

Peter Galison, Victor S.
Navasky, Naomi Oreskes,
Anthony Romero, and
Aryeh Neier

What We Have Learned about Limiting Knowledge in a Democracy

ARYEH NEIER: The topic of this session is “What We Have Learned about Limiting Knowledge in a Democracy,” and it says we should discuss “How should we proceed and where should lines be drawn?” I’m going to conduct a conversation in which I will focus on this question of limits. The panel is very distinguished, very diverse, and I think we ought to be able to anticipate, as a result, a diversity of views. All of our speakers are people who promote freedom of information, but I am going to ask them to reverse that role this evening. All of them, I assume, have certain limits they would impose on the availability of knowledge, and I’d like to know what those limits are, then see if there are some common threads or themes that we can extract from what they have to say. So, if you would suggest one or two or three categories of information that you would limit. Let me start with Peter Galison.

PETER GALISON: One thing that seems important is that the nature of secrecy, or what we try to keep secret as societies, has changed quite a lot historically. If you look at World War I, when a lot of the fram-

ing legal structures of secrecy in the United States and Europe were formulated—not because secrecy was invented then, but the structures formulated and bureaucratized—there were in the United States laws like the Espionage Act, and the Sedition Act that amended it. The statutes dealt with not revealing where this person was, where those troops were, or where these ships were—using photographs, models, or documents; they dealt with not demoralizing the troops or doing things that would interfere with the draft; they had sort of a punctiform quality (“x” must be kept secret). What happened, in very block form in World War II and in the surrounding period, exacerbated by the Cold War, is the introduction of science and technology into secrecy in a fundamental way. If you look back at the kinds of things people were arguing about in 1918, 1919, 1920, even in periods of significant political repression, they were not on the whole about technical systems, and therefore the information wasn’t connected—it wasn’t a network of information. When domains of knowledge became secret—in nuclear physics, microwave physics, and rocketry—it changed the nature of secrecy. Then the issue became, how do you block a field of knowledge from “leaking”? How do you keep nuclear physics and nuclear technologies from spreading? And that in turn created all sorts of new and in some cases rather bizarre notions about the nature of knowledge.

In the current world, in which we have yet other kinds of secrets that are precipitated by 9/11 and subsequent fears of terrorism; everything has become a target and, therefore, everything is potentially secret. Where we keep the power supply of our shopping center suddenly becomes a secret, though it never was before. So you can see there are three ages of secrecy: punctiform secrecy, scientific/technical systemic secrecy, and then this universalizing, global secrecy: “we are all targets, all the time, everywhere”.

ARYEH NEIER: Can I press you on that and use an example, since you cite the focus on keeping weapons information secret? There was a famous case in the early or mid-1970s involving the *Progressive* magazine, which published an issue on how to make a hydrogen bomb that

produced quite an uproar at that time. Where would you have come out on that question? Should they have been able to publish that?

PETER GALISON: My general view is that I think there are some things that should not be published. I don't want to find instructions on how to make binary chemical weapons easily available on the web. It's important that we know binary chemical weapons play a role in the world, and that they are extremely dangerous, and what their characteristics are, but we don't need to know precisely how to manufacture them. The availability of that information is very dangerous. This seems to me typical of many things about secret knowledge. That is to say, what we need to know to maintain a deliberative democracy, to debate issues of our day, can very often be had without revealing things that are a direct threat to national security. It seems to me a poor understanding of that fact has led us to some disastrous consequences—for instance, the States Secret Privilege, where the Supreme Court in 1953 said in *Reynolds v. United States*, that it's okay, we don't even need to read what the Air Force said in its "secret" accident report: "It's too secret even for us, the justices, to see." With that decision they set a massive precedent that has been invoked many, many times since, including, in an accelerated form now, in which the court simply said, "We won't go there." And that leads to a terrible shift of control of information to the executive branch and away from the courts, away from Congress, away from the press and away from us.

There are good proposals on how to reform that, which involve saying, well, courts handle secret things all the time. They have special masters for technical disputes between AT&T and Sprint, and the courts know how to handle sexual assault cases with confidentiality. The courts deal with all sorts of secret things. They need to read the material. They should do it in camera. Agencies that have the secrets and don't want to reveal them can figure out an unclassified way of discussing the material in question. That's what Senators Ted Kennedy and Arlen Specter wanted to do in their reform. Unfortunately, Kennedy died and Specter switched parties and is now defeated, so I don't know what will come

with reform of the State Secrets Privilege down the road. I hope it will still happen. But the State Secrets Privilege and its unhappy origin in the Reynolds case illustrates the broader point: oversight is crucial. We must have reliable mechanisms for overseeing secret information—for example, things that would reveal methods and sources that are used by the intelligence agencies, highly expensive spy satellites and communication technologies, where the lives of agents or troops would be immediately in danger if their locations, identities, or missions were revealed. Loathsome as the government may find it, sometimes they must bring secret actions and programs before the Foreign Intelligence Surveillance Court—even scrutiny by a mostly sympathetic body acts as a check. In many forms and many ways it is crucial that there be checks on an unrestrained flow of power of information toward the executive branch. That seems to me the big danger.

We need not be helpless when secrets enter the courts. There are mechanisms: in-camera reading of classified documents; the assignment of special masters who can handle technical, secure information; and the creation of declassified versions of crucial developments that can be debated in open court and beyond. No doubt other mechanisms will be needed to figure out how to handle and challenge the ever-changing spectrum of secrecy.

The *Progressive* case is an instance where I think there was a certain exaggeration on both sides. The idea that we are somehow more of a democracy if we disclose the detailed functioning of nuclear weapons seems to me peculiar. I think we do need to know about nuclear weapons, but do we need to know exactly what percentage of the X-rays is reflected by the beryllium coating? No, we don't. On the other hand, the article didn't reveal very much of a technical nature, and the government ended up revealing more while trying to keep the *Progressive* from publishing its schematic account of how hydrogen bombs work.

In terms of immediate danger of information going into the hands of a small group, chemical weapons seem to me a clearer case of danger because there are very dangerous chemicals that a midlevel chemistry student could produce if the instructions were laid out. I am

sure many dangerous devices and concoctions get published, legally, all the time. So we're in a tough situation: we have to live with a myriad of physically dangerous things and publications, even if some, all the way down to low-tech machine guns and poison gas mixtures, strike me as unimpressive examples of free speech and action.

ARYEH NEIER: Victor, I'm going to call on you, but I suggest the following: if you were going to directly address the matters that Peter Galison spoke about, by all means, do so now, but if that wasn't your plan, deal with whatever else you want to deal with and then we'll allow you to come back and react to the issues that Peter Galison raised.

VICTOR NAVASKY: That wasn't my plan, but I confess, I was one of the people who organized a group of magazines on behalf of the *Progressive* when they published that article, which I thought was important have on the public record.

ARYEH NEIER: And, full disclosure, I was at the American Civil Liberties Union at the time and we defended the *Progressive*.

VICTOR NAVASKY: Let me identify two categories of information that I believe should not be made public.

