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This is not the book I intended to write. I began the project in 2010 with every intention of comparing how democratic governments have complied with their transparency obligations. The idea was to track the globalization of freedom of information laws and then compare how they fared in practice. After gathering data from a range of cases—including the United States—I sat down in May 2011 to start writing. For reasons I cannot remember, I first dove into the US chapter.

By Memorial Day, the chapter had grown large and unwieldy, pushing 100 pages and filled with too many sections. The book obviously needed two US chapters, I thought, maybe divided between pre- and post-9/11 periods. As I continued, the two-chapter restraint seemed increasingly pointless. So did the narrow focus on the Freedom of Information Act (FOIA). So I kept going where I was going, points unknown. The global secrecy project needed to wait.

The book’s structure soon took form. I wanted to compare administrations and understand why some seemed more secretive than others, despite all of them having to operate under more or less the same information policy framework. As I collected stories about abuses of executive secrecy powers and officials’ clever and cynical (and clumsy) efforts to evade transparency laws, I realized that too many episodes came and went with the barest of traces. To my surprise, no one had put it all together before, at least not in the way I envisioned. The book I wanted to read during that first summer didn’t yet exist.

I faced the same problem as anyone else studying secrecy—at any rate, those of us without top security clearances. How would I construct a comparative political history of executive branch secrecy? The subject, after all, involved hidden information, exclusive knowledge. Clearly, we cannot document the secrecy system in full, observing and measuring every secret, knowing every transgression, every overclassification, every circumvention around open government laws. But because of those powerful laws, as well as leaks, lawsuits, journalism, and other secret-spilling mechanisms, hundreds of pieces of evidence have made their way into the public record.

As I gathered the pieces and stacked them up into piles for each presi-
dential administration, I noticed some conventional wisdom–busting patterns. Most interesting was how Bush-Cheney secrecy started to look less and less “unprecedented,” as many have alleged. To be sure, Bush and Cheney ran one of the most secretive administrations in history. But along several of the dimensions examined in this book, not only did the scale and scope of their secrecy have historical precedents but other administrations sometimes proved to be worse (the normative word *worse* flowing from the conceptual framework sketched in chapter 2). When they did exceed their predecessors in scale, they often did so by using tools and tricks those earlier officials had invented and developed. And then came Obama-Biden officials, promising “the most transparent administration in history” and ending their first term still trumpeting that promise despite the evidence.

The book therefore is a comparative historical analysis of administrations during the sunshine era, the period following the game-changing series of open government laws passed in the 1970s (the Federal Advisory Committee Act, the Government in the Sunshine Act, and the Privacy Act, as well as crucial FOIA amendments). I strove to make the analysis as comprehensive as possible, all the while recognizing the inherent problems of studying secrecy and the impossibility of including everything relevant. I was especially drawn to the intense drama of many of the secrecy conflicts. Hence, I didn’t shy away from telling stories, despite what some of the hegemonic norms in political science say about that. Like Percival Godliman in Ken Follett’s *Eye of the Needle*, I rediscovered how much I “liked the unraveling of mysteries, the discovery of faint clues, the resolution of contradictions, the unmasking of lies and propaganda and myth.” Like Iowa Bob in John Irving’s *Hotel New Hampshire*, I got obsessed and stayed obsessed.

The book was hatched and developed at Virginia Commonwealth University (VCU), where I have many wonderful colleagues who offered continued support and encouragement even after the project changed shape. For that and other reasons, I thank the core political science faculty: John Aughenbaugh, Deirdre Condit, Herb Hirsch, Bill Newmann, Chris Saladino, Faedah Totah, and Judy Twigg. Extra thanks go to Deirdre for just being awesome. I also thank David Gompert, who read the entire manuscript, offered many valuable criticisms, and reminded me of the important differences between bunting, balking, and punting. VCU also afforded the able research assistance of Cindy Cors and Jessica Zielonis, as well as the dogged and resourceful librarian Bettina Peacemaker (thanks also to Bettina’s colleagues Gail Warren, the state of Virginia law librarian, and Gail Zwirner, law librarian at the

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Every author should be so lucky to have an editor like Chuck Myers. I realized my good fortune right away when he responded to my proposal with an incisive comment that helped me reframe the project. All along the way, he seemed to be an enthusiastic backer, and he was always a significant contributor and critic, identifying and helping to correct problems and thereby improving the book (blame any remaining errors on me). Thanks, Chuck, for all of this and for our many intellectually stimulating conversations. I am also grateful for the anonymous reviewers whose extensive comments and criticisms improved the book in many ways. Thanks also to Michael Kehoe, Larisa Martin, Becca Murray, Joan Sherman, and others behind the scenes at the University Press of Kansas for all of their hard work and patience as we transformed the manuscript into a finished product.

