Secrecy in Congress: Tiptoeing toward Reform

Members of Congress have long complained of secrecy practices in the executive branch, and in recent years the outcry from Capitol Hill against such practices has been louder than ever. To select a few items from Congress' catalog of grievances, note the following: the tendency of White House aides and other high officials to claim "executive privilege" and thus avoid appearing before congressional committees; the overclassification of documents, with papers often stamped "confidential" to hide not military secrets but rather bureaucratic ineptitude; the old habit, now partly corrected, of government advisory committees meeting privately—with special interests sometimes thereby gaining an unfair advantage; and the frequently obstructionist attitude of officials toward the Freedom of Information Act of 1967. Yet Congress, according to reformers both within and outside its ranks, sets a poor example by keeping some of its own vital processes closed to public view.

As everyone knows, many critical congressional decisions are made not on the House and Senate floors but in committee "mark up" sessions in which bills are rewritten and in House-Senate conferences held to work out a common version of bills already passed in different form by the two chambers. Mark up sessions are usually closed to the press and public, and conference sessions invariably are. Now, at the opening of a new Congress, there is some movement toward greater openness of procedure but how far it will go is very much a question.

From the standpoint of both good journalism and good government, the closed mark up and conference sessions are viewed by many reformers as highly objectionable. For the reporter, the practice of covering committees primarily through "leaks" is often unsatisfactory because the information obtained is likely to be biased and incomplete. From the viewpoint of the reformer there are several fundamental objections to the closed sessions:

► The public and members of the Congress at large do not become properly aware, and in a timely manner, of major policy conflicts arising in committee or conference sessions.

► Powerful chairmen have more opportunities to behave arbitrarily.

► An unnecessary element of ambiguity, if not actually slippery behavior, is injected into congressional proceedings.

► By virtue of the closed sessions, House-Senate conferees are made less accountable not only to the public but to their own chambers.

For a striking example of how the public and Congress as a whole can be kept in the dark about significant policy conflicts, one need look no further than to the long-drawn-out mark up and conference sessions on the 1972 water pollution act. Important policy questions were being debated: the amount of money needed for pollution abatement; the right of citizens to bring mandamus actions against complacent pollution control agencies; and the question of zero discharges of pollutants as a policy goal. Yet the House Committee on Public Works held mark up sessions over a period of 3 months, all in closed session, with no official information given out until the pollution control bill was finally reported—2 weeks before the House acted on it.

Hiding the Votes

For an instance of a powerful chairman behaving arbitrarily behind closed doors, one need only look to Russell Long (D–La.), chairman of the Senate Finance Committee, which is responsible for all tax and social security legislation. The Legislative Reorganization Act of 1970 requires that all *recorded* votes taken by Senate committees in mark up sessions be made public. Long regularly evades this requirement by the simple expedient of disposing of many issues by unrecorded voice votes. If reporters were present to hear the ayes and nays on controversial questions such as continuing the huge depletion allowance for oil companies, it might conceivably make a difference.

Now, for a case of business ambiguously conducted, we go to one of the closed sessions held last year by the Senate Committee on Armed Services. The issue at hand was whether the committee should vote to recommend an authorization for the U.S. Navy Department to begin procuring parts for an extraordinary weapon which was not yet even fully designed—the Trident submarine, now estimated to cost $1.3 billion apiece. The Committee's research and development subcommittee had recommended unanimously that procurement be deferred, a position taken much to the displeasure of the Pentagon and the White House. When the vote was called, it first came out 9 to 7 against procurement. But one of the senators voting with the majority was Richard S. Schweiker, a Republican from Pennsylvania, who was not actually present but had given his proxy to Margaret Chase Smith, the committee's senior Republican.

Stories differ as to what happened next. One account is that it was somehow perceived by those who favored the Trident procurement that Schweiker could be prevailed upon to change his vote, perhaps as a favor to the White House. And, according to this version, announcement of the outcome of the vote was held up for a quarter of an hour in order that the senator could be summoned, and that, sure enough, when Schweiker appeared he switched and gave Trident his blessing. Schweiker's staff says that this is wrong, that the senator never meant to vote against Trident and that he simply had acted to clear up a misunderstanding when he arrived late at the committee meeting.

