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

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By John Gardner

WASHINGTON—Secrecy is a ruling attribute of our government at every level. It is woven into the very fabric of the public process. Secret nominating processes shut off the citizen's access to his political will. Regulatory agencies often meet behind closed doors, emit public hearing reports the public should see. Congressional committees are among the worst offenders. The Senate Agriculture Committee held 65 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? Why is that not to 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 ones of our business?

The House Ways and Means Committee recently passed a bill to close the secret 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. No right to security is 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 taxes be drafted in secrecy?

Doing the public's business in secret seems to be the hallmark of every governmental activity, the secretiveness of the executive branch, unexplained secrecy has reached a peak in matters relating to national security. The Legislative Reorganization Act of 1970 which was intended to be an end to all such meetings only, 10 per cent of committee members present to request a vote recorded by individual members on any motion or amendment before the committee.

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

The best hope of enforcing this 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 report 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.

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 thwarted by public bodies at every level. They will be less perplexed if they examine systematically the devices used by public officials to thwart the public interest. They will discover that chief among these 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.

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 hearing 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. Fort 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 Nyack 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 those clandestine meetings are not kept and if they are they are often doctored to suit the membership. There are no minutes of the meetings, where the nature of the meeting is a secret itself. Councils, boards and committees often convene in private offices, media rooms, homes, firehouse back rooms and restaurants. An Illinois city council occasionally in a barn. Why is that necessary? The arrogance of certain public officials and their contempt for the people's right to know never should 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. Despite the advice of Governor Rockefeller. In the 1972 session, the bill again passed the Assembly but only 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 for hours for an hour or two of an elected official's meetings behind closed doors before convening in public like feudal lords giving the people 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 told 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 also held 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 footloose weapons against secrecy-oriented officials. In some states, weak F.O.I. statutes are circumvented daily and even strong ones occasionally. Nevertheless, such laws give the news media and public the legal leverage to demand open government. And that is 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 states. Why not New York? Freedom of the press is largely a meaningless concept without freedom to know. What their lawmakers are doing, they have a right to know what their lawmakers are doing, why they're doing it and where they're doing it.

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