There are dozens of others whose words and actions have been sources of inspiration and insight. I probably would not have even started the project if Chelsea (née Bradley) Manning had not leaked the Apache helicopter video to Wikileaks, which published it as “Collateral Murder” in April 2010. Other courageous individuals—Daniel Ellsberg, Edward Snowden, Jesselyn Radack, Sibel Edmonds, and Thomas Drake, among others—forced me and the rest of the world to reconsider what counts as necessary and unnecessary secrets and to never forget how crucial an informed citizenry is for high-quality representative democracy. I am also grateful for the tireless research and advocacy work of the following organizations (and the people inside): the National Security Archive, the Federation of American Scientists, the American Civil
Liberties Union, the Union of Concerned Scientists, the Electronic Frontier Foundation, the Government Accountability Project, the Sunlight Foundation, the Project on Government Oversight, and the Center for Effective Government (formerly OMB Watch). In addition, I would like to acknowledge the late Meg Greenfield, who wrote about a “sunshine era” long before I did. Though I came across her reference after I had already completed and named the book, Greenfield nevertheless beat me to it.1

Finally and perhaps most of all, I thank Stephanie and the little family we grew over the course of this project. Thanks, Steph, for managing crowd patrol and noise reduction duty when I had to close the door to the office. (Thanks as well to Brian Eno and other musicians for counterbalancing some of those noises with other ones that better facilitated writing.) Steph, thanks also for just about everything you’ve done over the past eighteen-plus years; I am eternally grateful. Penelope and Charlotte, I cannot wait until you can read what I was always working on in that stuffy office (Pen, it wasn’t just about the headphones). I also cannot wait to hear what you have to say about it.
INTRODUCTION

Three days into a 1975 diplomatic tour of the Middle East, Secretary of State Henry Kissinger sat down with a group of American and Turkish dignitaries in Ankara for a conversation about two nagging political problems: Cyprus and the US Congress. Turkey had invaded Cyprus seven months earlier, in response to a Greek-sponsored coup d’état on the small sovereign island nation. Both countries believed Cyprus was rightfully theirs, and both paid a heavy price for disrupting the status quo. For Greece’s coup, the US Congress cut off military aid to the right-wing junta leading the government, still a North Atlantic Treaty Organization (NATO) ally despite its unabashed and repressive authoritarianism. For Turkey’s invasion and ensuing human rights violations against Greek Cypriots, Congress cut off aid and took the unusual step of imposing an arms embargo on its other longtime NATO ally. Although Congress had overlooked ethnic cleansings in the past, atrocities that happened to occur in Europe rarely went unnoticed.¹

After earlier refusals to meet with Kissinger, a peevish group from Turkey agreed to see him on March 10, 1975. Senior Turkish officials changed their minds about a meeting once he and the Ford-Rockefeller administration sent signals they strongly opposed Congress’s vote on the embargo. Kissinger underscored the point as soon as the two sides sat down, saying the group was meeting at a “time that is not easy in our relationship, when the U.S. Congress has taken an action which is totally wrong and with which we totally disagree.” After discussing the ways the administration was working to restore aid and arms to Turkey through legal channels, Kissinger and Turkish foreign minister Melih Esenbel began to discuss alternative, not so legal plans, some of which seemed already well hatched. When Esenbel began to speak a little more explicitly about the ideas, US ambassador William Macomber piped in to remind the secretary, “That is illegal,” just in case anyone there forgot about the appropriateness of violating an official US embargo. Kissinger’s reply was, well, vintage Kissinger—bracing, with a charming wink: “Before the Freedom of Information Act, I used to say at meetings, ‘The illegal we do immediately; the unconstitutional takes a little longer.’ [laughter] But since the Freedom
of Information Act, I’m afraid to say things like that.” If Esenbel missed the underlying point, Kissinger continued, in his distinctive slow, guttural voice, “We’ll make a major effort [to send you arms illegally].” Kissinger’s joke, which recognized the power of the Freedom of Information Act (FOIA) while simultaneously mocking it, illustrates all too well the promise and pitfalls of FOIA and the other truly radical transparency laws of the 1970s.2

