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# Government of the ------, by the ------, and for the ------

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Anita Siegel

## By John Gardner

WASHINGTON—Secrecy is a ruling attribute of our government at every level. Secrecy touches every aspect of the public process. Secret nominating processes shut off the citizen's access to his political institutions.

Regulatory agencies often meet behind closed doors, omit public hearings and suppress reports the public should see. Congressional committees are among the worst offenders. The Senate Agriculture Committee held 33 per cent of its meetings in 1971 in secret. What are its members hiding? Why does the Senate Public Works Committee hold roughly 50 per cent of its sessions in secret? What is it that can't be told? Why does the House Appropriations Committee hold over 90 per cent of its sessions behind closed doors? Is the question of how they spend our money none of our business?

The House Ways and Means Committee, which initiates the legislation governing every Federal tax dollar you and I pay, is notoriously secretive. Each January a majority of the committee's members vote to close all its business sessions for the entire year. So tight is security that even the staff assistant of a Congressman who is on the committee cannot attend committee meetings.

Why should the laws on which you and I pay our hard-earned tax dollars be drafted in secrecy?

Doing the public's business in secret severs the link of accountability between the elected official and his constituents. What they can't see, they can't judge. Accountability depends on access.

All sessions of all Congressional committees and records of all votes taken at such sessions should normally be open to the public. Committees should be allowed to close a meeting only for considerations of national security or invasion of personal privacy, and the procedure for closing it should be carefully protected against abuse. The Legislative Reorganization Act of 1970 should be amended to allow 10 per cent of committee members present to request a vote recorded by individual members on any motion or amendment before the committee.

Since caucus votes can directly affect the course of legislation it is vital that such meetings be open and that votes taken in them by each Congressman be recorded.

In the executive branch, unnecessary secrecy has reached a peak in matters relating to national security. Virtually every public figure associated with national security affairs acknowledges that the system of classifying documents to preserve secrecy has been overextended and abused—all too often with the purpose of concealing bureaucratic error.

But the zeal for secrecy extends to every executive branch agency.

Congress loves its own secrecy, but it hates the secretiveness of the executive branch and in 1966 it tried to tear away the veil by passing the Freedom of Information Act. But the executive branch fought to weaken the statute and succeeded all too well. As a result, agency personnel use a variety of means for evading the intent of the act: some agencies are unreasonably slow in responding; some charge exorbitant search and copying fees; some mix unclassified documents that might prove embarrassing with files containing classified documents, so the whole file is classified; and so on.

The best hope of enforcing the act is to bring the whole process of citizen information-seeking and agency response into the light of day. The act should be amended to require that every executive branch agency submit to Congress annually a detailed, item-by-item record of every refusal on the part of the agency to provide information sought under the act.

The best opportunity for opening up both Congress and the executive branch is a bill recently introduced by Senator Lawton Chiles of Florida which would open to the public all legislative and executive branch meetings except those dealing with national security or matters involving personal privacy.

Information is power, and secrecy is the most convenient means of keeping that power out of the hands of the people. Many citizens are puzzled by the regularity with which the public interest is flouted by public bodies at every level. They will be less puzzled if they examine systematically the devices used by public officials to thwart the public interest. They will discover that chief among those devices is the ancient tactic of secrecy. What the people don't know they can't object to.

*John Gardner, former Secretary of Health, Education and Welfare, is chairman of Common Cause.*

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## By M. L. Stein

New York shares with four other states—Mississippi, South Carolina, West Virginia and Rhode Island—the shoddy distinction of having no open meeting or open record laws.

This means that governmental bodies, ranging from Albany legislative committees to local school boards, feel free to deny the press and public access to their deliberations. A large portion of the public business in this state is conducted in secret meetings, euphemistically called "executive sessions" by their sponsors. Many records which should be available for public scrutiny are not.

Recently, the Orange County Legislature decided to discuss its 1973 budget in secret meetings. "We get more work done that way," one member explained. Port Washington's Board of Education (Nassau County) frequently schedules "executive sessions" before and after its public appearances. The Suffolk County Human Rights Commission regularly bars its doors to the press and public.

In Westchester County, it's common practice for zoning boards to hold public hearings and then retire for private debate. In one instance, the White Plains Planning Board voted secretly to turn down an industrial firm's plea for a variance. It passed its recommendation on to the Common Council, which held a public hearing on the matter without announcing the planners' decision. The Metropolitan Transportation Authority refused to let Newsday look at its files.

In most cases, a school board, council or commission uses a public meeting to rubber stamp actions agreed to in private. The public has no idea of the thought processes or factors that led to the vote. Minutes of these clandestine meetings are rarely kept and if they are they are often doctored to suit the membership. There are numerous instances where the location of the meeting is a secret itself. Councils, boards and committees often convene in private offices, members' homes, firehouse back rooms and restaurants. An Illinois city council met regularly in a bank vault.

The arrogance of certain public officials and their contempt for the people's right to know should never be underestimated.

No open meeting law has been recently proposed in Albany but attempts were made in the 1971 and 1972 legislative sessions to adopt an open records bill introduced by a Republican Assemblyman, Donald L. Taylor of Watertown. In 1971, the measure was approved by both the Assembly and Senate but was vetoed by Governor Rockefeller. In the 1972 session, the bill again passed in the Assembly but oddly wound up in the Senate's Finance Committee, where it died.

Who mourned its death? Surely not a generally apathetic press and public. I have seen citizens and reporters wait docilely for an hour or more while elected officials met behind closed doors before convening in public like feudal lords giving the peasants a few moments of their time. With few exceptions, the communications media and their professional and trade organizations have done little or nothing to change the status quo. Questioned about the problem of access, an official of the New York State Publishers Association said to me: "There's no real big issue that we know of." When told of specific right-to-know abuses by various governmental groups, he admitted that "There might be some room for improvement."

Yes, indeed. And some improvement can be achieved if the press and public raise hell every time there's a secret meeting that should be in the open, or when public documents are kept hidden for no valid reason. Public officials should be made aware of their moral responsibilities in the absence of freedom-of-information laws.

But such laws must be passed if New York is to maintain its rank as one of the more progressive states. Open meeting and record regulations are not foolproof weapons against secrecy-minded officials. In some states, weak F.O.I. statutes are circumvented daily and even strong ones occasionally are breached. Nonetheless, such laws give the news media and public the legal leverage to demand open government. One of the best of these laws is California's Brown Act, which permits secret gatherings by public officials only in certain personnel matters. It has been used as a model statute for several other states. Why not New York? Freedom of the press is largely a meaningless concept without freedom of information. The people have a right to know what their lawmakers are doing, why they're doing it and where they're doing it.

*M. L. Stein is chairman of the department of journalism, New York University.*