

# SECRECY

A Guide for Teachers



# About the Film

In a single recent year the United States classified about five times the number of pages added to the Library of Congress. We live in a world where the production of secret knowledge dwarfs the production of open knowledge. Depending on whom you ask, government secrecy is either the key to victory in our struggle against terrorism, or our Achilles heel. Directed and produced by Peter Galison and Robb Moss, this new documentary film explores the vast, invisible world of government secrecy. By focusing on classified secrets—the government’s ability to put information out of sight if it would harm national security—*Secrecy* explores the tensions between our safety as a nation, and our ability to function as a democracy.

*“Secrecy is equal parts history lesson, meditative essay, didactic poem and call to arms. [Secrecy] explores some chilling corridors of the clandestine. Secrecy acknowledges the necessity, in principle, of hiding certain types of critical information. In practice, the film finds much to be troubled about, starting with the momentous 1953 Supreme Court decision in United States v. Reynolds that set the legal precedent for the state-secrets privilege and was later revealed to have been founded on dubious grounds. Developing its analysis of what it calls ‘the modern secrecy system,’...the movie touches on the push-pull dynamic of the government versus the press; the culture clash between those shaped by the cold-war paradigm of information hoarding and those alert to the networked sensibility of the Internet era; the private toll of covering up; and the great danger to the public of secrecy for its own sake.”*

—Nathan Lee, *The New York Times*

## Note to Teachers

This guide is designed to help students consider the complex and important issues raised by *Secrecy*. Teaching about this topic will require special sensitivity from educators as sharp political points of view could short-circuit thoughtful consideration of the issues.

Sorting through these issues is a classroom challenge. Yet providing students the opportunity to consider these issues and participate in an informed discussion is invaluable.

The activities provided in this guide can help students explore and develop their own views about this important topic. Teachers may want to consult the Choices Program’s Guidelines for Deliberation <<http://www.choices.edu/deliberation>> as a means of promoting careful consideration of controversial issues.

Each lesson in this guide can be used independently or in combination. They are designed for use with selected excerpts from the film, which are indicated in each lesson. There are also graphic organizers and a study guide for teachers who wish to show the film in its entirety.

The film takes a layered approach in presenting information about the various case studies that it discusses. While watching the film in its entirety, we suggest that you ask students to consider why the filmmakers might have chosen to do this.

**Images in the Film:** *Secrecy* includes a limited number of graphic images and mature content. This content is concentrated in a few short sections. Teachers should carefully preview the film to be sure that it is appropriate for use in their classrooms.

*Secrecy* is available on DVD.

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# Introductory Activity: What is Secrecy?

## Objectives

### Students will:

Consider the concept of secrecy.

Analyze the merits of choosing to keep a secret and choosing not to keep a secret.

Brainstorm the possible risks and benefits of government secrecy.

## In the Classroom

1. Write the question “What is a secret?” on the board. Ask students to brainstorm reasons that people keep secrets. Are there certain situations that require secrecy? Are there certain types of information that people try to keep secret? What are some positive consequences of these secrets? What are some negative consequences? As alternatives to class discussion, you may want to have students write their responses in a journal or discuss them in a “pair-share” with classmates.
2. As a class, brainstorm the answers to the following questions: When is it appropriate to keep a personal secret? When is it not appropriate? Make a T-chart on the board and record students’ answers.
3. Tell students that governments also make decisions to keep certain information secret. Have students brainstorm reasons why governments keep secrets. Are there certain situations that require secrecy? Are there certain types of information that a government would want to keep secret? What are some positive consequences of these secrets? What are some negative consequences?

In what ways are the issues around government secrecy the same as for personal secrets? In what ways are they different? Do the same standards for keeping personal secrets apply to government secrets?

## Graphic Organizer: Considering Secrecy Historically

*Instructions:* Use this chart to keep track of any information you learn from the film about the relationship between the events listed below and secrecy. Because the film is organized as a web of stories, you will need to add information as you receive it in the boxes provided. [The events below are listed chronologically; not in the order in which they appear in the film.]

Event	How it relates to secrecy
<b>Manhattan Project (WWII)</b>	
<b>Cold War (1947-1989)</b>	
<b>Reynolds Case (1952)</b>	
<b>Attacks on U.S. Embassy and barracks, Lebanon (1983)</b>	
<b>9.11 Attacks (2001)</b>	
<b>Search for WMDs in Iraq (2003)</b>	
<b>Detention of Khalid el-Masri (2003)</b>	
<b>Hamdan trial (2006)</b>	



# Study Guide

Student Name: \_\_\_\_\_

*Instructions:* Answer the following questions.

## **Secrecy – Pros and Cons**

1. How can secrecy help to make a nation more secure? Use examples from the film to support your answer.
2. How can secrecy make a nation less secure? Use examples from the film to support your answer.

## **Role of the Press**

1. Why is a free press important to a democracy? Use examples from the film to support your answer.
2. How can a free press make a nation more secure? Use examples from the film to support your answer.
3. How can a free press endanger national security? Use examples from the film to support your answer.

## **Separation of Powers**

1. What is the constitutional principle of separation of powers? Why is this principle considered central to the U.S. democracy?
- 2a. What do the Reynolds and Hamdan cases (seen in the film) have to do with separation of powers?
  - b. How do these cases affect the power of the president and that of Congress?

Reynolds:

Hamdan:

c. How do these cases show the importance of the courts?

### **Living in a New World**

1. What were the effects of the atomic bomb and the Cold War on the government's use of secrecy?

2. Why, in the film, is the Cold War called a "simple war" compared to the "war on terror"?

3. In the film one speaker (Thomas Blanton) says, "...one almost might say [a] cultural war [is] happening between folks I would identify as the Cold Warriors, who believe in compartmented information and the need to know and high controls and more secrecy and more classification, versus the people who are self-described as the Web Crawlers, the people who understand that distributed information networks actually empower." What does he mean?

### **Point of View**

1. What is the film's point of view about secrecy? Give evidence to support your answer.

2. Do you agree with this point of view? Explain why or why not.

### **Bonus Question**

The film moves back and forth from one story to the next, sometimes stopping almost mid-thought in one story to discuss another, only to come back to the first story later on. Why do you think the filmmakers chose to do this? What effect does this have on you, as the audience?



# Lesson 1: Secrecy, Freedom of the Press, and National Security

## Objective

### Students Will:

- Understand the tensions between secrecy and a free press.
- Analyze the issue from the perspective of a variety of experts.
- Work cooperatively in groups to represent the views of experts in a class discussion.

## Film

For this activity, chapters 3, 7, and 15 of *Secrecy* are recommended.

## Note

A partial transcript of the suggested chapters is provided for planning purposes. You also may find it helpful as a handout for students after they have viewed the film.

## Handouts

“Secrecy, Freedom of the Press, and National Security”

## In the Classroom

- View Excerpts from the Film:** Give each student a copy of “Secrecy, Freedom of the Press, and National Security.” Tell students to fill in Part I of the handout as they watch chapters 3, 7, and 15 of *Secrecy*.
- Identifying Key Concepts:** Review Part I of “Secrecy, Freedom of the Press, and National Security” with your students. Make sure that their answers are complete. Divide students into groups of two or three to answer Part II of the handout. Tell students that they now must categorize the arguments presented by these experts. For each expert, they must decide whether the arguments made are more supportive of government secrecy or a free press. Then they must list key words the expert used (such as “security,” “protection,” “intelligence,” “freedom,” “truth”) to present his or her case. Once they have filled out the worksheet, tell groups to look through their answers and circle the key words found in both columns.

When groups are finished, discuss as a class what the different key words mean. How do they relate to government secrecy? How do they relate to a free press? How can certain key words be important to both columns?

Alternatively, you may ask students to list not only key words but also specific concepts such as “protecting Americans at home” or “seeking out the enemy overseas.”

- Working with the Arguments:** Divide the class into six groups, and assign each group one of the experts. Tell students that they will be representing their expert in a class discussion. Have students list the strongest arguments of their expert and examples to support these arguments. Give groups time to develop the experts’ arguments. Then hold a class discussion with each group advocating its expert’s opinion. How does a free press threaten national security? How does government secrecy threaten national security? How should the United States balance the need to keep certain information secret with the rights of a free press?

Alternatively, presentations can be done as a fishbowl activity, with one student from each group discussing the issues and the rest of the class observing and taking notes. See Guidelines for Deliberation <[www.choices.edu/resources/guidelines.php](http://www.choices.edu/resources/guidelines.php)> for additional suggestions on deliberation.

