

AN ANALYTIC FRAMEWORK FOR OPEN MEETINGS AND TRANSPARENCY

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ABSTRACT

Much of the current literature on open public meetings focuses on public participation. We expanded upon this literature and address public meetings from the perspective of governmental transparency. Each state has an open meeting law that applies to its government bodies, including the local governments in the state. Using transparency and public participation literatures and field research, we developed a framework for analyzing open meeting laws and their capacity for fostering transparent practices. As a result, we identified eight components that are most important with respect to transparency: notice and agenda; minutes; closed meeting sessions; public comment; video and audio recordings; electronic meetings; violations, sanctions, fines, and attorneys' fees; and physical space. Open meeting policies and practices from one state, New Jersey, are offered to illustrate the utility of this framework. Further, a review of open meeting laws in all 50 states and the District of Columbia resulted in wide variation as to how they approach these eight aspects of open meeting issues. The components of the framework we provide may be useful to municipal managers when considering an overhaul of their public meeting practices.

INTRODUCTION

Currently, much of the open meeting literature focuses on open public meetings with regards to public participation. This focus is a legitimate one since open meetings have historically been a common avenue for participation in the United States. Whether open meetings really offer substantial opportunities for participation with significant impact is still an open question (Adams 2004; Baker, Addams, & Davis 2005; Cole & Caputo 1984; McComas 2001). The main contribution of this study is to establish a framework for analyzing open meeting laws with respect to transparency. This is the first comprehensive analytical framework of this kind. An analysis of open meeting laws throughout the United States with highlights from New Jersey policies and practices illustrate the utility of this framework.

We build upon the current public meetings literature and address how open meetings relate to governmental transparency. Frances Rourke wrote that “nothing could be more axiomatic for a democracy than the principle of exposing the processes of government to relentless public criticism and scrutiny” (1960, p. 694). Open public meetings have the potential to expose the processes of government. Within this paper we focus on local government public meetings, which are also in some contexts referred to public hearings. Open public meetings are ones which members of the general public can attend the government meeting and, in many cases if certain conditions are met, participate and speak at the meeting.

Open meetings are most commonly associated with local governments and town hall-style meetings, but they are held at all levels of government. For example, open meetings at the federal level are governed by both the Federal Advisory Committee Act and the Government in the Sunshine Act (Bradley 1996–1997). This study focuses

on open meetings at the local level. Each state has an open meeting law which applies to local governments. Through fieldwork and reviewing the academic literature, we identified eight aspects of open meetings that are the most important with respect to transparency. We present a comparison of state open meeting laws on each of these eight components.

TRANSPARENCY AND PUBLIC MEETINGS

While the issue and study of governmental transparency has been gaining traction in recent years, it is not a new concept. It has been discussed in political, legal, and administrative settings. For example, governmental transparency has been defined as the degree to which access to government information is available (Piotrowski & Borry, 2009). The greater the governmental transparency, the easier it is for individuals to hold government officials accountable for their actions. Transparency may be the closest thing the field of public administration ethics has to a universally accepted value (Cooper 2004). While the issue and study of governmental transparency has been gaining traction in recent years, it is not a new concept. Early theorists such as Max Weber (1968) wrote about the tendency of bureaucracy toward secrecy. In a personal correspondence in 1822, James Madison wrote:

A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps, both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors must arm themselves with the power which knowledge gives. (Madison 1999, 790)

Weber and Madison were not alone in turning their attention to the subject of transparency. Before becoming a U.S. Supreme Court justice, Louis D. Brandeis commented about access to the banking industry: “[S]unlight is said to be the best of disinfectants; electric light the most efficient policeman” (Brandeis 1933, p. 62). This imagery is reflected in the label of “sunshine laws” given to those pertaining to governmental transparency. The current literature on transparency focuses on a wide range of issues, including national security (Roberts 2004; Blanton 2003), targeted transparency policies (Fung, Graham, and Weil 2007), and international trends (Florini 2007). David Heald (2006) develops a particularly helpful framework for thinking about the directions of transparency—upwards, downward, outwards and inwards. His four-part framework includes “transparency inwards,” the ability to see within an organization from the outside, which is the one most relevant to open public meetings. Governmental transparency allows individuals to find out what is happening inside government through various mechanisms. Open public meetings are one of these mechanisms. The other avenues of access to information include freedom of information-type requests, the proactive release of information by governments, whistle-blowing, and leaked information (Piotrowski 2007).

Frances Rourke contended that “the tradition of disclosure might wither in the shade of administrative evasion or inertia were it not for the continued exercise of outside vigilance” (1960, p. 691). Open public meetings allow for this outside oversight. The general arguments for transparency differ slightly from the specific ones for and against open meetings. A 1962 *Harvard Law Review* article presents six specific reasons why public meetings should be open. The first is that open meetings provide public knowledge that is essential to a democratic process. Even though the actual number of people who might attend a

meeting may be small, these few individuals can disseminate the information to wider audiences. Second, decisions regarding public expenditures should be made openly so that the public can observe how public money is spent, the hope being that openness will deter misappropriations and conflicts of interest. Third, government officials will be more responsive to the public when there is an opportunity for public participation at a meeting. Fourth, meetings as a whole are a way for elected officials to gain information. Factual misconceptions can be corrected by members of the public who may know more about a specific local issue. Fifth, if citizens gain a better understanding of complex and difficult decisions, they may be more understanding about accepting initially undesirable policy outcomes. And lastly, open meetings promote better reporting of governmental activities (Open Meeting Statutes: The Press Fights for the “Right To Know” 1962).

