20	11 SEC	2.07	14
12 USPRC	1.87	8	12 CAB	2.04	26
13 FERC	1.88	16	13 FRB	2.00	21
14 CFTC	1.87	15	14 FDIC	2.00	1
15 NRC	1.80	20	15 FMC	1.89	9
16 USITC	1.78	18	16 ICC	1.77	22
17 FRB	1.75	12	17 FCC	1.06	23
18 SEC	1.48	23	18 NTSB	1.00	1

most negative effects on the quality of decisions. On the other hand, officials of eight agencies whose combined responses indicated some degree of impaired collegiality perceive an improvement in the quality of decisions.

General Assessment and Comparison

Respondents also were asked to assess the comparative overall costs and benefits of the act from the standpoint of effective agency performance. The results appear in Table 10. When compared with Table 8, they show a greater perception of general negative impact than that reported on the quality of decisions. As might be expected, observers (51.1%) are most inclined to feel that benefits are greater than costs, although officials serving only after the act was passed are almost as positive (45.7%). In contrast, more than half the officials who were in agencies before the act (51.6%) think that costs exceed benefits.[59]

Table 10

Costs and Benefits of the Sunshine Act

	C>B	C=B	B>C
Attentive publics	24.0%	24.0%	51.1%
Officials after	32.9	21.4	45.7
Officials before and after	51.6	23.8	24.6
Total	38.0%	23.6%	38.4%

When the scores are examined agency-by-agency, they again show major differences in the perceptions of agency officials and members of attentive

[59]Two agency members recently have expressed critical views of the act as a result of their experience in the Consumer Product Saftety Commission and the Securities and Exchange Commission. See Stuart M. Statler, "Let the Sunshine In?," Ameican Bar Association Journal, May, 1981, pp. 573-5; and Bevis Longstreth, "A Little Shade, Please," The Washington Post, July 25, 1983, p. A 13. Longstreth drew a rejoinder from Senator Lawton Chiles, "The Sunshine Act Does to Work," The Washington Post, August 4, 1983, p. A 21.

Table 11

Costs and Benefits of the Sunshine Act in Major Regulatory Agencies

Agency Officials

Agency	Mean	N
All Respondents	0.85	308
1 EEOC	1.50	8
2 CAB	1.50	24
3 FTC	1.31	16
4 NTSB	1.20	15
5 CPSC	1.15	27
6. FHLBB	1.00	10
7. USPRC	0.88	8
. . . . .		
8 ICC	0.85	20
9 FCC	0.84	25
10 FEC	0.83	12
11 FERC	0.78	18
12 NRC	0.73	22
13 FMC	0.71	21
14 CFTC	0.67	15
15 USITC	0.56	18
16 FRB	0.46	13
17 FDIC	0.27	11
18 SEC	0.16	25

Attentive Publics

Agency	Mean	N
All Respondents	1.26	223
1 USPRC	2.0	2
2 USITC	1.50	6
3 CAB	1.48	25
4 FTC	1.46	13
5 FMC	1.44	9
6 FCC	1.39	23
7 NRC	1.38	21
8 CPSC	1.38	8
9 FEC	1.33	6
10 FHLB	1.27	11
. . . . .		
11 FRB	1.18	22
12 CFTC	1.15	20
13 FERC	1.12	17
14 SECC	1.07	15
15 EEOC	1.00	1
16 NTSB	1.00	1
17 ICCC	0.82	22
18 FDIC	0	1

publics. Table 11 displays the results for the major regulatory agencies. Mean scores of less than 1 are reported only in the cases of the Federal Deposit Insurance Corporation where there is but one response and the Interstate Commerce Commission, indicating that observers on balance see the cost of the act as greater than its benefits in those agencies. In most other instances the aggregate view is that benefits exceed costs. Agency officials are less positive in their assessments. In five agencies benefits are perceived to exceed costs, in one they are seen as about equal, and in twelve agencies the costs are reported to outweigh benefits.

Given the sizeable number of agencies with distinctive features affected by the Sunshine Act, it would be reasonable to expect substantial differences in the character and ease of adaptation to its requirements. However, a comparative agency assessment of the average scores for each questionnaire item shows considerable consistency among them. This means, simply, that with certain exceptions, perceptions of sunshine experience and effects do not vary much in significant and systematic ways from agency to agency. In both the general sense and on specific points, experience under the act is seen in much the same way from agency to agency.

The major exceptions are several agencies which stand out in regard to the severity of the impediments agency respondents associate with the law. Several regulate either financial markets or institutions. They include the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the Federal Reserve Board. Others are the Federal Communications Commission, the Federal Energy Regulatory Commission, the Federal Maritime Commission, the Interstate Commerce Commission, the Nuclear Regulatory Commission, and the United States International Trade Commission.

There are some differences among them in the particulars of perceived effects and their responses to the act which seem to be related to distinctive circumstances and to the personal predilections of agency members. For example, the agencies regulating financial institutions may close most of their more sensitive disucssions. On the other hand, two of them, the FDIC and the FHLBB, are further affected because they are among several three-member agencies where the act bans substantive discussion of one member with another outside of formal meetings.

When one cuts through the particulars in search of fundamental sources of discomfort, certain commonalities among those agencies most distressed by sunshine begin to emerge. First, the agencies operate under especially close scrutiny of attentive publics--the media, interest groups, and Congress. Second, their actions, even their anticipated actions, may set off profound economic and political repurcussions of national and even international scope. Third, awareness of this breeds caution about public disclosures prior to official action and guardedness in order to limit the possibility of market speculation, generation of particularistic political pressures on the agency, public apprehension, impediments to enforcement, and other undesirable effects. Fourth, most if not all of them have been engaged in policy transitions which intensify sensitivity to their actions. Fifth, because of an awareness of possible repurcussions to anticipated action, to the extent that it must be

done in the open, policy and strategic planning through collegial processes are foregone or imperfectly realized. The impairment most keenly felt, then, is not in regard to the day-to-day decisions, but in those of broad and long-term policy significance or better yet, those leading up to focused policy deliberations. Frank, full and public explorations of issues and options, in which uncertainties, speculative thinking, and testing of ideas are inherent, are seen as risky endeavors likely to produce unacceptable costs.