- Expressing Personal Views:** Ask students to step out of their character roles and articulate their own opinions. What can provide the greatest threat to national security, government secrecy or a free press? How can these conflicting needs—a free press and protection of sensitive information—be balanced? Are there ever times when it is ok to curb freedom of the press? What are the costs of limiting what the press can report? What are the risks of allowing secrecy? What are the risks of not allowing secrecy?

As an alternative to class discussion, you might ask your students to write essays explaining how both a free press and government secrecy can threaten national security and expressing their own views on the issues.

# Secrecy, Freedom of the Press, and National Security

*Instructions:* As you view the film, fill in the chart below. Make sure you record the title of each speaker. Then record the arguments that they make for freedom of the press or for government secrecy in each chapter. Do not fill out the boxes that are shaded.

	Speaker's Title	Key Arguments from Chapter 3	Key Arguments from Chapter 7	Key Arguments from Chapter 15
Mike Levin				
Barton Gellman				
Steven Aftergood				
James Bruce				
Thomas Blanton				
Melissa Boyle Mahle				

## Part II: Categorizing the Arguments

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For each of the experts interviewed in the film, indicate whether they are making the case for government secrecy or a free press. What words do they use to make their case? List key words in the appropriate column.

When you have finished, circle any key words found in both columns.

Name	Government Secrecy	Free Press
<b>Mike Levin</b> a. Select column b. List key words		
<b>Barton Gellman</b> a. Select column b. List key words		
<b>Steven Aftergood</b> a. Select column b. List key words		
<b>James Bruce</b> a. Select column b. List key words		
<b>Thomas Blanton</b> a. Select column b. List key words		
<b>Melissa Boyle Mahle</b> a. Select column b. List key words		

# Secrecy, Freedom of the Press, and National Security

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## Transcript of Excerpts from *Secrecy*

### Chapter 3

#### **Mike Levin, Chief, Information Policy, National Security Agency, 1947-93**

There is a need for secrecy in order to protect the national security of the United States. The public is told by the media that there's excessive secrecy in government. The media is always trying to reduce the level of secrecy. They're always trying to get information that the intelligence community thinks should be protected....

In Lebanon, in 1983, terrorists attacked the American Embassy and caused a lot of damage and some deaths. We at NSA were listening to the communications of the people that did it and we knew who they were and what country was supporting them. It was Iran supporting them through the Hezbollah.

This fact was leaked. It got into the press somehow; I don't know how. And almost immediately that communication channel that we were using so productively to derive intelligence on the whereabouts of these terrorists, that channel dried up. We lost a critical source of intelligence.

Eight months later, the same terrorists bombed the Marine barracks in Beirut, and we lost over 240 United States Marines. This is the kind of damage that can come from a leak of sensitive information.

We have a special word for people who provide information to the enemy of their country.... What word do we use? Traitor. Traitor.

#### **Barton Gellman, Reporter, Special Projects, Washington Post**

I really resent accusations that we're not patriots, or that we are indifferent to the security of the United States if we publish things that the government says are secret. I think what I do is every bit as patriotic as what a soldier does, or what an intelligence officer does. I think that people who look only at security are misjudging what kind of society they're supposed to be defending. And I think ultimately the idea that the president and the president alone can decide what we will know is profoundly un-American.

I went to Iraq for the first time a few days after the fall of Baghdad covering weapons of mass destruction, and I timed my trip for the purpose of arriving for the first of the big finds of chemical weapons. What I was trying to find out was, what was the truth of it? Did Iraq still have programs? Did it have stored munitions? Had it reconstituted its nuclear weapons program?

All those things were alleged by the Bush Administration. And one by one, those things fell apart. And at every step of the way, the fact that they were falling apart was protected by government secrecy. The same weeks I was writing these stories, in 2003, senior officials were holding briefings in Washington....

And what I was discovering on the ground was that they had already exploited, as they call it, eighty-nine of the top ninety sites. They had found nothing they were expecting to find, that the weapons teams were dispirited, having declared failure. And, absent someone who was going to pierce that secrecy and report what was actually happening on the ground, the official account was going to be the only thing out there, was going to stand as truth in the public record. And it was not true.

### Chapter 7

#### **Steven Aftergood, Government Secrecy Project, American Federation of Scientists**

The commission that investigated the September 11 attacks found that secrecy had actually impeded the functioning of our national security. The Central Intelligence Agency and the National Security Agency possessed information about the 9/11 hijackers, but it was classified at so high a level that it was never shared with FBI agents in the field.

It's kind of the reduction to the absurd of what the classification system is supposed to be. Instead of protecting national security, it actually facilitated a threat to national security.

#### **James Bruce, Senior Executive Officer, C.I.A., 1981-95**

...In 1998, there was press coverage in several newspapers that we had an intercept capability of Osama bin Laden's satellite telephone communications. When that press coverage exposed that intelligence collection capability, to no

one's surprise, except perhaps of the press, we lost the ability to monitor the satellite communications of Osama bin Laden.

What I can tell you is that that's only the tip of the iceberg. Intelligence collection capabilities require secret mechanisms that we know if exposed will be less effective. And, in some cases, if exposed will perish completely. We lost one very valuable and potentially lucrative source of intelligence on what turned out to be the most horrific attack on the United States in history. What a shame it is that we did not have this capability.

The only reason we did not have this capability was because of a pointless and needless press disclosure. And a question for the American citizen is, was that in my interest? Was that in my interest as a citizen to have the press expose these capabilities?...

## **Chapter 15**

### **Thomas Blanton, National Security Archive, George Washington University**

The dichotomy is not between national security and openness. The dichotomy is between secrecy and security. The secrecy is not making us safer. There are better ways to make us safer. Less secrecy would actually make us safer.

We caught the Unabomber because we published his screeds in the newspaper, and his brother opened the Chicago Tribune in the suburbs of Illinois and said, "Hmm, this sounds like crazy Ted up in the cabin in Montana. I better call the FBI," and they go catch him. Twelve years they chased this guy. Never caught him until they turned loose the stuff they'd been sitting on.

Publicity generated the means to connect the dots. And the secrecy prevented the safety.

### **Mike Levin, Chief, Information Policy, National Security Agency, 1947-93**

The four freedoms that we have are very vital to American society. They're very important. Free press is a great thing to have. We want to keep it. But we who are trying to protect sensitive national security information have a responsibility to the people to protect this information on their behalf.

### **Barton Gellman, Reporter, Special Projects, Washington Post**

If you published only what they willingly told you, you wouldn't know that Osama bin Laden escaped from Tora Bora. You wouldn't know that people are being seized on the street in foreign countries and taken secretly to prisons elsewhere in the world without any judicial process. You wouldn't know that the U.S. government is employing methods against detainees that it has previously described as torture. You wouldn't know many of the basic outlines of what the government is doing in the name of the war on terror. And yet, the President said this should be the issue on which you decide the election.

### **Melissa Boyle Mahle, Former C.I.A. Chief of Base, Jerusalem, 1988-2002**

Journalists, in my opinion, treat secrecy as a game. It is their game to expose the secrets, because then they have a story. CIA doesn't look at secrecy as a game; they look at it as a survival mechanism. The consequences in some countries for agents that have been caught for betraying their country is death. Terrorists don't have any problem with taking out a CIA officer. Some terrorists wouldn't think twice of taking out your family as well.

# Lesson 2: State Secrets—From Reynolds to Hamdan

## Objective

Students will consider the state secrets privilege in relation to three key court cases.

## Film

For this activity, chapters 2, 5, 10, 11, 14, 18, and 21 of *Secrecy* are recommended.

## Note

A partial transcript of the suggested chapters is provided for planning purposes. You also may find it helpful as a handout for students after they have viewed the film.

For more information about the court cases, AltLaw <[www.altlaw.org](http://www.altlaw.org)> provides the first free, full-text searchable database of Supreme Court and Federal Appellate case reports. It is a resource for attorneys, legal scholars, and the general public. For the Reynolds case, go to <<http://www.altlaw.org/v1/cases/387492>>. For the El-Masri case, go to <<http://www.altlaw.org/v1/cases/1142694>>.

The Hamdan case can be found at <<http://www.law.cornell.edu/supct/html/05-184.ZS.html>>.

## Handouts

“From Reynolds to Hamdan”

## In the Classroom

1. **View Excerpts from the Film:** Give each student a copy of “From Reynolds to Hamdan.” Tell students to take notes on the handout as they watch chapters 2, 5, 10, 11, 14, 18, and 21 of *Secrecy*.
2. **Discussion:** Ask students to consider the court cases that were discussed in the film. What happened in the Reynolds court case? Why was it important? What did the courts decide? What is the state secrets privilege? How did the Reynolds ruling affect the other two court cases in this activity? Why is the El-Masri case called the Reynolds case of the last decade? What did the courts rule in the Hamdan case? Why was that ruling significant?