First, my study of the Hollywood blacklist some years ago led me to believe that those who declined to answer what was then known as the \$64,000 question put by the House Committee on Un-American Activities, popularly known as HUAC ("Are you now or have you ever been a member of the Communist Party?") were right to refuse to provide the requested information. They claimed that HUAC had no right to inquire into their personal, political affiliations and demand that they prove their patriotism by naming the names of others who had participated with them in so-called subversive activities. The underlying principle here is the right to privacy, and the idea that in a democratic society, the right to free speech implies the right to silence.

I would add that in the context of the Cold War blacklist, there is something repugnant about imposing as a litmus test of good citizenship that one betray one's former comrades. This is especially true when the agency of the request has all the earmarks of an opportunistic wrecking expedition in pursuit of an essentially inappropriate and illegitimate task.

One of the best known witnesses who chose to cooperate with HUAC and provide them with the information they requested was the great director, Elia Kazan, who took an advertisement in the *New York Times* urging others to do as he did because he said it was the duty of all citizens in the contest between democratic openness and totalitarian secrecy to tell all. To my mind, the problem with his position was that by choosing to tell his story through the agency of HUAC, he was helping to legitimize a fundamentally antidemocratic institution. Without implying any moral equivalence, he could have used his *Times* ad to oppose both totalitarian secrecy and homegrown McCarthyism. Many years later the motion picture academy gave him a lifetime achievement award. This was protested by those who objected to his earlier testimony. One of the reasons given by one of the protestors was that part of his lifetime achievement was to keep fellow members of the academy from practicing their chosen craft. The wife of one of the blacklistedees said to me: if you don't remind people of how they behaved in a time of trouble, they will do it again.

A second category concerns reporter shield laws. A majority of states have such laws. Currently, Congress is considering a federal law that would provide news reporters with the right to refuse to testify about information or sources acquired during the news gathering process. Based on my knowledge of the news business and my belief in the importance of reliable information to the proper functioning of a democratic society, I am in favor of a law that gives reporters protection against being forced to disclose information or sources in court. A shield law provides that—classic protection under which a reporter can't be coerced by subpoena or other court order to testify about information contained in a news story or be forced to reveal the source of that information.

ARYEH NEIER: Just to test you on the second one, Victor: there have been some cases in which individuals facing criminal prosecution have sought to have testimony from journalists, and journalists have declined to testify or declined to reveal their sources, and then it gets to be a conflict between an individual's right to a fair trial and the privilege of the journalist or the journalist's source. When you encounter situations of that sort, do you still take the view that the confidentiality of the journalist's source must take precedence?

VICTOR NAVASKY: You have to take them case by case, but in our society, you want to protect free speech and you also want to protect the idea of a fair trial. But I start with the presumption that you're better off letting one side suffer the consequences of not having access to the confidential source material in the interest of protecting free flow of information to the society at large. That way, the defendant who is at risk in the case, in a funny way, gets the benefit of not getting the information and by having a presumption work on his or her behalf.

ARYEH NEIER: Clearly, a defendant could reach out broadly and try to make sure that this was a way of getting off.

VICTOR NAVASKY: As I say, you have to look case by case, and if there is bad faith there, you don't accede to it.

ARYEH NEIER: Naomi Oreskes, would you take this on?

NAOMI ORESKES: Well, first let me say that I certainly agree with Victor Navasky about the right to privacy, and I certainly agree the right to free speech must absolutely include the right not to speak. But if I think about what *broad* categories of information I would support blocking, I would have to say the answer is none. Other people are much better equipped than I am to talk about military secrets, nuclear weapons secrets, and the like, so I'll defer to Peter Galison and acknowledge there are categories that do need to be respected. But in my own work

on the history of oceanography, an area of science which was of quite great military significance but not as obviously and immediately life-threatening as nuclear weapons, I see massive classification of huge areas of scientific research and knowledge and technology where very, very wide fences were built around scientific knowledge. It was difficult, both for me as a historian looking back on it and for the actors of the time, to see exactly why this material had to be classified. I think a strong case can be made that there was widespread over-classification of information.

One specific example that stands out for me, which I've written about, was a major argument in the scientific community about the classification of information about the location of seamounts. These are underwater mountains, of which there are many—tens of thousands—in the Pacific Ocean. These seamounts were of some military significance, although it wasn't the specific location of the seamount that was so crucial—it was the depths at which the tops were, and that once you knew where one was, you kind of knew where the rest were. The argument was made that not much was gained by keeping this information secret, but there was a risk that something was lost by keeping it secret, and the argument was made that when you classify this information, other people, even in your own organization, in the U.S. Navy, wouldn't be able to get at it—they wouldn't know that the data was there because the whole program was secret. And in the 1960s the argument was made that it would be in the interest of the operational Navy to have this information at its fingertips. That argument was rejected, as were most arguments for the declassification of oceanographic knowledge. Thirty years later, in the 1990s, a submarine actually crashed into a seamount and people were killed. So that was an example of a warning prediction that came true. Now, whether the loss of that particular submarine was worse than the loss of something else that might have happened if that information had been declassified—there is no way to know, but it is an interesting thing to think about.

So, I'm not really interested in blocking information. I don't see large categories of information that I have worked on and know about

that I think should be kept secret, but I am interested in something different and a little more complicated, which is potentially blocking *disinformation*. In my more recent work, which is in my new book, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming*, I study the case of people affiliated with politically motivated think tanks, particularly libertarian think tanks like the Cato Institute, the Heritage Foundation, the Heartland Institute, and the George Marshall Institute, where groups of people work who have deliberately promoted disinformation—information that went against what scientists would say was established scientific knowledge. They did this extensively, consciously and deliberately, and they were massively and widely quoted in the media. And in many instances—which we have documented—the press really did not differentiate between scientists talking about their own scientific research results published in peer-reviewed literature, versus other people *misrepresenting* scientific results for political reasons. We talked a lot about the press this morning, but we didn't really talk about the fact that these people were talking about science and making claims about science, but they, themselves, were not scientists, and those claims in many cases were demonstrably at odds with established scientific results. So, this, I think, is a real problem in a democracy. We do believe in free speech, we do believe that everyone is entitled to their own opinions—although, as several people said this morning, maybe not their own facts. It does seem to me to be very problematic that the mass media quote contrarians as if their claims were information of comparable validity and importance to knowledge produced by research scientists. Yet it's extremely difficult to know how to combat that without seeming to be arguing for the shutting down of free speech and free press. So I don't know what the answer to that is, but I do think it's a very significant problem that does involve limiting knowledge.

ARYEH NEIER: Thank you very much. Anthony?