Whether this rationale is correct is a matter of judgment, although there is no reason to think that the responses on which it is based are not authentic. There are agencies somewhat similar to those under discussion, it should be said, in which impairment is not so keenly felt. The Civil Aeronautics Board and the Consumer Product Safety Commission, two agencies in which the sunshine experience is viewed rather positively by many, may be contrasted with the ICC and the NRC. What accounts for the differences? In part it appears to be the dispositions of agency leadership. It may also have to do with age and tradition. When the act went into effect the CAB was well along in a process of re-creation that would lead to termination, and thus it was subject to much less uncertainty about its future than the ICC, just starting to reexamine its policies and programs. In 1977 the CPSC was a very young agency that had manifested a certain commitment to openness from the start, although members did not regularly hold their meetings in public. The NRC is a much older agency whose functions and organizational history going back to the Atomic Energy Commission create a special concern for the confidentiality of information. Although CAB and CPSC reactions to sunshine, overall, are on the positive side, there is considerable feeling in them that it is difficult to give appropriate attention to certain matters. This suggests that the impediments to considering the larger questions exist to some degree beyond those agencies where they are felt most acutely.

Weighing the Sunshine Experience

From the standpoint of the study of public policy and administration, the Government in the Sunshine Act is especially interesting in two major respects. One is the character of agency response to mandated change of substantial proportion in the conduct of their affairs. The other is the consideration the act dictates of competing approaches to the administration of public policies and programs in a democratic society, including the place of collegial processes in government. These points provide a focus for a summary discussion of experience under the act.

Bureaucratic organizations are often depicted as being rigid, wedded to standard operating procedures, inherently resistant to change, and strongly inclined to seek the comfort and advantage of secrecy and control over information central to their activities. Based upon such a characterization, it might be expected that the response of agencies to the strictures of the Sunshine act, imposing as they do rather basic changes in customary ways of doing business, would be tortuous, reluctant adaptation, and perhaps even evasision of its dictates.

That does not appear to be quite the case. Overall, it seems that agency compliance with the act's notice, meeting and other requirements has been high

and generally at least in accord with the letter of the law. Certainly there are no indications that outright evasion, such as holding "secret" meetings of agency members in unquestionable violation of the law, is a major problem. Notices are generally put out before meetings, and although there are many closed meetings, substantial numbers of open meetings are held.

There is a difference, of course, between compliance with the letter of the Sunshine Act and with its spirit, which calls for maximum public access to meaningful information about agency processes. In this respect, those who wish to take advantage of the access provided them by the law see some deficiencies in its implementation. Three of the most common criticisms are that meetings are often closed on technical legal grounds when there is no substantive reason to do so, that at times there is not enough discussion in open meetings to allow those in attendance to understand the proceedings, and that some agencies do not give sufficient access to explanatory materials and documents underlying discussions and decisions. Whatever reticence these criticisms imply, it should be emphasized, stops far short of bureaucratic intansigence in the face of the law's requirements.

In the narrow administration sense, implementation of the act is now a routine matter and is not especially costly or burdensome. Regular procedures and processes were rather quickly put in place to govern notices, meetings and records in conformity with its provisions. Administrative adaptation has not been wholly free of problems, however. One source is certain procedural requirements which some officials view as administratively cumbersome and lacking offsetting benefits to the public. These include member votes on agenda changes, a "full written explanation" of the reasons for closure, a list of persons expected to attend a closed meeting, and a presiding officer's statement after a closed meeting. Of greater importance, agency officials even now may find themselves from time to time on uncertain ground in applying the statutory definition of meetings, in interpreting several of the exemptions, and in divining the proper course in face of statutory silence, as, for example, the length of time the records of closed meetings may be kept in confidence. A number of judicial decisions have addressed several interpretative problems. Furthermore, the relatively few court challenges to agency sunshine practices are further indications of a generally positive response to its requirements.

To report an absence of perverse bureaucratic intransigence in the face of mandated change is not to suggest an absence of considerable, continuing tensions about the Sunshine Act's purposes, values and suppositions. They are clearly indicated by the differences in perceptions and assessments reported by many agency officials, on the one hand, and by members of attentive publics, on the other. And they are a continuance of contrasting views about the costs and benefits of increased public access to information that marked legislative consideration of the sunshine proposal. At that time, legislative sponsors, Common Cause and other supporters of an open meeting bill clearly were of the view that government secrecy was a problem of substantial proportions. That view, the legislative history shows, was not based upon specific, concrete examples or circumstances associated with the agencies to be covered by the law. Rather, it was based upon the general proposition that open government is a good in and of itself, and that the more open government is, the more democratic percepts are served without a necessary loss in administrative effectiveness, and perhaps with gains to be realized in the quality of per-

formance. State and congressional experience provided the empirical foundations for this position.[60] While not challenging the value of openness in government, numbers of agency officials saw a conflict between the public's right to know carried beyond a certain point and the public's right to fair, effective and reasoned administration of law. In their view the sunshine proposal went beyond that point, even with the provision for closed meetings, liberalized to an extent in the course of legislative consideration. Their major concern, although there were others, was that the open meeting requirement would have a chilling effect on deliberations.

This study, although executed from an objective perspective as to the merits of sunshine, cannot "objectively" determine which of the positions has proved to be the correct one. This is because the views and perceptions of several hundred respondents which are at the core of the analysis are themselves subjective, shaped by factors such as the roles in which people find themselves, their individual and institutional interests, and their personal scales of values. There is a sufficient basis to draw some conclusions, however, and to point out aspects of the sunshine experience that remain ambiguous.

One result of the act about which there is fairly general agreement is that public access to information has been enlarged. More information than before about what agencies are doing, how they go about their business, and in some respects the basic forces and rationales that underpin their actions, is there for the taking. There also is substantial agreement that it is the attentive publics, the journalists and those who do business with agencies and seek to influence their actions, who take advantage of the new opportunities. The major justification for the act was not the advancement of particularistic interests, however; it was a set of diffuse, systemic benefits, the most prominent of which were broadened general public knowledge and understanding of government, increased public trust and confidence in government (which polls show to have continued to decline), and improved agency responsibility and accountability. Whether any such benefits have been realized remains problematic. Respondents are quite divided in their views, and there is no independent evidence one way or the other.

There are reasons to believe that whatever the benefits resulting from the act, they have not come without certain costs, albeit distributed somewhat unevenly across agencies. For example, some agencies seem not to be affected in any significant way in their ability to act expeditiously, prevent the premature disclosure of information, and manage relationships with Congress and other organizations with which they must interact. Others, however, experience real difficulties in one or more of these areas. The sources of variation are not

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[60]The fact that many state laws and congressional requirements are much less constraining than the Sunshine Act did not receive much attention. In regard to Congress, House committees and subcommittees may close all or part of any meeting by majority vote regardless of subject matter. Perhaps the more important difference is that in both the House and Senate, any number of members may caucus freely in private sessions on any and all business.

readily evident, but probably lie in factors such as the nature and political and economic sensitivity of responsibilities.