The Promise

In a country where policy change is usually incremental at best, the “sunshine laws” passed in quick succession in the 1970s were, by comparison, revolutionary, a rare example of punctuated change. The Federal Advisory Committee Act (FACA) (1972), the Privacy Act (1974), FOIA’s strengthening amendments (1974 and 1976), the Government in the Sunshine Act (GITSA) (1976), and the Presidential Records Act (PRA) (1978) all passed Congress in a six-year period. The potential impact on US political processes—and on the quality of US democracy more broadly—was enormous. For the first time, citizens would not need to rely on officials’ beneficence to access information about government actions. FOIA authorized citizens to demand unclassified information from government agencies, which had to comply, with limited exceptions. FACA and GITSA allowed ordinary citizens to literally sit and watch private interests try to influence government officials on presidential task forces. After meetings adjourned, people could read the transcripts and any other unclassified task force documents. Through the PRA, citizens could review all nonclassified presidential documents that had once been immune to FOIA, after a twelve-year delay. And the Privacy Act empowered citizens to demand dossiers the government had collected on them—or at least some of the unclassified parts.3

Earlier open government laws, such as the Federal Records Act (FRA), had edged the government toward transparency, but much was left to officials’ discretion, leaving citizens with a spotty, highly selective record of government action—not exactly ideal for democratic citizens trying to monitor and evaluate their representatives as well as government processes and performance more generally. The separation-of-powers system also created some natural incentives and opportunities for competitive parties to rat each other out. For example, members of Congress can hold hearings, issue press releases, publish letters written to senior officials, and push for reforms (such as the State Se-
Secrets Protection Act). But governing norms and credible threats of retaliation, on top of the closed government legal framework, greatly limited information disclosure to actors outside the executive and nurtured a culture of secrecy in Washington, DC. Information flowed to citizens, but presidential administrations selected each drop.4

FOIA and the other sunshine laws thus empowered citizens like never before. Officials could withhold information or otherwise block access, but they had to justify doing so within an explicit set of parameters. Sensitive national security, law enforcement, and other types of information could be withheld but only under specified conditions. Otherwise, the laws said, the information should be accessible to anyone who was interested. Plus, if agencies rejected a FOIA request or if presidents failed to comply with FACA, citizens could contest the decision in court, taking final decisions away from the executive branch, which, after all, might have illegitimate reasons (and questionable motives) for its secrecy. Overall, the sunshine laws offered citizens a radically more open government, and in so doing, they promised to constrain elite behavior, improve democratic accountability, and possibly even hasten the end of DC’s secrecy culture.

The advent of powerful and relatively cheap information technologies in the 1980s and 1990s sweetened the deal for citizens even more. They could click a few buttons and immediately wade through thousands of declassified and unclassified government documents published online. They could read a Central Intelligence Agency (CIA) propaganda plan from the 1961 Bay of Pigs operation in which the author reminded officials of the agency’s ability to plant news stories “directly on international wire services.” They could learn in 2003 about the detailed maps of Iraq’s oil fields, refineries, and pipelines that Vice President Dick Cheney and his secretive energy task force examined in 2001. Thousands of other declassified, unclassified, and leaked classified documents have streamed out of the government since the 1970s, revealing truths many political and economic elites would much rather have kept hidden.

Given these changes, the post-1970s period was distinct from all earlier periods of American political history. The laws and the new technologies together helped usher in what we might call the sunshine era, in which the ever-watchful eyes of citizens simply became a fact of life, forever influencing policy making and elections, for good or ill. Everything not classified in the new “floodlit society” would be open to scrutiny, scorn, and electoral punishment. At least, that was the promise.5
Although most citizens embraced the transformation, the new political calculus drew its fair share of skeptics—with Cheney being only one of the most prominent. Transparency sounds nice and noble on paper, they warned, but the passionate, often misguided gaze of the electorate could easily warp the political process. The country thus faced the danger of too much transparency. All that monitoring, if haphazard and driven by easily manipulated emotions, might lead citizens to false impressions, steering them toward pettiness and irrationality. Politicians, worried for their political futures, would refrain from making the hard but ultimately correct choices. Finally, though leaks had always been an issue, the new technologies made leaking even easier, multiplying the risks to national security. The techno-legal information revolution was promising, they argued, but it had gone too far.

