

[It is gratifying to be present on an occasion notable for the good will and good fellowship between your many organizations, ~~that is~~ celebrated by this annual meeting. It is an occasion of ~~celebration~~, good feeling, and high spirits. My remarks will not contribute to that good cheer.

[In my distant boyhood, the health officer came periodically to our home, armed with bright colored placards that bore upon them the various legends suitable for the successive infectious afflictions that waylaid the young. I remember especially the bright red placard that bore the legend: "Scarlet Fever". Like the health officers of my youth, ^{it is my unpleasant duty} ~~I am here~~ to warn you of an epidemic. Your community, the entire state, and even the nation, has broken out with an itch. It is an itch that seems to afflict public officials--from town offices to national executives. It is an irrepressible, ineradicable, and apparently incurable ^{an itch for secrecy.} itch. Like all itches, the more it is scratched, the worse it gets.

The most ^{recent} notable outbursts in Maine have occurred in the ranks of town selectmen. In the past few months, hitherto ^hheathy officials have been scratching away. In my own vicinity, they have suddenly decided that, in spite of state laws requiring open meetings of town selectmen, they can void the purpose of the law by voting by ~~secret~~ ballot. One board of selectmen abandoned the effort when summoned to court ^{by a private suit}. Another board ~~XXXXXXXXXXXX~~ dropped its effort when the Attorney General of Maine formally recorded his opinion that the secret ballot was illegal. So this particular local outburst of the affliction has somewhat subsided; but let no one thing it is cured permanently.

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I would not wish to ^{break} break down the traditional privacy that should prevail between doctor and patient, but I must (as a health official) let you know that the itch for secrecy has afflicted our Governor. He succeeded in getting the legislature to pass a statute drawing a veil of secrecy over divorce proceedings, in order to protect the privacy of persons seeking a divorce, and protect them from the sensationalism of the Maine press----despite the fact that no one has been able to cite a single instance in which any Maine newspaper sought to exploit a sensational divorce case.

There is a ^{veritable} veritable outburst of the infection in Washington where a shower of amendments to the right-to-know law propose to restore a degree of secrecy diminished by the Freedom of Information Act in ~~which~~ the passage of which a great Maine citizen, the late Harold Cross of Skowhegan and Boothbay had a major role. ~~xxx~~

This ~~epidemic~~ itch for secrecy reached the worst epidemic proportions in Maine in 1973 with the passage of an expungement statute which provided that all ~~information on~~ information on arrest (upon acquittal) must be expunged ~~from criminal history records.~~ from criminal history records.. The Secretary of State interpreted the law to mean that newspapers must search their files and excise references to arrest following acquittal in court.. It became impossible for the press to get information on police actions and court procedures. In 1976 this ridiculous statute was largely repealed--as was a similar statute in Hawaii, and in Oregon. But remnants and bits of it linger in the laws to mar the state's otherwise effective laws governing the right of access to government proceedings and government records..

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The periodic efforts of local, state and the federal government are surprising in view of the clear intention of the founding fathers to forbend this kind of obstruction. Nearly 200 years have passed since the adoption of the Bill of Rights and its simple and direct affirmation that: "Congress shall make no law restricting the Freedom of the Press". But we are slow learners. And periodically we try to rewrite that explicit language to suit the private purpose of some official with an itch for secrecy.

There really is not much doubt about what it means. It plainly means that Congress (and the states under the 14th amendment) shall not restrict the press freedoms that existed in this country in ~~18xx~~ the eighteenth century when the Constitution and the Bill of Rights were adopted. And what rights ^{will} ~~are~~ they?

The first, in the order of its exercise, ^{was} ~~is~~ the right to gather information. Oddly enough, it is a right that many were reluctant to admit ~~xxxxxxxxxxxx~~ was embraced by the first amendment until ^{Chief} Justice Warren Burger, in an historic opinion, ^(Virginia v. ~~the~~ Richmond Newspapers) handed down on July 2, 1980, firmly ~~xxxxxxxx~~ embedded it in the law. ^{Justice} The Chief ^{addressed} himself chiefly to the right of access to trials, but he noted the Court's earlier opinion in Branzburg v Hayes stating that "without some protection for seeking out the news, freedom of the press could be eviscerated". He cited precedent after precedent for the right of citizens to get information. He noted First National Bank of Boston v Bellotti saying "The First Amendment goes beyond protection of the press and the self expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw. He noted that there is a first amendment right to receive information.

That this acknowledgement is so often and has for so long been denied is remarkable in view of the evidence that it was conceded at the time the First Amendment was adopted and was clearly

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understood as a right that Congress must not abridge.

The New York General Assembly, in Oct. 1747, resolved that "it is the undoubted right of the people of this colony to know the proceedings of their representatives in General Assembly and that any attempt to prevent their proceedings being printed or published is a violation of the liberties and rights of the People in this colony".

(1676)

New Jersey's basic laws assured that "any person or persons inhabitants of said providence may freely come into and attend the said Courts and hear and be present at all or any such tryalls as shall be there had or passed that Justice may not be done in a corner or in a covert manner".

On June 3, 1776 James Otis succeeded in opening the proceedings of the Massachusetts General Court so citizens could hear the stamp act debates.