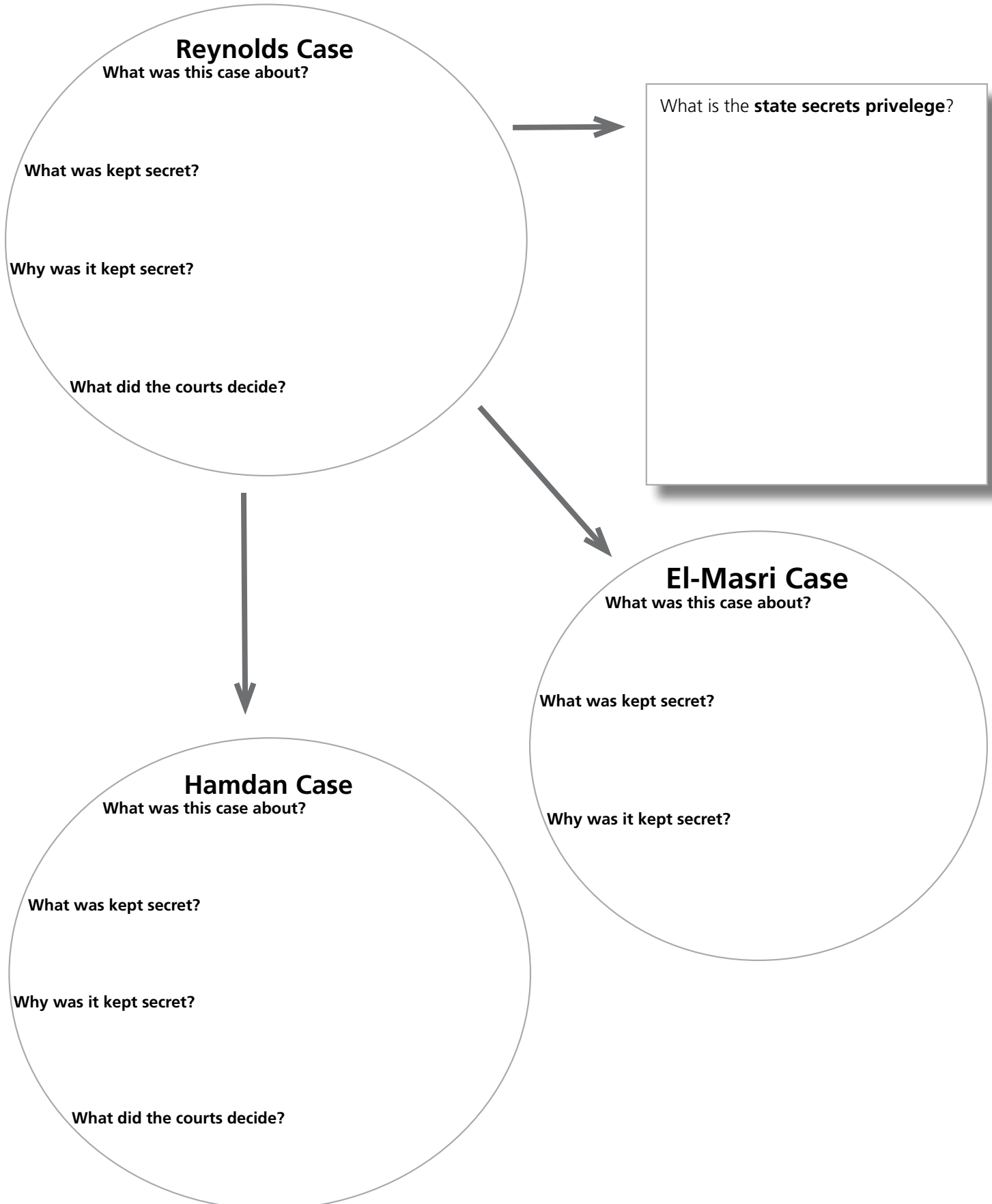
Create a T-chart on the board and lead students in a discussion of the arguments for and against the state secrets privilege. What are some impacts or consequences of the state secrets privilege? Are there times when it is necessary? Ben Wizner, an expert from the film, said that “the state secrets privilege is prone to abuse.” What does he mean? How might the state secrets privilege sometimes be misused? Who should be the judge of the use of the state secrets privilege?

What is the constitutional concept of separation of powers? Why is this concept important in the U.S. democracy? How does the state secrets privilege affect the separation of powers? How would the Hamdan ruling affect the separation of powers?

3. **Making Connections:** Have students consider the impact of the state secrets privilege in a post-9.11 world. How are the security concerns of today different from what they were when the Reynolds case was decided? How important is the state secrets privilege today? What might be the consequences of keeping information from the courts or from a defendant?

# From Reynolds to Hamdan

Instructions: As you watch the film, answer the questions below.



# State Secrets - From Reynolds to Hamdan

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## Transcript of Excerpts from *Secrecy*

### Chapter 2

#### **Ben Wizner, Staff Attorney, ACLU, 2001-present**

No one knew where Khalid el-Masri was until he was released at the end of his ordeal. There was no one to fight for Khalid el-Masri. Even his family didn't know where he was. His wife thought she had been abandoned. Khalid el-Masri is a German citizen who was born in Lebanon. He got on a bus from his hometown of Ulm, Germany, to travel to Macedonia. And when he got to Macedonia, he was pulled off the bus by officials. He was turned over to the local CIA agents on the ground who blindfolded him, brought him to an airport, sliced off his clothes, forced an object into his anus, injected him with drugs, chained him to the floor of a plane, and flew him to Afghanistan, a country where he had never been and with which he had absolutely no contact.

El-Masri was brought to a facility that we believe was called "the salt pit," a former brick factory on the outskirts of Kabul. And there, he was held in a dungeon for nearly five months, even though the CIA and high officials of the US government knew well before then that they had detained the wrong person.

The very purpose of setting up these black sites was to allow the CIA to hold people and to interrogate them using methods that would not be permitted under US and international law.

Khalid el-Masri was told, "You are in a place right now whose existence no one knows. You are off the map of civilization. Unless you cooperate with us in every way, anything can happen to you. No one would know."

### Chapter 5

#### **Patricia J. Herring (formerly Patricia J. Reynolds), Participant in *United States v. Reynolds* (1953)**

It wasn't a top-secret mission, and it evidently never had been a top-secret mission. But they were presenting it to the Supreme Court as just that, and too important in its day to have been opened up for even the Supreme Court's viewing.

It was 1946, and I was 18 years old. This friend of my mother's had said, "Oh, this young man is so wonderful. Patty has to meet this young man." For three weeks I put it off; whoever he was I didn't want to meet him. And then I met Bob Reynolds. That changed things.

We met about the first of September and were married November 30th. Very fast. This was love at first sight. It was a very romantic relationship, and it stayed that way right to his death.

#### **Wilson M. Brown III, Attorney, Drinker Biddle, Philadelphia, PA**

On October 6, 1948, at about two in the afternoon, a B-29 fell twenty thousand feet to crash outside of Waycross, Georgia. Nine people were killed, including three civilian engineers who were on board testing some electronic equipment: Albert Palya, William Brauner and Robert Reynolds.

In early 1949, the widows began looking for legal counsel and ended up finding Drinker Biddle & Reath in Philadelphia. They had very little information other than there was a violent spiral, an engine fire, and an explosion that broke the plane up ten thousand feet above the ground. Something went wrong. Was it negligence?

The widows needed proof, but the government refused to produce its accident report, saying that the disclosure of these documents would be harmful to national security, because the plane was on a secret mission and it was carrying confidential equipment. The judges issued an order saying, "You will produce the documents to me for the limited purpose of assessing whether or not what the Air Force is saying about the documents is true."

The government petitioned the Supreme Court to review the case saying, "We're the executive, we need this power. The lower courts aren't giving it to us, but it's time for the Supreme Court to weigh in."

### Chapter 10

#### **Neal Katyal, Hamdan attorney; Professor, Georgetown University Law School**

In November 2001, Salim Hamdan was fleeing the Afghanistan border and trying to cross over into Pakistan. He was captured by Northern Alliance forces who heard his story and then used that story to sell him to the Americans for



a hefty fee. The Americans ultimately brought him to Guantanamo Bay because he had admitted being Osama bin Laden's personal driver. He knew bin Laden, unlike most of the other people at Guantanamo, but was definitely a really low-level, small-fry guy, but at least the Administration could say, "Well, we got people related to the bad guys there."