In any case, the proposal to delete the Trident procurement from the bill lost on an 8-to-8 tie, which may have been critical to Trident's winning approval later on the Senate floor (by 47 to 39), where a majority of senators will seldom vote against the Armed Services Committee's recommendations. Ambiguous incidents of the kind just described can happen in an open committee meeting as well as in one that is closed, but it seems clear that they are less likely to. There can, of course, be a problem of protecting classified military or foreign policy information if meetings of committees such as Armed Services are opened, and this is a matter we shall return to later.

The place where secrecy is perhaps most likely to be abused, with accountability flying out the window, is in the House-Senate conferences. The final bill agreed upon in such a conference of course goes back to the House and

Senate to be voted upon as it is, without amendment. It not infrequently happens that the conferees for one body or the other do not support certain of the major provisions of the bill passed by their own chamber. Last year, for example, a conservative coalition in the House succeeded in passing its own modest version of a minimum wage bill, but its leaders elected not to let the measure go to conference. They knew that the conferees to be named by the Speaker would make no more than a token effort to represent the House position, and would bring back a measure more liberal than the one the House had approved. Opening up conference sessions to the press and public certainly is not a complete cure for this kind of problem, but reformers believe that it would help. In their view, conferees would be more careful to represent their chamber's position if they knew their performance was being monitored.

The majority caucuses of the House and Senate, themselves always closed to the public, can in principle instruct the Democrats on the various committees as to the practices to be followed. On 11 January, the Democratic conference or caucus in the Senate adopted a resolution stating that Senate committees "should conduct their proceedings in open session in the absence of overriding reasons to the contrary." The caucus added blandly that, whenever the doors of a committee are closed, an explanation should be forthcoming from the chairman. This resolution is so weak that it could turn out to have scarcely any effect on the behavior of the committee.

The Democratic caucus in the House had been expected to adopt on 1 February an open-meetings resolution stronger and more explicit than the one approved by the Senate caucus, but the House caucus adjourned before taking it up. This resolution, still given an excellent chance of adoption, has been proposed by three members of the liberally oriented Democratic Study Group — Representatives Bob Eckhardt of Texas, Dante Fascell of Florida, and Thomas Foley of Washington. It would require that no meeting of a House committee or subcommittee could be closed except by a roll-call vote of its members, with such a vote required for each day the committee meets in closed session. Also, the resolution would apply specifically to mark up sessions as well as to sessions held for hearing testimony or conducting other business. However, it would not, and of course could not, apply to House-Senate conferences, which no doubt would continue to be held routinely in private.

Under the Legislative Reorganization Act of 1970, House committees may decide, by a vote early in a new session of Congress, to close all their mark up sessions for the remainder of the year. Now, to have to take such a vote meeting by meeting and ask newsmen, lobbyists, and other citizens to leave could be embarrassing, particularly if some of the committee members should want the session to remain open. The House Committee on Education and Labor and the full committee on Interior and Insular Affairs (but not its subcommittees) have, even in past years, generally been conducting their mark up sessions publicly. Some other House committees, possibly quite a few of them, will probably be following the example of Education and Labor and Interior if the proposed caucus resolution is adopted.

To bring about open congressional meetings has been one of the two major reforms (the other being abolition of the seniority system) currently pur-

Sickle Cell Screening of Recruits Urged

All recruits for the armed forces should be screened for sickle cell disease and other hemoglobin disorders, according to a committee of the National Academy of Sciences–National Research Council that has just released the results of a study it made for the Department of Defense (DOD). The screening, the committee believes, should be mandatory.

In what appears to be an effort to escape the flap that would surely ensue if it had recommended mandatory screening for persons who merely carry the trait for one of several identifiable hemoglobin defects, the committee chose to emphasize that such screening should be carried out only to detect persons with overt disease. However, because it is not technically feasible to screen a blood sample for evidence of genetic hemoglobin disease without also picking up trait carriers, the distinction is academic.