The Pitfalls

However much the new laws promoted transparency, the sunshine era also has had a huge, underexplored dark side. It is not only a matter of the enormous and growing “national security state,” although that is something that can hardly be ignored. The system before the 9/11 attacks was already huge, shrinking only minimally after the end of the Cold War in the 1990s (see chapter 3). After 9/11, it grew to staggering proportions, with a dizzying array of acronymed institutions packed with secrecy workers. In the counterterrorism–homeland security–intelligence matrix alone, millions of individuals in 2010 worked in 1,271 government agencies and 1,931 private companies in some 10,000 locations across the country (plus thousands abroad). About 854,000 of those individuals, in both the private and public sectors, had top secret clearances, the highest-known level. Millions of Americans with security clearances made hundreds of thousands of decisions to classify information every year—tens of millions if we include derivative classifications, as we should (see chapter 3).

Overly optimistic arguments about the sunshine era also buckle under the weight of decades of government insiders’ repeated admissions, before and after 9/11, that the classification system “has grown out of control,” as one Defense Department review concluded in 1994. Panels commissioned by presidents and congresses across the post–World War II era have consistently found rampant overclassification and, more generally, “excessive secrecy” within the federal government. President Ronald Reagan’s National Security
Council (NSC) executive secretary, Rodney B. McDaniel, for example, concluded in 1991 that 90 percent of classified secrets were not legitimately held. The post-9/11 period brought, at a minimum, more of the same. The chair of the 9/11 Commission, Thomas Kean, estimated that 75 percent of government secrets were unnecessary. (‘‘Three-quarters of what I read that was classified shouldn’t have been.’’) Even former defense secretary Donald Rumsfeld conceded, ‘‘It may very well be that a lot of information is classified that shouldn’t be.’’ As Richard Nixon’s former solicitor general Erwin N. Griswold put it in 1989, ‘‘It quickly becomes apparent to any person who has considerable experience with classified material that there is massive overclassification and that the principal concern of the classifiers is not with national security, but rather with governmental embarrassment of one sort or another.’’

To grasp the full scale and scope of the secrecy system, we must also factor in all the hidden unclassified information, though we would almost surely underestimate the size of those secret libraries. For one, the government does not track all of its ‘‘sensitive but unclassified’’ (SBU) information—or if it does, it does not share the details. Just about anything can be trapped by SBU and similar designations, from documents about dual-use nuclear materials and heating and air conditioning systems to scientific data about Agent Orange’s health effects and antibiotic-resistant bacteria leaking out of midwestern hog farms. There are dozens of other cases, some involving national security, many not. Indeed, this book documents case after case of presidents and their administrations contorting themselves to hide unclassified information, not always for self-interested political gain or to please private interests but often enough.

When we sift through all those examples, which include historical fights over particular pieces of information as well as abstract categories of information (such as SBU), it becomes apparent how much the secrecy system has grown during the sunshine era. If one thing is consistent, it is presidents’ efforts to weaken the system’s legal foundations. Sometimes the efforts were deliberate. Top Bush-Cheney officials, for instance, worked from day one to restore what they saw as the proper balance of interbranch power that prevailed before Congress and the country overreacted to Watergate and Vietnam. Cheney’s protracted fight over his energy task force—in which he refused to comply with FACA’s requirement to publish the names of the group’s private sector members and details of their meetings—was more about his governing ideology than about the gory details of energy policy, although that was also a factor (see chapter 4). Though Bush-Cheney officials attracted
a lot of criticism after openly defying sunshine laws like FACA and pushing hard against the PRA, they also followed their predecessors in circumventing laws in quieter and subtler ways—often for short-term, more pragmatic reasons that had little to do with principled stands on presidential power. Sometimes it worked, sometimes not. When it did, precedents were set, giving future administrations more secrecy tools to use as they pleased. The quantity of carved-out exceptions to the sunshine laws grew through both deliberate strategy and unintended consequences.