This same article goes on to describe reasons against holding all meetings publicly. First, in some cases freedom from public pressure is desirable during deliberation and decision making. An example is the secrecy surrounding the Constitutional Convention. Second, public officials are more likely to make long, time-wasting speeches during an open meeting than during a closed meeting. Third, open meetings may be to the disadvantage of lower-level government employees who may object to a program and voice those objections in public but in the end have to administer the objectionable program or policy. Fourth, elected officials may harden their positions once they state them publically. The fifth and final objection to open meetings is the tendency of the press to sensationalize stories and emphasize only controversial topics brought up at meetings (Open Meeting Statutes: The Press Fights for the “Right To Know” 1962). The pros and cons of open meetings are clearly inherently debatable. This paper informs that debate by focusing not

on whether there should be open meetings but rather on which aspects of open meetings can potentially increase transparency and participation.

EIGHT KEY COMPONENTS FOR MUNICIPAL OPEN MEETINGS

Based on the literature, we developed a framework and identified eight key components of municipal open public meetings that directly relate to transparency. The different components we identified as important are notice and agenda; minutes; closed meeting sessions; public comment; video and audio recordings; electronic meetings; violations, sanctions, fines, and attorneys' fees; and physical space. While this list could have been expanded, we believe that these eight are the most important with respect to transparency and have the most direct impact on how open meetings are run and how information is provided to the public. Within this section, we discuss and present literature supporting our decision of including each component in our eight-part framework.

1: Notice and Agenda. In Massachusetts during the late 19th century, attendance at local town meetings was frequently scarce due to the weather, poor road conditions, and early spring meeting dates. Slim attendance was also a result of deception. At times, entire sections of towns were not informed of an upcoming meeting with the purpose of limiting attendance (LaBelle 1990–1991, Piotrowski and Borry, 2007). Current open meeting laws attempt to ameliorate the issue of how individuals become aware of an upcoming meeting. Notice, sometimes in the form of a schedule, informs the public of meeting dates and times. An early *Harvard Law Review* article on open meetings argues that “[a]n ‘open meeting’ is only open in theory if the public has no knowledge of the time and place at which it is to be held” (Open Meeting Statutes: The Press Fights

for the “Right To Know” 1962). Notification of a meeting is important to ensure a reasonable possibility for members of the public to make arrangements to attend. In the extreme with no real public notice given, this could result in a public session without any members of the public, which would clearly violate the spirit of open meeting legislation.

As J. H. Snider writes, the agenda is the first of three components to a public meeting; the second and third are comments and votes, respectively. “A posted agenda marks the beginning of a public meeting and circumscribes the topic for which comments and votes will later be allowed” (Snider 2003). Snider also explains that agendas are often incomplete and posted at the last possible minute allowed by law. While agendas are typically mailed or distributed at the meeting, Snider argues that agenda distribution by e-mail can cut costs. Katherine A. McComas notes that agendas also help the public body understand what type of people will attend the meeting. Her survey of government officials showed that one-third of respondents agree that a “successful” meeting is one in which the officials know their audience (McComas 2001). Baker, Addams, and Davis (2005) also touch upon the same sentiment: a successful meeting with regard to public participation depends partly upon a well-written agenda. It is not uncommon for individuals to attend meetings only when the topic at hand is something that affects them directly or is in some other way important to them. Therefore, an agenda can set the attendance for the meeting.

Both agendas and notices greatly increase transparency surrounding a meeting. If the public is not given adequate notice, they may be unable to attend. Obviously, if no one is in the audience to hear what business is being conducted, then a layer of openness is removed. Similarly, if the agenda of an upcoming meeting

is not made available prior to the meeting, residents will not know what is to be discussed at the meeting, and transparency and accountability are again lost.

2: *Minutes*. Minutes are one of the core components of open meeting laws. They act as a hard copy record of the meeting. Snider argues that “[g]ood public records instill fear in legislators that an opportunistic or incompetent action will later be exposed to the public and have adverse electoral consequences” (2003). As public records for meetings, minutes—whether broad or concise—hold public bodies and officials accountable to their actions in the long term.

Open meeting laws in the United States tend to emphasize minutes, as a majority of them require definite information to be included. A lack of specific content requirements can lead to inconsistencies in implementation of the law among public bodies within the same state. In addition, lack of specificity with regard to when approved minutes are to be available leaves the law open to interpretation. This could cause inconsistencies as well as the lack of available approved minutes altogether. A greater degree of transparency is achieved through more detailed and accurate meeting minutes. When more information is provided about what actually was discussed at a meeting, the public has a better chance to hold elected officials accountable for their actions, over the near and long term, leading to increased transparency.

3: *Closed Meeting Sessions*. While transparency is achieved through various mechanisms, it is not feasible to say that an unlimited amount of access to government is desirable. James Bowen argues that “[s]uccessful open meeting legislation involves the reconciliation of serious value conflicts” (2001–2002, p. 134). There are legitimate reasons why access to government should be restricted, including concerns for personal privacy and security. A government’s bargaining position during contract

negotiations, proprietary information on businesses held by a government, pre-decisional policy deliberations, and personnel matters are common legal reasons to withhold government information. There is also the argument that transparency in the extreme is so costly and resource intensive that the drawbacks outweigh the benefits (Hood 2006).

4: *Public Comment*. One function of public meetings is to allow elected officials to gain a better understanding of public opinion (Adams 2004). This can be done through public comment sessions at public meetings. Public comment sessions promote transparency in two ways. First, certain types of comment sessions allow elected officials to respond directly to resident complaints, questions, and comments. This direct feedback leads to greater information flow. The second way public comment sessions increase transparency is less immediate. An issue may be raised by a member of the public at one meeting, resulting in the possibility of council members choosing to research the topic and report back at a subsequent meeting. In this way, information is being given to the public but in a more delayed time frame.

