

The 1970s Sunshine Reforms and the Transformation of Congressional Lobbying

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Congressional lobbying dramatically intensified in the 1970s. Why? Explanations on offer include a business backlash against intrusive consumer and environmental legislation, proliferation of PACs, and the weakening of political parties. Another factor that is rarely discussed is the increase in Congressional transparency in the 1970s, which gave pressure groups enhanced access to and leverage over the minutiae of Congressional decision-making. This paper tells the intertwined story of the “sunshine” reforms of the 1970s and the transformation of the lobbying industry.

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Introduction

Only recently have scholars begun seriously studying the effects of transparency and “sunshine” rules on legislatures.¹ The deep neglect of this subject can be attributed to a pervasive cultural assumption, shared by both scholars and laypersons, that transparency in government is necessarily beneficial.

The pervasive assumption that transparency is beneficial, or even a citizen’s right, has its own history. Michael Schudson, in *The Rise of the Right to Know*, has shown that it is a fairly recent phenomenon. It emerged in the post-WWII era in the U.S. and became widespread in the 1970s. From the U.S. the norm of transparency has since been exported to many corners of the globe.

The 1970s were a decade of momentous changes in U.S. political life. This was, among other things, the era when federal lobbying transformed from the sleepy and parochial business described in classic studies from the post-WWII era (discussed below) into the nexus of power and wealth that it is today.

A strong prima facie case can be made that the transformation of the lobbying industry in the 1970s should have owed something to the “sunshine reforms” that opened up Congressional and executive branch activity to public scrutiny during the same time period. The discourse around the sunshine reforms at the time focused on “public” scrutiny. It was argued that transparency would enable ordinary citizens to keep tabs on their representatives and hold them accountable to their word and to common standards of good government. But the logic of accountability applies just as well to lobbyists as to constituents. Government representatives who are being closely watched by special interests will find themselves under pressure to please those interests. And from the beginning it has been primarily representatives of special interests, not citizens, who sat in on open Congressional committee meetings and submitted Freedom of Information

¹ e.g., Jane Mansbridge, “Against Accountability,” Max Weber Lecture, delivered October 25, 2010, Max Weber Programme, European University Institute, Florence; Abigail K. Woodruff, “The Unintended Consequences of Increased Transparency in American National Government” (senior thesis #84, Claremont McKenna College, 2010); Sarah A. Binder and Francis E. Lee, “Making Deals in Congress,” in *Negotiating Agreement in Politics: Report of the Task Force on Negotiating Agreement in Politics*, ed. Jane Mansbridge and Cathie Jo Martin (Washington, D.C.: American Political Science Association, 2013), 54-72; Gary D. Bass, Danielle Brian and Norman Eisen, “Why Critics of Transparency Are Wrong,” November 2014, Center for Effective Public Management, Brookings Institution; Michael Schudson, *Rise of the Right to Know: Politics and the Culture of Transparency, 1945-1975* (Cambridge, Mass.: Harvard University Press, 2015); Jon Elster, ed., *Secrecy and Publicity in Votes and Debates* (Cambridge, U.K.: Cambridge University Press, 2015).

Act requests.² Thus, under conditions of expanded transparency in the 1970s, lobbyists ought to have become more effective.

Yet, as will be discussed below, the literature on lobbying, special interests, and “pressure groups” has almost completely neglected the role of the sunshine reforms when discussing the transformation of the industry in the 1970s.

This paper remedies that omission. First, we review the explanations conventionally given for the transformation of the lobbying industry. Second, we retell the story of the transformation of federal lobbying as intertwined with the revolution in Congressional transparency. Finally, we offer some thoughts on how the connection between transparency and lobbying could have been so long overlooked.

1 Explaining the transformation of lobbying in the 1970s

It is widely agreed that the lobbying industry transformed and metastasized in the 1970s. Lee Drutman, an authority on the history of lobbying, calls the 1970s the “political awakening of corporate lobbying.” Kay Schlozman and colleagues write of the “well-documented march to Washington by business in the 1970s.” David Plotke writes that “in the 1970s, a major political mobilization of business occurred in the United States that was important in shaping politics over the next decade and beyond.” These scholars echo the contemporaneous opinion of Graham Wilson, who wrote in 1981 of “the intensity and competence of interest-group activity today”: “Most commentators and politicians in the United States believe that interest groups are more important political actors today than they have been for some time. Interest groups have become more active and better organized . . . more efficient and more effective.”³

By virtually every quantitative measure, lobbying dramatically increased in the 1970s:

² e.g., Donald R. Kennon and Rebecca Mary Rogers, *The Committee on Ways and Means: A Bicentennial History 1789-1989* (Washington, D.C.: U.S. GPO, 1989), 369; David E. Pozen, “Freedom of Information Beyond the Freedom of Information Act,” *University of Pennsylvania Law Review* 165 (2017): 1097-1158.

³ Lee Drutman, *The Business of America is Lobbying: How Corporations Became Politicized and Politics Became More Corporate* (Oxford: Oxford University Press, 2015), 49; Kay L. Schlozman, Sidney Verba, and Henry E. Brady, *The Unheavenly Chorus: Unequal Political Voice and the Broken Promise of American Democracy* (Princeton: Princeton University Press, 2012), 165; David Plotke, “The Political Mobilization of Business,” in *The Politics of Interests: Interest Groups Transformed*, ed. Mark P. Petracca (New York: Westview Press, 1992), 175-200, 175; Graham K. Wilson, *Interest Groups in the United States* (Oxford: Oxford University Press, 1981), ix.

- Powerful business associations were founded or became larger and more active in this period. The Business Roundtable was formed in 1972. Between 1972 and 1974, the National Association of Manufacturers shifted its operations from New York to Washington. Membership in the Chamber of Commerce more than doubled between 1967 (36,000) and 1974 (80,000) and doubled again by 1980 (160,000). Between 1974 and 1980, its budget tripled. Between 1970 and 1979, membership in the National Federation of Independent Business rose from 300 to 600,000.⁴
- Individual corporations increased their lobbying footprint as well. Between 1968 and 1978, the number of corporations with public affairs offices in Washington grew more than five-fold, from 100 to over 500. “A survey of four hundred large and medium-sized U.S. business firms conducted in 1981,” reports David Vogel, “found that 361 had public-affairs units, that more than half of these had been created since 1970, and that nearly one-third were established between 1975 and 1979.”⁵
- Between 1971 and 1982, the number of firms with registered lobbyists in Washington grew from 175 to 2,445.⁶
- Lobbying and public relations shops in D.C. increased in size: the office maintained by General Motors, for example, grew from a staff of 3 in 1968 to a staff of 28 in 1977.⁷
- The number of lobbyists for corporations in Washington grew from 8,000 to 15,000 between 1974 and 1978.⁸
- In 1980, individuals in the “private service industry” exceeded federal employees in D.C. for the first time since before the New Deal.⁹
- The pace of the growth in the number of lobby shops in Washington in the 1970s has not be matched by any other decade before or since.¹⁰

The pace of growth in the 1970s was matched by quantum leaps in lobbying intensity and lobbyists’ prestige. In the 1950s and 1960s, corporate lobbying had mostly been left in the hands of trade associations. *American Business and Public Policy*, the

⁴ Drutman, *Business of America is Lobbying*, 57-58.

⁵ David Vogel, *Fluctuating Fortunes: The Political Power of American Business* (New York: Basic Books, 1989), 195-97.

⁶ Drutman, *Business of America is Lobbying*, 58.

⁷ Vogel, *Fluctuating Fortunes*, 197.

⁸ Wilson, *Interest Groups in the United States*, 142.

⁹ Vogel, *Fluctuating Fortunes*, 198.

¹⁰ Kay L. Schlozman and John T. Tierney, “More of the Same: Washington Pressure Group Activity in a Decade of Change,” *The Journal of Politics* 45/2 (1983), 351-377, 355-56; Thomas T. Holyoke, *Interest Groups and Lobbying: Pursuing Political Interests in America* (New York, Westview Press: 2014), 58-59.

classic 1963 study of business lobbying in the post-WWII era, concluded that the lobbies themselves “were on the whole poorly financed, ill managed, out of touch with Congress, and at best only marginally effective in supporting tendencies and measures which already had behind them considerable Congressional impetus from other sources.” They mostly served as “service bureaus” for members of Congress with whom they were already in agreement. Of 166 large firms surveyed, only 37 had had any communication with Congress in the previous two years. Those who did send representatives to Washington tended to delegate the mission to “soon-to-retire executives” rather than their A-team. As late as 1969, a survey of corporate political activity found that “political activity commands but a small percentage of the human and material assets of an enterprise and occupies a position of relatively low priority.” But over the course of the 1970s, there was a cultural shift: public affairs and government relations had become a prestigious career track within the American corporation.¹¹

- In 1976, 92% of polled CEOs said they were spending more time on external relations than in 1970.
- Between 1976 and 1978, the amount of time CEOs of Fortune 1000 companies were devoting to “public issues” had jumped from 20% to 40%.
- According to an executive of a recruiting firm in 1977, “companies want executives who can manage Washington almost as a profit center.”
- A 1979 survey found that three quarters of Fortune 500 companies had promoted their senior officers responsible for government relations within the past five years.

What accounts for this radical transformation? Scholars have offered a number of explanations. For example:

1. A business backlash against the intrusive consumer and environmental legislation of the late 1960s and early 1970s.
2. Growth in political action committees (PACs), which were authorized by 1974 legislation.
3. The transition from the old-fashioned local patronage-based party system to a national party system based on mass persuasion and/or mass participation, which left individual Congresspeople more isolated and vulnerable to pressure from interest groups.

¹¹ Drutman, *Business of America is Lobbying*, 53-54; Raymond A. Bauer, Ithiel de Sola Pool, and Lewis Anthony Dexter, *American Business and Public Policy: The Politics of Foreign Trade* (Cambridge, Mass.: MIT Press, 1963), 111, 324, 357; Vogel, *Fluctuating Fortunes*, 296. Information in the bullets that follow is from Vogel, *Fluctuating Fortunes*, 195-96.

4. Advances in electronic and communication technologies that made it easier for organizations to launch massive campaigns.
5. Congressional decentralization, as the seniority system was progressively dismantled and power shifted from autocratic committee chairmen to subcommittees and to the caucuses.
 - a. In a decentralized Congress, there were more gatekeepers who needed to be won over by special interests.
 - b. In addition, each member was now a policy entrepreneur, looking for issues to champion.
6. A shifting public mood: away from the liberalism of the 1960s and early 1970s and toward a pro-business stance, or organizing as single-issue constituencies.
7. General economic conditions (e.g., declining profits from recession, inflation, growing international competition) that induced businesses to seek government intervention.