ANTHONY ROMERO: Thank you, Aryeh. I'll start by saying that, ironically, Victor, when you were talking about the seventy-seventh anni-

versary of the HUAC witch hunt, I testified in Congress yesterday at a subcommittee of the House Committee on Homeland Security. The subject was “Internet Terror Recruitment and Tradecraft: How Can We Address an Evolving Tool While Protecting Free Speech?” It was in the room that the HUAC hearings were conducted, and I was very glad to be a witness there and say at least we are having a little more of a hospitable environment than the last time members of the ACLU board or the leadership was summoned to that room. And I was really quite stunned by the conversation because it reminded me of Solomon taking the sword out to divide the baby. It’s just not possible. In the prelude to our testimony, the three individuals who were testifying with me were shown videos from jihadist websites. They showed a man who was rapping in Arabic. They showed pictures of Western leaders turning into animals, and pictures of Osama Bin Laden and others almost deified. It was a way to instill the fear in the audience and the fact that “certainly *this* video is the type of video we ought to shut down from the Internet.” They had one video of an American soldier who was firing multiple shots into an Iraqi man already lying on the ground and then who was asked by his buddy, “How do you feel?” He replied, “I feel great! Shot him. Got the animal.” This had been posted that on YouTube, and there was a question about whether or not this was going to inflame anti-American sentiment because we had a soldier who thought he was hunting deer. Frankly, I sat there in that hearing room and thought, “all of these videos should be viewed by everyone.” Obviously, these were supposed to be the icons of the type of speech that it would be appropriate to ban. And I sat there thinking, “All Americans ought to see this. We ought to be able to ask questions about this. We ought to be able to engage each other on these issues.”

But I’m going to try your hypothetical. I’m going to think of a couple of places that haven’t been thrown out. I agree on the right to free speech and the right to remain silent; that’s an obvious one. The right to privacy. I think the clearest one for me there is probably medical records, especially the protection of one’s medical and personal history. I don’t worry as much about financial records in quite the same

way, especially when they are individuals in public office or in public light. Perhaps the most compelling for me at this point is attorney-client privilege, which is completely under assault, in case you don't know. We have an effort right now in the House Armed Services Committee, where the Republicans have put a rider onto an appropriations bill that would require the Department of Defense Office of Inspector General to conduct investigations on any of the lawyers representing terrorist suspects if there is a concern that perhaps the information they either gleaned or gave would compromise national security. So attorney-client privilege is under assault.

And perhaps I'm branching out a little too far from my bailiwick or some of my experience, but there are certain trademark and copyright information that, in order to keep the incentives flowing to the economic system and to keep scientists and Coca-Cola going, you don't want to have to publish the formula for Coke. Maybe, and this is where I get into a slippery slope, maybe there are parts of our national defense operations that ought not be revealed in the public. I don't agree with Peter that the questions around binary chemical weapons and how they work should be impeded. I don't know really fully know what binary chemical weapons are.

ARYEH NEIER: That may be the problem.

ANTHONY ROMERO: That may be the problem, but I think it's going to be futile to try to keep it off. At the end of the day I may come at it from a more pedestrian, practical perspective. I was asked a question yesterday: "Do you think we ought to show all the information which the Times Square bomber used to put together that bomb in the car?"

NAOMI ORESKES: He just told us.

ANTHONY ROMERO: And I thought, "Well, if I'm a journalist writing a book on the definitive history of what happened in that moment and I'm doing research on how to build those types of bombs, could

I have a diagram in my book and explain what went wrong or what went right?" So you'll educate me on binary chemical weapons. Troop movements might be one way: whether or not you're going to deploy certain soldiers into a certain region of Afghanistan at a certain time with the level of specificity that could put soldiers' lives at risk. I think with respect to the military, greater transparency is generally necessary, but I'm willing to concede that there are places where that might be limited.

I believe that information has been overclassified. I think we do have mechanisms that allow the government to keep very specific pieces of classified information that ought not to be in the public domain out of the public domain. We have the Classified Information Procedures Act, CIPA, so whenever you have a court case where there's something that comes up, you can go speak with the judge privately and fight over whether or not something ought to be covered by CIPA or whether it should be in the public record. The workings of government—I struggle with this one. We hear discussions about emails and conversations between, let's say, the White House counsel and the president. That perhaps works for me as long there are not questions about illegality involved. I feel very differently about former Attorney General Alberto Gonzales, because there are questions about illegality that could perhaps be addressed by examining his emails to President George W. Bush. How you draw that line is a hard one. But I think if there are questions about the legality of the conduct or discussions that are in place, then they should be revealed. And absent that, I still follow attorney-client privilege up the way.

Broader than that, I have a hard time with the other parts of the executive branch, and certainly not the Congress. With the courts—certainly there are parts of how our courts have to adjudicate cases that you do not want in the public domain: when a court decides whether or not to take a case, how they decide it. There's a certain level of that in perhaps the least transparent of our government branches, especially the Supreme Court. But other than that, I have to say I struggle with the fact that we have too little information in our democracy. We

have allowed it to creep on ourselves in such a way that we just buy it whenever they say, “We can’t tell you this because it will harm national security. We can’t tell you this because it will put troops in harm’s way. We can’t tell you this because it will bring government to a grinding halt.” Frankly, I think those arguments are overused, and if we had had greater transparency we wouldn’t be in the mess we’re in right now. Unfortunately, I think the Obama administration just follows many of the same arguments of the Bush administration. For example, we have a case in the 9th Circuit where we’re suing a Boeing subsidiary called Jeppesen Dataplan that conducted the flight services for the rendition flights. The ones where the CEO was on the record saying, “We fly the torture flights.” And so we sued Jeppesen on behalf of our clients. We filed it during the Bush years and in the Obama regime they have gone in again arguing the same thing. They claim that even to let this case to go forward and allow us to present the facts, present our evidence, call our witnesses would jeopardize national security. They’re endeavoring to dismiss the case, so they invoke state secrets. And you see the exact same arguments in the Obama brief that you saw in the Bush briefs. So we’re still not out of the woods yet on this by any means.

ARYEH NEIER: Okay, thank you. So far at least I’m not able to discern general principles from the comments of our speakers, but I would say that three of them made references to privacy in indicating what knowledge they would limit. Victor focused on the privacy of speech and association, and also on the confidentiality of journalist’s sources. Naomi Oreskes briefly referred to protecting privacy and then discussed what should be available in terms of scientific information. And Anthony referred to medical privacy. One could add the standard categories—the marital relationship or the priest-penitent relationship. Anthony, you suggested that financial records don’t warrant that privacy. One country that I know of, Switzerland, has a privilege of confidentiality for one’s communications with one’s banker. I think it’s the only country that has that particular privilege. But what none of you talked about—no, I’m not quite right, Anthony referred to judicial delibera-

tions and communications between the president and White House counsel on certain matters. But beyond that, no one suggested that there is a deliberative process that is deserving of being kept hidden, and to use famous examples, Peter Galison started out by talking about the period of World War I and the period after World War I. In that period, Woodrow Wilson famously talked about the need for open covenants openly arrived at as a way of conducting peace negotiations. That's one view of taking important deliberations and making them fully available publicly.