According to Robert Murray of Howard University, the chairman of the study group, the DOD is being urged to screen not only for the presence of hemoglobin disorders among recruits, but also for other problems that may go unnoticed in routine military physicals. By using automated screening procedures requiring a single blood sample, he says, one could pick up persons with diabetes, gout, iron-deficiency anemia, kidney impairment, and other pathological conditions.

Addressing another, related issue, the committee advised the DOD to revise its policy of limiting the activities of military men who are known carriers of sickle cell trait, a group Murray estimates to comprise about 8 percent of black inductees. (He estimates that between 1.5 and 2 per thousand black inductees will be found to have previously unrecognized sickle cell disease.)

Noting that available medical data on the question are anything but definitive, Murray said the committee found no reason to believe that sickle cell trait carriers are endangered in any way. In 1970, there was a report in the *New England Journal of Medicine* that recounted the fate of four black trait carriers who died (in separate events) during combat training at high altitude. The committee found that the link between these individuals' sudden deaths and their status as sickle cell trait carriers was only circumstantial.

To err on the side of caution, the committee advised the DOD to retain its restrictions against trait carriers' serving as pilots or deep-sea divers, and in other critical positions in which there might be a slight chance of a person getting into physiological trouble because of low oxygen. In all other regards, it believes the military should treat trait carriers like everybody else.

So far, the committee has received no response—other than a pro forma thank you—from the DOD to its report, which was submitted last 21 December. The NAS has no idea how much its proposal would cost.

—B.J.C.

sued by the recently established Committee for Congressional Reform and Common Cause, the "citizens lobby" established a few years ago by John W. Gardner (former Secretary of Health, Education, and Welfare). Common Cause recently reported that 145 of the 243 Democrats in the House have indicated, in response to the lobby's questionnaire, that committees should conduct their business in open sessions, with only such exceptions as necessary to protect the national security and rights of personal privacy. The Committee for Congressional Reform, though not as active as Common Cause, has helped let members of Congress know that there is a growing public and a significant group of "opinion leaders" who are concerned about congressional secrecy. The committee is a coalition of 44 organizations—religious groups, several labor unions, the National Education Association, the American Civil Liberties Union, Environmental Action, the League of Women Voters, the National Urban League, and Common Cause, among others.

The main burden of reform falls, however, on the members of Congress themselves. In the House, the reform initiatives have come principally from members of the Democratic Study Group; in the Senate, such initiatives are coming from a small number of senators, including Charles McC. Mathias, Jr. (R–Md.) and Adlai E. Stevenson III (D–Ill.)—who have joined in establishing an informal ad hoc committee on reform—and Lawton Chiles (D–Fla.), the latter being principal sponsor of a "Government in the Sunshine" bill modeled in part after a Florida law by that title which has illuminated some dark corners in Florida's state and local governments.

Enactment of the Sunshine Bill would represent probably the ultimate any reformer could reasonably expect with respect to ending congressional secrecy. This bill, cosponsored by 22 other senators, would, like the House open-meetings resolution, require a vote by committees before any meeting is closed; but, in addition, it would apply to House-Senate conferences as well as to committee meetings and would flatly forbid the closing of any meeting except when necessary to protect confidential information. And, even where such an exemption applies, the committee would have the duty to make public, within 7 days of the closed meeting, a record of all votes taken and a verbatim transcript with only confidential information removed. The requirement for the transcript could be expected to discourage promiscuous closing of meetings for alleged reasons of national security. On this point, it is significant to note that Stuart Symington, second ranking Democrat on Senate Armed Services Committee and a former Secretary of the Air Force, is a cosponsor of the Sunshine Bill.