The cost that is clearest and most generally felt is impairment of collegial decision-making processes, a consequence noted even by many respondents generally favorable to the sunshine law, in addition to those less positive in their attitudes. Indications are found in the increased use of notation voting, observed differences in member behavior in open and closed meetings and in open and pre-sunshine meetings, the tendency of members to come to open meetings with their minds made up to a greater degree than in the case of closed or pre-sunshine meetings, the incidence of staff assistant and other types of meetings not covered by the law, and the limits members experience in asserting their collective prerogatives and meeting their collective responsibility for agency leadership.

A movement toward individualized, segmented processes as the setting for evaluating information, testing views and other aspects of decision making does not mean that other features of collegial systems are lost, such as the representation of diverse views and interests and a measure of continuity at the agency leadership level. But the most important advantages of collegial structures are diminshed, to the extent that the diverse veiws of members are not tested in authentic deliberations, and the specialized expertise of the staff cannot be easily conjoined with the generalist perspectives of the members as a group.

There are variations among agencies in their willingness to treat what might be considered sensitive matters in open meetings when they do not fall under one or another of the exemptions. Yet in many settings, the evidence indicates, there is an absence of meaningful meetings on fundamental questions of policy and strategy if those meetings must be in public. The major difficulty is not when the question is, "What shall we decide in regard to this particular matter before us?" but, when it is, "Is there a problem, and, if so, what general approaches to dealing with it might it be well to consider?"

Unfortunately, human nature dictates that the public spotlight may often inhibit the kind of behavior called for in authentic collegial deliberations on complex problems where the uncertainties may be considerable and the views diverse and in an early stage of formulation. Deliberations in this type of situation are strengthened by such behavior as the expression of views, even if they are tentative and not fully informed; the testing of views through critical queries, even if put forth only for the purpose of debate; and raising alternatives for discussion, even though one does not necessarily favor them. People, especially public officials in positions of responsibility, generally do not wish to appear unknowledgeable, uncertain, or unprincipled, which such behavior might suggest. Furthermore, there are public and policy consequences officials might appropriately wish to avoid. These include inciting public alarm about conditions that after examination are found not to pose problems; stimulating public reactions in markets and elsewhere to an anticiapted action that ultimately may not be taken; generating political pressures at an early stage of attention to a problem that may preclude or distort further consideration; and providing interests subject to the authority of or otherwise affected by an agency with information which weakens it in the exercise of its responsibilities, to the general public's detriment.

It is easier to assert that the character of agency decision-making has changed as a result of the Sunshine Act than to pinpoint in convincing fashion the substantive consequences of that change. Certainly the evidence on the act's effect on the quality of decisions is mixed, although there are indications of a relationship in some agencies. On the other hand, the apparent loss of an element of administration that has been so valued for such a long period of time should give pause. Perhaps from the congressional perspective, diminished collegiality is a tolerable exchange for increased public access to information, but it is also possible that diminishment has gone beyond the acceptable. At the least, realization of what has occured should prompt further consideration of the state of collegial decision-making arrangements and their continued value under present conditions.

In summary, clearly the Sunshine act has proved to be no panacea for the ills besetting the relationship between the American administrative state and the American people. No one expected it to be, although its advocates clearly saw great promise in it. There have been certain benefits realized in seven years of experience, but there have been costs.[61] More time will be required to determine whether the balance it strikes between the public's right to know and, particularly, the confidentiality of administrative deliberations up to a certain point is a felicitous one, or whether over the long term, it contributes to further deterioration in the relationship between citizens and their government by impeding the sound and effective administration of governmental affairs.

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[61]This appears also to be true of the congressional experience. See, for example, William J. Keefe, Congress and the American People (Englewood Cliffs, N.J.: 1984), pp. 203 and 212; Catherine E. Rudder, "Committee Reform and The Revenue Process," in Lawrence C. Dodd and Bruce I. Oppenheimer (eds.), Congress Revisited (New York, Praeger Publishers, 1977), pp. 117-39, p. 126; Congressional Quarterly Weekly Report, Oct. 15, 1983, p. 2115; U.S. News and World Report, Feb. 20, 1984, p. 69.

Appendix A
Survey Response: Agency Officials

Sample

Agency	Staff Sent	Staff Ret-	Member Sent	Member Ret-	Chairman Sent	Chairman Ret-	Total Sent	Total Ret-
Program/Enterprise Management								
Board for International Broadcasting	2	2(100.0)	7	2(28.6)	2	1(50.0)	11	5(45.5)
National Railroad Passenger Corp.	15	7(46.7)	13	4(30.8)	3	3(100.0)	31	14(45.2)
U.S. Parole Commission	11	6(54.5)	8	3(37.5)	4	1(25.0)	23	10(43.5)
U.S. Postal Service	14	9(64.3)	12	8(66.7)	3	2(66.7)	29	19(65.5)
Credit								
Export-Import Bank	10	3(30.0)	8	3(37.5)	3	1(33.3)	21	7(33.3)
Conflict Adjudication								
Foreign Claims Settlement Comm.	5	1(20.0)	4	3(75.0)	3	1(50.0)	11	5(45.5)
National Labor Relations Bd.	3	0(0.0)	5	1(20.0)	2	2(100.0)	10	3(30.0)
National Mediation Board	3	1(33.3)	4	2(50.0)	0	0(0.0)	7	3(42.9)
Occupational Safety and Health Review Comm.	11	9(81.8)	2	1(50.0)	2	1(50.0)	15	11(73.3)
Regulatory								
Civil Aeronautics Board	28	16(57.1)	7	2(28.6)	4	3(75.0)	39	25(64.1)
Commodity Futures Trading Comm.	22	12(54.6)	4	4(100.0)	2	0(0.0)	28	16(57.1)
Consumer Product Safety Comm.	28	22(78.6)	5	5(100.0)	2	1(50.0)	35	28(80.0)
Equal Employment Opportunity Comm.	14	6(42.9)	5	2(40.0)	3	0(0.0)	22	8(36.4)