President Bush, on November 13, 2001, issued a military order for the trial of suspected terrorists at Guantanamo Bay. He was going to set up the entire trial system on his own—who could be tried, how they could be tried. He was going to pick the judges, hand pick the prosecutors and defense attorneys. And he went so far in that order as to say that the federal courts have no business reviewing what he's doing, because of the classified national security information that might be at stake.

The prosecutor appointed Lieutenant Commander Charles Swift of the Navy to be Mr. Hamdan's counsel.

### **Charles D. Swift, Lieutenant Commander (LCDR), U.S. Navy, Judge Advocate General's Corps**

You would think I'm going to see somebody who's the combination of Al Capone, Adolph Hitler and Genghis Khan. This guy is just, oh, my God. He could bring America to his knees with a pencil! Dangerous.

When I get in, the first thing that they say is, "Well, you have to take off your nametag." I'm wearing a nametag on the uniform. "Why?" "Well, he can't know who you are." "Wait a second, guys. I don't defend people by saying, 'You don't know who I am but I'm going to defend you.' Now, why don't we all have a little courage and I'll tell him who I am. After all, I'm the one who's going down." "No, sir, the rules are." "Well, I'm not going to take it off. What are you going to do?"

And here he is. He doesn't move when he first sees me, but that's because he has a set of handcuffs on that chain his hands absolutely together to his feet. So he's kind of hunched over and he can't move. Ultimately, I'm able to get the handcuffs off of him, so at least now a little bit of chain, so he can stand so I can shake—so I go to shake his hand. "Don't touch him!" "What is he, a bear? Come on! He's not an animal, he's not a bear. I'm going to shake my client's hand. Thank you."

Salim looks at me. Salim says, "The guards say there's no law here. How can you do anything? There's no law." I said, "I don't believe that. I don't believe they're right. I believe there's law everywhere. But we're going to have to go to the Supreme Court of the United States and win if that's to be true."

## **Chapter 11**

### **Ben Wizner, Staff Attorney, ACLU, 2001-present**

We first heard about Khalid el-Masri's nightmare ordeal the way most of the world first heard about it. We read an article in the newspaper that had these fantastic allegations of an innocent man being kidnapped by the CIA and subjected to torture in a secret prison. It seemed really beyond belief.

The ACLU representing Khalid el-Masri brought a lawsuit, but before Tenet and the other defendants even answered the lawsuit in federal court, the CIA came in to federal court, and in a secret affidavit explained that the case had to be dismissed, because any litigation of the claim would involve state secrets and would harm national security.

The state secrets privilege was really born in sin. The whole doctrine is the fruit of a poisonous tree. It was first recognized in the United States in a case called Reynolds involving the crash of an Air Force plane.

### **Judy (Palya) Loether, Daughter of Al Payla (mother was plaintiff in United States v. Reynolds)**

The B-29 blew up in the air. My father was forty-one when he died. As a child, I have very vivid memories of going up into our attic. There were a couple boxes of pictures of him. Among those were engineering manuals for the project he worked on during World War II. It was really intriguing to look through the books, even though I had no clue as to what they were talking about, because every page at the bottom was stamped "secret." In the newspaper articles after the plane crashed, all of them talk about this top-secret project. It just added to the mystery, you know, of who my father was.

### **Patricia J. Herring (formerly Patricia J. Reynolds), Participant in United States v. Reynolds (1953)**

It was so murky back in the '50s. Those were troubling times. The Cold War threatened to ignite at any moment. We had so many things to fear.

### **Wilson M. Brown III, Attorney, Drinker Biddle, Philadelphia, PA**

The Reynolds case comes to the Supreme Court in 1952. And we're at a time in our history when we are scared. We had the awesome technology, and now, through spies, our enemies have that technology. It's a very, very scary time.

Everyone agrees there should be a state secret privilege. The issue is, who's going to police that privilege? When the government says, "This is a state secret," what steps are we going to have in place to assure that that's so? What role will the judiciary play? And the Supreme Court's answer to that, six to three, was "not much."

### **Ben Wizner, Staff Attorney, ACLU, 2001-present**

The Supreme Court said, "We agree with the United States. There must be a privilege for state secrets." And the Supreme Court made a very critical error. It did not even look at the documents that the government insisted contained secret information.

### **Patricia J. Herring (formerly Patricia J. Reynolds), Participant in United States v. Reynolds (1953)**

The Air Force pled secrecy be imperative to the safety of the country. And ultimately, the Supreme Court accepted it. And so did we. At least, so did I. Not dreaming that there was anything other than what appeared on the surface, that there were governmental secrets that at that time could not be exposed.

### **Wilson M. Brown III, Attorney, Drinker Biddle, Philadelphia, PA**

And the books close on that case, at that point. The fall of 1953; that's the last of the Reynolds case. For fifty years.

## **Chapter 14**

### **Neal Katyal, Hamdan attorney; Professor, Georgetown University Law School**

It takes me about thirty hours to get down to Guantanamo Bay. Each time it involves me waking up in the middle of the night, driving for four hours, flying for approximately fifteen hours through a convoluted route, begging my way onto a military base where they can't really understand why I'm there. I don't fit their two boxes of either being an officer or a contractor. I'm in that third box, the guy who's suing the Secretary of Defense.

Now, anyone who studied the Anglo-American criminal justice system knows that the one thing you cannot do, the most basic foundational thing, is kick someone out of their own criminal trial. What President Bush's order set out to do was permit defendants, in the name of protecting secrets, to be kicked out of their own trials, to be literally put to death on the basis of information that they never got to see.

### **Charles D. Swift, Lieutenant Commander (LCDR), U.S. Navy, Judge Advocate General's Corps**

If you're to the point that you can be the executioner without telling anyone about it, and not having anyone look at it, and being able to do all that in secret, what's left? What's left?

If I can decide the reasons you will be held in jail for the rest of your life, and I alone get to know them, and I don't have to tell anyone, what's left?

When laid bare, their argument is, there is no limit on Presidential power. The President ultimately decides his power, and no one else. Yet, fundamentally that was what they had claimed for the commissions. Fundamentally, that was what they had claimed for interrogations for wiretapping, all of these things, and done it in secrecy.

But the Hamdan case had the opportunity to begin to pull back the blanket of that bare, raw assertion of power.

## **Chapter 18**

### **Wilson M. Brown III, Attorney, Drinker Biddle, Philadelphia, PA**

In early 2000, Judy Loether, the daughter of Albert Palya, who was killed in this crash, was surfing the Internet, and a website comes up which identifies all sorts of accident reports. And Judy's very excited, because she's going to get some information about her dad. When her dad died, she was six weeks old. She never knew him.

### **Judy (Palya) Loether, Daughter of Al Payla (mother was plaintiff in United States v. Reynolds)**

I went to the mailbox, and it was this big manila envelope. I remember going into my family room and sitting down on the sofa, just contemplating what was in there. Did I really want to see gory details in there about how he died?

I opened it. It was kind of overwhelming to look at that report and try and digest all the mistakes that had been made by so many people that ended up killing nine men. And I realized there was another woman out there that maybe would benefit by what I had found.

### **Patricia J. Herring (formerly Patricia J. Reynolds), Participant in United States v. Reynolds (1953)**

When I received the accident report and read it over, it was truly devastating. There had been many problems with the heat rings. They had been advised by the Air Force not to fly until those heat rings were all replaced. And on this plane, none of that was done. And the more I read, the worse I felt. And of course, you've got all of these shots showing this mangled wreckage, and the smoke coming out. And the thought that hit you, of course, is, Bob was in that.

You've got to remember that when I had seen Bob leave, the day of the crash, he was a young, vibrant 24-year-old. We were about to embark on a new phase of our lives in our new apartment, and everything was going to be wonderful for one hundred years. And I never saw him again.

It was always in the back of my mind, I know he's gone, but. And for some reason, reading this report brought it to reality.

### **Wilson M. Brown III, Attorney, Drinker Biddle, Philadelphia, PA**

There's no mention in there of the project these people were involved in. There's no mention in there of the equipment that they were carrying. There's no mention in there of what they were trying to accomplish on this flight. The accident report describes an horrific accident and expressly finds negligence on the part of the US Air Force. They hadn't done what they were supposed to do. That's not a secret.

### **Thomas Blanton, National Security Archive, George Washington University**

There's one line about secret testing of electronic equipment, and that's what it says. The mission was to test some secret electronic equipment, period. It wouldn't tell the enemy anything. And yet, the government entered affidavits sufficient to have the Supreme Court throw the widows out.

### **Judy (Palya) Loether, Daughter of Al Payla (mother was plaintiff in United States v. Reynolds)**

Men in power, in my America, decided to lie in the Supreme Court. They wanted the state secrets precedent, and we were the sacrifice. That's the way I see it. It was the widows and the children were the sacrifice so that the government could get their precedent.