Some of these explanations appear to us to be better founded than others. David Plotke effectively refutes #7.¹² #6 appears to put the cart before the horse: it seems more likely that the public was responding to the public relations efforts of the business community and special interest groups (a phenomenon that is well documented, for example, in Benjamin Waterhouse’s 2014 *Lobbying America*) than that corporations were responding in some unexplained way to public sentiment that was unaccountably shifting. The premise of #5b is true, but it doesn’t explain growth in lobbying. (In other eras, Congressional policy entrepreneurs acted quite independently of interest groups.¹³) #5a could help explain why lobby shops hired more staff, but not why they increased in number. #4 we think is valid, though it only applied to a subset of lobbying groups that used mass mobilization strategies. #3 and #2 and #1 appear to us to be compelling explanations.

It is not the primary purpose of this paper to refute the explanations from the literature that we disagree with or to defend those we find plausible. What we wish to suggest is that missing from the explanations given in the literature—almost entirely missing—is a critical factor that leavened the growth in lobbying in the 1970s: the revolution in transparency.

We say recognition of transparency as a factor is “almost entirely missing” because some researchers appear to have grasped it, at least partially.

Kay Schlozman and John Tierney report that 28 percent of respondents to their survey of pressure groups “attributed their increased activity to the reforms of

¹² Plotke, “Political Mobilization of Business.”

¹³ see Vogel, *Fluctuating Fortunes*, 39ff, 238.

congressional organization and procedure since 1974.”¹⁴ Among those reforms, the authors list five: “the proliferation of subcommittees, the diminished importance of congressional staff, the greater number of policy entrepreneurs, *the requirements for open meetings*, [and] the rapid turnover in congressional membership” (emphasis added). After discussing the importance of decentralization, policy entrepreneurship, and cultivating relationships with Congressional staff, the authors say: “Sunshine rules, which open once-secret meetings to public scrutiny, were mentioned—although substantially less frequently—by our respondents as having similar effects: creating new opportunities for influence and thereby escalating the work load. According to the legislative counsel for one of the major hospital associations: ‘It’s great for the lobbyists, but the members of Congress hate it. There in the back of the hearing room are all these lobbyists watching a markup session and giving a thumbs-up or a thumbs-down to specific wordings or provisions. It’s a fishbowl for them.’”

These authors grasp and then immediately let slip the significance of transparency. Yes, the sunshine reforms created new opportunities for influence, by allowing lobbyists to sit in on meetings and give their thumbs-up and thumbs-down. But no, the primary effect of opening committee meetings wasn’t to “escalate the work load” of lobbyists. Before committee meetings were opened, many lobbyists occupied their time during committee meetings precisely by waiting outside the committee room, in the lobby or hallway.¹⁵ Rather, the primary effect of opening committee meetings is that it gives lobbyists more information, and thus more power. It makes lobbying—the art of influencing government officials—a more effective, scientific discipline. It makes it harder for representatives to shake off the cajoling of lobbyists with a friendly white lie. It allows lobbyists to prove to their principals at the home office, with hard data, that their efforts pay off, that investment in legislative influence can be profitable.

The authors of the study also had only a hazy grasp of the dates associated with the transparency reforms: the year they identify, 1974, was a watershed for decentralization in Congress, but the opening up of committee meetings began in 1970 and continued piecemeal through 1977.

David Vogel, too, puts his finger lightly on the issue of transparency: “The enactment of the ‘sunshine laws,’” he writes, “which had opened up committee legislative drafting sessions to the public in order to dilute the power of business lobbyists, had precisely the opposite effect. They enabled business lobbyists to monitor

¹⁴ Schlozman and Tierney, “More of the Same,” 368-70.

¹⁵ Jeffrey Berry, for example, describes a lobbyist standing outside the committee room for three hours at a time, waiting for the committee chair to come out and give him instructions to track down an absent member whose vote is needed on a critical amendment. Jeffrey M. Berry, *Lobbying for the People: The Political Behavior of Public Interest Groups* (Princeton: Princeton University Press, 1977), 221.

the votes of each elected official more closely.”¹⁶ This insight, unfortunately, is not woven into the fabric of Vogel’s otherwise very compelling 300-page study of how the business lobby rose to power in the 1970s. It is simply offered as an example of how reforms sometimes have unintended consequences.

2 The dual revolution: transparency and lobbying

2.1 Overview of the sunshine reforms

In bare outline, the Congressional sunshine reforms consisted of the following:

- In 1970, Congress passed and Nixon signed into law a Legislative Reorganization Act (LRA) that included several transparency measures, most of which were inserted as amendments by an insurgent group of mostly younger members of the House. These transparency measures included making open meetings the default for House standing committees (requiring a vote taken in open session to close them), requiring the recording of votes taken in House standing committees, permitting for the first time the recording of votes taken in the House’s Committee of the Whole (COTW), and others (e.g., providing for eventual electronic voting in the House and broadcasting of House and Senate proceedings).
- In 1973, both the House and Senate approved new and more stringent rules making it more difficult to close committee meetings, and specifying limited valid reasons for closing them
- In 1975 the rules were amended to require conference committee meetings too to be open to the public (with limited exceptions).
- In 1976, Congress passed a Government in the Sunshine Act that established open meeting requirements for federal agencies in the executive branch (again, with limited exceptions)
- In 1977, the House further tightened the rules governing the closing of conference committee meetings.

In this section, we show how the effort to bring about those reforms, especially the critical early ones, was intertwined with the transformation of the lobbying industry. Our story is in three main parts, following three of the main organizational protagonists: the Democratic Study Group (DSG), Common Cause, and the U.S. Chamber of Commerce. It closes with an episode from the mid-1980s that shows how far the intertwined transparency and lobbying revolutions had progressed.

¹⁶ Vogel, *Fluctuating Fortunes*, 234.

2.2 The liberal insurgency

The transparency amendments in the 1970 LRA were championed by a bipartisan coalition of mostly younger members of the House. On the Republican side were the remnants of “Rumsfeld’s Raiders,” young Turks of the party who had theatrically disrupted proceedings in the late 1960s to air grievances about House procedures (grievances that are laid out in the 1966 book *We Propose: A Modern Congress*). Donald Rumsfeld, the ringleader, had by 1970 left the House to join the Nixon administration, but colleagues like Barber Conable and William Steiger continued to advocate for procedural reform. On the Democratic side was the Democratic Study Group, the House Democrats’ liberal caucus. By 1970 the liberals were a majority within the Democratic party, but because they were mostly younger members they were largely locked out of power.

On the issue of recording teller votes in the COTW, the centerpiece of the reform effort, the coalition was joined by other members as well. Tip O’Neill, a rising star in the House Democratic establishment, showed his usual savvy (as in the case of Vietnam War opposition) by getting out in front early on a winning issue. Charles Gubser, a Republican war hawk, had become a champion of recorded votes on amendments after an unrecorded vote of his own had (he alleged) been misrepresented by the press. The bipartisan reform coalition eagerly signed on the “establishment” figures Gubser and O’Neill to be the sponsors of that key amendment. Another ally was the conservative Southern Democrat Joe Waggoner, who simply considered it cowardly of politicians to not vote publicly. Waggoner was, as far as we can tell, the first to propose recording teller votes (in hearings before the subcommittee that drafted the LRA).

All of these groups and individuals appeared to sincerely believe that more transparency would better serve the public interest. But as scholars were not slow to point out, the transparency amendments to the LRA also represented a political coup for the liberal Democrats. It represented a first and indirect but telling blow to the power of the conservative Southern Democratic committee chairmen.¹⁷

Since 1910, longevity had been the sole criterion for committee chairmanship (or, in the minority party, ranking member status). Over decades, conservative Democrats from noncompetitive districts in the South had outlasted colleagues from the North and West and inexorably risen to leadership positions in the committees. Chairmen had near-autocratic control over their committees’ agenda and schedule. Working closely with

¹⁷ John F. Bibby and Roger H. Davidson, *On Capitol Hill: Studies in the Legislative Process*, 2nd ed. (Hinsdale, Ill.: Dryden Press, 1972); Norman J. Ornstein and David W. Rohde, “The Strategy of Reform: Recorded Teller Voting in the U.S. House of Representatives,” delivered at the 1974 Midwest Political Science Association Convention, Chicago, Illinois, April 25-27, 1974 (unpublished).

Republican colleagues, Southern Democratic chairmen consistently reported out conservative legislation and quashed liberal initiative. Masters of procedure, they practically always got their way in the COTW as well, in which the full House considered amendments before a vote on final passage. The COTW operated under looser rules than the House in regular session in order to expedite business: it required a smaller quorum, and it substituted voice votes, standing votes, and teller votes (basically head counts, with individual positions traditionally going unrecorded) for roll call votes.

In the LRA the liberals saw an opportunity to make inroads against the seniority system. It would not be a head-on assault (that would come later, in the Democratic caucus), but a stealth attack. The liberals believed that by opening up committee business to the public, and by recording votes in the COTW that had previously gone unrecorded, they could weaken the iron grip of the committee chairmen on House legislation.

For the DSG, the logic of the push for the recorded teller vote in the COTW was four-fold. First, making COTW votes recorded would increase attendance. Historically, attendance in sessions of the COTW had been poor because everyone knew that the committee chairs would get their way. Why bother showing up? The leaders of the liberal faction knew they had a majority on some issues, and believed they would win if they could break through that self-defeating circle of logic and get members to simply show up. Making teller votes in the COTW *recorded* votes that would count toward attendance statistics would have that effect.

Second, one thing that committee chairs respected was the power of constituent pressure. Chairs understood that on controversial issues they could pressure members to vote with them only on non-recorded votes. On recorded votes, like the final passage of bills in regular session, the member would necessarily vote in a way that he or she could explain to constituents. The architects of the LRA transparency reforms believed that by replacing the unrecorded teller vote in the COTW with a recorded teller vote, dissident members would have more opportunities to vote against chairmen without repercussions.

Third, recording more votes would make it easier for the party leadership to enforce party discipline—liberal party discipline. In the late 1960s, Democratic party leadership was weak. Speaker John McCormack and Majority Leader Carl Albert often sympathized with the liberal wing, but they rarely challenged the prerogatives of the conservative committee chairs. Part of the DSG's game plan was to reinvigorate the caucus as an instrument of party discipline. With their strength of numbers, they believed that they could dominate the conservative faction in the caucus. A DSG study of published vote tallies in the late 1960s showed that non-DSG Democrats *opposed* party positions 69% of the time, and that in over half of Democratic party defeats on key votes, Democratic committee and subcommittee chairmen alone provided the margin of

defeat.¹⁸ Over the course of the 1960s, at the liberals' instigation, the caucus had begun asserting its authority by stripping seniority from committee chairs who campaigned against the party's presidential nominee (John Bell Williams of Mississippi and Albert Watson of South Carolina in 1964, and John Rarick of Louisiana in 1968). But to enforce discipline properly, the party leadership would need good systematic data on how members were voting. For the 1969 study, DSG had to rely on published roll call votes, which represented just the tip of the legislative iceberg. Recording votes on amendments in the COTW would change the game. When Tip O'Neill succeeded McCormack and Albert in the Democratic House leadership, he did make good use of the extensive available voting records to enforce party discipline.¹⁹

Fourth, a recorded teller vote would ease the task of friendly lobbyists. Liberal members of the House in the late 1960s were notoriously undisciplined: not only habitually neglecting to attend debates in the COTW, but voting as individuals rather than as a bloc. The DSG leadership had a whip system, but it was never particularly effective. There were, however, moments when the liberals did succeed in voting as a bloc and winning legislative battles in the COTW. Those were when the DSG's allies in the labor and liberal pressure groups made a concerted effort to "get out the vote."²⁰ To ensure that liberal members followed through on the commitments they made, an elaborate procedure called "spotting" would be employed. A team of observers in the House visitors' gallery would watch members file through the teller lines and record how they voted. Each observer would be responsible for a handful of targeted members. They would need to be able to recognize those members from behind at a distance. Since taking notes was forbidden in the visitors' gallery, they would need to memorize what they observed, or use a technique like transferring slips of paper with members' names from one pocket to another.