Agency	Staff		Member		Chairman		Total	
	Sent	Ret-	Sent	Ret-	Sent	Ret-	Sent	Ret-
Federal Communications Comm.	21	14(66.7)	10	7(70.0)	5	3(60.0)	36	24(66.7)
Federal Deposit Insurance Corp.	18	8(44.4)	1	0(0.0)	4	3(75.0)		11(47.8)
Federal Election Comm.	6	5(83.3)	10	8(80.0)	1	0(0.0)	17	13(76.5)
Federal Energy Regulatory Comm.	20	13(68.4)	7	5(71.4)	2	1(50.0)	28	19(67.9)
Federal Home Loan Bank Bd.	27	10(37.0)	4	1(25.0)	1	0(.0.)	32	11(34.4)
Federal Reserve Board	14	7(50.0)	9	6(66.7)	2	1(50.0)	25	14(56.0)
Federal Trade Comm.	23	11(47.8)	5	3(60.0)	3	3(100.0)	31	17(54.8)
Federal Maritime Comm.	22	16(72.7)	6	3(50.0)	3	2(66.7)	31	21((67.7)
Interstate Commerce Comm.	19	11(57.9)	7	5(71.4)	5	4(80.0)	31	20(64.5)
Nuclear Regulatory Comm.	29	14(48.3)	4	2(50.0)	3	3(100.0)	36	19(52.8)
National Transportation Safety Bd.	14	11(78.6)	7	2(28.6)	2	1(50.0)	23	14(60.9)
Securities and Exchange Comm.	27	17(63.0)	7	7(100.0)	1	1(100.0)	35	25(71.4)
U.S. International Trade Comm.	15	11(73.3)	5	5(100.0)	2	2(100.0)	22	18(81.8)
U.S. Postal Rate Comm.	7	4(57.1)	4	2(50.0)	3	3(100.0)	14	9(64.3)
Total	428	246(57.6%)	170	96(56.6%)	69	43(66.3%)	667	389(57.8%)

Appendix B

Survey Response: Attentive Publics

Journalists		Attorneys, Firm, and Association Representatives		Public Interest Group Officials		Total	
Sent	Ret.	Sent	Ret.	Sent	Ret.	Sent	Ret.
174	61(35.1%)	621	241(38.8%)	45	11(24.4%)	840	313(37.4%)

Appendix C

X
NO. OF MEETINGS BY TYPE & AGENCY: '77-'81

(ADVISORY & PLANNING)

CEO	1977 N	1977 %	1978 N	1978 %	1979 N	1979 %	1980 N	1980 %	1981 N	1981 %	TOTALS N	TOTALS %
OPN:	7	(100.0)	0	(0.0)	15	(93.8)	C X	(N/A)	C X	(N/A)	22	(95.7)
CLD:	0	(0.0)	0	(0.0)	1	(6.2)	C X	(N/A)	C X	(N/A)	1	(4.3)
P/C:	0	(0.0)	0	(0.0)	0	(0.0)	C X	(N/A)	C X	(N/A)	0	(0.0)
TOT:	7	(100.0)	0	(0.0)	16	(100.0)	C X	(N/A)	C X	(N/A)	23	(100.0)

*MRC	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	10	(100.0)	10	(100.0)	8	(100.0)	8	(100.0)	8	(100.0)	44	(100.0)
CLD:	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)
P/C:	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)
TOT:	10	(100.0)	10	(100.0)	8	(100.0)	8	(100.0)	8	(100.0)	44	(100.0)

*NCLIS	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	14	(100.0)	15	(93.8)	4	(100.0)	8	(61.5)	13	(92.9)	54	(88.5)
CLD:	0	(0.0)	0	(0.0)	0	(0.0)	5	(38.5)	1	(7.1)	6	(9.8)
P/C:	0	(0.0)	1	(6.2)	0	(0.0)	0	(0.0)	0	(0.0)	1	(1.6)
TOT:	14	(100.0)	16	(100.0)	4	(100.0)	13	(100.0)	14	(100.0)	61	(100.0)

*USCCR	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	17	(47.2)	18	(81.8)	14	(77.8)	10	(90.9)	10	(90.9)	69	(70.4)
CLD:	19	(52.8)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	19	(19.4)
P/C:	0	(0.0)	4	(18.2)	4	(22.2)	1	(9.1)	1	(9.1)	10	(10.2)
TOT:	36	(100.0)	22	(100.0)	18	(100.0)	11	(100.0)	11	(100.0)	98	(100.0)

*USMB	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	C X	(N/A)	C X	(N/A)	C X	(N/A)	18	(72.0)	26	(59.1)	44	(63.8)
CLD:	C X	(N/A)	C X	(N/A)	C X	(N/A)	2	(8.0)	8	(18.2)	10	(14.5)
P/C:	C X	(N/A)	C X	(N/A)	C X	(N/A)	5	(20.0)	10	(22.7)	15	(21.7)
TOT:	C X	(N/A)	C X	(N/A)	C X	(N/A)	25	(100.0)	44	(100.0)	69	(100.0)

TOT OPEN:	233 (79.0
TOT CLOSED:	36 (12.2
TOT PT/CLD:	26 (6.8
GROUP GRAND TOTAL:	295 (100.0

(ADHOC ADJ. OF CONFLICT)