5: *Video and Audio Recordings*. Snider (2003) argues that the videotape recording of meetings can improve the accuracy of public records, increasing accountability. The literature pays less attention to the issue of the public's right to record meetings. The argument for allowing the public to directly record a meeting is greater access and permanent meeting records. An argument against this practice is the concern about disruption of the meeting because of the video or audio recording by a member of the public. Allowing members of the public to tape meetings increases transparency. The recordings can be posted online and shared with those who did not attend. Transparency is also increased when the public body itself has the meeting videotaped and makes it public by posting

the file online or broadcasting the meeting on television. Some local governments have embraced this practice by replaying the meeting multiple times on a cable channel.

6: *Electronic Meetings*. Electronic communications are ubiquitous and open meeting laws need to adequately address this reality. The term electronic meetings refers to meetings conducted via videoconferencing, teleconferencing, email, listserves, and chat rooms. As technology evolves, the definition of what is considered an electronic meeting expands. The issue of how public meetings should enter the “Internet age” is a topic that has received some scholarly attention (O’Connor and Baratz 2004; Snider 2003; Ross 1998; Schaeffer 2003–2004). Susan Dente Ross (1998) argues that there are different ways laws address electronic meetings. Some laws expressly allow such meetings, while others imply the legality of these meetings. A decade ago, Ross found that many laws did not address teleconferencing at all. Electronic meetings enable access for those who have limited physical mobility but solely relying on these means of communication can be problematic for access because they do not allow for an actual meeting location, as there is no one place for the public to go to witness the meeting or to participate. Finally, these virtual meetings would shut out anyone who did not have access to a computer and the Internet.

7. *Violations: Sanctions, Fines, and Attorneys’ Fees*. Even though open public meeting laws are present in all states and the District of Columbia, they are periodically broken, either due to ignorance or deliberate circumvention. In such cases, enforcement and sanctioning mechanisms must be in place. Individuals who attend public meetings are most likely the ones who notice violations. When violations are observed, the public then needs to know how to report the infraction. Court cases can be extremely expensive, and this method of recourse deters

people from reporting violations. Advocates of stricter and higher sanctions associated with a violation of an open meeting law believe they will lead to the spirit and letter of the law being followed more closely. Greater adherence and less circumvention of open meeting laws lead to greater transparency. There is evidence that prosecutors do little to ensure compliance with open meeting laws (Davis, Chance, and Chamberlin 1998). Not only do sanctions need to be in place, but effective mechanisms to ensure compliance with these laws must also be in place to achieve greater transparency.

8. *Physical Space.* The actual physical space of the room where the meeting is held is an often overlooked aspect of open meetings. The physical location of a meeting has been identified as a factor that may impact the level of public hearing participation (Baker, Addams, & Davis, 2005). Simply because there have not been legislative mandates regarding the type of space meetings are held in does not negate its importance with respect to transparency. There are two components of the space issue: location and facilities. The location of the meeting refers to the building the meeting is in and the placement of the room within the building. If the meeting is not held at city hall or some other centrally located place, residents may be confused as to where to attend. Even when meetings are located in a convenient and intuitively placed building, the room where the meeting is held may be hard to locate. If a resident has to walk through a series of metal detectors, down a hall, into an elevator, and down another hall to arrive at the meeting location, it sends a nonverbal message that the public is not really welcome. Equally important are the facilities, which refer to the size, acoustics, and layout of the room and the amount of seating available. If it is hard for the audience to see, hear, or participate at a meeting, then transparency is clearly diminished.

NEW JERSEY'S SUNSHINE LAW

Open public meetings have a long history in the United States, with many states instituting open meeting legislation beginning in the 1950s (Pupillo 1993). New Jersey was not far behind with its “right to attend public meetings” law of 1960. The purpose of this proposed law was to “further freedom of information to the public of the transaction of governmental business by insuring to the citizens of the State the right to attend public meetings” (Legislative History of RS 10:4-1 to 5, Right to attend public meetings 1963). The current Open Public Meetings Act (N.J. Stat. Ann. § 10:4-6 to 4-21), also known as the Sunshine Law, was initially introduced on January 28, 1974, by Assemblyman Byron M. Baer (Legislative History of RS 10:4-6 to 4-21, Open Public Meetings Act 1976). It was a complement to then-Governor Brendan Byrne’s “Government Under Glass” commitment (Piotrowski and Borry 2007).

The New Jersey Open Public Meetings Act gives the public the right to attend meetings of all public bodies. A public body under the law generally means a commission, authority, board, council, committee, or any other group of two or more persons organized under the laws of this state and collectively empowered as a voting body acting on behalf of the public. The law requires public bodies to give advance notice of meetings for the purpose of giving the public time to arrange attendance. In addition, it requires that minutes be kept as a public record; these minutes also serve to inform those who did not attend meetings. The Sunshine Law gives citizens the right to bring civil action against a public body that violates the law.

METHODOLOGY AND DATA

In the Transparency and Public Meetings section, we presented a framework for analyzing the level of transparency fostered or hindered by open meeting laws. This framework includes eight components that most lend themselves to increasing transparency and participation in open public meetings. These components include: notice and agenda; minutes; closed meeting sessions; public comment; video and audio recordings; electronic meetings; violations, sanctions, fines, and attorneys' fees; and physical space.

We have included examples from one state, New Jersey, to highlight the utility of the framework. New Jersey is a particularly interesting case to study because not only does it have a well-established open meeting law but there is renewed interest in the topic. In the state legislature, there have been periodically been proposals to significantly revise the state's Open Public Meetings Act. The New Jersey examples are not meant to represent a "best" or "worst" practice but are included to give context to the other data and municipal meetings framework we developed. After developing the framework, we conducted a cross-state comparison of state open meeting laws to show how this framework is applicable to other states.

