

## **Former Lt. Gov. Bill Hobby's Remarks at Freedom of Information Foundation of Texas Dinner**

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*By Bill Hobby*

Thanks to all of you for the honor you have conferred on me.

The Texas Open Records Act says: "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

In other words, the public's right to know does not depend on the whims of officials, elected or non-elected. Winning an election or getting a government job doesn't make anybody smarter than they were before, or less subject to law. In fact, public officials not only have to obey the law like everybody else, they have an even higher duty. They "solemnly swear\_to preserve, protect and defend the Constitution and laws\_".

Freedom of Information laws are generally about open records, open meetings, notice of meetings, and publication of agenda.

They insure transparency in government. Any institution that is not transparent is not trustworthy or believable. Anybody who doesn't want an institution to be transparent has a bad reason for doing so. The bad reason is that they do not want their policies and legislation to be considered, or even questioned, by the public.

For example, a few days ago a point of order was raised in the Texas House of Representatives against consideration of a bill that had been considered in an irregular, closed committee meeting. The procedure subverted the committee process. Committee hearings enable legislative opponents and the public to oppose the legislation, ask questions, raise problems that should be addressed.

The facts were not in dispute. The rules are clear. The point was valid. Why did it take the Speaker several hours to agonize instead of sustaining the point of order immediately?

Because it interfered with his agenda

.But the law, the Texas Open Records Act, says otherwise. It tells us that the presumption must be that the public has the right to know. Sometimes that's unpopular, just as the presumption of innocence is sometimes unpopular. Unless you are the defendant.

Seldom enough does open debate damage important policy decisions---I really doubt if knowing who Vice President Cheney talked to would have materially changed federal energy policy. And where there is good reason to protect the information—such as the reputation of a public employee or the integrity of criminal investigation—that information is protected from disclosure by exemptions in the Act.

Right now, just down the street, there are probably 20 bills that would create new exemptions in the Open Records. It's doubtful that many of them are really necessary. It's much more likely that most of them are aimed at keeping the public from knowing what they need to know, such as which nursing homes have poor patient conditions.

There is a presumption in Texas that the public has the right to know. Unfortunately, that policy is not now in effect at the national level. We read in the NY Times that Attorney General John Ashcroft set a new policy in late 2001 on the Freedom of Information Act.

I quote: "The new Ashcroft directive encouraged federal agencies to reject requests for documents if there was any legal basis to do so, promising that the Justice Department would defend them in court. It was a stark reversal of the policy enunciated eight years earlier, when the Clinton administration told federal agencies to make records available whenever they could do so as long as there was no "foreseeable harm" from the release.

Forward, into the past. Back to closed doors and closed files and decisions relayed to the public after they were made. How convenient! How timely to invoke national security as a reason for putting all kinds of records off limits. How useful to avoid public input by arguing that decisions must be "streamlined".

But not really a surprise, considering that one of the first decisions made by President George W. Bush, was to delay access to his father's presidential papers. Maybe Vice-President Cheney should just give his papers to the Bush Library.

We came tonight because we believe in the First Amendment. Living all our lives with freedom of speech and freedom of the press may make us take these basic freedoms for granted. We should not. Eternal vigilance is the price of liberty.

Thank you.