Needless to say, spotting was an imprecise science and difficult to pull off. It was a challenge to recruit a team large enough to do the job, knowledgeable enough to recognize a large number of members accurately, and poorly enough employed that they could afford to spend hours sitting in the gallery waiting for an issue to come to a vote. Spotters could easily make mistakes—as Charles Gubser alleged they did in his case—that would undermine the credibility of the effort. Clearly, if the House were to institute a recorded teller vote (with an official tally of how each member voted published in the *Congressional Record* the following day), the lobbyists would no longer need to engage

¹⁸ Democratic Study Group, "Voting in the House," unpublished report, read into the Congressional Record by Richard Bolling on Tuesday, March 18, 1969 (115 *Cong. Rec.* 6749ff).

¹⁹ e.g., Paul R. Clancy and Shirley Elder, *Tip: A Biography of Thomas P. O'Neill, Speaker of the House* (New York: Macmillan Publishing Company, 1980), 172.

²⁰ See, e.g., Norman Miller, "House Liberals: A Frustrated Majority," *Wall Street Journal*, September 4, 1969.

in spotting. Their efforts to corral liberal members to attend and vote as a bloc would be both easier to execute and more effective, and the lobby coalition could be activated more regularly.

As noted, the reform coalition succeeded in inserting other transparency provisions into the LRA as well. These concerned transparency in committee: requiring that meetings be open unless a vote in open session is taken to close them, and requiring that records of all votes taken be preserved and available for viewing in the committee offices. In committee, the over-riding advantage transparency provided to liberals was easing the job of friendly lobbyists. The lobbyist does not need to attend the meeting; the meeting does not even necessarily need to be “open.” As long as the liberal committeeman knows that his lobbyist friend will be able to stroll into the committee office anytime to check whether he voted as requested or promised, he will feel pressure to comply.

The House Education and Labor committee was a laboratory for open meetings. This particular committee had long been a hotbed of liberal activism; in the 1960s it was the only committee that regularly reported out liberal legislation. In 1967, when Republican committee members had sought to slow down the committee’s progress on anti-poverty legislation by denying the Democrats a quorum, Chairman Carl D. Perkins had thrown open the meeting to the public and the press. Faced with adverse publicity, the Republicans returned to the table and remained on their “best behavior.”²¹ The committee then made a policy of conducting all of its business in the open. This suited the liberal majority because it allowed their friends to sit in on the meetings: the most active lobbyists in this space were the labor unions, professional associations like the National Educators Association, and civil rights and other liberal groups. Advocates of open committee meetings in 1970 were able to point to the Education and Labor committee as a success story (in the sense that committee business had not ground to a halt from grandstanding, as skeptics had feared), and this may have helped win support for the open-meeting LRA amendment.

The de facto leader of the reform coalition in 1970 was DSG Staff Director Richard Conlon. Conlon understood that procedural reform was, in the words of Rumsfeld, “an issue without a constituency.”²² Conlon set out to create a constituency: two, in fact.

The first constituency was the media. Conlon, a former journalist, proposed selling the package of procedural reforms to the press as an “anti-secrecy” effort. In truth, only a handful of the ten or so amendments offered by the coalition involved transparency and

²¹ Andrée E. Reeves, *Congressional Committee Chairmen: Three Who Made an Evolution* (Lexington, Ky.: University Press of Kentucky, 2015), 159.

²² Bibby and Davidson, *On Capitol Hill*, 259.

could therefore be described as anti-secrecy; the others covered topics ranging from committee staffing to the length of quorum calls. But Conlon’s anti-secrecy branding effort was effective; it appealed directly to a journalist’s core values. DSG held a press conference featuring Gubser and O’Neill and sent press releases to newspapers around the country. Conlon’s materials decried the problem of “secrecy” in Congress, and advertised the reform coalition’s upcoming effort to change the House rules as a civic-minded effort to make Congress more open and responsive to the public. Many newspapers printed these articles and wrote editorials of their own. The typical editorial echoed the DSG press release by noting, in closing, the delicious irony that the vote on the amendment to permit recorded votes in the COTW *would itself be unrecorded*. Dozens of such pro-transparency editorials from hometown newspapers were read into the *Congressional Record* by coalition members.

The second constituency Conlon cultivated was friendly lobbyists. The *National Journal* reported that Conlon held three meetings with lobbyists to pitch them on the reform agenda.²³ We don’t know exactly what was said in these meetings, but it is likely that the key points discussed above were raised: When the unions, the professional associations, the civil rights groups, the consumer rights groups, the anti-war groups, and the environmentalists are able to sit in on *all* committee meetings, not just those of the Education and Labor committee, how much greater will be their influence? When votes on amendments in the COTW are recorded and published in the *Congressional Register*, how much easier will it be for the grand liberal-labor lobby coalition to get out the vote and enforce discipline among liberal members of the House? The AFL-CIO, the National Farmers’ Association, the NEA and others put their weight behind the anti-secrecy effort in response to Conlon’s call.²⁴

When we asked Roy Dye, who had been a DSG intern in 1970, about the lobbyist-recruitment meetings described in the *National Journal*, he did not recall three distinct meetings. But he recalled that Conlon met with the labor and liberal lobby groups all the time. They were in constant contact, they worked together regularly, they shared common perspectives on issues and strategy.

Of the two constituencies—the media and the friendly lobbyists—it is easy to imagine that the second was the one that counted more. The media blitz created at least the appearance that people at home cared about how their representatives voted on the issue (though it is doubtful that many newspaper readers cared about the issue of transparency as much as the editorial writers themselves).²⁵ Representatives knew that the votes on the transparency amendments would be unrecorded (as the editorials pointed

²³ Andrew J. Glass, “Congressional Report: Legislative Reform Effort Builds New Alliances among House Members,” *National Journal* (July 25, 1970), 1607-1614, 1612.

²⁴ Glass, “Congressional Report,” 1612.

²⁵ C.f. Schudson, *Rise of the Right to Know*, 182.

out), so people back home would be unlikely to get worked up about them. Members of the lobby coalition, on the other hand, were paying close attention: canvassing the representatives, reminding them to show up when the issues were under debate and up for a vote, and watching closely what they said and how they voted. As Conlon told the *National Journal*, “We got a big lobby effort going . . . It is what you would call a ‘public interest lobby.’ They understand that this bill, with our revisions, is really going to revolutionize this place.”²⁶

And revolutionize the place it did. With the benefit of hindsight, the reader can easily see the Achilles’ heel in the DSG’s strategy. The advantages that transparency provided to the liberal-labor lobby were not the exclusive property of the liberal-labor lobby. Any group at all could benefit from them. The story of the rise of lobbying in the 1970s is in part the story of the slow awakening of the conservative business community, and of every special interest under the sun, to the awesome power granted to lobbyists under the new rules. But before we tell that story, we turn to the story of Common Cause, the good-government organization that burst onto the scene shortly after DSG won its LRA battle and immediately became Washington’s biggest champion of transparency, working tirelessly for the next few years to make it the law of the land in Congress and in every state legislature.

2.3 The public-interest lobby

Common Cause was founded in August 1970 by John Gardner, a former member of the Johnson administration, who had seen in the late 1960s the hunger of ordinary people to have more of a voice in government. He conceived the idea of a “citizens’ lobby,” a lobby group that would be as organized and professional as those representing special interests in Washington but would champion the public interest. It would be funded primarily by small donations from a mass membership, and it would organize those members into an effective grassroots wing of the lobbying effort.²⁷

Within the first year of its existence, Common Cause had adopted “government reform” as its primary brand, and among the many government reform issues the organization championed (including lobbying disclosure, campaign finance reform, conflict of interest rules, abolition of the seniority system in the House, etc.), the centerpiece was transparency.

In 1972, Common Cause launched its “Open Up the System” (OUTS) campaign. During election season that year, citizen-activist members canvassed House and Senate

²⁶ Glass, “Congressional Report,” 1612.

²⁷ Common Cause, “A Prospectus: Common Cause,” July 9, 1970 (Common Cause archives, Princeton University Library), 3.

candidates and sought specific commitments that if elected they would vote to open all committee meetings. Over 2,000 members participated.²⁸

The campaign was an aggressive one. Citizen-lobbyists were instructed to be polite but firm and persistent. They were to send the questionnaire to the candidates and then request in-person interviews. If the candidates did not respond, the activists were to shadow them on the campaign trail and pose the questions during public events. (One resourceful group of volunteers in Illinois cornered their prey on a radio call-in show, flooding the phone lines and forcing the captive candidate to spend the hour answering all the Common Cause questions he had been dodging.²⁹) When the candidates did grant interviews, the citizen-lobbyists were to get clear answers to their questions and not accept equivocation. They were instructed to read the answers back to the candidates and get positive confirmation so there could be no later claim of misunderstanding. Then there was to be publicity: in print and other media, the citizen volunteers were to create a public record of how the candidates responded on the Common Cause issues and what commitments they had made. When the election was over, there was to be further contact: to remind them of their commitments, or to get them off the fence. “It is imperative that Common Cause continue pressure on the winning candidate when he or she is a member of the House or Senate. We do not want to let him off the hook when he is in a position to make good on his pre-election statements.” During this continued “holding of the feet to the fire,” citizen lobbyists were instructed that “deviations from previous commitments or ‘waffling’ should be reported immediately” so appropriate remedial pressure could be applied.³⁰

Volunteers were also instructed to “make contact with other groups—labor, consumer, women’s civil rights [sic], environmental, etc.—to enlist their support and to make them aware how their issues are affected by the Common Cause structure and process government reform issues.”³¹ As with Conlon’s meetings with lobbyists two years earlier, we don’t have a record of what was said at such meetings, but presumably similar arguments were made to this similar array of liberal groups: transparency will make it easier for you to hold representatives accountable on the issues that matter to you.