If one wants to take a point of view or an example that is diametrically opposite, one might pick the famous walk in the woods by Paul Nitze. Paul Nitze was the leading disarmament negotiator for the United States over an extended period, and in 1982 he was engaged in talks with the Soviet Union over nuclear disarmament. Not only was he interested in keeping the negotiating secret from the general public, he didn't even want his fellow negotiators to know what he was doing. And so he arranged that he and his Soviet counterpart would take a walk in the woods, presumably so they wouldn't be overheard on any electronic eavesdropping that was taking place. And they came to an agreement on nuclear disarmament, and then each undertook to try to persuade their own side to accept that agreement. Now you have the Wilson approach: open covenants openly arrived at. Do we want to know everything about what is taking place in important deliberations or negotiations, or do you think we're better off allowing government officials to maintain as much secrecy as possible at the point when they're trying to work out something as serious as nuclear disarmament? I'd be interested to hear from anyone who would want to take that on.

VICTOR NAVASKY: I think you want to encourage people to dissent and offer creative ideas in privacy of their deliberations, and they shouldn't be penalized by what they have to say. So to that extent, yes, I would be in favor in having a moratorium on the release of such information, but I would not be in favor of prosecuting the people

who breach the moratorium and publicize the previously secret information.

PETER GALISON: I think this is an important point. In our discussion we've talked about what is a good idea to publish or to talk about and what is not. But that is not the same discussion as what should be illegal and what should not.

ARYEH NEIER: Quite right, yes.

PETER GALISON: First of all, we should be clear: we are not going to wake up one day and find all the secrets disclosed. The amount of secrecy and the pressures on secrecy are so enormous, they're almost unimaginable. The amount of information that is classified in the United States, tens of millions of actions a year, mean this: there are more pages ushered into the classification system than are acquired by the New York Public Library each year. So this is huge effect. We have to keep in mind that the people who think there should be more disclosure are about to collapse the entire fabric of secret information. We're chipping away at the very exterior parts of an immense structure. It's quite important because there is so much overclassification. Everyone thinks that. Even people who are deeply in this classification system, they worry about this all the time. The pressures to overclassify are overwhelming, even at the simplest level: no one gets fired for overclassifying, but lots of people have lost their jobs for allowing documents out into the world.

As far as journalists go, in the United States we don't tend to prosecute people for disclosing things as a form of espionage if they disclose something that had been classified. Whereas there have been proposals in the United States to have something more resembling British Official Secrets Act, where you don't have to sign an official secrets act to be a part of it. Everyone in Britain is a part of the Official Secrets Act, and journalists can be and are prosecuted for disclosing secrets. Quite generally, it is hard to prosecute a journalist for disclos-

ing something that is classified in the United States if they didn't do it with the specific intent of receiving money for it, or to benefit a foreign country, and so on.

ARYEH NEIER: You made that reference, "You don't have to sign something." I want to come back to that.

NAOMI ORESKES: I don't think anyone is saying that an individual in a moment doesn't or shouldn't have the discretion to have a private conversation. Anyone who has been a department chair knows there are times when you just pick up the telephone. Also, I think there's an important distinction between what happens in a moment in a private discussion versus after the fact. For example, a department chair might call a faculty member to have a private conversation, but once it's agreed upon, once an action is taken, then a memorandum is written and everyone has a right to know what agreements were made. That's a small example from my life, where we deal with these sorts of things all the time. I think that's really a crucial issue because it's about how when policies are made, people do have a right to information about those policies.

And yet, one of the things we see in the United States—we talked about it this morning—is the unreasonable extension of privacy, particularly copyright. I think almost everyone would recognize that all organizations have an interest in sometimes keeping materials discreet or secret or private for some reasonable period of time. But then the question is, for how long? We've seen a massive expansion of copyright way beyond anything that I think could plausibly have been what the founding fathers had in mind when they wrote the patent clause of the Constitution, and the same with historical and archival documents. I've put in FOIA requests—again this goes back to the problem of massive overclassification—for scientific documents that were 50 years old, and had the requests rejected on national security grounds. One involved documents describing ideas for projects that were never even implemented. These things are still classified 50 years later, and there's really no coherent justification for it, except

Peter's point that the penalty for underclassification is much greater than the penalty for overclassification. So all the people in the system are afraid to be the one. Nobody wants to say, "Oh yes, this can be declassified," lest it turns out they make a mistake.

I just want to add one other thing that's relevant to what Peter said earlier. I think it's absolutely correct that there's no need for most ordinary citizens to know the details of the physics packets inside hydrogen bombs, and there are obviously risks that would be associated if they did. I think we probably all agree on that. And yet one of the problems we see in democracy is that the lack of knowledge is often used and even lorded over people to say, "Well, you really can't participate in this discussion because you don't understand the technical details of this. You don't have access to private details, and there are things that we know that you don't know, and therefore you're not really in a position to judge." We've seen that happen in many cases, including the whole issue of nuclear weapons and disarmament. So again, secret knowledge is used in ways that can be counterproductive to democracy, in ways that are intended to shut down debate.

ANTHONY ROMERO: To the extent, Aryeh, that you propose this access of open covenants openly arrived at and this private walk in the woods, I would probably put more of my energy on the open covenants openly arrived at.

ARYEH NEIER: Do you think you would ever have a peace agreement on that basis? That is, you put the opposing parties in a room, and you put C-SPAN on, and they have to negotiate on C-SPAN, and you see either party, let's say, yielding on some point on C-SPAN, or do you think if you don't have this on the public record as the negotiations are taking place, there is some greater chance this negotiation would succeed?

ANTHONY ROMERO: I hear you, and that's why I think I would err on the side of open covenants openly arrived at and preserve a small domain of the private walk in the woods for those very difficult conver-

sations or negotiations. The only time I would ever want to pierce that private conversation in the woods is if there is a question of violation of law. Frankly, if the American negotiator and the Soviet negotiator were going for a walk in the woods to talk about how they're going to commit war crimes against another country, I have no interest in keeping that conversation private. I think what we experience now are private walks in the woods with government officials who talk and conspire on illegal matters, such as torture. And we're having a hell of time piercing that kind of shield around that private walk in the woods because there's politics and there are laws and questions of immunity, and there are state secrets issues. So when there is a question of whether or not a law has been broken, or protection of that government interface, or that private walk in the woods, or that interaction between Gonzalez and Bush, and Addington and Yoo with Cheney—that should not be, for me, privileged.

I also want to add that Peter's point about the overclassification of information is enormous. I'll give one little anecdote which I think is humorous; at least, I find it humorous. There was one lawyer in New York who got a classified memo, he worked on Guantánamo. It was in the aftermath of Abu Ghraib, about how to take photographs of detainees and comply with the Geneva Conventions. It was an internal Justice Department memo. He sent it out to a group of lawyers by email. Somehow the Department of Justice and the U.S. Attorney's Office found out about it and they subpoenaed his hard drive at his law firm, and his law firm turned it over. They found out that we were recipients of this classified memo, and they asked us to return the memo and to delete it from all of our hard drives. They filed an actual subpoena on us to have it deleted. We filed a motion to quash the subpoena. We won. We published the memo on our website that day. There was nothing in it that threatened national security. It just gave instructions on how to take photographs of detainees in a way that complied with the Geneva Conventions. It didn't reveal their identities; it didn't talk about how to destroy photographs. It explained how to do it right. This incident just shows the zeal with which the government is trying to enforce its overclassification efforts.