	1977		1978		1979		1980		1981		TOTALS	
CRT	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	0	(0.0)	14	(100.0)	4	(100.0)	D -	(N/A)	D -	(N/A)	18	(100.0
CLD:	0	(0.0)	0	(0.0)	0	(0.0)	D -	(N/A)	D -	(N/A)	0	(0.0
P/C:	0	(0.0)	0	(0.0)	0	(0.0)	D -	(N/A)	D -	(N/A)	0	(0.0
TOT:	0	(0.0)	14	(100.0)	4	(100.0)	D -	(N/A)	D -	(N/A)	18	(100.0
FLRA	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	0	(0.0)	0	(0.0)	2	(3.4)	C X	(N/A)	C X	(N/A)	2	(3.4
CLD:	0	(0.0)	0	(0.0)	57	(96.6)	C X	(N/A)	C X	(N/A)	57	(96.6)
P/C:	0	(0.0)	0	(0.0)	0	(0.0)	C X	(N/A)	C X	(N/A)	0	(0.0
TOT:	0	(0.0)	0	(0.0)	59	(100.0)	C X	(N/A)	C X	(N/A)	59	(100.0
FMSHRC	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	0	(0.0)	0	(0.0)	40	(76.9)	50	(100.0)	36	(100.0)	126	(91.3
CLD:	0	(0.0)	0	(0.0)	6	(11.5)	0	(0.0)	0	(0.0)	6	(4.3)
P/C:	0	(0.0)	0	(0.0)	6	(11.5)	0	(0.0)	0	(0.0)	6	(4.3)
TOT:	0	(0.0)	0	(0.0)	52	(100.0)	50	(100.0)	36	(100.0)	138	(100.0)
MSPB	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	0	(0.0)	0	(0.0)	5	(55.6)	0	(0.0)	0	(0.0)	5	(22.7)
CLD:	0	(0.0)	0	(0.0)	4	(44.4)	12	(100.0)	1	(100.0)	17	(77.3)
P/C:	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)
TOT:	0	(0.0)	0	(0.0)	9	(100.0)	12	(100.0)	1	(100.0)	22	(100.0)
NLRB	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	2	(6.5)	0	(0.0)	1	(2.7)	0	(0.0)	0	(0.0)	3	(2.0)
CLD:	29	(93.5)	30	(100.0)	36	(97.3)	29	(100.0)	25	(100.0)	149	(98.0)
P/C:	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)
TOT:	31	(100.0)	30	(100.0)	37	(100.0)	29	(100.0)	25	(100.0)	152	(100.0)
NMB	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	6	(100.0)	12	(100.0)	13	(100.0)	12	(100.0)	12	(100.0)	55	(100.0)
CLD:	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)
P/C:	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)
TOT:	6	(100.0)	12	(100.0)	13	(100.0)	12	(100.0)	12	(100.0)	55	(100.0)
OSHRC	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	4	(10.5)	3	(7.5)	8	(19.0)	1	(3.0)	1	(2.9)	17	(9.0)
CLD:	33	(86.8)	37	(92.5)	34	(81.0)	31	(93.9)	34	(97.1)	169	(89.9)
P/C:	1	(2.6)	0	(0.0)	0	(0.0)	1	(3.0)	0	(0.0)	2	(1.1)
TOT:	38	(100.0)	40	(100.0)	42	(100.0)	33	(100.0)	35	(100.0)	188	(100.0)
USFCSC	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	41	(100.0)	27	(100.0)	42	(100.0)	29	(100.0)	C X	(N/A)	139	(100.0)
CLD:	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	C X	(N/A)	0	(0.0)
P/C:	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	C X	(N/A)	0	(0.0)
TOT:	41	(100.0)	27	(100.0)	42	(100.0)	29	(100.0)	C X	(N/A)	139	(100.0

RB

	N %	N %	N %	N %	N %	N %
OPN:	9(21.4)	0(0.0)	0(0.0)	0(0.0)	0(0.0)	9(21.4)
CLD:	16(38.1)	0(0.0)	0(0.0)	0(0.0)	0(0.0)	16(38.1)
P/C:	17(40.5)	0(0.0)	0(0.0)	0(0.0)	0(0.0)	17(40.5)
TOT:	42(100.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)	42(100.0)

TOT OPEN:	374(46.0)
TOT CLOSED:	414(50.9)
TOT PT/CLD:	25(3.1)
GROUP GRAND TOTAL:	813(100.0)

(CREDIT)

EX-IM B

	1977 N %	1978 N %	1979 N %	1980 N %	1981 N %	TOTALS N %
OPN:	0(0.0)	0(0.0)	1(.8)	2(1.9)	0(0.0)	3(.6)
CLD:	111(100.0)	117(100.0)	118(99.2)	106(98.1)	56(100.0)	508(99.4)
P/C:	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)
TOT:	111(100.0)	117(100.0)	119(100.0)	108(100.0)	56(100.0)	511(100.0)

*FFCB

	N %	N %	N %	N %	N %	N %
OPN:	6(100.0)	6(100.0)	7(100.0)	0(0.0)	0(0.0)	19(59.4)
CLD:	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)
P/C:	0(0.0)	0(0.0)	0(0.0)	6(100.0)	7(100.0)	13(40.6)
TOT:	6(100.0)	6(100.0)	7(100.0)	6(100.0)	7(100.0)	32(100.0)

FHLMC

	N %	N %	N %	N %	N %	N %
OPN:	9(40.9)	0(0.0)	0(0.0)	0(0.0)	1(7.7)	10(17.9)
CLD:	4(18.2)	0(0.0)	6(60.0)	8(72.7)	12(92.3)	30(53.6)
P/C:	9(40.9)	0(0.0)	4(40.0)	3(27.3)	0(0.0)	16(28.6)
TOT:	22(100.0)	0(0.0)	10(100.0)	11(100.0)	13(100.0)	56(100.0)

*OPIC

	N %	N %	N %	N %	N %	N %
OPN:A	0(0.0)	0(0.0)	0(0.0)	C X (N/A)	C X (N/A)	0(0.0)
CLD:A	1(16.7)	0(0.0)	0(0.0)	C X (N/A)	C X (N/A)	1(5.3)
P/C:A	5(83.3)	7(100.0)	6(100.0)	C X (N/A)	C X (N/A)	18(94.7)
TOT:A	6(100.0)	7(100.0)	6(100.0)	C X (N/A)	C X (N/A)	19(100.0)

TOT OPEN:	32(5.2)
TOT CLOSED:	539(87.2)
TOT PT/CLD:	47(7.6)
GROUP GRAND TOTAL:	618(100.0)

(PROGRAM/ENTERPRISE)