Of course, the closed mark up session is a traditional institution with its own articulate defenders. Sam Ervin, Jr. (D–N.C.), chairman of the Senate Committee on Government Operations, makes perhaps the best case possible for keeping mark up sessions of committees closed. In a recent letter to a member of Common Cause, Ervin says:

> I do not favor open meetings at such time as the committee "marks up" a bill, simply because it is necessary for com-

Chemical Corps To Be Diluted

Virtually overlooked in the Army reorganization announcement of 11 January, is a plan to deprive the U.S. Army Chemical Corps of its independent status and to place it under the Ordnance Corps. The Chemical Corps, which dates back to World War I, is regarded as the strongest proponent of chemical and biological weapons in government.

The Army announced that the U.S. Army Chemical School at Fort McClellan, Alabama, is slated for "disestablishment" and that the 5000-member Corps itself will be reduced. One who is familiar with the Corps said, "If you had to list the three biggest enemies of the Chemical Corps in the military, the Ordnance Corps would be about number two."

The move could affect the Nixon Administration's future stance concerning the 1925 Geneva Protocol, which has 101 other nations as parties, but has never been ratified by the United States. The Chemical Corps supervises the manufacture, purchase, and use of herbicides, tear gas, and other riot control agents. Its active intramilitary lobby in favor of these weapons is well known; it has sometimes been a stumbling block to other military departments which have sought a limitation on chemical weapons. One proponent of the limitation stated that the move might make the battle for the protocol easier: "If I were a Russian, and I saw that the Chemical Corps was being put under the Ordnance Corps, I would interpret this as meaning that the United States was more willing to go ahead with a ban, and I would pressure more for it."

Action on the protocol has been delayed since April 1971, when the Senate Foreign Relations Committee requested that the President "reconsider the Administration's interpretation that the Geneva Protocol does not prohibit the use of tear gas and herbicides in warfare," in the words of Senator J. William Fulbright (D–Ark.). The Administration had exempted herbicides and riot control agents such as tear gas on the grounds that the language of the protocol did not clearly include them. The White House has not yet replied to the Committee's request.

However, some observers in the Senate speculate that one reason the President submitted the protocol with the two "interpretations" was because herbicides and riot control agents were being used in Vietnam. From a diplomatic standpoint, the United States could not very well be using certain weapons and advocating their ban at once.

One Senate source states that the Vietnam peace agreement may simplify the Senate–White House debate on the protocol; "We can take a fresh look now . . . without the war being an issue." The cease-fire in Vietnam "might" increase the chances that the Administration will withdraw the two interpretations, he said.

Other factors that may influence Administration thinking on the protocol are two military reports said to be resting with the National Security Council. One evaluated the military effectiveness of herbicides in Vietnam; it was leaked last year and shown to present only a weak case favoring them. The other study is of the military effectiveness of riot control agents; its contents have not been divulged.—D.S.

mittee members to have the privilege of freely expressing their thoughts. . . . Often times, opinions expressed by members of the committee are subject to change as the result of expressions of the views of other members just as the opinions of members of the board of directors of any organization are subject to change under like circumstances. I do not see what good purpose could be served by admitting the general public to a meeting of this kind. After all, such a meeting is merely a method of exercising the thinking process.

The reformers counter that committee members are really doing more than thinking—they are deciding public questions. Further, the suggestion that members generally go into closed sessions with open minds would be more reassuring if it were not common knowledge that many of them have made private commitments to special interests.

Other arguments often made against open mark up sessions are that compromise and vote trading are inhibited, and that the work is slowed down because members insist on making lengthy statements. That political posturing will in fact go on in such open sessions no one could deny. But the charge that compromise is discouraged does not seem borne out by the experience of the House Education and Labor Committee. What happens is that members make deals on the side, outside the public mark up sessions. The public sessions are nevertheless considered revealing because, even though some of the actors have rehearsed their roles, they are all on stage to be judged for what they say and how they vote.