ARYEH NEIER: Peter, you referred to not signing a secrecy agreement. During my tenure at the American Civil Liberties Union many years ago in the 1970s, we had a couple of cases of people who did sign a secrecy agreement. These were both CIA agents, named Victor Marchetti and Frank Snepp, and the CIA went to court to prevent publication of their books on the basis that they had signed secrecy agreements. It didn't try to prosecute them, send them to jail, or anything like that. But it did try to enforce the secrecy agreements. In a circumstance like that, do you think information they learned through their professional positions, in circumstances where they had signed secrecy agreements, can be kept out of the public domain?

PETER GALISON: I don't know these details of those cases. For instance, we have a law that you can't reveal the names of CIA agents in the field—this is what the Bush administration violated in the Valerie Plame case.

ARYEH NEIER: I can tell you in terms of Marchetti, the case was partially lost and partially won by the ACLU. The CIA wanted to prevent him from publishing the whole book. The court said, "No, you can't do that, you have to specify the particular passages you want to exclude." And then we fought it out about those passages. The book was ultimately published with white spaces wherever a passage had been deleted—exactly the length of the passage that had been deleted, including very often one word deleted. And then it had boldface type wherever we had succeeded in restoring what the administration had asked to have deleted. I thought the book was much more interesting with the white spaces and boldface type than it had been in the original. But among other things, I read the manuscript of the book before the deletions took place and I still haven't disclosed, in fact, a lot of the information that I learned from reading that book. But it did mention some quite prominent persons in other countries. I will say that one was a famous writer and another was a famous public official who said they themselves had been paid agents of the CIA. So that was the kind of information that was in the book.

PETER GALISON: It seems to me that this is an instance where it really is case by case. If somebody discloses the name of an agent where somebody would be killed, then it is, and in my view should be, illegal—

ARYEH NEIER: These wouldn't have been agents who would be killed, they would have been embarrassed.

PETER GALISON: Right. It's an outrage that secrecy laws are used to prosecute people for embarrassing a person or agency. When officials use secrecy to protect themselves from embarrassment they're wrong, and you are right to fight, and I hope you win.

I have a question to Victor and to the others about privacy, because one of the things that has become commonplace since the Bush years is to think that privacy and government power to combat terrorism are reciprocally related. A common myth is that the more privacy we maintain, the less safe we are. There's a kind of weird talismanic, mystical view that if we give up our privacy we'll be safer. I don't think it's stated quite so baldly as that, but implicitly, and in some cases explicitly, that has become a kind of truism that floats through many discussions. It's extremely dangerous for us as a country to think that somehow we're safer because we sacrifice privacy. Privacy is not necessarily a threat to security. We need both a protected space for private reflection and a public accountability for our government if our democracy is going to flourish.

VICTOR NAVASKY: I agree, but it's not just privacy. After every traumatic experience in this country there is a move to trade individual rights for so-called security—in the name of national security, to have incursions on liberty. It happened after World War I with the Palmer Raids, it happened after World War II with McCarthyism, it happened after the Revolutionary War with the Alien and Sedition Acts, and so it's not just privacy.

I have a question for you, Peter. On the atomic stuff, it always seemed to me that the mystique around the atomic bomb had a lot

of negative consequences. The Rosenberg case has been argued all these years, and there were people who held that they were framed, though it's now been pretty well established that Julius Rosenberg was some kind of low-level espionage agent. Yet the screaming headlines "Atom Spies" were what made their execution acceptable in this society precisely because of the mystique around the atomic bomb. And if the kind of information that Howard Morland published in the *Progressive*, based on the public record, was more widely known: do you think that mystique would have prevailed in the same way?

PETER GALISON: I very much agree with the first part of what you say, that nuclear weapons are invoked in many ways to justify secrecy across the whole broad spectrum of information in our society. Nuclear weapons cast a spell. When some people argue for "enhanced interrogation," they say, "Why do we have to have torture?" "Well, what if the guy has an atomic bomb and it's ticking?" The atomic bomb is invoked to defend secrecy even far outside of its domain. And even *within* the atomic world there's a limited sphere of true secrets. If the worry is proliferation, that is the production of a very basic nuclear weapon. The most secret things are actually detailed engineering, and they're not sexy scientific or design concepts. There used to be headlines about the secret formula of the bomb. There is no equation for the atomic bomb. This is not fundamental physics. It's about all the grubby and sometimes dangerous details, things like how you forge and shape plutonium. It's actually not the kind of things that are in the Morland article; it's what Khan sold everybody to make those highly effective, industrial gas centrifuges. That was the real disastrous disclosure that's led to a great deal of proliferation. He's not a great scientist. He's a midlevel engineering guy who happened to be able to get his hands on blueprints and operational matters at a much greater level of detail than the *Progressive* case.

That's why it was really wrong of the government to have prosecuted the *Progressive*. It was slightly lunatic in a way, and reflexive. No doubt the *Progressive* was trying to get a rise out of officialdom. They

got it. And once they did, I think you were right to defend them. My impression is that most weapons scientists did not think that what was disclosed there was a great threat to national security. Whether it diminished the charm and seduction of secrecy and of the H-bomb, I don't know. The famous Smyth Report released just after World War II contained a great deal of information about the fission bomb—but it did not stop the political panic of the McCarthy years. Did the Morland article merit defense? No question. Did it really raise fundamental issues of free speech? I'm less sure—the case and its outcome did not, it seems to me, reach profoundly into the status of the First Amendment.

Very worrisome to me is the psychological circumstance that people, even people in great authority, trust secrecy information over open information, sometimes with terrible consequences. Mohamed El Baradei got it right about the nonexistence of Saddam Hussein's nuclear weapons program and Dick Cheney's secret sources got it wrong. But back in those months after 9/11 there was an enormous desire to believe that rock bottom truth lay behind utterances like "If you knew what I knew." Secrecy is tremendously seductive. Public officials and people who have access to it will often tell you that they don't bother reading the things in the press because they have access to secret reports. But it's a big mistake to ignore the open, debated, contested aspects of the press. Not that the press doesn't get things wrong, because it does, of course, but to ignore open sources systematically in favor of secret things just by virtue of the fact that they're secret is terribly dangerous for us all.

ARYEH NEIER: Do you want to come in on this side of the table?