²⁸ Common Cause, “Statement by John W. Gardner, Chairman, Common Cause Project Regarding ‘Open Up the System’ and Congressional Support for Ending Secrecy and the Seniority System,” January 4, 1973 press release (Common Cause archives, Princeton University Library), 2.

²⁹ Common Cause, Memo to Field and Network Staff from Ruth Saxe, with an attachment “Re: Significant OUTS Projects,” February 6, 1973 (Common Cause archives, Princeton University Library).

³⁰ Common Cause, “Guidelines for Activist Members, Operation Open Up the System,” September 1972 (Common Cause archives, Princeton University Library), 2, 25.

³¹ Common Cause, “Guidelines for Activist Members, Operation Open Up the System,” 1972, 4.

What transparency reforms did Common Cause hope to achieve? In the first season (1972), the primary goal of OOTS was to strengthen open committee meeting requirements. Common Cause sought from candidates a commitment to support an open meetings bill that allies in the House and Senate had promised to introduce in the new session.

In its campaign for open meetings, Common Cause benefited from the legwork that had been done by the DSG and allies in 1970 to put House members on record. The power of asking candidates to sign a “pledge” came from the shared understanding that Common Cause could verify at practically every stage in the legislative process whether the pledge had been kept. If there was an attempt to table the bill in committee, the representative’s vote on the motion would be recorded and preserved in the committee office, where Common Cause D.C. staff could review it. If there was an attempt to strengthen the bill or weaken it in the COTW, the representative’s vote—or abstention or absence from the floor—would be publicized in the next day’s *Congressional Record*.

In 1972, as in every new Congress, before the legislative session began the Democrats and Republicans were scheduled to meet in their respective caucuses. Common Cause saw opportunities here as well to attack secrecy. Common Cause had asked candidates for pledges to support a caucus resolution in favor of open committee meetings. Of course, since caucus meetings were held in private, Common Cause lobbyists could not tell whether members kept their word on this second pledge. So Common Cause had asked for a third pledge on top of the others: to support transparency in caucus meetings, either by opening them up to the public and the press or, at the very least, by recording and publishing the votes taken.

On this last point, in its naiveté, Common Cause found itself wrong-footed. Common Cause had been counting on working closely with the liberal Democrats in the House, the DSG members who were natural allies on most issues and who were loud supporters of open committee meetings. But among the first items of business of the House Democratic caucus would be selecting members for leadership positions, and there the sides appeared to have switched. On learning that he would face a challenger, the autocratic chairman of the government operations committee, Chester (“Chet”) Holifield, demanded a record vote. “If I’m going to be stabbed in the back, then I want it to be done openly.”³² That was precisely the Common Cause position: Democrats “should take recorded votes on leadership contests and make them public immediately.”³³ The DSG liberals, for their part, favored a secret ballot, a position that Common Cause had attacked

³² Marjorie Hunter, “Democrats in House Given Vote on Committee Heads,” *New York Times*, January 22, 1973.

³³ Common Cause, “Editorial Memorandum on Seniority, Secrecy and Congressional Reform,” enclosed in December 12, 1972 letter from David Cohen to OOTS Coordinators (Common Cause archives, Princeton University Library), 5.

in its literature as “the antithesis of an open Congress operating under the scrutiny of an informed electorate.”³⁴

What had happened? The House DSG liberals were pragmatists, prepared to use whatever procedural tools would help them achieve their political and policy goals. In committee and on the House floor, they figured that the attack on the seniority system required open meetings and recorded votes. In caucus, the same end required a secret ballot, to give junior members the cover they needed to vote against powerful chairmen. Common Cause, in contrast, was fixated on the principle of transparency. Nevertheless, Common Cause was also for dismantling the seniority system. Evidently someone explained the caucus calculus to Common Cause and brought them around to DSG’s perspective, for Common Cause did an awkward about-face.

By January 14, 1973, just eight days before the leadership votes in the caucus, Common Cause acknowledged in a press statement that a secret ballot would be an acceptable alternative to open voting on committee chairmen.³⁵ Five days later, the president of Common Cause wrote to Congressmen that the organization “strongly urges adoption” of a DSG-backed proposal for selecting chairman involving what he described as “a specified procedure on voting” with “a single master ballot.”³⁶ He was apparently unable to bring himself to use the expression “secret ballot.” After the caucus meeting (in which the secret ballot was employed), Common Cause explained to its coordinators in the field: “Although we had favored a recorded vote, not a secret ballot, most reform-minded members believed that the secret ballot was essential to allow legislators to vote their beliefs without fear of intimidation by a powerful chairman if their votes were known. . . . The secret ballot allows members to express dissatisfaction with a chairman’s performance and makes the chairman aware of the amount of opposition to him.”³⁷

In early March, Common Cause got the long-awaited floor votes in the House and Senate on opening up committee meetings. Although Common Cause considered the Senate vote a defeat and the House vote a victory, that judgment is questionable.³⁸ The Senate defeated a Common-Cause-backed amendment that would have created a presumption of open meetings and required a vote to close them—but the resolution that

³⁴ Common Cause, “Editorial Memorandum on Seniority, Secrecy and Congressional Reform,” December 12, 1972, 8.

³⁵ Common Cause, “Common Cause Charges that House Leadership Does Not Dare to Hold Caucus on Reform,” press release dated January 14, 1973 (Common Cause archives, Princeton University Library), 2.

³⁶ Common Cause, “Dear Congressman” letter from Jack T. Conway, January 19, 1973 (Common Cause archives, Princeton University Library).

³⁷ Common Cause, Memo to Field and Network Staff from Ruth Saxe, February 6, 1973.

³⁸ Common Cause, “Dear OUTS Coordinator” letter from David Cohen, dated March 12, 1973, with attachments (Common Cause archives, Princeton University Library).

eventually passed, unanimously, shifted the ground by permitting Senate committee business meetings to be open to the public, something the 1970 LRA had expressly prohibited. In the House, on the other hand, the Common Cause “victory” was rather hollow. The House resolution created a presumption of open meetings for House committees, requiring a vote in order to close them—but the 1970 LRA had already done that. The new resolution strengthened the rule by requiring the vote to be taken by roll call, but weakened it by permitting Administration officials to attend so-called “closed” meetings. And the vote to close a meeting still did not need to be taken on the day of the meeting—with a single vote a committee could close all meetings for the rest of the Congressional session. *Congressional Quarterly* quoted one Common Cause spokesperson on the harrowing victory: “I think we were lucky. . . . We were happy to get the House vote over with as soon as possible.”³⁹

Though Common Cause came away from these legislative battles battered and bruised, in fact they had won, or they were on the cusp. They had knocked down the gates. Regardless of the exact wording of the rules adopted in 1973, Common Cause’s massive coordinated campaign for open meetings had created momentum for the issue, which the organization was able to exploit as it brought the fight into committee rooms on both sides of the Capitol. The numbers tell the story: Throughout the 1960s, the percentage of Congressional committee meetings held in closed session annually had generally been in the range of 35-40% (this CQ tabulation includes hearings and ordinary business meetings, which were traditionally often open, as well as meetings to mark up bills, which were almost always closed). The passage of the LRA had no noticeable impact on the overall tally: 36% were held in closed session in 1971, and 40% in 1972. But in 1973, the number dropped to 16%. In 1974 it was 15%, and in 1975 an astonishingly low 7%.⁴⁰ Some of the credit goes to the changing demographics of the House and Senate. Younger, newer members were more in favor of transparency than older, more experienced members. But there is every reason to believe that enforcement pressure by Common Cause played an important role.

Common Cause dispatched volunteers to serve as monitors: to sit in on meetings, to take notes on who voted to close meetings, and to report any irregularities in observance of the open-meeting rules.⁴¹ These volunteers were instructed not to

³⁹ *Congressional Quarterly*, “Senate, House Modify Committee Secrecy Rules,” in *CQ Almanac 1973, 29th ed.* (Washington, D.C.: Congressional Quarterly, Inc., 1974), 716-19; *Congressional Quarterly*, “Senate and House Open Up their Sessions in 1973,” in *CQ Almanac 1973, 29th ed.* (Washington, D.C.: Congressional Quarterly, Inc., 1974), 1074-77.

⁴⁰ *Congressional Quarterly*, “Senate and House Open Up their Sessions in 1973”; *Congressional Quarterly*, “Committees Opened 93% of 1975 Meetings,” in *CQ Almanac 1975, 31st ed.* (Washington, D.C.: Congressional Quarterly, Inc., 1976), 930-33.

⁴¹ *Congressional Quarterly*, “Senate and House Open Up their Sessions in 1973.”

communicate directly with the legislators. That was the job of the large network of citizen-activists organized by state and Congressional district, who received alerts from the “Washington Connection,” Common Cause’s central clearinghouse. Members of the activist network received scripts that enabled them to apply timely, customized pressure. *Congressional Quarterly* reports that “on several occasions, the group’s lobbyists got wind of plans to close mark-ups, and protest letters were distributed to the members as they arrived for the next day’s session,” and that this type of pressure got results.⁴²

Another anecdote reported by *Congressional Quarterly* speaks to the power of the grassroots lobbying effort: A Common Cause rep boasted that as Massachusetts Democrat James A. Burke voted to keep committee mark-ups open on June 18, 1973, he explained that he was voting to keep the sessions open “not because it’s the right thing to do but because I’ll be damned if I’m going to spend the next year and a half explaining to my people why I voted against open meetings. Thank God there are enough votes here to close them.” The meeting was closed by a vote of 15-9, with all senior members except Burke voting for closing.⁴³

Common Cause had found its central issue and its modus operandi. It continued to push for more openness in the years that followed, and when pursuing openness and other goals it continued to use the “inside-outside” strategy: monitoring committees and using the information gathered there to have constituent-lobbyists apply targeted grassroots pressure.

The OUTS campaign was renewed in the 1974 election season and pledges were gathered for additional reforms. In the new Congress the House strengthened its open committee rules by requiring that a vote to close a meeting be taken no more than one day in advance of the meeting. The Senate changed its rules to require committee meetings to be open unless a majority of members chose via an open vote to close them. A vote to close meetings was valid for a series of meetings on a single subject for up to 14 days. Valid reasons for closing meetings were strictly delimited. The House and Senate also adopted rules that effectively opened the doors of conference committees unless a majority of participants from either chamber voted to close them.⁴⁴ Furthermore, in 1975 the House Democrats and House Republicans both agreed to open up their caucus meetings to the public and press, unless a majority voted to close them.

Common Cause’s efforts in Congress were paralleled by efforts at the state level. A 1967 Florida Sunshine Law had started a national trend in state-level transparency legislation. Common Cause joined and began coordinating this work under the OUTS banner in November of 1972. Legislatures in fully 44 states took transparency-related

⁴² Congressional Quarterly, “Senate and House Open Up their Sessions in 1973.”

⁴³ Congressional Quarterly, “Senate and House Open Up their Sessions in 1973.”