The other empirical data for this study came from a number of sources, including archival documents, government databases, news articles, and a comprehensive guide to open government laws. Historical documents regarding legislative actions were obtained from the New Jersey State Library. All information for the state comparisons was abstracted from the fifth edition of the *Open Government Guide*, put together by the Reporter's Committee for Freedom of the Press. The *Open Government Guide* outlines the freedom of information and open meeting laws in all 50 states and the District of

Columbia. This fifth edition was released in 2006, providing the most up-to-date information about states' open meeting laws at the time of the analysis.

The *Open Government Guide* is a comprehensive guide for both open records and open meeting statutes across the nation. The laws are evaluated by expert attorneys in the respective states, and the evaluations are then compiled into a main database by the Reporter's Committee for Freedom of the Press. Because of this process, the data are based on the interpretation of the laws by the individual evaluators. We acknowledge that this is a limitation but believe analysis and interpretation of a dataset developed by experts who intimately understand their state's laws outweighs the potential drawbacks.

While the guide is an excellent and rich resource, it provides no way to succinctly categorize the substance of the laws into easily understandable and comparable categories. We focus our comparative analysis on the state open meeting statutes and do not expand our analysis to other statutes, court rulings, or opinions of attorneys general. To a large extent this is due to resources and space constraints: an analysis of this type would be book length and offers an area for further research. Our contributions are identifying the key components of the laws with respect to transparency based on the literature and categorizing and presenting this data in such a way to allow for multistate comparisons.

UTILIZING THE ANALYTICAL FRAMEWORK TO ASSESS OPEN MEETING LAWS

In the following section, we discuss how open meeting laws are faring in the United States according to the analytical framework developed. Discussion includes how each of the fifty states and the District of Columbia are

approaching the issue, with close attention paid to the law in New Jersey.

Notice and Agenda

Four of the 51 open meeting laws do not have any notice requirements. Thirty-seven laws require notice before the meeting, and ten laws require a yearly schedule. Typically, a schedule refers to one made at the beginning of each year that sets the time and place for each regular public meeting to be held that given year. Of the 37 laws that require notice before a meeting, 17 provide a specific time by which the notice must be posted.¹ Table 2 displays the length of time required for the posting of notice before an upcoming regular meeting for each state and the District of Columbia. New Jersey's open meeting law requires that all public bodies submit a yearly schedule of regular meetings by January 10. In addition, a 48-hour notice is required of all special and closed meetings, as well as rescheduled regular meetings. This notice must be posted in a public place designated for such announcements, given to—though not necessarily published in—at least two newspapers and the clerk of the municipality. While most open meeting laws require some type of notice, fewer laws require an agenda for regularly scheduled meetings, either as part of or separate from the notice. Twenty-seven open meeting laws in the United States require an agenda. In New Jersey, the required notice must include the agenda of the meeting “to the extent known” (*New Jersey Open Public Meetings Act, P.L. 1975, C. 231 1976*). Since the notice requirements for regular meetings call for a yearly schedule, agendas are likely to be unknown in advance, particularly for meetings months down the road. In practice, however, most public bodies produce an agenda beforehand.

Minutes

Forty-four state laws, including the District of Columbia, which requires a transcript, explicitly require minutes to be recorded.ⁱⁱ Minutes under all laws are considered public records. Though some laws do not require the recording of minutes, they are public records if they are recorded. Typically, minutes include the topics discussed, ordinances passed, votes taken, and comments made. Of the 44 state open meeting laws that require minutes, over 70 percent stipulate specific information that should be included, at a minimum, in minutes. The most common requirements are the date, place, and time of the meeting, along with the subjects considered and the votes taken. Of the 27 laws that specify when the minutes should be available, 12 laws specify some sort of time frame for their release. Table 3 outlines the time requirements for minutes to be released. Georgia requires that minutes be available within two business days. At the opposite end of the spectrum, Rhode Island requires they be available within 35 days.

The New Jersey Sunshine Law requires that minutes be taken at all meetings: regular, special, emergency, and closed. Regular meeting minutes are required to include the date, time, and place of meeting; names of members present; subjects considered; actions taken; and vote counts attributed to each member. Minutes also must include how the notice for the meeting was given and are to be made “promptly available” for public inspection once they have been approved by the public body. While in New Jersey minutes are required by the law to be made “promptly available,” the question of how long a custodian can take to make them available does not have an explicit answer. New Jersey is one of the many states without an explicit time frame for release of meeting minutes. The lack of a stated time frame to release minutes is a central issue in the debate surrounding the revisions to

the open meeting law in New Jersey, as well as litigation surrounding the act.

Closed Meeting Sessions

Every sunshine law statutorily allows for meetings to be held in private under specific circumstances, with the exception of the District of Columbia, which does not distinguish between public and private meetings. The reasoning is that with some matters, the public interest is best served by having the topic discussed in private. Forty open meeting laws require public bodies to meet in open session before closing.ⁱⁱⁱ

The laws also may require the public body to disclose the reason for going into a closed meeting. Thirty-six laws require that the specific exemption or reason for the closed meeting be stated before the meeting takes place. Six laws require the exemption or reason for the closed meeting to be disclosed after the meeting takes place, either in the minutes or before the vote on the topics of the closed meeting. Table 4 outlines closed meeting requirements. A few laws go further by requiring a transcript, “verbatim record,” or audio or videotape of the closed meeting.^{iv} Critics of these provisions argue that they are extreme and dampen discussion. It may be true that discussion will be restricted, but when these requirements are enacted, there is more accountability and transparency in the long term. The unresolved issue is whether greater accountability is more important than free-flowing discussion.