ANTHONY ROMERO: I would like to push back a little bit, Peter, on the point you made maybe two comments ago. You asked what is the big deal if the information is legally garnered, and if people are not prosecuted and they don't end up in jail? I'm trying to paraphrase you. I was still mulling it over in my head. I think the place where that poses

a problem is in the context of the chilling effect. Perhaps you don't get prosecuted, perhaps you don't get thrown in jail, but you definitely scare off other people from doing this kind of work going forward. And so I'll give you a hypothetical. Let's say there are cases going forward, either in courts or military commissions, about who planned the 9/11 attacks. There are confessions that have been given after a 186 times of being waterboarded. All of those confessions—and the people who took those confessions—are classified, as are the identities of the individuals who took the depositions or took the statements. The Confrontation Clause is a really hard one to enforce if you cannot call as your witness who it was who took the confession. Do you or don't you try to identify who was in the room when the confession was given and when they conducted that waterboarding? There's a big conundrum because you need to find the folks who were in that room, and you're not going to find those folks on Facebook.

NAOMI ORESKES: Well, you never know.

ANTHONY ROMERO: And it is a debate that is roiling the defense bar right now. This is not a hypothetical, obviously, but it is a debate among real lawyers not only at the ACLU but also other criminal defense lawyers, other habeas lawyers, the lawyers for Abu Zubaydah. Because if you're going to follow the trail, you're going to quickly find yourself at the edge of solid ground. I think that's one of the places where government officials should not be permitted to hide behind the classification of information or the right to privacy when you're hunting down the trail of illegal behavior. You get to follow it to the very end.

PETER GALISON: I tend to agree with that. Crimes committed in Abu Ghraib were at first classified; much of the Taguba report was off limits. You can see the classification levels paragraph by paragraph now that it has been released. It was illegal behavior: there was murder and torture. Classify that kind of thing and our whole society loses. Secrecy was never designed to protect criminal behavior or to protect against

embarrassment. When it is used for those illegitimate purposes, we have to fight it tooth and nail.

You asked a question before about binary chemical weapons. The international community has come to some accords about the restriction of chemical weapons—and it's important to know what these things are, just as it is for the public to know what nuclear weapons are. The basic idea? Sure, without some concept of the danger of chemical weapons, we would never have been able to bring treaties limiting their use and stockpiling through the political system. Instructions about how to make them? I think that's a terrible idea to put on the web.

In the case of atomic weapons, there are secrets even beyond how they work. Where are they stored; what security systems are in place to keep them from going off when they're not supposed to; what routes are used as they are moved from place to place. Questions of operational security are important, and I hope that such information is protected. But limits on secrecy are also matters of vital importance. I talked to the guy who for years was in charge of nuclear weapons security. His view, shared by many in the nuclear establishment, is that there is far too much secrecy about nuclear weapons. One danger that he worries about is that *overclassification* breeds contempt among people who handle the atomic weapons. If someone says it's secret that we appeared on this panel today, *and* it's secret how to stabilize the rotors on gas centrifuges for uranium, then after a while you think that people who make these decisions are idiots and that it is unnecessary to follow any regulations about restricted data. And so even the people who work on exactly the paradigmatic case of A- and H-bombs think that the nuclear domain is hugely overclassified. And that doesn't even go into the other vast part of the world of secrecy, where classification is completely inappropriate.

NAOMI ORESKES: Some of this relates to the issue of risk and how we judge risk, the irrationality of the American people, and how statistically our fears of risk are disproportionate to actual statistical risks. But I think some of that also arises from the lack of information about

what's really going on. I'm thinking again of a specific case that I know about. After the Palomares disaster, where three hydrogen bombs were lost in an aerial refueling accident and one of them was lost in the ocean, it took a while for us to get it back, and that was a little embarrassing. The Navy and the Air Force did try to keep a lot of that secret because, in fact, it's rather embarrassing to lose a hydrogen bomb. Russell Baker wrote a good piece about it at the time. But it wasn't just that. One of the things said in the press releases was, "Well we were never really too worried about it, because the bombs weren't triggered, so we knew they couldn't actually go off." The conventional explosives component went off in two of the bombs, and it did scatter radioactive material over a big part of southeastern Spain, but we didn't have a nuclear conflagration. So the official press release was, we weren't really too worried. But in the declassified documents you find a different story where, in fact, the Air Force was hugely relieved. That, in fact, until they found the hydrogen bomb that was in the Mediterranean, they were profoundly worried that somehow the salt water could corrode the circuitry, and that if they didn't get the bomb out of the water pretty quickly, maybe there would be a short circuit in the electronics, and the whole thing might detonate. Now, if the public had had access to that information, what difference would it have made to public debate? Who knows? It would be hard to say. But it certainly might have changed the way some people thought about airborne alerts and refueling of planes carrying hydrogen bombs. And that might have been a legitimate piece of information for the public to have had, but it's information that the public has never had. Those documents are even still classified today and I got them through FOIA requests.

ARYEH NEIER: Okay, I think this is a good moment to open this up to questions from the audience.

ATTENDEE 1: I was at Bell Labs in the 1960s. At that time the Russians had put up Sputnik and there was a feeling that people had to get educated fast. What was different at the labs at that time was that we

could write about everything, and everything was public. The people in other places, who didn't speak to one another, didn't move as fast as we did in terms of discovering new things. It seems as if the Bush administration assumed people were stupider than we used to think back in the Kennedy administration. So I was wondering why you are so much in favor of keeping things quiet, not sharing things, and not assuming that people could be smart, because I think that assuming stupidity leads to people not being smart.

PETER GALISON: You're asking why I'm in favor of more secrecy?

ATTENDEE 1: Yes.

PETER GALISON: On the contrary: I'm in favor of *shrinking* the domain of secrecy for three reasons. First, to get rid of things that are illegally classified. Illegal secrecy prevents prosecution of crimes and encourages abuse. Second, openness may not guarantee that we as a society come to good, democratic decisions—but too much secrecy annihilates our understanding of the world and our ability to deliberate democratically. And third, within this very small percentage of things that are legitimately secret, like the detailed fabrication of nuclear weapons, even there, people in charge say it is overclassified and we should protect less and respect more the things that are rightly kept under wraps. On all three counts and at every level I'm for more openness. That's what I'm saying.

ANTHONY ROMERO: And the one point I agree with Peter on entirely is that this false dichotomy between “you have to give up your privacy in order to have greater safety and security” is not only not borne out over history, as Victor pointed out, and is a Faustian bargain, but it also, for very practical purposes, makes us less safe. If you look at the amount of information that the government has been able to collect in the aftermath of 9/11 with the Patriot Act, with national security letters, with the amendments to the Foreign

Intelligence Surveillance Act, there are volumes of emails and communications and records of law-abiding Americans that have literally thrown more hay onto the haystack, making it harder for government officials to find the real needles in the haystack. Part of what you see breaking down is the fact that individualized information on real suspects fell through the cracks because they're dealing with so much stuff that they really can't focus on the individuals they ought to be targeting. I think, from a very practical point of view, it is often more effective than just giving the civil libertarian point to argue; let's make law enforcement more effective by narrowing the amount of information that they should and could collect so they can better follow the tracks. So, I completely agree with you on that point.