⁴⁴ Congressional Quarterly, “Congressional Reforms Made in 1975,” in *CQ Almanac 1975, 31st ed.* (Washington, D.C.: Congressional Quarterly, Inc., 1976), 26-40.

action over the course of the state OUTS campaign. By 1976 (thanks in part to post-Watergate reform sentiment), all fifty states had open meeting laws on the books.⁴⁵

1976 was also the year of Common Cause's last major transparency victory at the federal level, passage of the Government in the Sunshine Act, which set open meeting standards for agencies in the executive branch. One final small advance was made for transparency at the federal level in 1977: The House modified its rule for transparency in conference committees, stating that approval by the full House would be required before the chamber's delegation would be permitted to vote to close conference committee meetings.⁴⁶

By this time the OUTS campaign had run its course. On one hand, it could be argued that the campaign had been so successful that it had served its purpose and there was little left to do. On the other hand, Common Cause's influence in Washington was undeniably waning. Though natural ideological allies with liberals on many issues, Common Cause made a point of being rigorously nonpartisan, and butted heads with Democrats regularly. The organization's strong-arm tactics and self-righteousness made it singularly unpopular on Capitol Hill. Andrew McFarland recounts that "mentions of Common Cause were greeted with booings at meetings of both the Democratic and Republican caucuses" in 1975, and that even friendly liberal representatives became irritated by the volume of strident letters from armchair activists.⁴⁷ As will be described in the next section, 1975-76 was also the time period when Common Cause's dominant position in the grassroots lobbying arena was being challenged by the business community. And internal Common Cause documents reveal that with the arrival of a reformist liberal (Jimmy Carter) in the White House, invading its niche, the organization faced an identity crisis.

Secrecy was the issue that had received the most attention from Common Cause at the federal level in the early years, and the organization could look back on it as an almost unbroken series of tactical successes. But when Common Cause shifted its focus to other government reform issues, it found the going a lot tougher, even as the issues became more urgent. For instance—and especially—there was the issue of money in politics. Literature produced by Common Cause in 1976 reports that "special interest groups are pouring campaign contributions into the 1976 Congressional races in record

⁴⁵ Common Cause, "Editorial Memorandum: A Wave of State Legislative Reform Sweeps Country," press release issued May 1974 (Common Cause archives, Princeton University Library); Common Cause, "Open Government in the States," January 1981 (Common Cause archives, Princeton University Library), 4.

⁴⁶ Congressional Quarterly, "95th Congress Elected New Leaders," in *CQ Almanac 1977*, 33rd ed. (Washington, D.C.: Congressional Quarterly, Inc., 1978), 3-10.

⁴⁷ Andrew S. McFarland, *Common Cause: Lobbying in the Public Interest* (Chatham, N.J.: Chatham House, 1984), 115, 138.

amounts,” that they had “almost doubled their campaign giving in 1976 over 1974,” and that “there are twice as many interest group committees today” as there had been two years earlier.⁴⁸

Even as Common Cause described these developments as unprecedented, it interpreted them as cyclical, or as backsliding: “The dramatic resurgence of dairy group giving and the phenomenal growth of new corporate political committees reflect a view that the country will tolerate a *return to the old system* of campaign contributions being used to influence government decisions,” declared the organization’s then-Vice-President Fred Wertheimer (emphasis added).⁴⁹ It did not appear to occur to Wertheimer and his colleagues that they were witnessing the birth of a brave *new* world of lobbying, one that they themselves had helped to gestate with their open meeting victories. They knew those rule changes had enhanced their own lobbying efforts; they did not appear to guess that the new rules could do the same for others.

2.4 The business lobby

The story of the business lobby’s surge to power in the mid-to-late 1970s has often been told.⁵⁰ Among other important business organizations of the era (e.g., the Business Roundtable), the U.S. Chamber of Commerce was a central player. In 1971, the famous “Powell memo” argued to the Chamber that Washington had become dominated by anti-business forces (consumer, environmental), and that the business community had a civic responsibility to more aggressively represent its point of view there. In 1972, the Chamber in its unrushed methodical fashion assembled a 40-person task force to investigate the issues raised in the memo. In late 1973 the board considered the task force’s recommendations and approved an array of initiatives in the areas of education, communications, political action, and judicial action. A Chamber publication described

⁴⁸ Common Cause, “Special Interest Groups Pour Campaign Contributions into 1976 Congressional Races, According to New Common Cause Study,” September 30, 1976 press release (Common Cause archives, Princeton University Library), 1, 4.

⁴⁹ Common Cause, “Special Interest Groups Pour Campaign Contributions into 1976 Congressional Races, According to New Common Cause Study,” September 30, 1976, 5.

⁵⁰ Vogel, *Fluctuating Fortunes*; Jacob S. Hacker and Paul Pierson, *Winner-Take-All Politics: How Washington Made the Rich Richer—and Turned Its Back on the Middle Class* (New York: Simon and Schuster, 2010); Benjamin C. Waterhouse, *Lobbying America: The Politics of Business from Nixon to NAFTA* (Princeton: Princeton University Press, 2014); Drutman, *Business of America is Lobbying*, 2015.

this action in response to the Powell memo as “one of the greatest undertakings in the national business federation’s history.”⁵¹

In the arena of political action, the Chamber intensified its D.C. lobbying efforts. As already noted above, the Chamber also dramatically expanded its membership base. With this expanded base it cultivated a strong grassroots action network. Businessmen, organized locally (sometimes with employees pressed into service as well), wrote letters, made phone calls, and flew in to Washington to put pressure on their representatives at key moments during the consideration of bills.

In other words, the Chamber organized an “inside-outside” campaign on the Common Cause model. There were differences, of course. The Chamber had a larger professional staff in Washington and did not need to assign civilians to sit in on committee meetings. With their deeper pockets the Chamber’s grassroots lobbyists carried a bigger stick than mere moral indignation (though they brought that to the table as well as their checkbooks). But observers agree that the Chamber and other business groups copied the playbook of Common Cause and other liberal and good-government organizations. Sar Levitan and Martha Cooper write that “as the 1970s progressed, business lobbies . . . became diligent students of the liberal-labor coalitions and learned their lessons well.” Jeffrey Berry states: “The rise of liberal citizen groups was largely responsible for catalyzing an explosion in the growth of all types of interest groups.” Graham Wilson reports that “organizations such as the Chamber of Commerce, recently regarded as something of a joke by Washington cognoscenti, have emerged as the most sophisticated practitioners of the new lobbying techniques. In recent conflicts with the unions and public interest groups, business lobbyists have emerged as the victors, outmaneuvering their opponents regularly.” Tantalizingly, though we have found no confirmation from other sources, Wilson indicates that business lobbyists made a habit of attending seminars on effective political action offered by Common Cause.⁵²

The result is well-known: In the early 1970s, when the business community had not yet mobilized, good government groups like Common Cause, consumer groups like the Nader organizations, and environmental groups, in partnership with labor, had enjoyed their greatest influence in Congress. They had scored wins like the Clean Air Act Amendments of 1970, the Occupational Health and Safety Act of 1970, the Cigarette

⁵¹ William G. Van Meter, “A History of the Chamber of Commerce of the United States, 1912-1975,” 1989 book manuscript (U.S. Chamber of Commerce archives, Hagley Museum and Library), 409.

⁵² Sar A. Levitan and Martha R. Cooper, *Business Lobbies: The Public Good & the Bottom Line* (Baltimore: Johns Hopkins University Press, 1984), vii; Jeffrey M. Berry, “Citizen Groups and the Changing Nature of Interest Group Politics in America,” *The Annals of the American Academy of Political and Social Science* 528/1 (1993), 30-41, 31; Wilson, *Interest Groups in the United States*, 114.

Advertising Act of 1970, the Federal Election Campaign Act of 1971, the Federal Environmental Pesticide Control Act of 1972, the Federal Water Pollution Control Act Amendments of 1972, the Federal Election Campaign Act of 1974, the Employee Retirement Income Security Act of 1974, the Magnuson-Moss Consumer Warranty Act of 1975, and the Toxic Substances Control Act of 1976. But by 1976 the balance of lobbying influence had tilted. In the late 1970s, business scored victories like the 1977 Clean Air Act Amendments (which weakened the earlier amendments), the 1978 defeat of the common situs picketing bill, the 1978 defeat of legislation for a Consumer Protection Agency, the 1978 defeat of a Federal Trade Commission bill, and the 1978 Revenue Act.⁵³ By 1984, Schlozman was able to write: “For all the newborn organizations representing the interests of diffuse publics, minorities, poor people, the elderly, and other disadvantaged groups, business actually is a more dominating presence in Washington now than it was two decades ago.”⁵⁴ This was in spite of the strong numerical advantage of Democrats in both Houses and the long-awaited ascendancy of the liberal wing in the House Democratic caucus in the late 1970s.

Vogel sums up the transformation: “It took business about seven years to rediscover how to win in Washington. Significantly, when business did become more politically active, it did so in ways that recognize how fundamentally the American political system had changed: it proceeded to imitate the political strategies that had previously been responsible for so many of its defeats.”⁵⁵

What exactly were those political strategies of the opposition that the business community imitated? Typically, scholars have pointed their finger at the common element of the lobby efforts that was most visible: the extensive grassroots campaigning.⁵⁶ Common Cause and its allies had harnessed the citizen activism of the 1960s into a disciplined lobbying force, and the business community (so the argument goes) had imitated it.

It is true that Common Cause made good use of the grassroots campaign, and that the Chamber of Commerce followed suit. But there are two reasons why this explanation does not deserve the weight it is usually given. One is that the grassroots campaign was not a new invention in the 1970s. Applying constituent pressure district by district is an old-fashioned technique used by many large organizations. Some place its origins in the

⁵³ Vogel, *Fluctuating Fortunes*.

⁵⁴ Kay Schlozman, “What Accent the Heavenly Chorus? Political Equality and the American Pressure System,” *The Journal of Politics* 46/4 (1984), 1006-1032, 1021.

⁵⁵ Vogel, *Fluctuating Fortunes*, 10-11.

⁵⁶ e.g., Vogel, *Fluctuating Fortunes*, 10, 204; see also Levitan and Cooper, *Business Lobbies*, 21.

1910s and 1920s.⁵⁷ In the 1960s, Lester Milbrath reports, it was a favored tactic of “groups with large memberships”: farm, labor, church, and humanitarian groups.⁵⁸ The Chamber of Commerce itself described it perfectly well in a 1962 legislative handbook for business associations:

The success of “grass roots” action depends on supplying factual information to those making the direct contact with legislators. When the “grass roots” drive is undertaken, special bulletins may be sent out, possibly marked: “Action Requested.” . . . Experience has taught that personal letters are much more effective than form letters. . . . An association’s legislative committee may select members from the industry in each state and, if possible, in each Congressional district, who will act as its contact on legislative matters.⁵⁹

The second reason is that the lobbying revolution that began in the 1970s far outlasted the initial burst of massive grassroots activism. Common Cause never recovered the membership numbers or the influence it had during the first years of its existence in the early and mid-1970s. The Chamber, for its part, wrapped up its “Citizen’s Choice” grassroots lobbying network in 1986, even as the business community, and special interests generally, have continued to dominate Washington for decades.