According to New Jersey’s open meeting law, closed sessions—sometimes referred to as executive sessions—are allowed if they are covered by one of the nine exemption categories. Listed below are the nine exemptions to the Open Public Meetings Act.

1. Matters deemed by a court as confidential
2. Matters that would impair the right to receive federal funds

3. Matters that would violate individual privacy
4. Labor negotiations
5. Matters involving purchase of real property if disclosure could adversely affect the public interest
6. Tactics used for protecting safety and property of the public
7. Pending or potential litigation, contract negotiations, or matters falling within attorney-client privilege
8. Matters involving the employment of a prospective or current employee
9. Deliberations following a public meeting that would result in the loss of license
- 10.

The New Jersey law requires that an ordinance be passed before the meeting is closed. This ordinance must include the “general nature of the subjects to be discussed” during the proposed closed meeting and an approximation of when, if ever, the matters will be made public (*New Jersey Open Public Meetings Act, P.L. 1975, C. 231 1976*). The purpose of this is to inform the public of what is being discussed during the closed meeting and to facilitate retrieval of the minutes once they become public. Under the law, minutes of closed meetings must be made public when, and if, the need for secrecy disappears. For example, if a meeting was closed to discuss negotiations for a land purchase, minutes should be available for public inspection once the transaction is complete. The public is also to be informed of the votes from the meeting after the closed meeting is adjourned. While there are legitimate reasons for going into closed session, limiting the number of these sessions increases transparency by allowing the public greater access to, and understanding of, decision making done on their behalf.

Public Comment

Not all state open meeting laws give the public the right to participate in meetings. Forty-one laws do not specifically grant the public the right to comment.^v Of the ten laws that give the public the right to comment, six allow public bodies to impose time limits.^{vi} The sunshine laws in Minnesota, New Mexico, and South Carolina give the public body discretion regarding public comment but do not specifically grant that right to individuals.^{vii}

The New Jersey Sunshine Law requires that all public bodies set aside a time for public comment regarding government issues that may be of interest to citizens of the municipality. All other procedures regarding public comment are at the discretion of the body. Currently, it is not uncommon for public bodies to impose a time limit on comments or require citizens to sign up to speak before the meeting. The length of comment periods, as well as the topics that can be addressed, vary greatly among different public bodies. Some municipalities limit comments to a specific time frame, while others may limit the comment to agenda topics only.

Video and Audio Recording

Thirty open meeting laws allow members of the public to tape meetings, either by audio or video.^{viii} Most laws do not differentiate between audio or video recording. Typically, the recording of a meeting refers to any technological device. Three states—Kentucky, Montana, and West Virginia—allow recordings to be done only by news media.

In New Jersey, like many other states, the right to tape a meeting is ambiguous, and as a result, is being decided by the courts. In 1984, a court decision upheld the right of citizens to videotape meetings (Let's roll the videotape, you can't be serious 2005). In October of 2000, a local activist, Robert Tarus, attempted to videotape a

public meeting, to which some audience members objected. When asked to put the camera at the front of the room to avoid taping other members of the public, he refused (Mazier 2005). In November 2005, an appellate court ruled in *Tarus v. Borough of Pine Hill* that there is no common law right to videotape meetings (Bird 2006). This case was appealed to the New Jersey Supreme Court, which overturned previous rulings in March 2007, stating that the municipality violated Tarus's common law right to videotape a meeting (New Jersey Judiciary 2007).

Electronic Meetings

Currently, 25 state sunshine laws allow meetings to be conducted by teleconference or videoconference, providing that the law is still followed in other respects.^{ix} Some laws include limitations though. For example, in New Mexico, Oklahoma, and Texas, conferences by telephone or video are allowed only under certain circumstances. Nebraska does not allow teleconferences but instead allows videoconferences for statewide public bodies only. There are limits to the Nebraska law: No more than half of the body's meetings can be held this way, and at least one member must be present where the public has gathered for the meeting. In Virginia, statewide bodies may meet by teleconference, but local bodies are prohibited from doing so. These meetings would need to give proper notice and would require public access. North Carolina's law states that public bodies can hold a teleconference or videoconference and are allowed to charge attendees up to \$25 to offset the costs associated with setting up the meeting.^x

Since the New Jersey Sunshine Law states that meetings can be held by "communication equipment," it is unclear whether teleconferences or videoconferences are allowed to occur. The use of a speakerphone by one member of a public body seems to be more readily

accepted than videoconferences, since the majority of the public body is in one place where members of the public gather. An unpublished court decision^{xi} by a New Jersey appellate court allowed members to “attend” meetings by use of speakerphone (New Jersey School Boards Association 2003).

Because this previously mentioned decision was unpublished, “it is not binding on any other court—therefore, it is merely instructive” (New Jersey School Boards Association 2003). However, as stated in *Koch v. Board of Education of Jackson Township*, using a speakerphone is “contrary to the purposes and intent of the Open Public Meetings Act” (The Honorable Eugene D. Serpentelli, as quoted in New Jersey School Boards Association 2003). In response to a clarification request by an attorney representing boards of education in New Jersey, the attorney general stated in 2000 that:

...on a number of occasions, members of State boards and public bodies subject to the Open Public Meetings Act and represented by this office have participated in public meetings by means of speaker telephones without first obtaining a court order. In those instances all of the other requirements of the OPMA were followed and appropriate measures were taken to ensure that members of the public attending the meeting had the opportunity to hear the member who was not physically present participate in and take action in connection with the public meeting. (New Jersey School Boards Association 2003)

This provides some insight on how teleconferences might be treated to comply with the current New Jersey Sunshine Law.