### **Thomas Blanton, National Security Archive, George Washington University**

That case has been cited six hundred times based on a falsehood.

### **Ben Wizner, Staff Attorney, ACLU, 2001-present**

The state secrets privilege was established with a lie and has allowed the government to tell the same kinds of lies over and over again. But what's so striking about the way the state secrets privilege is being used now is that the government is using the state secrets privilege as an immunity doctrine. And so it's not waiting until a plaintiff asks for information. It's coming in as soon as the case is filed and saying effectively, "This case cannot be adjudicated."

And so we have this really amazing situation where the perpetrators themselves, the people who are being accused of illegal and un-Constitutional conduct, are themselves coming into court and saying, "Nothing to look at here, everything is secret. If this case goes forward, it will harm national security." And by virtue of those statements alone, without any examination of purportedly secret evidence, some of the most significant cases in US judicial history are being dismissed at the outset.

Reynolds should be evidence enough that the state secrets privilege is prone to abuse. But for those who were unpersuaded by Reynolds, Khalid el-Masri's case is the Reynolds case of the last decade.

## **Chapter 21**

*Justice Stevens: We'll hear argument in No. 05184, Hamdan against Rumsfeld. Mr. Katyal, you may proceed.*

*Mr. Katyal: Justice Stevens, may it please the Court. We ask this Court to preserve the status quo to require that the President respect time-honored limitations on military commissions.*

### **Neal Katyal, Hamdan attorney; Professor, Georgetown University Law School**

When I walked into the Supreme Court that morning, I was overwhelmed by the majesty of the court, the nation's

highest court hearing a challenge by a man who was accused of conspiring with one of the world's most evil men and suing the President of the United States, the world's most powerful man.

**Charles D. Swift, Lieutenant Commander (LCDR), U.S. Navy, Judge Advocate General's Corps**

The gravity of the moment literally took your breath away. The importance of what we were talking about was both thrilling and terrifying. We can't lose this. It's not enough to have said "I tried." It's just not enough, we have to win.

*Justice Stevens: I have the disposition to announce in No. 05184, Hamdan against Rumsfeld, the--*

**Neal Katyal, Hamdan attorney; Professor, Georgetown University Law School**

The day the decision came down, I was sitting in the courtroom with Commander Swift at my side. Justice Stevens started reading the opinion.

*Justice Stevens: We decide in effect that Congress has denied the President the legislative authority to create this military commission. Nothing prevents the President from returning to Congress to seek the authority he believes necessary and no emergency stands in the way of such—*

**Neal Katyal, Hamdan attorney; Professor, Georgetown University Law School**

I kept on going through the twenty or so issues in the case and thinking, check, he ruled on that one for us, and check, he ruled on this one for us. And ultimately, I saw we had won everything.

**Charles D. Swift, Lieutenant Commander (LCDR), U.S. Navy, Judge Advocate General's Corps**

As I walked out of the courtroom the last day, I went onto the steps with Neal, what I felt most was relieved, absolutely relieved. We had not blown it. And it was an amazing day.

That afternoon, the White House is announcing, "Well, we'll just change the law." So the challenge continues.

**Neal Katyal, Hamdan attorney; Professor, Georgetown University Law School**

If the President is taking secret actions that violate laws passed by Congress, treaties ratified by the Senate, and doing it in the name of executive power, well, one might think that's permitted on September 15, 2001, but years later it is a fundamentally corrosive threat to democracy.

# Lesson 3: Secrecy in a Post-9.11 World

## Objective

Students will wrestle with questions of secrecy and freedom of the press by exploring hypothetical, present-day case studies.

## Film

For this activity, chapters 1, 20, and 22 of *Secrecy* are recommended.

## Note

We suggest that you first do *Lesson 1: Secrecy, a Free Press, and National Security* with your students in order to give them a better understanding of the tensions between government secrecy and a free press.

A partial transcript of the suggested chapters is provided for planning purposes. You also may find it helpful as a handout for students after they have viewed the film.

## Handouts

“Secrecy in a Post-9.11 World”

“Case Studies: Your Assignment”

“Case Studies”

## In the Classroom:

- 1. View Excerpts from the Film:** Give each student a copy of “Secrecy in a Post-9.11 World” and have them answer the first two questions by taking notes while watching the film. Show your students chapters 1, 20, and 22 of *Secrecy*.
- 2. Discussion:** Ask students to describe some of the tensions between government secrecy and a free press that are discussed in the film. What different examples do the experts use? What makes the threats the United States faces today different from the threats faced earlier in the twentieth century? How are things different in a post-9.11 world?  
  
Where does the right to freedom of expression (and specifically press) come from? What purpose did the founders have for including this in the bill of rights? Where does presidential authority come from? Should the U.S. government ever restrict freedom of expression (speech/press)?  
  
Have students read the quotes and answer the questions on the second part of the handout. Tell students to keep these differing points of view in mind as they complete the next activity.
- 3. Working with Case Studies in Small Groups:** Divide the class into groups of 6-8 students. Distribute “Case Studies: Your Assignment” and “Case Studies.” Assign one of the hypothetical case studies to each group. Divide each group into two teams:
  - **Justice Department:** These teams must argue why, in their case studies, the threat to national security is great enough to warrant keeping the information secret.
  - **Newspaper Staff:** These teams must argue why, in their case studies, the public’s right to know and their paper’s constitutional right to freedom of the press make it necessary to print the story.
- 4. As a Class:** For each case study, set up a “fish bowl” discussion between the Justice Department and the senior newspaper staff to negotiate a resolution. Have groups discuss their case studies one at a time and have the rest of the class take notes on the arguments being made. When all of the case studies have been discussed, consider each case study individually. Call on students who were listeners in each fish bowl discussion to list the arguments made on each side. What were the most compelling arguments to keep the information secret? What were the most compelling arguments to make the information public? Record student commentary on a T-chart. Then compare. Were arguments more or less compelling depending on the specific case study? Which arguments appear consistently? Were there some that were more case specific?



- 5. Making Connections:** After students have completed the activity, return to the Posner and Margulies quotes. Ask students to explain the meaning of each quote. Whose point of view do they agree with more, Posner or Margulies? Should rights be limited or restricted during times of emergency? What are the consequences or risks of limiting rights? How important is secrecy to national security?

# Secrecy in a Post-9.11 World

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## Part I

*Instructions:* While watching the film in class, take notes of the arguments that the experts make for and against restricting freedom of the press.

A. What arguments do the experts make FOR the government restricting freedom of the press?

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B. What arguments do the experts make AGAINST the government restricting freedom of the press?

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## Part II: Contrasting Views

*Instructions:* Read the following quotes. Below each quote, state in your own words what you think the authors mean.

1. In his book, *Not a Suicide Pact: The Constitution in a Time of National Emergency* (Oxford University Press, 2006), U.S. Appellate Court Judge Richard Posner uses the metaphor of a scale to explain how he believes judges should reason before making decisions.

“The challenge to constitutional decision making in the era of modern terrorism is to restrike the balance between the interest in liberty from government restraint or interference and the interest in public safety, in recognition of the grave threat that terrorism poses to the nation’s security. ... [O]ne would like to locate the point at which a slight expansion in the scope of the right would subtract more from public safety than it would add to personal liberty and a slight contraction would subtract more from personal liberty than it would add to public safety. That is the point of balance, and determines the optimal scope of the right. The point shifts continuously as threats to liberty and safety wax and wane.”

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2. Law Professor Joseph Margulies takes a sharply different view in his book, *Guantanamo and the Abuse of Presidential Power* (Simon & Schuster, 2006). He argues that rights and protections must not be recalibrated, particularly during times of crisis, because that is when rights and liberties are most threatened.

“But it is precisely this historic balance between power asserted and power restrained that has been upset in the war on terror. ... [T]he administration claims all the authority that could conceivably flow to the executive branch during a time of armed conflict, but accepts none of the restrictions. The result is unchecked, almost imperial power.... All of this power is limited only by the president’s promise to exercise it wisely.”

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## Case Studies: Your Assignment

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*Instructions:* Working with your assigned group, you will divide into two teams—Justice Department and Newspaper Staff — to consider a hypothetical case study.

**Justice Department:** You have learned that a major city newspaper has received information on a story that could have serious consequences for U.S. national security. Read the information in your case study carefully.

1. List three reasons why you believe this story should not be made public.
  - a.
  - b.
  - c.
  
2. What answer would you give to critics who say the public's right to know outweighs government claims of protecting national security in this case?
  