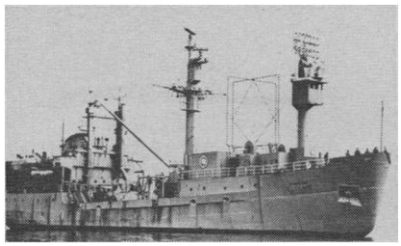
The prospects for passage of legislation as sweeping as Senator Chiles' Sunshine bill are, at the moment, gloomy. Opposition to any proposal more far reaching than the open-meetings resolution now pending in the House caucus will be potent and strategically placed. In the House, for instance, the Majority leadership is still relatively cautious and conservative on the secrecy issue. Speaker Carl Albert, John J. McFall (Democratic Whip), Wilbur Mills (chairman of the Ways and Means Committee), and numerous other committee and subcommittee chairmen clearly are opposed to the Sunshine bill and its uncompromising insistence on open congressional government. Similarly, in the Senate, to judge from the open-meetings resolution recently adopted by the Majority caucus, the kind of reform of secrecy practices desired by many of the grandees there is one that obfuscates the secrecy issue.—LUTHER J. CARTER

Budget Cuts Scupper NSF's *Eltanin*

It was Christmas day 1972, and the National Science Foundation's research ship *Eltanin*, operating off the southern coast of Australia, had just received a radiogram bearing President Nixon's holiday greetings to all the government's ships at sea.

Then came a second radiogram from Washington, bearing a different kind of greeting. The gist of the message from the National Science Foundation (NSF), as one scientist aboard the ship recalls, was that "our research program was terminated immediately and we were fired."

Thus did the long arm of the federal budget cutters reach out swift and sure to the Indian Ocean in pursuit of the President's goal to hold down federal spending in the current fiscal year. And thus also ended the 11-year career of a vessel the NSF describes as the only ship in the world devoted to full-time research in the oceans surrounding Antarctica. The *Eltanin*'s sudden recall spurred 15 of the 50 or so scientists involved in the ship's research program to fire off a telegram of protest to H. Guyford Stever, the NSF's director, but the ship's fate seems sealed. Although NSF officials say they haven't given up all hope of finding money to keep it running, the ship will probably be mothballed once it reaches home port at Oakland, California.



As it happens, the *Eltanin*'s demise was not entirely unexpected by the 28 scientists and 49 crewmen aboard the vessel. Early in December a radio conversation back to the United States brought rumors of wholesale impoundments of federal R & D money by the Nixon Administration. And indeed, in October, Philip S. Smith, the NSF deputy director of polar research, had told a meeting of scientists whose research depended on the ship that budget stringencies might force a "downward adjustment" of some of their grants and termination of others. A subsequent memo to the scientists indicated that this was a "foundation-wide" problem that stemmed from the President's command to hold federal spending below $250 billion for the current fiscal year.

The *Eltanin* was built in 1957 as an arctic cargo ship for the Navy. As such, it was especially designed for cruising in ice-clogged polar waters. The NSF acquired the ship in 1961 and converted it to a floating laboratory that soon began the first of 55 research cruises around the southern oceans, most of them running for 2 months at a time.

In the intervening years, the ship systematically criss-crossed the southern Atlantic, Pacific, and Indian oceans in a 280° band around Antarctica—amassing geophysical, chemical, atmospheric, and biological data and samples from 2000 separate stations. The vessel was within 2 years of rounding out this most thorough of all circumpolar surveys when the *Eltanin*'s last $1.5 million was impounded.

To be sure, the *Eltanin* was not without its problems. It suffered from academic rivalries between on-board scientists, and, according to Bruce Heezen of the Lamont-Doherty observatory, who served as the ship's chief scientist on its 55th and final voyage, it also suffered an "appalling" quality of maintenance by Australian government shipyards. Nevertheless, Heezen maintains, no other polar research ship in the world could match the *Eltanin* for its range (10,000 miles) and endurance (up to 275 days a year at sea). "You could cancel the work of practically any other research ship in the world," he told *Science*, "and it would be less of a disaster."

Meanwhile, the *Eltanin*'s departure leaves the NSF's *Hero*, a 125-foot trawler, as the only other American research vessel in near-Antarctic waters. And if it ventures very near the polar ice pack, it surely will have earned its name. Although of recent vintage, the *Hero* is built of wood, a material the NSF describes as "cost-effective."—R.G.