What remains underexplored—and underexplained—is this extensive shadow history of presidential resistance to the new legal regime. Indeed, a complete history of the era reveals episode after episode of evasive maneuvers, rule bending, clever rhetorical gambits, and outright defiance, under Republican and Democratic presidents alike. Effective means of evasion accumulated over time, kept in a virtual secrecy toolbox that presidents could use when in a pinch. Other presidents used the tools and added to the toolbox for more ideological reasons. Administrations gradually chipped away at the legal regime, leaving it still standing but poked full of holes.

Any history of America’s information revolution thus requires a history of information policy retrenchment in counterpoint. It is a strange paradox. Although many government operations were more transparent in the sunshine era thanks to the new legal framework, the secrecy regime circa 2014—with its medley of rules and precedents gutting the letter and spirit of the sunshine laws and with its millions of secrecy workers and blacked-out pages—is at least as excessive as it was in the 1970s, when Washington promised something new. What escapes most citizens is how resistant the system is to change, with moves toward transparency infrequent and, when initiated, often abandoned. This has occurred no matter which party presidents have belonged to and no matter how noble their intentions have seemed.

Comparing Sunshine-Era Administrations

Still, some administrations appear more secretive than others. This was certainly the case during the Bush-Cheney years, when the president was accused of running an exceptionally secretive administration. After 9/11 and especially after the invasion of Iraq, accusations that the administration was governing with unprecedented secrecy became increasingly common:
• Bush-Cheney secrecy was “unprecedented and deprives the public of information it is lawfully entitled to receive.” (Center for National Security Studies et al. v. Department of Justice, December 2001)

• “The Bush administration has taken secrecy to a new level. They have greatly increased the numbers and types of classified documents . . . . They have made it far more difficult and time-consuming to obtain documents under the Freedom of Information Act. And they have imposed ‘gag rules’ on an ever-widening group of government employees.” (Steven Aftergood, director of the Project on Government Secrecy at the Federation of American Scientists, 2004)

• “George W. Bush and Richard B. Cheney have created the most secretive presidency of my lifetime. Their secrecy is far worse than during Watergate, and it bodes even more serious consequences.” (John Dean, White House counsel during the Nixon administration, 2004)

• Bush-Cheney led “the most secretive White House in modern history.” (David Sanger, New York Times, 2005)

• “The Bush administration . . . has consistently demonstrated an extraordinary mania for secrecy . . . . Public recourse has become more difficult: enforcement of the Freedom of Information Act has become slower and more burdensome. The one thing the administration has made no secret [sic] is its antipathy to government transparency. The secrecy fixation is a threat to democracy and an insult to honest history.” (New York Times editorial board, 2006)

• “The current administration has exercised an unprecedented level of restriction of access to information about, and suppression of discussion of, the federal government’s policies and decisions.” (OpenTheGovernment.org, 2006)

• “More than any other administration in recent history, this administration has a penchant for secrecy.” (Sen. Russell Feingold, 2008)

• Bush-Cheney led “the most secretive administration we’ve ever had, at least in the modern era.” (Dan Metcalfe, who directed the Justice Department’s Office of Information and Privacy [OIP] for over twenty-five years, 2009)

It is not a stretch to say the “unprecedented” claim became the conventional wisdom, shared not only by partisans but also by more objective analysts like Aftergood and Metcalfe.
However obviously true the conventional wisdom might seem, impressions can often be misleading. Frustrated partisans whose candidate lost the last election are apt to complain about the incumbent’s shenanigans. Republicans on the floor of Congress, on Fox News, and all over the Internet complained bitterly about Obama-Biden secrecy before White House officials could even put their family pictures on the wall. My favorite was an article that appeared on the popular right-wing website Newsmax six days after Obama’s first inauguration, entitled “Obama, Most Secretive President Ever.” Though that may have been an erroneous and premature accusation, the Obama-Biden administration’s frequent boasts about being “the most open and transparent administration in history” were also premature and probably unfounded, as chapter 10 shows. Indeed, the New York Times’s David Sanger, who called Bush-Cheney “the most secretive administration in modern history” in 2005, described Obama-Biden in even harsher terms: “This is the most closed, control-freak administration I’ve ever covered.”