On Oct. 10, 1768, the Massachusetts ~~General Court~~ Council made public Governor Bernard's plans for quartering British troops. (The Governor said no civilized government on earth could function when its intimate deliberations were canvassed by tavern politicians and censured by news paper libelers".

In April, 1769, Governor Bernard's confidential letters to the British colonial office were disclosed.

In June, 1773, Governor Thomas Hutchinson's confidential letters to the Grenville government were revealed and later printed in a pamphlet by Edes and Gill.

From colony to colony, citizens and printers had hammered at the doors of colonial assemblies, open the secret files of governors, and paved the way for open legislative assemblies in the new government.

John Adams said: ...the "right to know is a political

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liberty to which the people of New England are entitled...the people "have a right, an indisputable, unalienable, indefeasible, ~~divine~~ divine right to know that most dreaded and envied kind of knowledge, I mean of the characters and conduct of their rulers".

Thomas Cooley, the great law writer of the last century, said "the evils to be prevented by the first amendment were not the censorship of the press merely but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens".

And as Chief Justice ^{Burger} summed it all up in his July 1980 opinion: "the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and of the press could be eviscerated".

This ought to end the popular argument over the right of access to information, but it probably will not do so. Freedom is won only a day at a time and the itch for secrecy is suppressed in one locality on one occasion only to reappear later at some new time and place under the auspices of some ^{other} arrogant politician with an itch for secrecy so irresistible that he must scratch it, no matter how ridiculous his picture.

Some of the other elements of the First Amendment need to be on every occasion reiterated, even when not currently under attack, lest ^t someone get the idea they are not in effect. They include, of course: the right to print without prior restraint (solidly fixed in the law by the historic opinion of ^{Charles} Chief Justice Hughes in *Near v Minnesota* in June 1931), and re-stated in the Burger Court's opinion on the Pentagon papers. They also include

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the right to print without the hazard of sanguinary punishment for information alleged to be wrongful (made more secure in our time by Birgmingham v New York Times). And they include as well the right to distribute, buttressed by a succession of opinions since World War I ..

Society has for 200 years sought to dampen the ~~skkxxxx~~ itch of politicians and officeholders to keep their conduct secret. ~~by~~ It has tried the application~~x~~ of constitutional law, supreme court opinions. congressional acts, state laws, and local ordinances. None of these lotions, potions, salves and medicaments seemsfully effective.

The most effective treatment is in the hands of the peo le. They have the sovereign remedy for this rampant affliction of political ~~skkxxxx~~ itch. A vote applied to the proper place on a ballot will do a lot to diminish the affliction, or to do away with the afflicted. ^t is a remedy that needs to be applied wherever politicians try to bar the entrance to courts, close the doors of public assemblies, seal the records of the police, or put the proceedings of selectmen and councilmen off the record. Citizens need to be resolute and relentless in the application of this treatment if they are to retain the information about their own government that will permit them to function^{intelligently}/as voters.

The open conduct of government is essential to the sound functioning of government itself, of course, not just for the gratificatin of public curiosity, however ~~jxxxx~~ much that justifies it.

The open conduct of the courts has been understood by all the great law ~~makers~~^{writers} as a contributor to justice. It is no accident that the court room of the State of ⁿennsylvania, acorss the corridor from the room where the framers of the Constitution met, is a great room without a door--an architectural testament to the virtues of the open court. ~~Qxx great~~
~~Qxxxxxxxx~~

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Blackstone, Bentham, Wigmore and Cooley have all elaborated on the open court and the process of justice. They have pointed out that it contributes to the improvement of testimony by confronting the witness with those who may contradict a false tale. They have told us how it improves testimony by enlarging the number of witnesses. They ^{have} demonstrate ^d how it keeps ^s the court while trying under trial. They have shown how it protects the officers of the court from false allegations of wrong doing. And they have told us how the open courts act as schools in which citizens are educated about their own rights. And they have cited its utility as a warning to others of how wrong doing will be found out and punished..

The proceedings of legislative bodies similarly profit by open proceedings. Selectmen meeting in a closed chamber (or legislative committees or assemblies) have available only the wisdom and experience within the chamber; but meeting in open they can draw upon the experience and knowledge of the whole community. In an open meeting, they may elicit in advance of formal actions information on the consequences of legislation that otherwise would only become apparent after the fact. Meeting in public, moreover, they make the whole citizenry participants in the thought, reflection, and anguish of policy making, preparing the public mind for needed but disagreeable acts and laying a sound foundation for ~~xxxx~~ the acceptance of laws..

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Like all ~~general~~ institutions contributing to the general good, freedom of information must occasionally contribute to some individual inconvenience and some occasional discomfort~~xxx~~. We must, like Jeremy Bentham, keep our eyes on the greatest good for the greatest number. Merely entrenching the right to know in statutes and constitutions does not suffice. There is provision for public trials in the Soviet constitution, but government disregards that provision at will. Our government, too, will disregard this and other rights of citizens, if the general body of voters grows indifferent to the sanctions of law on which their rights depend.

Now I have fulfilled my duty. I have nailed up my placard. You know there is an epidemic. Be prepared to act at the first occasion a public official begins to scratch his itch for secrecy.

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