	1977	1978	1979	1980	1981	TOTALS
*BIB						
	N %	N %	N %	N %	N %	N %
OPN:	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)
CLD:	2(100.0)	3(100.0)	4(100.0)	5(100.0)	3(100.0)	17(100.0)
P/C:	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)
TOT:	2(100.0)	3(100.0)	4(100.0)	5(100.0)	3(100.0)	17(100.0)
*CCC						
	N %	N %	N %	N %	N %	N %
OPN:	3(60.0)	4(66.7)	3(60.0)	1(25.0)	0(0.0)	11(39.3)
CLD:	0(0.0)	0(0.0)	0(0.0)	2(50.0)	4(50.0)	6(21.4)
P/C:	2(40.0)	2(33.3)	2(40.0)	1(25.0)	4(50.0)	11(39.3)
TOT:	5(100.0)	6(100.0)	5(100.0)	4(100.0)	8(100.0)	28(100.0)
*IMS						
	N %	N %	N %	N %	N %	N %
OPN:	0(0.0)	5(100.0)	4(100.0)	D - (N/A)	C X (N/A)	9(100.0)
CLD:	0(0.0)	0(0.0)	0(0.0)	D - (N/A)	C X (N/A)	0(0.0)
P/C:	0(0.0)	0(0.0)	0(0.0)	D - (N/A)	C X (N/A)	0(0.0)
TOT:	0(0.0)	5(100.0)	4(100.0)	D - (N/A)	C X (N/A)	9(100.0)
*IAF						
	N %	N %	N %	N %	N %	N %
OPN:	2(100.0)	3(100.0)	4(100.0)	5(100.0)	4(100.0)	18(100.0)
CLD:	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)
P/C:	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)
TOT:	2(100.0)	3(100.0)	4(100.0)	5(100.0)	4(100.0)	18(100.0)
*LSC						
	N %	N %	N %	N %	N %	N %
OPN:	0(0.0)	16(94.1)	14(66.7)	14(66.7)	C X (N/A)	44(74.6)
CLD:	0(0.0)	0(0.0)	3(14.3)	3(14.3)	C X (N/A)	6(10.2)
P/C:	0(0.0)	1(5.9)	4(19.0)	4(19.0)	C X (N/A)	9(15.3)
TOT:	0(0.0)	17(100.0)	21(100.0)	21(100.0)	C X (N/A)	59(100.0)
*NCER						
	N %	N %	N %	N %	N %	N %
OPN:	3(75.0)	3(50.0)	5(71.4)	0(0.0)	0(0.0)	11(64.7)
CLD:	0(0.0)	1(16.7)	0(0.0)	0(0.0)	0(0.0)	1(5.9)
P/C:	1(25.0)	2(33.3)	2(28.6)	0(0.0)	0(0.0)	5(29.4)
TOT:	4(100.0)	6(100.0)	7(100.0)	0(0.0)	0(0.0)	17(100.0)
*NNRC						
	N %	N %	N %	N %	N %	N %
OPN:	0(0.0)	0(0.0)	5(83.3)	0(0.0)	0(0.0)	5(83.3)
CLD:	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)
P/C:	0(0.0)	0(0.0)	1(16.7)	0(0.0)	0(0.0)	1(16.7)
TOT:	0(0.0)	0(0.0)	6(100.0)	0(0.0)	0(0.0)	6(100.0)

*NRPC

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	1	(10.0)	0	(0.0)	0	(0.0)	C X	(N/A)	E -	(N/A)	1	(2.9)
CLD:A	0	(0.0)	1	(8.3)	0	(0.0)	C X	(N/A)	E -	(N/A)	1	(2.9)
P/C:A	9	(90.0)	11	(91.7)	12	(100.0)	C X	(N/A)	E -	(N/A)	32	(94.1)
TOT:A	10	(100.0)	12	(100.0)	12	(100.0)	C X	(N/A)	E -	(N/A)	34	(100.0)

*NSB

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	5	(31.2)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	5	(9.4)
CLD:A	5	(31.2)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	5	(9.4)
P/C:A	6	(37.5)	8	(100.0)	9	(100.0)	10	(100.0)	10	(100.0)	43	(81.1)
TOT:A	16	(100.0)	8	(100.0)	9	(100.0)	10	(100.0)	10	(100.0)	53	(100.0)

RRB

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	2	(16.7)	0	(0.0)	0	(0.0)	C X	(N/A)	C X	(N/A)	2	(6.5)
CLD:	1	(8.3)	1	(10.0)	4	(44.4)	C X	(N/A)	C X	(N/A)	6	(19.4)
P/C:	9	(75.0)	9	(90.0)	5	(55.6)	C X	(N/A)	C X	(N/A)	23	(74.2)
TOT:	12	(100.0)	10	(100.0)	9	(100.0)	C X	(N/A)	C X	(N/A)	31	(100.0)

TVA

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	21	(100.0)	19	(100.0)	29	(100.0)	25	(100.0)	22	(100.0)	116	(100.0)
CLD:	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)
P/C:	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)
TOT:	21	(100.0)	19	(100.0)	29	(100.0)	25	(100.0)	22	(100.0)	116	(100.0)

*USUHS

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	5	(100.0)	3	(100.0)	4	(100.0)	D -	(N/A)	C X	(N/A)	12	(100.0)
CLD:A	0	(0.0)	0	(0.0)	0	(0.0)	D -	(N/A)	C X	(N/A)	0	(0.0)
P/C:A	0	(0.0)	0	(0.0)	0	(0.0)	D -	(N/A)	C X	(N/A)	0	(0.0)
TOT:A	5	(100.0)	3	(100.0)	4	(100.0)	D -	(N/A)	C X	(N/A)	12	(100.0)

USPC

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	5	(17.2)	7	(18.4)	5	(15.6)	C X	(N/A)	C X	(N/A)	17	(17.2)
CLD:A	23	(79.3)	30	(78.9)	27	(84.4)	C X	(N/A)	C X	(N/A)	80	(80.8)
P/C:A	1	(3.4)	1	(2.6)	0	(0.0)	C X	(N/A)	C X	(N/A)	2	(2.0)
TOT:A	29	(100.0)	38	(100.0)	32	(100.0)	C X	(N/A)	C X	(N/A)	99	(100.0)

*USPS

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	11	(91.7)	7	(53.8)	6	(54.5)	2	(13.3)	1	(6.2)	27	(40.3)
CLD:A	1	(8.3)	0	(0.0)	0	(0.0)	3	(20.0)	3	(18.8)	7	(10.4)
P/C:A	0	(0.0)	6	(46.2)	5	(45.5)	10	(66.7)	12	(75.0)	33	(49.3)
TOT:A	12	(100.0)	13	(100.0)	11	(100.0)	15	(100.0)	16	(100.0)	67	(100.0)

*USRA

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	4	(28.6)	3	(18.8)	0	(0.0)	0	(0.0)	C X	(N/A)	7	(12.7)
CLD:	5	(35.7)	1	(6.2)	0	(0.0)	0	(0.0)	C X	(N/A)	6	(10.9)
P/C:	5	(35.7)	12	(75.0)	12	(100.0)	13	(100.0)	C X	(N/A)	42	(76.4)
TOT:	14	(100.0)	16	(100.0)	12	(100.0)	13	(100.0)	C X	(N/A)	55	(100.0)

TOT OPEN:	285(45.9)
TOT CLOSED:	135(21.7)
TOT PT/CLD:	201(32.4)
GROUP GRAND TOTAL:	621(100.0)