Massively coordinated citizen pressure, in short, turned out not to be a *sine qua non* of effective lobbying. Financial pressure (either as carrot or stick—and certainly this was nothing new in the 1970s either) worked just as well. And when constituent pressure was applied, it need not be massive; it could be targeted, pinpointed. Lobby shops like Cassidy & Associates, whose launch in the mid-1970s was profiled in Robert Kaiser’s 2009 book *So Damn Much Money*, made an art out of applying just the right kind of pressure to just the right power brokers at just the right moments to smooth the way of clients’ subsidies through the legislative maze.

No, as significant as it was, massive grassroots campaigning was not the key to the success of the business lobby and the special interest lobbies. It was not the raucous “outside” lobbying that made the difference, but the much quieter revolution in “inside” tactics. The fact was that business lobbyists in the 1970s acquired unprecedented access to the legislative process. Now that they could count on a seat in the committee room and watch members vote, the whole dynamic had changed. They were well positioned to

⁵⁷ e.g., Lester W. Milbrath, *The Washington Lobbyists* (Chicago: Rand McNally, 1963), 237; Neil MacNeil, *Forge of Democracy: The House of Representatives* (Philadelphia: David McKay Company, 1963), 217ff.

⁵⁸ Milbrath, *Washington Lobbyists*, 242.

⁵⁹ Chamber of Commerce of the United States of America. 1962. *Legislative Handbook for Associations* (U.S. Chamber of Commerce archives, Hagley Museum and Library), 11.

make good on threats and monitor their investments. They could instantly tell when the carefully crafted language they had slipped into a bill was in danger of being scrapped or altered and take corrective action, and just as importantly they could tell beyond the shadow of a doubt who in a committee was a reliable partner and who was double-crossing them.

We can grasp the magnitude of the change if we focus on one aspect: the concept of “pressure.”

In the pre-reform era, Congresspeople made a distinction between two different kinds of contact with constituents and other parties interested in legislation. On the one hand was contact that was intended to provide information or express an opinion for the member to take into consideration when making up his or her own mind. On the other hand was “pressure.”

So, for example, many members paid close attention to constituent mail. The volume of mail and its tenor allowed them to “take the temperature” of the district on issues of the day. A moving personal story or plea might change the way a member thought about an issue. On the other hand, the irate and threatening constituent letter was met with derision. Letter-writing manuals universally described this approach as ineffective. Some members simply tossed these letters in the garbage. Others exacted revenge. The irascible Wayne Hays of Ohio “had a standard letter of reply to such mail. Hays’s response was this: ‘Dear Sir: Today I received a letter from some crackpot who signed your name to it. I thought you ought to know about this before it went any further.’”⁶⁰

So it was with special interests. For a lobbyist to overtly threaten a member was typically to invite being kicked out of his or her office and denied access (the most precious commodity for a lobbyist) in the future. The same was true of overt bribes. Responses given to researchers in the early 1960s by both legislators and lobbyists indicated that such tactics were prone to backfire, with members voting against the special interest to demonstrate that they could not be intimidated or bought.⁶¹

On the other hand, pressure tactics *could* work if backed by a credible enough threat. Legislators had genuine leverage over each other (senior members more leverage over junior members, naturally), and put pressure on each other all the time. And a special interest with power at the polls could, at least some of the time, get away with using pressure tactics. In the 1960s, the labor unions, with their wide membership and their ability to get out the vote, were seen as the groups that could and did use pressure tactics most successfully. But even then it was a gamble. As Milbrath observed, “political

⁶⁰ MacNeil, *Forge of Democracy*, 141.

⁶¹ Milbrath, *Washington Lobbyists*, 225, 285; Bauer, Pool, and Dexter, *American Business and Public Policy*, 442-43.

tactics are ‘hot potatoes,’ and only organizations with considerable power at the polls can use them without being burned.”⁶²

How then did most lobbyists operate? As a baseline, they sought to win members over by being helpful and informative and making good and thoughtful arguments. In the words of one Congressman, “they don’t come around and try to pressure you, they just drop in and present their case.” Milbrath calls it the “soft sell”: “Here’s our story; here’s the way our people feel about it. I would like you to think it over and see if you can go along with us.”⁶³

But many lobbyists did not stop there; they pushed the envelope. For instance, as discussed above, lobbyists might activate a network of letter-writers to bombard a member with mail on an issue, knowing that many members “weigh the mail.” The trouble was, members perceived organized letter-writing campaigns by special interests as “stimulated mail” that did not represent genuine constituent opinion, and tended to disregard it. (Congressman to Secretary: “Jane, am I right that we haven’t received mail from more than five people on this tariff business?” Secretary to Congressman: “Yes, except, of course, for the pressure groups.”⁶⁴) Letter-writing guides advised network members to customize their letters as much as possible. “It then becomes a game in which the lobbyists try to launch a campaign that does not look like one, and the members try to spot the campaign and discount it.”⁶⁵

Another tactic some special interests used was to publicize members’ votes. This was perceived by Milbrath’s interviewees as risky behavior, because it carried an implied threat. “Publicizing voting records is a powerful and dangerous political tactic open only to groups with considerable power at the polls. . . . Congressional respondents perceive that the tactic generally has an effect on them. . . . They may retaliate against the organization or lobbyist who uses it. Members quite accurately feel that pressure is being applied to force their vote in a certain direction.” Since it is a dangerous tactic, “publicizing voting records has been pursued most diligently by labor and other large membership groups.” A labor lobbyist explains: “We find this especially valuable in the case of a congressman who comes from a very close district. He’s got to have labor votes in order to win, so he will certainly come around. The reason I am so convinced that they are helpful is that I get many calls from members saying, ‘Couldn’t you keep that vote off the record?’” Another labor lobbyist says: “Some members of Congress have come to me

⁶² Milbrath, *Washington Lobbyists*, 285; c.f. Frank Bonilla, “When is Petition ‘Pressure’?” *The Public Opinion Quarterly* 20/1 (1956), 39-48, 45.

⁶³ Milbrath, *Washington Lobbyists*, 225, 226.

⁶⁴ Milbrath, *Washington Lobbyists*, 440.

⁶⁵ Milbrath, *Washington Lobbyists*, 245-46.

and said, ‘You didn’t tell me you were going to put that particular vote in the record.’ Usually they are pretty angry about it.”⁶⁶

Publicizing a vote was a pressure tactic because it made the vote *visible* to some other party who could make life difficult for the member. So far we have been discussing visibility to constituents. Visibility to other parties could have the same effect. To illustrate with two more examples:

The President is another player who has the power to exert pressure on members, and will want to exercise that power judiciously to avoid blowback—i.e., as much as possible to avoid the appearance of using pressure tactics. When Eisenhower appointed Bryce Harlow as the White House’s first-ever full-time Congressional liaison, Harlow “felt the need to remain inconspicuous. He normally operated from his White House office, answering and making phone calls,” according to Neil MacNeil. “Only rarely did he slip up into the House of Representatives and usually even then only to have a private lunch” with Republican leaders. We need not infer that Harlow was shy; it seems likely that he knew that if he were seen roaming the halls or watching from the gallery, his presence might be perceived as an implied threat—the threat of an angry phone call from the President, or worse. Harlow’s successor as Congressional liaison under Kennedy, Larry O’Brien, confirmed this point explicitly: O’Brien “would not enter the gallery of the House either to listen to debate or to watch the House vote. He had as much right to enter the gallery as any of the thousands of tourists who streamed through the Capitol: it was a public place. O’Brien felt, however, that because of his position as the President’s man on Capitol Hill it would not be proper for him to be seen in the gallery of the House or that of the Senate. . . . To appear in the gallery . . . might smack of impropriety; *it might seem that he was asserting an undue pressure on the members of Congress*” (emphasis added).⁶⁷ Later inhabitants of the White House have had fewer scruples about laying on a heavier hand—George W. Bush’s late-night phone calls to squeeze a few more Republicans into approving the hotly contested Medicaid Part D bill is one example that comes to mind—but then, the 1950s and early 1960s were a more genteel era. The point is that visibility mattered. For the President’s liaison to be in the room, watching the debate and the vote, was to be seen as exerting pressure.

What is true of the President’s liaison is also true, writ smaller, of any lobbyist representing any interest. Based on his extensive interviews, Milbrath concludes that “lobbyists . . . have a kind of nuisance impact. They can make life somewhat unpleasant for officials who do not go along with them: *It is embarrassing to vote against someone who is watching*” (emphasis added).⁶⁸ It is especially embarrassing if the lobbyist who is

⁶⁶ Milbrath, *Washington Lobbyists*, 252-54.

⁶⁷ MacNeil, *Forge of Democracy*, 254, 268.

⁶⁸ Milbrath, *Washington Lobbyists*, 343.

watching is an ideological ally and a social friend (as many were—that is what made former Congressmen and staffers so valuable as lobbyists). And it is sufficiently embarrassing—a capital nuisance—if one knows that among the spectators are anonymous representatives of this and that pressure group, who have the power to cause a swarm of lobbyists to descend or (as in the case of Representative James A. Burke, described in the previous section) a flood of angry mail to pour in.

Given the connection between *pressure* and *visibility*, and observations by scholars such as Jeffrey Berry that “quite literally, public interest groups [in their 1970s incarnation] do act . . . as “pressure” groups,” and Graham Wilson that “the major changes in the methods of pressure-group politics in the last ten years [before 1981] have been the frequent and open use of methods amounting to pressure rather than persuasion,” we must conclude that the contemporaneous revolution in visibility—transparency—was an integral part of the 1970s’ revolution in lobbying.⁶⁹

How well did the business community understand the importance of the sunshine reforms to its tidal wave of success in the 1970s? This is still unclear. It is possible that the answer is hidden in the archives of corporations and industry associations across the country: meeting minutes in which government relations staff explain to executives how sunshine will revolutionize their ability to extract concessions from Congress. Probably many did not fully comprehend what had changed, but simply saw their opportunities and took them, moving with the herd in the general stampede to Washington. The Chamber of Commerce archive unfortunately appears to contain no record of internal meetings on the topic of government transparency.⁷⁰ But we can catch glimpses of the Chamber’s reactions as events unfolded.

⁶⁹ Berry, *Lobbying for the People*, 223; Wilson, *Interest Groups in the United States*, 114.

