

Sidney A. Shapiro

*Two Cheers for HBO: The Problem of the Nonpublic Record*

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Abstract by Dipal Shah

In his article, Professor Shapiro discusses “presidential administration” in reference to the President’s use of officials from the executive branch to create rules and regulations. Shapiro details how officials meet to create rules in private settings without any public record attached. Analyzing a case example, *Home Box Office, Inc. v. FCC*, Shapiro comments on the secret lobbying and private meetings which took place in formation of FCC regulations. HBO opposed the fact that the public was left without access to the information and viewpoints of the private meetings. Regardless, Shapiro acknowledges that current law under the Administrative Procedure Act only requires that information in a rulemaking record be made public.

Shapiro argues that agencies and the White House should enact rules which ban ex parte contacts during the pendency of rulemaking procedures. If such disclosures are not banned, Congress should impose disclosures on such contacts. Shapiro asserts that these private meetings and secret lobbying are antithetical to the concept of open government, and create a lack of accountability in rulemaking. Shapiro contends that changes which he recommends are unlikely in the near future. Shapiro concludes that the White House would be wise to modify its policy, in order to preempt credibility and accountability attacks and promote the ideals of public government.