VICTOR NAVASKY: As has been pointed out a number of times, the real problem has less to do with the law than the interaction of secrecy with bureaucracy. The FBI is the number one example of this—you can say that “secrecy is not supposed to be used to prevent political embarrassment” but of course that's what happens. When I was writing about the FBI, I was reading the great sociologist Georg Simmel about secret societies, and I came to think of the FBI as a secret society. The organization speaks in code. It feels it can get away with a lot because of the way it is insulated from inspection, and that was accepted even in the bureaucracy of the Justice Department at the time. So many of the fantasies of the Civil Liberties Union turned out not to be fantasies. They were doing worse things than they were suspected of doing.

ARYEH NEIER: Ok, let's go to another question.

ATTENDEE 2: Imagine that the title of the conference was “Required Knowledge in a Democracy.” What would such a conference cover? Many of the issues we are talking about are very technical. They require basic knowledge of scientific concepts, of historical facts. There's a huge gap between the class of experts, represented here in this room,

and the rest of our society. We can't all be experts in everything. So my question is, What is the common foundational knowledge that we need if we're going to have effective democracy today?

ARYEH NEIER: Although you phrase it as a question, I take it as a statement.

ATTENDEE 2: No, no I mean it seriously as a question. Everyone has an opinion on this.

ARYEH NEIER: Well, does anyone want to?

ANTHONY ROMERO: I struggle with it because where do you start? So, for what it's worth, I'm going to step out of the ACLU hat for a moment. I think the one place where I'm stunned that Americans are so pedestrian, if you will, is on the global issues. We know so little about the world and other religions and contexts. I wasn't taught a lot about that. I went to Catholic school. I went to public school. I went to Princeton. When I arrived at Princeton and I had a Sikh roommate and a best friend who is a Bangladeshi Muslim woman. I literally had to look them up in the encyclopedia when I went home for Thanksgiving. That's kind of astonishing for someone who had a decent education, or at least good enough to get me through to Princeton. I think the one glaring missing piece is to get our kids and the younger ones to think about themselves as part of a broader global community. I guess the other area is curriculum. The fact is, we're still fighting over curriculum, for example, in Texas. I'll just go back to a more pedestrian viewpoint, the idea that they want to rewrite schoolbooks and talk about the pros and cons of the Confederacy versus the civil rights movement, and talk about intelligent design versus evolution. I think we have a pretty good curriculum. I think we're at a point where we may be losing some of the battle on good curricula.

NAOMI ORESKES: I'll just say really briefly—because as the provost of a college where we have a required freshman curriculum, I live this

question—that the biggest obstacle to achieving agreement on what the required curriculum should be is getting 12 faculty who would actually agree to teach the relevant courses. But I honestly feel, living this every day of my life, that the issue is not so much what we teach but whether we teach at all. I work at what I consider to be one of the greatest experiments in public education in the history of the planet, which is now being systematically dismantled. So this is a very difficult question for me to talk about in public. But if you care about this, it's not just California, it's Michigan, and it's Massachusetts and it's New York, it's every public university in this country under siege. If you care about these issues— this is going to sound a little like a soap box, so I apologize, but you asked—it's not about the specific curriculum in classrooms, it's about whether or not we're going to have meaningful public education in this country and whether it's going to be accessible to large numbers of people who are not wealthy. So that's my soap box issue, and it's a real issue, and it's going on right now, and I apologize.

VICTOR NAVASKY: I agree with the questioner that we can't all be experts, but I think that's a good thing. Aryeh, you were kind enough to mention a couple of books I wrote, but the book you didn't mention was a book Christopher Cerf and I wrote, called *The Experts Speak: The Definitive Compendium of Authoritative Misinformation*. It was a collection of experts who were wrong since the beginning of time on every subject under the sun. To me, the illusion is that experts are going to give you the curriculum that's going to solve our problems. It goes back to Aristotle; to the Yale professor who, the day before the stock market crash of 1929, said "the stock market has reached a permanently high plateau"; to the talent scout who told Elvis Presley to go back to driving a truck, they're all in there.

ARYEH NEIER: Yes, please.

ATTENDEE 3: The new Access to Information Treaty of the Council of Europe, the human rights organization of Europe, although weak in

many points, contains some important provisions. Most important, I think, is that if public access to information is denied, that barrier must be lifted if there is an overriding public interest in doing so. It remains to be seen how the member states of the Council of Europe are going to implement this rule, but in Hungary, when debating the state secrets law, the Hungarian Civil Liberties Union has been pushing a proposal stating that even when a public official leaks national documents that have been formally, properly classified at the highest level of national security—even then the public official should have the chance to prove in court that he or she did it for the public interest, and that public interest was stronger than national security. In other words, the presumption should be in favor of providing access to information, so the burden of proof is on the state to show that the public interest in secrecy is stronger than the public interest in access. Would you agree with that? Or would you say it's too dangerous to give public officials the freedom to second-guess the decisions of the executive branch? If you give them the freedom to second-guess and hope that the courts will agree the information should have been kept secret, then the most sensitive data could be leaked, even data you might agree should be classified.

ANTHONY ROMERO: I'd like to understand this better. I know the work of the Hungarian Civil Liberties Union. Aryeh introduced them to me a number of years ago. Balazs Denes, the director, and I spent some time with each other. Certainly I think some way to pierce the state secrets privilege, would be a useful remedy in our context—whether or not you allow for individual government officials to reveal information that might be in the public interest. If I understand you correctly, it's almost like building in a whistleblower mechanism that could allow you to find a way to pierce state secrets privilege in an adjudicative process. I think it bears some study. We have very little like that here. In all the cases that we've confronted, it's always us against the government, arguing about why we need certain information, and yet we rarely know the details of the information we're fighting over.

I'll use one quick example of how hard it can be. We used the Freedom of Information Act to bring a lawsuit early on by Amrit Singh and Jameel Jaffer. These two young ACLU lawyers brought a case arguing for obtaining any old documents that were in the government's possession that show, describe, or discuss torture. We thought we would get nothing out of it. In fact, there was an early bet by a very senior lawyer who was very well credentialed in the Supreme Court who said, "I'll give you a dollar for every page you get." And four years later, he owes them \$130,000. He says we don't pay him enough to make good on his bet, which is probably true. When we litigate what documents we are trying to get, we are working from a document called the Vaughn Index, an index that is literally a list of things. It doesn't describe them in any great details for you, and there is no way to appeal when a judge rules that you're not entitled to number 5. That's been one of our frustrations. For example, the photographs that President Obama decided not to release that show post-Abu Ghraib torture and abuse of prisoners—we litigated that in court, Congress passed a new law, the Supreme Court demurred to Congress, and we are now stuck.