⁷⁰ The archive does offer one indirect line of evidence, in the letter-writing guides that the Chamber of Commerce published regularly throughout the 1960s and 1970s. Although the advice not to insult or threaten a legislator stays consistent, a comparison shows that starting in the early 1970s the guides do get more and more aggressive. Between 1970 and 1972, they add to the admonition to ask the congressman what his position is: “as his constituent, you are entitled to know.” By 1975, the guides urge the businessman to explicitly identify the name and number of the bill in question, and to write at every stage of the bill’s progress, and to write to express pleasure or displeasure about votes already cast. By 1975, the letter-writer is instructed not to accept a vague response, but to follow up and request a statement of intent. By 1976, the guides recommend sending a follow-up letter when the vote is close at hand, to ask “how are you going to vote?” The increasingly aggressive tactics had “nuisance” value that depended on the fact that, as all parties understood, the informational feedback loop would eventually be closed. The Chamber would monitor the vote and inform the constituent of the outcome. The vote would be “visible.” Although this analysis does not show that the Chamber consciously understood what had changed and how, it shows that the Chamber was adapting its tactics to the new conditions in the 1970s.

In the run-up to the 1970 LRA, as we have already described, the DSG's Richard Conlon set up a series of meetings to sell lobbyists on the transparency amendments. Most of the lobbyists in attendance were from the liberal / labor camp. But not all. Since the reformers were a bipartisan coalition, Republican member William Steiger invited the Chamber of Commerce to attend. The Chamber sent its legislative counsel, Argyll Campbell. Interviewed by a *National Journal* reporter, Campbell said he attended "just out of curiosity." According to Campbell, the Chamber regarded the LRA "as strictly an 'in-house' matter. It would be much better for them to handle it themselves. Members should decide how they will conduct their legislative affairs and not outside pressure groups." He affirmed that the Chamber has done "nothing" on the bill.⁷¹ (A 1971 Chamber report on legislative positions taken in the 1969-70 Congress confirms this: The Chamber took a stand on 63 issues, and the LRA was not among them.⁷²)

One could take Argyll's statement at face value. Perhaps in 1970 the slow, methodical tortoise of a Chamber simply didn't see how an issue like transparency might fit into its agenda. On the other hand, perhaps the Chamber recognized the revolutionary implications of the transparency movement, perceived that it would be a coup for its ideological opponents in the liberal-labor lobby, and tried to put a brave face on it by scolding them. ("Members should decide how they will conduct their legislative affairs and not outside pressure groups.") Then again, perhaps the Chamber understood the advantages it could eventually reap from transparency reforms, but wanted, like Pontius Pilate, to be seen publicly as having clean hands in the matter.

Another tantalizing hint about the business community's frame of mind is found, oddly enough, in the Common Cause archive.

When Common Cause was launching in 1971-72, it sought to organize its members into state chapters or to affiliate with existing state-level groups and networks already on the ground. One of the most active early state affiliates, thanks to the energy and charismatic leadership of a local organizer, Craig Barnes, was in Colorado.

The Common Cause archive contains a memo written by Barnes to John Gardner at the national office, recounting the Colorado Project's 1972 accomplishments.⁷³ Against advice to set manageable goals and focus on one issue at a time, the eager Colorado group pushed a raft of four ballot initiatives in 1972. These concerned taxation, no-fault automobile insurance, utility regulation, and transparency. Of the four, only the sunshine initiative passed. This initiative required that public officials disclose their

⁷¹ Glass, "Congressional Report," 1612.

⁷² Chamber of Commerce, *A Summary of Major Legislative Recommendations of the Chamber of Commerce of the United States to the 91st Congress*, February 1971 (U.S. Chamber of Commerce archives, Hagley Museum and Library).

⁷³ Craig S. Barnes, "Letter to John W. Gardner," December 12, 1972 (Common Cause archives, Princeton University Library).

private interests, that lobbyists register and file periodic informational statements, and that all official state meetings be open to the public.

From the 25% success rate, Barnes did not conclude that it was a mistake for the Colorado group to take on so many issues at once. On the contrary, he thought that attacking the business community on so many fronts diluted its attention and resources, and enabled the sunshine reforms to slip through. “There was substantial opposition to the Sunshine Amendment, but the additional issues on the ballot diverted our opponents’ attention and advertising money.”⁷⁴

What was that “substantial opposition”? Barnes claims to have heard directly from the leader of the Colorado Association of Commerce and Industry that “they strongly opposed Sunshine but would have to fight it later.” Barnes explains: “That same person then put together a coalition which financed 2,695 minutes of radio advertising, 88 minutes of TV ads, and 3,640 column inches of newspaper space in opposition to our tax initiative. We are fortunate this money wasn’t spent against Sunshine.”⁷⁵

In the case of the Colorado Project’s no-fault insurance amendment, “the insurance industry and trial lawyers spent an undetermined amount”—Barnes estimates approximately a quarter of a million dollars—“in pamphleteering, radio and television and newspaper ads. . . . Again, we are fortunate such major sums of money were not available to spend against Sunshine, and it is quite possible that had they not been preoccupied with no-fault, some portion of this energy would have gone to do just that.”⁷⁶

Finally, “utilities united with the chairman of the Public Utilities Commission, who lobbied all over the state against the Utility Consumer Counsel Amendment.” State utilities undertook a massive publicity blitz against the amendment via postcards and other mailings. “Here again, one of the state’s major lobbying coalitions was too active saving its own skin to look to the Sunshine bill.”⁷⁷

The upshot, according to Barnes, was that “only the Sunshine Amendment escaped adverse advertising aimed specifically to discredit the bill, and it alone passed.” That is, according to Barnes, Sunshine slipped through while the opposition was engaged elsewhere. He points out that “in recent weeks, the Governor, Lieutenant Governor, Speaker, and Republican Senate Caucus Chairman have all expressed shock at the extent of Sunshine, and these expressions are sometimes accompanied by the phrase, ‘I wish we had read it before the election.’”⁷⁸

⁷⁴ Barnes, “Letter to John W. Gardner,” 2.

⁷⁵ Barnes, “Letter to John W. Gardner,” 2.

⁷⁶ Barnes, “Letter to John W. Gardner,” 2.

⁷⁷ Barnes, “Letter to John W. Gardner,” 2-3.

⁷⁸ Barnes, “Letter to John W. Gardner,” 3.

Barnes may indeed have slipped the Sunshine reforms past distracted *politicians* who might otherwise have opposed it vociferously, but his conclusion that the Colorado Project had somehow outmaneuvered the *business community* is simply not credible. The Colorado Project was waging a four-pronged campaign with volunteer labor on a shoestring budget. Did Barnes really believe that the Colorado Association of Commerce and Industry, a Goliath capable of flooding the airwaves and newspaper columns with propaganda, was incapable of fighting on two fronts at once? That if the business association really “strongly opposed Sunshine” as its leader claimed, they could not have fought it? Barnes was surely kidding himself as well that the insurance industry and trial lawyers, who had hundreds of thousands of dollars to spend on state ballot initiatives, could not spare a dime to oppose Sunshine. That “only the Sunshine Amendment escaped adverse advertising” by the business community and special interests must be taken as *prima facie* evidence that they did *not* strongly oppose this particular amendment. They might have been ambivalent about it—it included provisions that would put a burden on business lobbyists, to register and report on their activities—but it is very easy to imagine that business leaders and their lobbyists carefully weighed the pros and cons, and decided that although they could not be seen as publicly endorsing it, it might serve them well.

It is possible that two years earlier, when Richard Conlon was lining up support for the LRA reform amendments, Argyll and other lobbyists and executives at the U.S. Chamber of Commerce in Washington D.C. had made a similar calculation. It is not hard to find other examples of the ploy. For instance, when asked about the prospect of opening up conference committees, a chief lobbyist for the Chamber of Commerce said that he personally “did not object to sunshine” but thought it might make the work of the committees more difficult, since “if you put a flock of Ralph Naders, John Gardners, or Sierra Clubbers in a conference room . . . it will make some conferees sweat.” By 1976, when this statement was made, the Chamber and its allies were fully mobilized to take advantage of the transparency reforms and make members “sweat” themselves—like (as recounted by Lawrence Longley and Walter Oleszek) the “key farm lobbyist [who] was credited with influencing the agricultural conference ‘just by sitting in the front row.’”⁷⁹

2.5 Denouement

By the 1980s, the tide of power had fully shifted. With a pro-business Republican as president, a Republican-dominated Senate, and House run by Democrats who had largely abandoned labor and were cultivating the business community instead, the business lobby had never been more powerful. The public interest lobby was at a nadir of influence.

⁷⁹ Lawrence D. Longley and Walter J. Oleszek, *Bicameral Politics: Conference Committee in Congress* (New Haven: Yale University Press, 1989), 53, 59.

One of the most extraordinary episodes of the Reagan presidency was the successful passage of tax reform. In Reagan's first term there had been "tax relief" in the form of an orgy of giveaways to special interests, from Fortune 500 companies to Trappist monks.⁸⁰ But early in Reagan's second term, a fragile bipartisan coalition managed, with the blessing and support of the White House, to pass genuine tax reform. This revenue-neutral overhaul of the tax code rescinded many special interest giveaways and reduced nominal tax rates for all households and corporations. The episode illustrates the denouement of the Sunshine reforms, in which the business community openly cheers for sunshine and the public interest lobby looks on in chagrin.

As the reader will understand, rescinding special interest giveaways was no mean feat for Congress. Tax giveaways to groups favored by this and that member normally lubricate the legislative process. This was true even in the case of tax reform. Committee leaders kept winning coalitions intact in part by distributing limited amounts of pork to loyal partners. But on the whole, in this case, movement was in the opposite direction: taking away goodies, inflicting pain on special interests. Special interests and their agents therefore naturally took intense interest in the bill. According to Jeffrey Birnbaum and Alan Murray, lobbyists "would arrive as early as 5:30 A.M. to get at the head of the queue and have a chance for a front-row seat. The line sometimes stretched the entire length of the hallway, a city block long, and then wrapped around the corner." The bill earned the nickname the "Lobbyists' Relief Act of 1986."⁸¹

Leaders in the House Ways and Means Committee and the Senate Finance Committee found that they could not make progress with lobbyists in the room. Therefore, much of the committee work was done, in a dramatic break with (by then) longstanding practice, behind closed doors. Lobbyists still packed the hallways. As a gag, one House committee member distributed disposable urinals to his colleagues. "They were meant, he explained, to make it easier for the members to remain in the hearing room for long hours without being followed into the lavatory by anxious lobbyists." Senator Finance Committee chairman Bob Packwood employed the subterfuge of telling the lobbyists in the hallway on Friday (to loud cheers) that there would be no meetings over the weekend, and then convening committee members to work furiously over the weekend.⁸²

"Common Cause simply has everything upside down when they advocate 'sunshine' laws," was Packwood's opinion. "When we're in the sunshine, as soon as we vote, every trade association in the country gets out their mailgrams and their phone calls in twelve hours, and complains about the members' votes. But when we're in the back

⁸⁰ Jeffrey H. Birnbaum and Alan S. Murray, *Showdown at Gucci Gulch: Lawmakers, Lobbyists, and the Unlikely Triumph of Tax Reform* (New York: Random House, 1987), 7.