(REGULATORY)
ECON

	1977		1978		1979		1980		1981		TOTALS	
CAB	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	73	(85.9)	72	(74.2)	42	(56.8)	17	(44.7)	10	(28.6)	214	(65.0)
CLD:	9	(10.6)	18	(18.6)	11	(14.9)	7	(18.4)	6	(17.1)	51	(15.5)
P/C:	3	(3.5)	7	(7.2)	21	(28.4)	14	(36.8)	19	(54.3)	64	(19.5)
TOT:	85	(100.0)	97	(100.0)	74	(100.0)	38	(100.0)	35	(100.0)	329	(100.0)
CFTC	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	12	(12.8)	46	(28.7)	29	(18.1)	25	(17.9)	26	(25.7)	138	(21.1)
CLD:A	56	(59.6)	114	(71.2)	131	(81.9)	115	(82.1)	75	(74.3)	491	(75.0)
P/C:A	26	(27.7)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	26	(4.0)
TOT:A	94	(100.0)	160	(100.0)	160	(100.0)	140	(100.0)	101	(100.0)	655	(100.0)
FCC	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	17	(37.0)	45	(51.7)	46	(59.7)	45	(53.6)	27	(48.2)	180	(51.4)
CLD:A	7	(15.2)	12	(13.8)	31	(40.3)	39	(46.4)	29	(51.8)	118	(33.7)
P/C:A	22	(47.8)	30	(34.5)	0	(0.0)	0	(0.0)	0	(0.0)	52	(14.9)
TOT:A	46	(100.0)	87	(100.0)	77	(100.0)	84	(100.0)	56	(100.0)	350	(100.0)
FERC	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	46	(85.2)	64	(78.0)	50	(66.7)	48	(69.6)	38	(70.4)	246	(73.7)
CLD:A	1	(1.9)	18	(22.0)	25	(33.3)	21	(30.4)	16	(29.6)	81	(24.3)
P/C:A	7	(13.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	7	(2.1)
TOT:A	54	(100.0)	82	(100.0)	75	(100.0)	69	(100.0)	54	(100.0)	334	(100.0)
FMC	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	7	(17.1)	B 412	(87.3)	18	(24.7)	44	(62.9)	8	(14.5)	77	(32.2)
CLD:A	2	(4.9)	B 60	(12.7)	17	(23.3)	3	(4.3)	7	(12.7)	29	(12.1)
P/C:A	32	(78.0)	B 0	(0.0)	38	(52.1)	23	(32.9)	40	(72.7)	133	(55.6)
TOT:A	41	(100.0)	B 472	(100.0)	73	(100.0)	70	(100.0)	55	(100.0)	239	(100.0)

FTC

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	25	(30.1)	23	(29.1)	15	(20.3)	12	(17.4)	9	(14.8)	84	(23.0)
CLD:	41	(49.4)	46	(58.2)	51	(68.9)	43	(62.3)	45	(73.8)	226	(61.7)
P/C:	17	(20.5)	10	(12.7)	8	(10.8)	14	(20.3)	7	(11.5)	56	(15.3)
TOT:	83	(100.0)	79	(100.0)	74	(100.0)	69	(100.0)	61	(100.0)	366	(100.0)

ICC

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	32	(86.5)	46	(93.9)	19	(82.6)	12	(100.0)	1	(100.0)	110	(90.2)
CLD:A	0	(0.0)	2	(4.1)	3	(13.0)	0	(0.0)	0	(0.0)	5	(4.1)
P/C:A	5	(13.5)	1	(2.0)	1	(4.3)	0	(0.0)	0	(0.0)	7	(5.7)
TOT:A	37	(100.0)	49	(100.0)	23	(100.0)	12	(100.0)	1	(100.0)	122	(100.0)

USPRC

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	3	(11.1)	0	(0.0)	3	(13.0)	2	(8.0)	0	(0.0)	8	(6.0)
CLD:A	18	(66.7)	7	(70.0)	17	(73.9)	20	(80.0)	46	(95.8)	108	(81.2)
P/C:A	6	(22.2)	3	(30.0)	3	(13.0)	3	(12.0)	2	(4.2)	17	(12.8)
TOT:A	27	(100.0)	10	(100.0)	23	(100.0)	25	(100.0)	48	(100.0)	133	(100.0)

SEC

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	68	(41.0)	B 76	(39.6)	67	(37.6)	56	(35.4)	C X	(N/A)	191	(38.0)
CLD:	98	(59.0)	B 116	(60.4)	98	(55.1)	95	(60.1)	C X	(N/A)	291	(58.0)
P/C:	0	(0.0)	B 0	(0.0)	13	(7.3)	7	(4.4)	C X	(N/A)	20	(4.0)
TOT:	166	(100.0)	B 192	(100.0)	178	(100.0)	158	(100.0)	C X	(N/A)	502	(100.0)

USITC

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	29	(46.8)	38	(61.3)	20	(44.4)	46	(65.7)	C X	(N/A)	133	(55.6)
CLD:	0	(0.0)	1	(1.6)	0	(0.0)	11	(15.7)	C X	(N/A)	12	(5.0)
P/C:	33	(53.2)	23	(37.1)	25	(55.6)	13	(18.6)	C X	(N/A)	94	(39.3)
TOT:	62	(100.0)	62	(100.0)	45	(100.0)	70	(100.0)	C X	(N/A)	239	(100.0)

TOT OPEN:	1381 (42.2)
TOT CLOSED:	1412 (43.2)
TOT PT/CLD:	476 (14.6)
GROUP GRAND TOTAL:	3269(100.0)

H/S

CPSC	1977		1978		1979		1980		1981		TOTALS	
	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	43	(54.4)	36	(45.6)	54	(60.0)	32	(44.4)	30	(44.8)	195	(50.4)
CLD:A	9	(11.4)	8	(10.1)	12	(13.3)	10	(13.9)	16	(23.9)	55	(14.2)
P/C:A	27	(34.2)	35	(44.3)	24	(26.7)	30	(41.7)	21	(31.3)	137	(35.4)
TOT:A	79	(100.0)	79	(100.0)	90	(100.0)	72	(100.0)	67	(100.0)	387	(100.0)

NTSB

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	28	(59.6)	22	(55.0)	29	(65.9)	21	(50.0)	28	(66.7)	128	(59.5)
CLD:	19	(40.4)	4	(10.0)	3	(6.8)	5	(11.9)	4	(9.5)	35	(16.3)
P/C:	0	(0.0)	14	(35.0)	12	(27.3)	16	(38.1)	10	(23.8)	52	(24.2)
TOT:	47	(100.0)	40	(100.0)	44	(100.0)	42	(100.0)	42	(100.0)	215	(100.0)