  
  
  
  
  
  
  
  
  
3. Make an argument for why the country would be LESS secure if the information was made public.

**Newspaper Staff:** One of your reporters has uncovered a story that will be big news once it is printed in your paper. Your newspaper believes that printing this story could change public opinion about the situation and possibly alter government policy. Read the information in your case study carefully.

1. List three reasons why you believe this story should be made public.
  - a.
  - b.
  - c.
  
2. What answer would you give to critics who say that protecting national security outweighs the public's right to know in this case?
  
  
  
  
  
  
  
  
  
  
3. Make an argument for why the country would be MORE secure if the information was made public.



# Case Studies

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## **CASE 1—Covert Military Operations**

A reporter has recently discovered information from a governmental source about a covert (secret) operation that the U.S. military has been conducting in Daria. Daria is a country that has been of concern to the United States for some time. The U.S. government believes that Daria has been providing weapons to terrorist groups in Southeast Asia. The government also has evidence that Daria is developing a nuclear program. The covert U.S. operation includes assassinations of prominent Darian governmental officials as well as raids by U.S. Special Forces against Darian radar installations. Both actions have been secret and do not have authorization from the U.S. Congress. The government source further suggests that these actions may be in preparation for a larger military attack on Daria.

Publishing this story would bring Congressional and public attention to these acts and would probably limit or even end subsequent covert operations in the region. The reporter feels this is a right to know issue and wants to run the story in next Sunday's paper when the Op-Ed page is the most widely read. The U.S. government considers Daria a threat to U.S. security and feels that publishing this story will compromise an operation it considers critical to U.S. security.

## **CASE 2—Cyber-Attacks at U.S. Strategic Command**

In recent months there have been increasing cyber-attacks on computer networks at the U.S. Strategic Command, which is responsible for U.S. nuclear weapons systems. Although the cyber attacks originated outside of the United States, a reporter has learned that the Justice Department suspects that someone at an internet security software company has provided information that will allow cyber-terrorists to bypass computer security. This reporter also has learned that, in an effort to identify the "leak," the U.S. government has been listening to the phone calls and reading the e-mails of thousands of people who live in a small city in the Midwestern United States, a city where the largest employer is a giant software company that develops technology to protect the security of all internet traffic around the world.

Publishing this story would bring Congressional and public attention to this monitoring and would alert those responsible for the cyber attacks that they are being watched. The reporter feels this is a right to know issue and wants to run the story in next Sunday's paper when the Op-Ed page is the most widely read. The U.S. government considers these cyber attacks a threat to U.S. security and worries that publishing this story will alert the attackers and compromise the government's ability to find them.

## **CASE 3—Scientific Research or Bio-Terrorism?**

The science editor for a large newspaper is planning a special Sunday supplement on recent scientific breakthroughs. A team of U.S. scientists working in a private laboratory have sent him an article that they would like included in the supplement. These scientists were able to create a deadly virus by injecting rabbit DNA into the rabbitpox virus. By itself, rabbitpox virus is not very dangerous. But this bioengineered virus tested far more deadly than smallpox; it even killed the rabbits that were vaccinated against rabbitpox. The article contains a "how-to" section that explains the scientists' step-by-step process in creating the virus.

Although not an expert in the field of bioengineering, the science editor realizes that the article is detailed enough that a bioterrorist who could obtain the rabbitpox virus could create the super-deadly version that might be used against a human population, causing a pandemic with great loss of lives. Biological and chemical weapons may be an even greater threat to the public than a nuclear device, because they may be more easily obtainable and handled.

The editor also realizes that it would be extremely difficult to stop this news from getting out, because there are so many scientific journals that might print this remarkable, though terrible, breakthrough. The U.S. government has informed the newspaper that it knows about this new deadly virus and is considering what to do about it; it considers release of the information to be a threat to security.

## **CASE 4—Truth Serum for Use in Interrogation**

A reporter has discovered that the United States government has been testing a powerful new “truth serum” drug that they plan to use as an aid in the interrogation of terror suspects. They have been testing the drug on prison inmates who are on death row. In return for participation and silence, the inmates have their sentences reduced to life in prison. The drug has proven to be remarkably effective at getting clear, accurate, and reliable information that was previously undisclosed from the prisoners. It also has been shown to have potentially serious permanent side effects for a small percentage of people. The government is getting ready to use the drug on two recently-captured, high-ranking members of al Qaeda. It claims that it does not want to reveal the existence of this drug for fear that terrorists would learn of this new interrogation method.

Publishing this story would bring Congressional and public attention to this issue and could affect the government’s decision to use this drug. The reporter feels this is a right to know issue and wants to run the story in next Sunday’s paper when the Op-Ed page is the most widely read. The U.S. government considers these al Qaeda suspects a threat to U.S. security and worries that disclosure could compromise the effectiveness of the drug. It also does not want the program to be stalled by public opposition.

## **CASE 5—Support in Exchange for Cooperation**

Over the years the United States has secretly given hundreds of millions of dollars in aid to the president of an oil-rich African country. The president has used much of this aid to get himself elected over and over again as well as to line his own pockets. Much of the population of his country lives in poverty. In public, the president is strongly anti-American, but at the direction of the CIA, he secretly works to flood the petroleum markets with oil to keep prices down. He is also corrupt and his government is known for its human rights abuses. The U.S. government sees him as a less than ideal leader and would not want to publically support him, but his willingness to help manipulate international oil supplies make him someone the government is willing to support secretly. If the secret U.S. support were made public, he would probably be thrown out of office.

Publishing this story would bring Congressional and public attention to this issue and could affect the government’s program of support for this leader in exchange for cooperation. The reporter feels this is a right to know issue and wants to run the story in next Sunday’s paper when the Op-Ed page is the most widely read. The U.S. government wants to keep the program secret as it considers a potential increase in oil prices to be a threat to U.S. security.

# Secrecy in a Post-9.11 World

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## Transcript of Excerpts from *Secrecy*

### Chapter 1

#### **Mike Levin, Chief, Information Policy, National Security Administration, 1947-93**

Secrecy is something like forbidden fruit. You can't have it. It's classified. That makes you want it more. If somebody discloses that we listen to a cell phone that Osama bin Laden is using to talk to al-Zawahiri who's in Peshawar, Pakistan, this fact would do damage to the national security, so it has to be kept classified.

#### **Thomas Blanton, National Security Archive, George Washington University**

The conclusion of the Congressional inquiry in 9/11 said, "We were fighting the war on terror as a country without our most powerful weapon, which was an alert and informed American public." This secrecy prevents the alert. The secrecy prevents informed action. The secrecy prevents democratic deliberation. The secrecy prevents effective counterterrorism. To fight terrorism, we need to know. Like the passengers on Flight 93, we need to know.

#### **Melissa Boyle Mahle, Former C.I.A. Chief of Base, Jerusalem, 1988-2002**

Should Americans be involved in operations to kidnap foreign people, and should they make them disappear? And is that consistent with who we are as a nation? I would argue that that is exactly the kind of thing that we would want our intelligence services to be doing, because what we want is to wage that clandestine war. Take it under the radar so our enemy does not see us coming. And so we have more latitude of action. And we can use methods that are not necessarily consistent with the values of Americans.

### Chapter 20

#### **Melissa Boyle Mahle, Former C.I.A. Chief of Base, Jerusalem, 1988-2002**

In the mid-1990s, the world looked safer. But that was only because we had blinders on. We weren't then really spinning out the scenarios of transnational terrorist networks. Today, when you take a look at our threat environment, we face the very real potential that a terrorist organization will obtain the capability and will try to implement a WMD attack against a major city in the world.

#### **Siegfried S. Hecker, Director of Los Alamos National Laboratory, 1986-1997**

The Cold War, it was a high-tech war. We were constantly looking to out invent and out create the Russians, to stay one step ahead of them. Now all of a sudden, nuclear terrorism, it's the more primitive information related to nuclear weapons that's very important. And so how do we keep that appropriately secret? Or can we anymore today?

The essential information as to how to make those bombs is out there. You can Google for it. A single bomb in New York City or in Moscow or in Berlin would have just enormous destructive capability. Tens to hundreds of thousands of people killed instantly, the effects of radiation, devastation of an entire city.

#### **Melissa Boyle Mahle, Former C.I.A. Chief of Base, Jerusalem, 1988-2002**

And that will have phenomenal impact on the way we Americans live our lives. You cannot have a bomb, a dirty bomb go off in London and think that America's not going to be impacted. Americans will no longer feel that they have the luxury to be an open and free society. A democracy is not a natural state of being. Democracy requires a shared belief system. A democracy requires a citizenry that is committed to certain rules of the game. And if we begin to redefine those rules because of fear of terrorists, democracy could very well be a casualty of that.