⁸¹ Birnbaum and Murray, *Showdown at Gucci Gulch*, 177, 178.

⁸² Birnbaum and Murray, *Showdown at Gucci Gulch*, 147, 225.

room, the senators can vote their conscience.” Even some lobbyists out in the hallway were sympathetic: “In a public session there are so many different interest groups eyeballing the congressmen,” one oil lobbyist told a journalist candidly, “that they’re so torn they end up doing something nonsensical . . . that’s how we got where we are.” Public interest lobbyists were reluctantly and half-heartedly coming to the same conclusion: “It’s a real dilemma for liberal reformers. When you look at recent tax bills, the best ones have come out of closed sessions. You take what you can get and hope someday you can get a good bill at an open meeting.”⁸³

Sunshine found an eloquent champion in Senator John Danforth of Missouri. When the conference committee was on the cusp of completing its work on reconciling the House and Senate versions of the bill, Danforth spoke up against it. According to Birnbaum and Murray’s account,

Danforth had turned against the bill for largely parochial reasons. It would hurt McDonnell Douglas, the biggest employer in his state, and its changes in the treatment of bonds would also hurt Washington University in St. Louis, where Danforth’s brother was chancellor. Nevertheless, Danforth couched his opposition in far broader terms. The conference bill was written in secret meetings and no one other than the senators and their aides had seen it, he charged. The “sunlight” of public scrutiny would only help the tax bill, not hurt it.⁸⁴

Despite Danforth’s objections, the conference committee completed the work in closed session, and then called one final open meeting to announce the result. Danforth spoke up again on the same theme:

In the back room of the Senate Finance Committee earlier today, I took the same position I’m taking now. I said that this should be ventilated, and there is no reason not to put it out before the public and give us and our staffs a chance to look at it before we sign the conference report. The position that was taken by our chairman, by [Treasury] Secretary [James] Baker, and several other senators who were present was: “Well, we can’t do that. We can’t put it public, we’ve got to sign the conference report now.” Why? Well the reason given was that if we don’t do it now, people are going to find out what we’re doing before we do it. And if they find out, they’re going to bring pressure on us during the recess. Lobbyists, interest groups, people who have concerns about the bill are going to bring

⁸³ Birnbaum and Murray, *Showdown at Gucci Gulch*, 260; Pamela Fessler, “Panel Expects to Rewrite Tax Code in Private,” *CQ Weekly*, August 31, 1985, 1706.

⁸⁴ Birnbaum and Murray, *Showdown at Gucci Gulch*, 277.

pressure on the Congress, and we can't have that. . . . *Now, Mr. Chairman, I don't understand what's wrong with a little sunshine in government!* [emphasis added]⁸⁵

According to Birnbaum and Murray, Danforth's speech was greeted by "loud and spontaneous applause" from the lobbyists who had been kept waiting in the hallways for weeks and months. "This was their Little Big Horn, and Danforth's final rousing speech was an acknowledgement of their certain defeat."⁸⁶

Among those present was Fred Wertheimer, head of Common Cause. He called it "quite a dramatic moment, a magic moment."⁸⁷ The moment was dramatic—and ironic—for multiple reasons. It was the climax of a victorious campaign for tax reform, of which Common Cause counted itself on the winning side. It was also a resounding death knell for one of Common Cause's core tenets: the idea that sunshine favors the general interest over special interests. Tax reform was the final nail in the coffin, the capstone in a decade of evidence to the contrary. For a decade, sunshine had consistently favored special interests. Here, in the case of tax reform, the general interest had undeniably depended on secrecy. A year later, in 1987, *Congressional Quarterly* was able to report that Common Cause "neither monitors committees to see which are closing meetings, as it did in the past, nor protests when they do," and that instead it was lobbyists who were "the 1980s' proponents of sunshine in Congress."⁸⁸ The final dramatic irony of this magic moment in the Ways and Means hearing room in 1986, however, was that the magic was so fleeting. For one perfect moment, the general interest, aided by secrecy, had triumphed over the special interests. But in the long run the tax-reform victory was as poignantly insubstantial as the victory of the Sioux and Cheyenne over Custer at Little Big Horn. Open meetings and recorded votes remained, and continue to remain, the norm. Special interests openly champion them and continue to thrive on them.

3 The invisibility of sunshine

How has the effect of transparency on special interest lobbying gone so long unnoticed? In one sense, it has not. Many, many participants and observers have noted the advantages lobbyists receive from being present in the committee room and observing the speeches and the votes. (A representative sample of quotations is posted on the Congressional Research Institute website:

⁸⁵ Birnbaum and Murray, *Showdown at Gucci Gulch*, 281.

⁸⁶ Birnbaum and Murray, *Showdown at Gucci Gulch*, 281.

⁸⁷ Birnbaum and Murray, *Showdown at Gucci Gulch*, 282.

⁸⁸ Jacqueline Calmes, "Fading 'Sunshine' Reforms: Few Complaints Are Voiced as Doors Close on Capitol Hill," *CQ Weekly*, May 23, 1987, 1059-60

<http://congressionalresearch.org/Citations.html>.) And yet this insight has barely penetrated the field of political science. Even eminent scholars like John Kingdon, Francis Fukuyama, Bruce Cain, Douglas Arnold and Walter Oleszek who have noted it have rarely given it its proper weight. This is partly due, we believe, to the pervasive cultural bias in favor of transparency. For both scholars and the public, it goes against the grain to think of transparency as anything but a blessing. And in some branches of political science, of course, scholars have a vested interest in transparency, as the recording of votes has opened up new modes of inquiry. But there are other factors as well.

In the first place, transparency is a subtle phenomenon. It involves small changes in lobbyists' activities, and large changes in the dynamic between lobbyist and legislator.

When Schlozman and Tierney studied lobbying in the 1980s, they developed a 27-point list of *things that interest groups do* as a basis for their survey and interviews. The list covers everything from testifying at hearings to engaging in protests and demonstrations. It includes “publishing candidates’ voting records,” a practice that predates the sunshine reforms. But it does not include “attending committee meetings” or “studying recorded teller votes taken in the COTW in the next day’s *Congressional Register*” or “consulting voting records in committee offices”—activities that appear prosaic but have important repercussions, and which were mostly missing from the lobbyist’s repertoire before 1971. Similarly, Berry compiled a list of ten “tactics for advocacy” that public interest lobbyists make use of. This list too includes “publishing voting records” (with two thirds saying they do not use the tactic), and no tactics that were unavailable before 1971.⁸⁹

Work by Levitan and Cooper indicates the extent of the misdirection, the magician’s sleight of hand: “The Chamber’s extensive grass-roots organization has come to be its *primary means of influence*; direct lobbying of legislators by Chamber staff is of secondary importance in the Chamber’s strategy” (emphasis added). What are the staff in D.C. responsible for, when relieved of the primary responsibility of exercising influence? “Issue managers are responsible for following legislation through Congress, coordinating Chamber strategy, and briefing the membership about the issues.”⁹⁰ Of these three items, the most passive one—“following legislation through Congress”—is the most pivotal. And not only is it passive, it is speculative. It is the fact that D.C. staff of the Chamber of Commerce *can and might* watch the member’s vote when the bill comes up next week that makes the member responsive to the constituent mail today. Without the “following

⁸⁹ Kay L. Schlozman and John T. Tierney, *Organized Interests and American Democracy* (New York: Harpercollins College Div., 1986), 150; Berry, *Lobbying for the People*, 214.

⁹⁰ Levitan and Cooper, *Business Lobbies*, 21-22.

of the legislation,” the grassroots mobilization would be toothless. It would be constituents expressing a preference rather than constituents making a threat.

Our reading of the evidence suggests that even *participants* often failed to appreciate the revolutionary nature of the changes wrought by transparency. That happened because the changes were outwardly subtle, and also because of high rates of turnover among both legislators and lobbyists. The early 1970s saw a rash of senior members of both parties simply declining to seek reelection;⁹¹ 1974 saw a huge freshman class of Democratic “Watergate babies.” Legislators who arrived in the 1970s, many of whom were enthusiastic about transparency (having recently been outsiders looking in), had no experience of a pre-reform Congress against which to compare their experience in the fishbowl. They did not know what had been lost. The lobbying industry, meanwhile, was expanding rapidly, which meant it too was flooded with new personnel who had no pre-reform baseline experience. Common Cause was perfectly capable (e.g., in its 1975 “Inside Congress” manual) of writing about transparency reform as if it began with Common Cause itself.

Political science too was caught up in the turnover. Classic studies that are still taught in the classroom today, like John Kingdon’s 1973 *Congressmen’s Voting Decisions*, Aage Clausen’s 1973 *How Congressmen Decide*, David Mayhew’s 1974 *Congress: The Electoral Connection*, and Richard Fenno’s 1978 *Home Style: House Members in Their Districts*, were written during the rapidly changing Congress of the reform era, and leave the reader or student in the dark about the very different world of the pre-reform era. (In point of fact, as the exception that proves the rule, Kingdon’s original field work was done in 1969. In the second (1981) and third (1989) editions of his book, he found himself compelled to qualify and rewrite and add new sections, given how far Congress had drifted from the picture provided by his original source material.⁹²) For scholars who study voting patterns, the pre-LRA era (with no recorded votes in the House’s COTW) was practically the dark ages, and invites neglect. Or worse, scholars who do not recognize the significance of the LRA (in recording so many more votes, and providing enhanced opportunities for gamesmanship) may not differentiate at all between pre-1970 and post-1970 DW-NOMINATE data. For those who study campaign finance,

⁹¹ “Confronting Abuse of Power,” *The Sioux City Journal*, Saturday, December 23, 1972, 4.

⁹² The seven books that Common Cause recommended to its own volunteers as background reading in the 1970s, on the other hand, all were based on fieldwork entirely from the pre-reform era. This no doubt reinforced in the minds of Common Cause activists the idea that business lobbyists only use old-fashioned “insider” strategies (i.e., based on personal relationships with committee chairmen and back-room meetings) and allowed them to be blindsided by special interests’ adoption of Common Cause’s own tactics. See: Common Cause, *Manual for Common Cause Inside Congress Project*, January 1975 (Common Cause archives, Princeton University Library), 15.

history essentially begins in 1974, when spending reports started flowing in to the Federal Elections Commission.

In the classic joke, the man who has lost his wallet searches for it under a lamp-post—not because that’s where he lost it, but because that is the most convenient place to search. For political science to account for the effects of the sunshine reforms on our institutions requires placing one foot squarely in the “dark ages” before 1970. It requires research that is archival and impressionistic, analysis that is qualitative. If this type of research and analysis is painstaking and not entirely conclusive, it is nevertheless necessary. Our aim in this essay has been to make a start, to lay a foundation for the study of that transition from darkness to light.

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