NRC

	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	47	(36.4)	B 203	(66.6)	119	(56.1)	213	(78.6)	110	(55.6)	489	(60.4)
CLD:A	52	(40.3)	B 101	(33.1)	57	(26.9)	56	(20.7)	44	(22.2)	209	(25.8)
P/C:A	30	(23.3)	B 1	(.3)	36	(17.0)	.2	(.7)	44	(22.2)	112	(13.8)
TOT:A	129	(100.0)	B 305	(100.0)	212	(100.0)	271	(100.0)	198	(100.0)	810	(100.0)

TOT OPEN:	812(57.5)
TOT CLOSED:	299(21.2)
TOT PT/CLD:	301(21.3)
	======
GROUP GRAND TOTAL:	1412(100.0)

FIN

	1977		1978		1979		1980		1981		TOTALS	
FDIC	N	%	N	%	N	%	N	%	N	%	N	%
OPN:A	2	(4.8)	30	(37.5)	4	(5.6)	1	(1.3)	2	(2.4)	39	(11.0)
CLD:A	22	(52.4)	49	(61.3)	22	(31.0)	26	(32.5)	30	(36.6)	149	(42.0)
P/C:A	18	(42.9)	1	(1.3)	45	(63.4)	53	(66.3)	50	(61.0)	167	(47.0)
TOT:A	42	(100.0)	80	(100.0)	71	(100.0)	80	(100.0)	82	(100.0)	355	(100.0)
FHLBB	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	0	(0.0)	5	(7.6)	8	(13.6)	12	(18.8)	34	(65.4)	59	(20.6)
CLD:	16	(34.8)	25	(37.9)	19	(32.2)	21	(32.8)	16	(30.8)	97	(33.8)
P/C:	30	(65.2)	36	(54.5)	32	(54.2)	31	(48.4)	2	(3.8)	131	(45.6)
TOT:	46	(100.0)	66	(100.0)	59	(100.0)	64	(100.0)	52	(100.0)	287	(100.0)
FRB	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	13	(11.4)	12	(10.4)	41	(30.1)	39	(25.3)	25	(46.3)	130	(22.7)
CLD:	83	(72.8)	70	(60.9)	86	(63.2)	115	(74.7)	29	(53.7)	383	(66.8)
P/C:	18	(15.8)	33	(28.7)	9	(6.6)	0	(0.0)	0	(0.0)	60	(10.5)
TOT:	114	(100.0)	115	(100.0)	136	(100.0)	154	(100.0)	54	(100.0)	573	(100.0)
NCUA	N	%	N	%	N	%	N	%	N	%	N	%
OPN:	0	(0.0)	0	(0.0)	15	(55.6)	43	(57.3)	0	(0.0)	58	(56.9)
CLD:	0	(0.0)	0	(0.0)	12	(44.4)	32	(42.7)	0	(0.0)	44	(43.1)
P/C:	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)
TOT:	0	(0.0)	0	(0.0)	27	(100.0)	75	(100.0)	0	(0.0)	102	(100.0)

TOT OPEN:	286(21.7)
TOT CLOSED:	673(51.1)
TOT PT/CLD:	358(27.2)
	======
GROUP GRAND TOTAL:	1317(100.0)

OTHER

	1977	1978	1979	1980	1981	TOTALS
EEOC	N %	N %	N %	N %	N %	N %
OPN:	4(11.8)	8(17.0)	10(18.5)	4(8.2)	0(0.0)	26(12.3)
CLD:	6(17.6)	3(6.4)	0(0.0)	2(4.1)	0(0.0)	11(5.2)
P/C:	24(70.6)	36(76.6)	44(81.5)	43(87.8)	28(100.0)	175(82.5)
TOT:	34(100.0)	47(100.0)	54(100.0)	49(100.0)	28(100.0)	212(100.0)
FEC	N %	N %	N %	N %	N %	N %
OPN:	3(4.3)	22(25.6)	16(20.3)	49(45.8)	37(40.2)	127(29.3)
CLD:	21(30.0)	37(43.0)	28(35.4)	58(54.2)	54(58.7)	198(45.6)
P/C:	46(65.7)	27(31.4)	35(44.3)	0(0.0)	1(1.1)	109(25.1)
TOT:	70(100.0)	86(100.0)	79(100.0)	107(100.0)	92(100.0)	434(100.0)
*HSTSF	N %	N %	N %	N %	N %	N %
OPN:	4(80.0)	2(66.7)	1(50.0)	1(50.0)	1(50.0)	9(64.3)
CLD:	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)	0(0.0)
P/C:	1(20.0)	1(33.3)	1(50.0)	1(50.0)	1(50.0)	5(35.7)
TOT:	5(100.0)	3(100.0)	2(100.0)	2(100.0)	2(100.0)	14(100.0)

TOT OPEN:	162(24.5)
TOT CLOSED:	209(31.7)
TOT PT/CLD:	289(43.8)
GROUP GRAND TOTAL:	660(100.0)

(REGULATORY)

TOT OPEN:	2641(39.7)
TOT CLOSED:	2593(38.9)
TOT PT/CLD:	1424(21.4)
GROUP GRAND TOTAL:	6658(100.0)

GRAND TOTALS

	1977	1978	1979	1980	1981	TOTALS
	N %	N %	N %	N %	N %	N %
OPN:	643(36.5)	646(40.3)	849(38.7)	907(43.3)	520(38.4)	3565(39.6)
CLD:	710(40.3)	635(39.6)	923(42.1)	885(42.2)	564(41.7)	3717(41.3)
P/C:	410(23.3)	321(20.0)	419(19.1)	304(14.5)	269(19.9)	1723(19.1)
TOT:	1763(100.0)	1602(100.0)	2191(100.0)	2096(100.0)	1353(100.0)	9005(100.0)

* PART TIME BOARD
A FIGURES TAKEN FROM COMMON CAUSE REPORT ON FIRST YEAR IMPLEMENTATION
B AGENDA ITEMS COUNTED SEPERATLY, NOT FIGURED IN AGENCY TOTALS
C REPORT NOT AVAILABLE
D REPORT FILED FOR FISCAL YEAR
E NO LONGER UNDER THE SUNSHINE ACT