### Chapter 22

#### **Melissa Boyle Mahle, Former C.I.A. Chief of Base, Jerusalem, 1988-2002**

Nuclear capable, or bioweapons capable, or chemical weapons capable terrorist threat, this in many ways is a kind of threat that can be battled to a large degree under the veil of secrecy. And I think it should be.

How do you keep an equilibrium in the secret world in our open society? And I think sometimes when you're facing a threat such as we are facing, there has to be a little bit of give. We need to empower our intelligence services to go out and do some of that dirty work so that we can remove these threats.

**Thomas Blanton, National Security Archive, George Washington University**

We need some secrecy, because we all have secrets, because there are some real secrets that would make the world a lot more dangerous. And most of us, if we saw those real secrets, from common sense, would recognize them and would want them protected. All one has to say is, “How to design a binary chemical warhead?” If Gaddafi had known how to do that, he might not be disarming today, and we might be in a lot more trouble in the Middle East.

There are real secrets. The challenge is, not only are there real secrets, there are these overwhelming tendencies within the bureaucracy to control turf and to aggrandize power. Overwhelming tendencies today in the Presidency. Major economic interests, major turf and bureaucratic interests that are pushing greater secrecy, and there’s no countervailing power.

**Charles D. Swift, Lieutenant Commander (LCDR), U.S. Navy, Judge Advocate General’s Corps**

When things are a secret, we don’t have to be responsible. We can live our lives without taking on the responsibility of our country. Democracy begins with this very simple idea. It’s all of us, we’re all responsible. We get the country we deserve, because we chose it. A great nation’s character is what makes it great. And our character was formed on the idea of a society devoted to the rule of law. And that is powerful.

When you’re afraid, it’s hard to have character. Fear coursing through your veins makes it tough. When you get down to it, courage is the ability to follow your principles even when you’re scared to death.

# Lesson 4: Redacting Documents

## Objective

### Students will:

Consider the trade-offs between the classification of information and freedom of information.

Analyze criteria for secrecy and explore the issues involved in redacting or classifying documents.

## Film

For this activity, chapters 4, 6, and 8 of *Secrecy* are recommended.

## Note

A partial transcript of the suggested chapters is provided for planning purposes. You also may find it helpful as a handout for students after they have viewed the film.

## Resources

“Redacting Documents: Ice Cream Store”

“Redacting Documents: Social Studies Class”

“Redacted Document: Executive Committee Record of Action, October 24, 1962”

“Transcript: Executive Committee Record of Action, October 24, 1962”

“Document: October 26, 1962”

## In the Classroom

### 1. What is “Redacting”?

- **Pairs Activity:** Organize students in pairs and distribute “Redacting Documents: Social Studies Class” to one student in each pair and “Redacting Documents: Ice Cream Store” to the other student in each pair. Tell students that they each will be writing a fictional document that contains important information. They then will exchange documents with their partners and redact (black out) parts of the document in order to preserve secrets. Ask students to think about how they will justify the kinds of information they want to keep secret.
- **Making Connections:** When pairs have finished the activity, ask a few students who redacted the ice cream store information to read aloud the redacted versions of the letters. Then have them read the original versions. Although these are frivolous fictional cases, have students brainstorm arguments for why it might be good to keep the ice cream store information secret. What would be some positive consequences? Why might it be bad? What would be some negative consequences? Have them do the same for the social studies class example.

### 2. View Excerpts from the Film:

Show your students chapters 4, 6, and 8 of *Secrecy*. After viewing the film, ask students to brainstorm why governments classify and redact documents. When did the “modern secrecy system” begin? Why was it created? What was the government trying to keep secret? How are the security concerns of the Cold War period similar or different to the security concerns of today? Should the secrecy system be modified to address those changes? How?

### 3. Examining a Classified Document:

Distribute “Redacted Document: Executive Committee Record of Action, October 24, 1962” to students and give them time to read it carefully. Tell students that this document was originally a classified document, which means that the entire document was kept secret. The version they have was released in August 1988, when it was unclassified with one section redacted. Why do students think this document was classified “Top Secret” in 1962? Ask students to draw on their knowledge of the time period. What was happening in the world at that time? What was the United States concerned about? Why do students think the document was unclassified in 1988? What was happening in the world at that time? What was the United States concerned about? What kind of information do students think might have been redacted in this unclassified document? What kind of information would the United States still have wanted to keep secret in 1988?



Distribute “Transcript: Executive Committee Record of Action, October 24, 1962.” Tell students that this is the complete document, fully declassified in 1996. Have students read the document to find the section that was redacted in 1988. What was the U.S. government keeping secret in 1988? Why? Why was this document fully declassified in 1996? What was happening in the world at that time? Why wasn’t it important to keep this information secret anymore? Ask students to go back to 1962 and consider the effect that the release of this information would have had, had the document not been classified. How might the information have affected events during the Cuban Missile Crisis? Steven Garfinkel, one of the experts in the film, discusses how the release of information can help “rewrite history.” Ask students to consider how the release of this information might affect the public’s understanding of that period in history? Looking back, do students think that it was necessary to keep this information secret? What were some possible consequences? Ask students to imagine that they were government officials in 1962, without the luxury of hindsight. Would their answers to these questions change?

4. **You’re the Classifier:** Distribute “Document: October 26, 1962” to students. Ask students to imagine they are working in the Department of Defense in 1962 and are responsible for keeping sensitive information secret. Remind students to consider the time period and consider who the United States would have wanted to keep sensitive information from. Have students read the document and underline any sections or information that they believe is potentially sensitive. As Department of Defense employees, how would they deal with this document? Would they fully classify the document “Top Secret”? Redact portions of it and release it? Allow full release of the document? Have students modify the document as per their answers, either marking the document “classified,” redacting certain portions, or leaving it as it is. Ask students to generate reasons for classification and reasons against. Record student answers in a T-chart on the board. What are potential consequences of full classification? Of releasing a redacted document? Of fully releasing the information?
5. **Making Connections:** Have students consider the exercise they just completed as compared to the initial exercise with the ice cream store and the social studies class. In what ways were the issues similar? In what ways were they different? Are there examples when secrets are good? Are there times when secrets are bad? What, if any, standards should be used for setting standards of government secrecy? Are there different standards for individual secrets and government secrets?

After students have explored the issue of classification in an historical context, ask them to imagine what kinds of information might be classified today and for what reasons. What kind of information is important to keep secret? From whom? This final activity lends itself to an essay addressing the questions:

- When is it right to classify information?
- What is the cost to democracy of classifying information?

# Redacting Documents: Ice Cream Store

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## Your Assignment: Part I

For this assignment, you are to write a detailed letter to someone you know (not your partner) about your fantastic new job in the local ice cream store. You have been working there for almost three months and have just learned to make the most amazing ice cream dish and want to tell your friend how to make it.

**In the letter you should include the following:**

- The name of the ice cream dish (e.g., The Super Sundae)
- The name and location of the store where you work
- All of the ingredients in the dish
- How the dish is made
- The name of the supervisor who taught you how to make the dish
- Your job title
- Whether you are enjoying the job

*Dear Sarah,*

*How are you? I am working this summer at Dear Hearts Ice Cream store. You know the one on Broad Street? Well, I learned how to make the most delicious hot fudge sundae...*

## Your Assignment: Part II

After you complete your letter and give it to your partner, you are ready for part II of your assignment. You are to imagine that you are the proud head of a high school social studies department. You are proud because your social studies department is ranked the best in the state. It has come to your attention that a student has written a letter to a friend at a nearby high school. You do not want the content of your social studies courses or the methods of your teachers to “fall into the wrong hands.”

With that in mind, read your partner’s complete letter. Take a pencil and draw a line through specific details in the letter that you do not want revealed. (Assume for the sake of this exercise that you can’t just throw the letter away.)

Share the redacted letter with your partner. What reasons do you have for crossing out certain items?

# Redacting Documents: Social Studies Class

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## Your Assignment: Part I

For this assignment, you are to write a detailed letter to someone you know (not your partner) about your social studies class so far this year. Imagine that the person is in another social studies class at another high school that is nearby.

**In the letter you should include the following:**

- What topics and historical events you have studied
- The names of leading historical figures you have studied
- Details about the different types of projects and assignments you have had
- The name of your teacher and the course
- The names of classmates you have collaborated with on any projects
- The names of books or films that you have used in class

Your letter should outline the main elements but should also mention whether you are enjoying the course.

*Dear Sarah,*

*How are you? I am taking American History this year. So far it is going pretty well. We've covered the American Revolution, the Constitution and...*

## Your Assignment: Part II

After you complete your letter and give it to your partner, you are ready for part II of your assignment. You are to imagine that you are the owner of a famous ice cream store. It has come to your attention that an employee has written a letter to a friend describing how to make one of your special recipes. You do not want this information to “fall into the wrong hands.”