Scholarly conclusions, like Aftergood’s and Metcalfe’s, are usually more circumspect than partisan jabs, heat-of-the-moment complaints, and government public relations claims (for example, “most open and transparent”). They likely contain elements of truth. Still, we lack systematic comparative historical analyses of the sunshine-era administrations’ secrecy records. Was Obama-Biden the most open and transparent administration in history? (Through the end of the first term, probably not.) Was Bush-Cheney secrecy unprecedented in scale and scope? (Yes but only along some dimensions.) In certain areas, Bush-Cheney clearly did expand the secrecy system—for instance, by relying more frequently on “secret law” within the executive branch to circumvent inconvenient laws. However, in other areas, including those in which the administration appeared to be vying for a world record in presidential secrecy, Bush-Cheney had close competitors. In several of those areas, such as the suppression of proprietary scientific information, Reagan-Bush and Bush-Cheney battled it out for the gold medal. (Did open government advocates and liberal Democrats in the 2000s forget about the 1980s?) Bush-Quayle also earned a few records for its efforts, and Clinton-Gore did not run far behind (for instance, in FACA violations). At the very least, the historical evidence, when stacked up and compared, suggests a more subtle conclusion than popular assessments, such as the widely accepted, unqualified one about unprecedented Bush-Cheney secrecy.
Organization of the Book

This book provides a comprehensive history of the sunshine era’s dark side, told through a comparative historical analysis of presidential administrations from Reagan-Bush through Obama-Biden’s first term. There are other books about US government secrecy, but none offer systematic comparisons, none explain how officials have resisted sunshine laws to make excessive secrecy happen, and none explain why presidents and their teams got away with it. We have, among others, books that focus on specific administrations (McDermott, Shulman), secrecy tools (Rozell), and issue areas (Fisher, Gup, Pallitto and Weaver, Roberts, Schoenfeld, Stone). But we lack studies that systematically compare administrations across issue areas. **Secrecy in the Sunshine Era** therefore gives historians, social scientists, and curious general readers the first comprehensive, comparative analytic history of sunshine-era secrecy.11

The book is organized thematically rather than chronologically. The structure works well for several reasons. First, it highlights the often surprising continuity across sunshine-era administrations. Second, the thematic format illuminates the often sharp contrasts between administrations in each issue area. Although there was continuity across administrations, there was also a lot of variation—surely not a linear increase in secrecy over time. Third, with a straight chronological approach, readers would lose each chapter’s depth of focus on specific issue areas. For instance, if the FACA cases were divided and distributed across separate administration-specific chapters, readers would finish the book with less of an understanding of the nature and importance of that law.

After the brief introduction, chapter 2 poses and begins to address the questions that drive the analysis. Which government secrets are legitimately held? What is the nature and scale of America’s “excessive secrecy” problem? What are the costs and consequences of excessive secrecy—for democracy, the economy, and national security? Why so much secrecy, despite the sunshine era’s legal framework and promises of openness? How have administrations circumvented the laws? Were the tactics mostly implemented piecemeal, for pragmatic purposes, or were they usually tied to broader strategies aimed against the legal framework? What consequences did administrations face for violating laws? What does it mean for American democracy that few senior officials suffered any costly legal consequences? Why have administrations had such varied records?

Through the process of answering those questions, chapter 2 outlines a
conce...or security and rights protections. It also shows how recent advances in historical institutionalism, particularly in research on institutional change, can help explain why presidential administrations have such varied records. Related work by constructivist institutionalists, who have emphasized how political actors’ ideas and rhetoric shape institutional change, also sheds light on the ways administrations have defied, dodged, and reconstructed sunshine laws.12

Chapter 3 focuses on statutes and administrative rules governing classified and unclassified information, during settled and unsettled times. Using the September 11 attacks as an empirical starting point, the chapter first examines how officials in the Bush-Cheney administration developed and interpreted new and old secrecy rules during the national security crisis and the subsequent critical juncture. Most of the time, they built atop precedents or revived older ideas and circumvention tactics from earlier administrations, especially Reagan-Bush. They also made distinctive policy choices based on a governing ideology that predated 9/11. A Gore-Lieberman administration just would have handled (some) things differently, due to its different governing ideology, all else being equal. Chapter 3 further highlights the role of ideas in institutional change by tracing the gradual application of “mosaic theory” as a conceptual and legal basis for secrecy. Finally, the chapter compares administrations’ classification and declassification records, as well as their FOIA response records. Overall, the chapter shows how a real or perceived national security crisis can create political space for policies tilted toward secrecy. However, there was plenty of secrecy before Bush-Cheney and 9/11, caused by forces more enduring than a particular governing ideology or exogenous shock.13