There is increasing debate surrounding whether e-mail exchanges should constitute a meeting and be made open (O'Connor and Baratz 2004). In Massachusetts, e-mails may be used to distribute informational materials, such as agendas and reports, to prepare for meetings, but are not allowed to be used as a method of holding a meeting. The use of e-mail to distribute information such as agendas, reports, and draft minutes to board members can certainly make board operations more convenient and efficient. One line of thinking concludes that e-mail exchanges should not be considered a meeting and instead be subject to state freedom of information law requirements (O'Connor and Baratz 2004). Another avenue of thought is that e-mail communications should be considered meetings. If this were the case, the law would have to be followed in all other respects, which would be prohibitive. Conversely, it has been argued that the back-and-forth online communication between board members should not be permitted at all because it is essentially an informal meeting. Civic networks, online discussion boards, and chat rooms also pose questions for open meeting laws applications (Betts 1994). The use of chat rooms or instant messaging more closely models a meeting since responses are real time. When legislatures revise state open meeting laws in the future, they need to consider whether chat room discussions should be covered and how to require notice for the public to "attend."

Because the New Jersey law was passed in the 1970s, it is not up to date with current information technology, leading to confusion as to what is allowable. E-mails and teleconferences are constantly debated as a proper means of communicating with regard to open meetings. Since a quorum must be present for a meeting, the New Jersey Sunshine Law is unclear as to whether sending and responding to e-mails about public business is considered a meeting and, in turn, subject to the law.

Since New Jersey has not addressed e-mails as meetings, we can look at a similar open meeting law:

In opinion 98-28, the Attorney General of Florida concluded that if one board member e-mails another board member a report to be discussed at an upcoming meeting, the Florida sunshine law has not been violated. If that same board member were to e-mail the report and invite comments from other board members, a violation has occurred. (Reporter's Committee for Freedom of the Press 2006)

The Florida standard may be one that other states can look to as they revise and update their laws. The greater extent to which e-mail and text message exchanges, online dialogues, and teleconferenced meetings are covered by open meeting laws, the greater the openness surrounding meetings.

Violations: Sanctions, Fines, and Attorneys' Fees

Eight states have open meeting oversight bodies,^{xii} which range in form and power, but can often act as mediators between meeting attendees and public bodies with regard to violations. Other laws direct citizens to attorneys general or give a combination of options to report open meeting violations. In New Jersey, residents can take the case to Superior Court, according to the law. In practice, individuals tend to report violations of the Sunshine Law to the county prosecutor's or attorney general's office. Currently, there is no way to find out how many violations are reported to the county prosecutor and what, if any, action has been taken.

Many open meeting laws, though not all, allow for the imposition of fines, paid from the public body's funds or by the violating individuals, when open public meeting

laws are violated. See Table 5 for the range of fines imposable by the open meeting laws. Twenty-six state sunshine laws allow for fines to be imposed, but two do not specify any particular amount.^{xiii} Missouri has the highest first offense fine, which is up to \$5,000 for a “purposeful” violation. A first offense “knowing” violation can be fined up to \$1,000. Fifteen laws require that the offense be “knowing,” “willful,” “intentional,” or “purposeful.”

In New Jersey, the Sunshine Law allows for fines to be imposed upon public bodies that violate the law. These fines can be from \$100 to \$500. However, the suspected violation must be proved to have been done “knowingly.” This proof requirement limits the levying of fines because it can be argued that the individual who is accused of violating the law was unfamiliar with the requirements of the law at the time of violation. Because of this, there have been very few instances of fines being imposed.

Some open meeting laws allow for attorneys’ fees incurred by members of the public who pursue violations to be recovered. Minnesota requires that “specific intent to violate the law” be present before attorneys’ fees are awarded. Over 60 percent of the open meeting laws allow for both court costs and attorneys’ fees to be recovered. The New Jersey Sunshine Law does not allow those who bring a successful legal action against a public body to recover attorney fees. In August 2006, it was determined that attorneys’ fees could be recouped in court for hiring a lawyer to access public records under the Sunshine Law’s sister statute, the Open Public Records Act (Kidd 2006).

Table 1. Eight Components of Municipal Open Meetings and Policy Recommendations

Component	Policy Recommendations
Notice and Agenda	Notices of upcoming meetings should be systematically published for regularly scheduled, special and emergency meetings. Publishing agendas before a meeting should be required. Specific timelines should be set for both the release of notices and agendas.
Minutes	The timely publishing of minutes should be required. Specific timelines should be set for the release of meeting minutes.
Closed Meeting Sessions	Legal allowances for closed meetings should be narrowly tailored to limit abuse. Documentation on closed meetings should be kept and released as soon as the need for secrecy has passed.
Public Comment	Public comment should be encouraged and explicit legal allowances made for public comment at meetings. Signing-up to speak at a public meeting should not be onerous.
Video and Audio Recordings	The public should be allowed to make video- and audio-recordings of meetings. Whenever feasible, local governments should videotape open meetings and make them available to the public.
Electronic Meetings	Clear definitions of, and parameters for, electronic meetings must be established.
Violations: Sanctions, Fines, and Attorneys' Fees	Unclear rules and lack prosecution of public meeting law violations leads to erratic implementation. Meaningful and commensurate sanctions of open meeting law violations should be established. Clear channels to report violations should be established and publicized.
Physical Space	While changing the venue for public meetings is not always possible, accommodations can and should be made so that members of the public can find the meeting room with little difficulty (e.g., having adequate signage posted) and hear the meeting (e.g., installing speaker systems in overflow areas).