With that in mind, read your partner's complete letter. Take a pencil and draw a line through specific details in the letter that you do not want revealed. (Assume for the sake of this exercise that you can't just throw the letter away.)

Share the redacted letter with your partner. What reasons do you have for crossing out certain items?



# Redacted Document – Executive Committee Record of Action

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THE WHITE HOUSE  
WASHINGTON

UNCLASSIFIED

October 24, 1962

TOP SECRET - SENSITIVE

Executive Committee Record of Action, October 24, 1962, 10:00 A. M.,  
Meeting No. 3

1. Intelligence

The Director of Central Intelligence summarized the intelligence briefing. The President directed that the Secretary of the Treasury and the Director of Central Intelligence take immediate action to obtain more "black boxes."

2. Defense Operations

a. The Secretary of Defense presented photographs of dispersal of existing U. S. planes in the southeast U. S., and the Chairman of the Joint Chiefs of Staff reported that modifications of readiness were being considered to permit improvement of the situation.

b. The Secretary of Defense reported the plans for naval interception, noted the presence of a submarine near the more interesting ships, and warned that radio silence might be imposed. There was discussion of the problem

3. In the middle of the meeting there were reports that certain Soviet ships had appeared to have stopped or turned back, and the President directed that there be no interception of any target for at least another hour while clarifying information was sought.

4. Dr. Wiesner presented an initial briefing on the communications situation and the President directed that most urgent action be taken by State, Defense and CIA to improve communications worldwide,

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Partially Declassified/Released on 8-18-88  
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by N. Menan, National Security Council

# Transcript – Executive Committee Record of Action

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The White House  
Washington  
October 24, 1962

Executive Committee Record of Action October 24, 1962, 10 a.m.  
Meeting No. 3

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## 1. Intelligence

The Director of Central Intelligence summarized the intelligence briefing. The President directed that the Secretary of the Treasury and the Director of Central Intelligence take immediate action to obtain more “black boxes.”

## 2. Defense Operations

a. The Secretary of Defense presented photographs of dispersal of existing U.S. planes in the southeast U.S., and the Chairman of the Joint Chiefs of Staff reported that modifications of readiness were being considered to permit improvement of the situation.

b. The Secretary of Defense reported the plans for naval interception, noted the presence of a submarine near the more interesting ships, and warned that radio silence might be imposed. There was discussion of the problem of dealing with such submarines, and it was understood that in the event of intervention by a submarine in the process of interception the submarine might have to be destroyed.

3. In the middle of the meeting there were reports that certain Soviet ships had appeared to have stopped or turned back, and the President directed that there be no interception of any target for at least another hour while clarifying information was sought.

4. Dr. Wiesner presented an initial briefing on the communications situation and the President directed that most urgent action be taken by State, Defense and CIA to improve communications worldwide, but particularly in the Caribbean area. After the meeting, the President, in discussion with the Secretary of State and the Secretary of Defense, directed that special responsibilities should be assigned to designated individuals and a plan for this purpose will be presented for approval by State, Defense and White House officers at the next meeting of the Committee.

5. The President directed that State and USIA should give immediate attention to increasing understanding in Europe of the fact that any Berlin crisis would be fundamentally the result of Soviet ambition and pressure, and that inaction by the United States in the face of the challenge in Cuba would have been more and not less dangerous for Berlin.

6. The President directed that a senior representative of USIA should regularly be present at meetings of the Executive Committee.

McGeorge Bundy

*Source: Kennedy Library, National Security Files, Meetings and Memoranda Series, Executive Committee, Vol. I, Meetings 1-5. Top Secret; Sensitive. For Robert Kennedy's recollections of the meeting, see Thirteen Days, pp. 67-71.*

~~SECRET~~

686  
KJ  
October 26, 1962

October 26, 1962

Dear Mr. President:

While I know the tremendous pressure under which you are working, I believe you would like to be informed that today the Air Force has achieved, on schedule as planned nearly three years ago, the initial operational capability with the Minuteman missile. The first three missiles, sited near Malmstrom Air Force Base, Montana, have had warheads installed and have been assigned targets in the USSR.

Because these three missiles constitute an element of a unitized launch complex of twenty, unusual safety precautions have been taken which necessitate approximately eight hours of preparation before these missiles can be launched. However, in the event of an imminent national emergency, the precautions can be waived and the preparatory actions taken, after which these missiles can be maintained on semi-alert and can be launched within thirty minutes.

We are making urgent efforts to increase this capability, without sacrificing the established safety standards. Every two days an additional three missiles will be added, each such increment having the same launch capability as the first, until mid-November when the entire complex of twenty will be operationally ready. At that time the complex will be placed in its normal alert status, and all twenty missiles will be able to be launched in thirty seconds.

This is, I believe, a most significant occasion, marking the commencement of a three-year steady build-up toward our present goal of 800 Minuteman missiles.

Respectfully,

Eugene M. Zuckert

OFC OF SIG  
OSAF FILES  
DEPSECDEF  
GEN MCHUGH  
AFCCB

The President

The White House 01-0.850500 AT

cc: Secretary of Defense

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# Redacting Documents

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## Transcript of Excerpts from *Secrecy*

### Chapter 4

#### **Steve Garfinkel, Second Director of the Information Security Oversight Office (ISOO), 1980 until 2002**

I'm not sure that I'm in a position to know whether the current world situation demands more secrecy or less. I know that for an entire couple of generations we actually lived in a comfort zone of the Cold War. And it provided a comfort zone because it had parameters. And we have lost that.

We have so much information being created, it's hard to imagine that humanly it can be controlled. There are, within these billions of pages, many thousands, perhaps millions, that will help rewrite history in some way.

As secrecy disappears over time, we gain a clearer picture of what actually happened over the course of time. Sometimes it can be very dramatic; more often it's more subtle. But subtleties that may change our way of thinking.

### Chapter 6

#### **Thomas Blanton, National Security Archive, George Washington University**

I've been studying the secrecy system, really, from its gestation: voluntary self-censorship by the nuclear physicist immediately prior to the Manhattan Project, aware of the possibilities of what a nuclear bomb might be, and not interested in giving anybody else a head's up. Then at the point of the huge investment by the federal government in the Manhattan Project, that was the point of the actual creation of the modern secrecy system. World War II, and particularly the Manhattan Project, was the beginning.

#### **Siegfried S. Hecker, Director of Los Alamos National Laboratory, 1986-1997**

What they were concerned about was that the Germans would win in the race to the bomb, use this enormous explosive power to win the Second World War, and to rule the world. It was exceedingly important to compartmentalize, to limit the number of people who have access to that information. Even the physics calculations that led to how much material, how fast would you need to assemble, what isotopic purity would you need in your material, machining techniques, assembly techniques, whether your press, form, heat, cool, they were all part of the important secret. This was considered such a big secret that Vice President Truman didn't find out about the Project until he became President of the United States.

#### **Thomas Blanton, National Security Archive, George Washington University**

Years later, General Groves, the head of the Manhattan Project, was trying to explain why we needed so much secrecy on the Manhattan Project. And he gave a series of reasons why we needed to keep secret everything having to do with a nuclear bomb.

Number one reason for the secrecy was the Germans. Number two reason for the secrecy was the Japanese. Number three reason for the secrecy was the Russians; our allies, but looking forward to a nice, new war. Number four reason for the secrecy was all other countries, so we can keep a monopoly. Number five reason for the secrecy was other executive agencies and the Congress who might interfere in the program.

Truth is told by bureaucrats. A core motivation of the secrecy is about control and power.

...That secrecy system boomed.

#### **Siegfried S. Hecker, Director of Los Alamos National Laboratory, 1986-1997**

Now you could do with one bomb what it took an enormous military to do before. It was a quantum jump in the capabilities of mankind. Because of that, secrecy was that much more important.

## Chapter 8

### **Steven Aftergood, Government Secrecy Project, American Federation of Scientists**

Post-9/11, a veil of secrecy has descended upon much of the government. We're seeing information that had been on thousands of government and military websites taken behind a firewall. Unimaginable quantities of government information that had been available no longer are. And because we don't see them, we don't miss them.

The world of government secrecy is almost unimaginably large. It includes billions of pages of historical documents, millions of new secrets generated each year, tens of thousands of new secrets every day of the year. The financial cost of secrecy grew by a billion dollars to an unprecedented \$7.5 billion in a single year. That's the size of a budget of a Cabinet level government agency. It's as if we had a Department of Government Secrecy that no one has ever heard of.

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