ARYEH NEIER: I think this case Anthony has described might be the most significant case that has been brought under the FOIA in the United States in terms of what it has secured. I think it is also interesting that countries all over the world, in the last several years, have been adopting Freedom of Information laws. There are now about 90 countries that have Freedom of Information or FOI laws, most of them adopted during the last decade. They include virtually all the countries of Europe, a lot of Latin American countries, a number of African countries, and I think most interesting has been the degree to which Asian countries have adopted them: India, Bangladesh, and Pakistan are among the countries with such laws, and about two weeks ago, the Pakistani constitution was amended to incorporate FOI in the constitution itself. Perhaps most astonishing, China doesn't have a FOI law, but a couple of years ago they promulgated a FOI regulation with the idea of seeing how a regulation would operate before

considering whether to make it a law. It has actually turned out to be immensely significant in China, principally in the environmental area, as there is quite a substantial environmental movement. It's the principal nongovernmental movement that exists in China, and the environmental movement has used the FOI law to get information on a great variety of public projects and then it is able to mobilize and challenge different projects that have environmental consequences. The extraordinary way the FOI idea has caught on, worldwide, is something that is not widely known, but I think it's an immensely significant development.

ATTENDEE 4: Anthony, I wanted to ask you if the fusion centers are still up and running in the country under Obama and if anything can be done about it.

ANTHONY ROMERO: The concept of the fusion centers was introduced under President Bush. They are still very much functioning. It's an effort to fuse what are often national databases with data from local law enforcement officials and local police. It's a way to merge tax databases, property records, et cetera. There was an effort to do this through TSA, the Transportation Security Administration, that we were able to stop. Then the program was promulgated through a series of grants through the states that allowed them to hook up federal, state, and local. I'm guessing you know we received support from the Open Society Institute to target these fusion center programs in six different states because it's the compilation of a mega-database that pulls together so much of the disparate information on an individual's life, everything from federal tax records to local law enforcement records. There are a number of legislative efforts that we have undertaken. It is harder to fight this at the federal level, so we pick the battles state by state. We are lobbying some of the state legislatures and litigating at the local level that the compilation of such databases is inherently dangerous to our privacy. It's very much a live issue.

ATTENDEE 4: And are our medical records going to be part of these databases?

ANTHONY ROMERO:The medical records have better protection because of the HIPAA (Health Insurance Portability and Accountability Act), but we don't know what's in these fusion centers. Part of the frustration is you're outside, trying to shine a light into these black boxes, so we use FOIA (both at the federal and at the state level). It's a blunt tool and it sometimes takes years to work, but it's the only X-ray we have on our democracy, especially when it shields information from us, and that's why it's one of the most important tools. It's also heartening to know it's growing in use overseas. I had not known that, Aryeh. That's hopeful.

ATTENDEE 5: Like many people who focus on civil liberties, I've been profoundly disappointed in the gap between the promises of candidate Obama and the performance of President Obama. Garry Wills had an article in the *New York Review of Books* not too long ago on what might account for this disparity. I wonder if any of our panelists have any thoughts on the matter.

PETER GALISON: I have a view about this. I think a lot of these things are structural. We think we can focus on President Obama and in particular on whether his strategy of trying to govern from the middle will lead to a sufficiently strong stance restricting secrecy. But I think that there is a deeper issue here, because historically, and over the long term, the executive branch has accrued power by increasing secrecy and diminishing information available to the courts, the legislature, and the press. To reduce secrecy, a president would have to come into office and say, "Please, may I have less power?" That is an extremely difficult thing to do. The more our government makes visible the friction between the branches—as it should—the stronger the tendency for a president to maintain the prerogatives of power by controlling information. I wish it wasn't so. No doubt it would require a tremendous effort for this

or any president to come into office and review critically the military tribunals with their secret proceedings, the state secrets privilege, or the reach of controlled unclassified information. Once these tools of the hidden have been herded into the radius of presidential power, it's hard for any White House to diminish secrecy.

I made a film, *Secrecy*, that was shown on the first day of this conference. One of the things that people would ask when I was first working on it was, "Is this just about the Bush administration?" I'd respond "No, there's no way this is just about the Bush administration." I may hope that Obama is going to be elected, but it's not going to change the overreach of secrecy fundamentally because deep structural forces drive a relentless expansion of the world of secrecy. Secrecy widens as the executive branch struggles to maintain control over our messy, fractious political life. Secrecy is expanded by agencies, departments, programs, and individuals protecting themselves against scrutiny or competition. Secrecy carries with it a kind of allure that makes classified information seem more compelling than open information. Secrecy is people advancing their careers by hoarding information, intelligence officers stove-piping information within the intelligence branches to keep other agencies away (as we saw in the control battles prior to 9/11). Secrecy is composed of many small political gestures, each of which is a problem, and which in aggregate threaten democracy.

I think that's why it's so tough. It's not just about making a speech about policy on X; it goes all the way down to what it means to be in a rule-governed, large-scale bureaucracy. Max Weber famously said it's easier to say no as a bureaucrat than to say yes, because when you say no you protect a domain, you exert power. And secrecy is a little bit like that. A lot like that: an informational "no."

ARYEH NEIER: Supporting that, immediately on Obama's taking office, he issued directives on more generous compliance with the Freedom of Information Act and open government and, I understand, in fact, there has been or was a slowdown during his first year of the compli-

ance with the FOI requests by different parts of the federal government. So, the bureaucracy can very often undo the policies that are set from above. Peter the Great supposedly said, “I don’t rule Russia; 10,000 clerks rule Russia.”

ATTENDEE 6: Do you all think that congressional elective officials should be subject to FOI laws, and what impact would that have on our society?

MANY: Yes.

ANTHONY ROMERO: I agree that of course bureaucracies are hard to change, even when you set tones from the top, and certainly with the point Peter makes about it being hard to give up power that’s been accrued in the executive branch when you’re now the occupant of the executive branch. Dick Cheney famously said to the press, “The president and I leave our offices in much better condition than when we found them,” and he was not talking about the paneled wood in the offices.

ARYEH NEIER: Okay, Anthony, I think we’re going to take that as your summation statement and I’m going to ask the other panelists whether there is anything they would like to say in 60 seconds by way of concluding remarks.

VICTOR NAVASKY: Not by way of summation, but in response to the gentleman who asked about congressional committees, it’s really outrageous that they didn’t cover themselves. The FOI act ought to apply to Congress. Why not? It makes no sense.

PETER GALISON: I just wanted to come back to a comment that you made quoting Woodrow Wilson about open covenants openly arrived. He made that remark at a time after World War I when people were coming to understand that World War I itself had resulted from secrecy

and a tangle of secret accords. I think the continuation of secrecy as an enabling feature of modern warfare over the whole course of the last 125 years is one of the greatest calamities of modern history. It may be, as I said, that secrecy is deeply structured into the bureaucracy, but the consequences of over-secrecy is one the most destructive features of modern political life.

ARYEH NEIER: I'm going to thank our panel this evening. I had hoped that I would be able to generalize about kinds of knowledge that they would keep secret. I don't think that I am able to do so. I think that all of them believe in a significant scope for privacy, and that privacy ought to be respected, and that all of them also see secrecy as the particular bane of our society, and in general they lean in the direction of expanding access to knowledge rather than try to shut off information. Thank you all for taking part in the panel. Thank you to those who asked questions and again thank you to the members of the panel. Thank you, also to Arien Mack for organizing this.