Physical Space

Of note is that a review of the Reporter's Committee Freedom of the Press report does not include any references in open meeting laws to the physical space of the meeting rooms. Again just because legislative action has not been taken on this topic does not negate its importance.

CONCLUSIONS AND RECOMMENDATIONS

Open meetings have been compared to motherhood: No one wants to be on the record as being against them (Open Meeting Statutes: The Press Fights for the "Right To Know" 1962). The principle of open meetings has many supporters, but the reality is that open public meetings do not always work as intended and multiple factors impact their effectiveness in promoting governmental transparency. Much of the research to date on public meetings has largely focused on improving participation, not explicitly on the goal of transparency. This article expands the public meeting literature by addressing issues of participation *and* transparency in open meeting laws. The eight-part analytical framework that we developed—notice and agenda; minutes; closed meeting sessions; public comment; video and audio recordings; electronic meetings; violations, sanctions, fines, and attorneys' fees; and physical space—lays the groundwork for future analysis of open meetings as mechanisms for achieving transparency. Future research can focus on how these different components affect the level of participation and transparency produced by a given open meeting or set of open meetings.

However, from our analysis of state open meeting laws here, one of our most important findings is that there is a wide variation within the eight different analytic categories among state statute. Community activists, city

council members, and journalists frequently work in localized silos and fail to recognize the variation that exists in open meeting laws throughout the country. This study clearly shows that within each component of the open meeting analytical framework there are multiple ways which open meeting laws can be configured. Some of these configurations are more likely to facilitate transparency than others. How state open meeting laws are written directly affects how meetings are run in practice and thus impacts governmental transparency. Future comparative research could identify the causes of variation across the states and make recommendations for statutory revision.

Based on our findings, state legislatures and municipal governments should focus primarily on the eight components identified when revising and updating their open meeting laws and implementing these laws. Table 1 lists the eight components of municipal open meetings and our policy recommendations for each of these components. State legislatures can use the framework to guide their revisions of open meeting law to ensure that each of these components is adequately addressed. State and local focused research think tanks can use the framework to begin an analysis of the open meeting laws and practices in their state.

Specifically, we recommend that agendas and minutes should be required, with specific timelines for availability. These timelines should be achievable by the government, but also timely enough for residents to be informed. Allowances for closed meetings should be few and only when necessary. Documentation for closed meetings should be released as soon as the reasons for secrecy dissipate. Public comment should be encouraged and uniform. State laws should set requirements for public comment at meetings so that local governments can not arbitrarily shut down the public comment and participation. Electronic meetings should be addressed in public meeting

laws. What constitutes an electronic meeting should be clear, as well as what creates a violation. Audio and video recording allowances should be specifically addressed in laws, as well. Allowing recordings, or even requiring governments to conduct them, ensures a record and the possibility of reaching more than those who attended. Sanctions should be specifically spelled out within open meeting laws. They should be enforced, and the public should have ways of filing complaints that are not burdensome. Finally, states should consider adding provisions within their laws that address physical space.

When working within the confines of existing laws, states should hold training sessions for public employees and elected officials concerning implementation of their open meeting laws. The public also needs to be more informed about what represents a violation of their state's open meeting law and how to report an infraction. Greater awareness on the part of the public, government employees, and elected officials as to the parameters of their state's open meeting law will reduce confusion of implementation and potentially increase transparency.

APPENDICES

Table 2: Length of Time Required for the Posting of Notice before an Upcoming Regular Meeting

	Description	Number of Laws	Open Meeting Laws
No time requirement	Notice is required but the law does not give a specific timeframe.	20	Alabama, Alaska, Arkansas, Colorado, Georgia, Illinois, Indiana, Kansas, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oregon, Tennessee, Washington, and Wyoming
One to five days	Notice is required one to five days before the meeting.	14	Arizona, California ¹ , Idaho, Iowa, Massachusetts, Nevada, New Hampshire, New Mexico, South Dakota, Texas, Virginia, Utah ² , Wisconsin, West Virginia
Six days or more	Notice is required six days or more before the meeting.	3	Delaware, Hawaii, New York ³
Schedule	A schedule of meetings is required as notice.	10	Connecticut, Kentucky, Louisiana, Minnesota, New Jersey, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina
No Requirement	Notice is not required.	4	District of Columbia, Florida, Montana, Vermont
Total		51	
¹ California has two open meeting laws. The law regarding local government agencies was included here. ² Utah requires both a schedule and 24 hours notice. ³ New York has two different time requirements. Notice must be given to the media one week before and to the public 72 hours before.			

Table 3: Length of Time Required for the Release of Minutes after a Regular Meeting

	Description	Number of Laws	State Open Meeting Laws
No specific time frame	Statements about the release of minutes include phrases such as “promptly,” “upon request,” “reasonable period of time,” and “before the next meeting.”	15	Alabama, California, Delaware, District of Columbia, Florida, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Maryland, New Jersey, Texas, Utah, West Virginia
One to five days	Minutes must be made available within one to five days after the meeting.	2	Georgia ¹ , Vermont
Six to ten days	Minutes must be made available within six to ten days after the meeting.	6	Connecticut, Illinois ² , Michigan ³ , Nebraska ⁴ , New Hampshire, Virginia
Eleven or more days	Minutes must be made available in eleven days or more after the meeting.	4	Mississippi, Nevada, New York, Rhode Island
Not addressed	When the minutes are to be released is not addressed.	17	Arizona, Colorado, Iowa, Massachusetts, Missouri, Montana, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Wisconsin, Wyoming ⁵
Not Applicable	Minutes are not required.	7	Alaska, Arkansas ⁵ , Kansas, Maine, Minnesota, Ohio, Washington ⁵
Total		51	
¹ Georgia law states two “business” days. ² Minutes must be available within seven days of approval. ³ Michigan law requires proposed minutes eight “business” days after the meeting. ⁴ Nebraska law states ten “working” days. ⁵ Minutes are required by a statute other than the states’ open meeting law.			

Table 4: Information Requirement for Closed Meetings

	Description	Number of Laws	State Open Meeting Laws
Information Required Before Meeting	Specific exemption or reason for closing the meeting is required to be in the notice or stated before the closed meeting.	36	Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kentucky ¹ , Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Washington, West Virginia, Wisconsin
Information Required After Meeting	Specific exemption or reason for closing the meeting is required to appear in the minutes or before the vote on the closed meeting topics.	6	Georgia, Illinois, Kansas, Louisiana, Utah, Virginia
Not required	There is no requirement to state the exemption or reason for the closing a meeting.	9	Arizona, District of Columbia, Florida, Michigan, Montana, Nevada, Tennessee, Vermont, Wyoming
	Total	51	
¹ Information is only required if the meeting has to do with the sale or acquisition of property or with personnel issues.			

Table 5: Fines Imposable for First Offenses as Stated in Open Meeting Law

	Description	Number of Laws	State Open Meeting Laws
Amount not specified	Fines can be imposed, but amounts are not specified in the law.	2	Oregon, Tennessee
Up to \$250	Fines up to \$250 are imposed on public bodies or officials who violate the law.	7	Idaho, Kentucky, Louisiana, Maryland, New Jersey, Pennsylvania ² , Washington
\$251 to \$500	Fines from \$251 to \$500 are imposed on public bodies or officials who violate the law	12	Arizona, Florida, Georgia, Iowa, Kansas, Maine, Minnesota, New Mexico, Ohio, Vermont, West Virginia, Wisconsin
\$501 to \$1,000	Fines from \$501 to \$1,000 are imposed on public bodies or officials who violate the law.	4	Massachusetts, Michigan, Rhode Island ¹ , Virginia
\$1,001 and up	Fines of at least \$1,001 are imposed on public bodies or officials who violate the law.	1	Missouri ³
No fine	There is no provision for fines in the open meeting law.	25	Alabama, Alaska, Arkansas ⁴ , California ⁴ , Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois ⁴ , Indiana, Mississippi, Montana, Nebraska ⁵ , Nevada, New Hampshire, New York, North Carolina, North Dakota, Oklahoma ⁵ , South Carolina ⁴ , South Dakota ⁴ , Texas ⁵ , Utah, Wyoming
	Total	51	
¹ Rhode Island allows a \$1,000 fine for each meeting, not to exceed \$5,000. ² Fines can be imposed as well as paying for the costs of prosecution. ³ Missouri has two first offense fines: \$1,000 for knowing violation and \$5,000 for purposeful violation. ⁴ Fines are imposable by other statutes, such as the criminal code. ⁵ Fines are imposable by the criminal code, but intent must be proven.			

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NOTES

ⁱ It is important to note that some states require notice of an open meeting but through a statute other than the relevant open meetings law. Our discussion and tables focus solely on open meetings laws, unless otherwise noted. For example, the state of Florida's notice requirement is stipulated in its Constitution; in Vermont, it is addressed by other statutes.

ⁱⁱ The seven open public meetings laws that do not explicitly require minutes are Alaska, Arkansas, Kansas, Maine, Minnesota, Ohio, and Washington.

ⁱⁱⁱ The 11 open public meetings laws that do not require a public body to meet before going into closed session are Arkansas, District of Columbia, Idaho, Indiana, Maryland, Montana, New Mexico, North Dakota, Oregon, Pennsylvania, and Tennessee. In Arkansas, the meeting

must be public first only if personnel matters are to be discussed.

^{iv} Open public meetings laws that make such requirements are Florida, Illinois, Iowa, Minnesota (when contract negotiation is involved), Nevada, and Texas.

^v The open meetings laws that specifically grant the right to comment are Arizona, California, Delaware, Hawaii, Louisiana, Nebraska, Nevada, New Jersey, Pennsylvania, and Vermont.

^{vi} The open public meetings laws in Arizona, California, Hawaii, Louisiana, Nebraska, and Pennsylvania allow limits on the topic or on the length of time for which an individual can comment at a meeting.

^{vii} The right to comment at a public meeting may be given by a statute other than the open public meetings law in nine states: Alabama, Alaska, Florida, Iowa, Maine, Michigan, Montana, North Carolina, and Wisconsin.

^{viii} The 30 state open public meetings laws that allow audio or videotaping of meetings are Alabama, Arizona, Arkansas, California, Connecticut, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington, and Wisconsin.

^{ix} The 25 open public meetings laws that allow video or teleconferencing are Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Iowa, Kansas, Maryland, Missouri, Montana, Nevada, Nebraska, New Jersey, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and West Virginia.

^x Open public meetings laws that prohibit video or teleconferencing are Massachusetts and Ohio.

^{xi} An unpublished court opinion or decision, according to Zimmerman's Research Guide at LexisNexis.com, is one that "has not been published in any official or near-official case reporter." Such court decisions can often be found in newspapers and on law websites. *Hegarty and Romeo v. Old Bridge Board of Education* Appellate Division Dkt. No. A-6300-95T3, decided Jan. 9, 1997.

^{xii} The eight states with open meetings oversight bodies are Connecticut, Hawaii, Illinois, Indiana, Maryland, New York, Oregon, and South Dakota.

^{xiii} In some states where the open public meetings laws do not impose fines, fines may be imposed through the criminal code.