Chapter 4 compares sunshine-era administrations on their FACA-defying behavior, finding none deserving of praise but with Bush-Quayle emerging as the most laudable. Indeed, presidents have flouted FACA more brazenly than any of the other sunshine laws. Upset citizens filed lawsuits, but through a variety of circumvention tactics—playing word games, running out the clock, and pretending nothing wrong happened—administrations often got away with it, letting their task forces continue uninterrupted and in secret. Each unpunished violation demonstrated to successor presidents how weak and unenforceable FACA could be. The chapter pays special attention to chapter 2’s “How?” question, with the circumvention tactics front and center in the case histories. Indeed, FACA seems to draw out officials’ most creative and cynical word game efforts. “Members” became “consultants,” “guests,” and
“visitors”; public “participation” became “consultations”—all to escape FA-
CA’s requirements. When citizens did sue, FACA case law allowed adminis-
trations to finely hone their running-out-the-clock tactics. By exploiting and
creating delays in the legal process, officials learned to complete task forces’
work before judges could rule, accomplishing the groups’ goals with a speed
and efficiency unknown to most government work. When judges finally did
rule, the FACA defiance continued: officials complied halfheartedly with or-
ders to disclose records. By the time Obama-Biden took power, FACA had
been poked so full of holes that senior officials learned they could simply pre-
tend the law did not exist, whenever they deemed it necessary.

Chapter 5 examines the historical development of so-called secret law in
the executive branch and catalogs all known efforts by administrations to
use secret legal memos to contravene statutes. The issue first became a major
source of controversy during the Bush-Cheney years, after news broke about
the “torture memos” written by Department of Justice (DOJ) attorneys in
the Office of Legal Counsel (OLC). It more recently reemerged as a major
political issue during the Obama-Biden administration, when many citizens
demanded the immediate declassification of OLC memos justifying the extra-
judicial assassination of US citizens. Although the history of secret law centers
on the OLC, the chapter analyzes the use of binding, immunizing secret legal
memos written by officials in other executive branch units, such as the Na-
tional Security Council.

Chapter 6 looks at how sunshine-era administrations have used and abused
secrecy tools in court cases, focusing on the state secrets privilege and the use
of “secret evidence.” The state secrets privilege involves executive branch ef-
forts to exclude (usually) classified evidence from trials, often with the goal of
persuading judges to dismiss plaintiffs’ lawsuits. Secret evidence involves ad-
ministrations’ efforts to include sensitive information—but only when it stays
concealed from defendants and their lawyers. The chapter compares admin-
istrations broadly and examines the use of both evidentiary tactics through
several case studies of lawsuits, including those involving Maher Arar, Si-
bel Edmonds, and Hany Kiareldeen, as well as the Truman-era case of Ellen
Knauff. In each case, executive branch officials insisted that the country’s
national security needs demanded government secrecy. Only later did judges,
litigants, and litigants’ relatives and supporters learn that many of those insis-
tent declarations were baseless, used to protect officials from embarrassments,
not to protect citizens or the Constitution. (Thus, in these cases, the excessive
secrecy did not emerge from bureaucratic conservatism or related impulses—
the forces officials usually blame for overclassification.) For those and other reasons, chapter 6 again brings us face to face with the politically constructed nature of “national security” and the problem of trusting executive branch officials to judiciously base their secrecy claims on the concept.

Though the state secrets privilege gets a (half) chapter of its own, the book covers executive privilege only in relevant cases throughout the pages ahead. The main reason for this relative lack of attention is that executive privilege is one of the few secrecy-related topics that have already received abundant scholarly attention, as in Mark Rozell’s comprehensive book on the subject. As defined in chapter 4, executive privilege is a Supreme Court–sanctioned authority allowing senior White House officials to resist demands for information by the other branches, under certain conditions (determined by the courts).14

The two chapters on “secret science,” chapters 7 and 8, compare sunshine-era administrations in terms of their efforts to conceal proprietary scientific information, whether produced by government scientists or otherwise held exclusively held by the government. Because so few of the cases involved national security or anything close to it, administrations did not have the luxury of making security-related appeals when forced to justify their secrecy. They certainly offered excuses, making tenuous claims about privacy protections or citing their obligation to protect private sector trade secrets. When possible, they said nothing at all, especially if the secrecy seemed to clearly benefit corporate interests (producers of asbestos, aspirin, dioxin, meat, and so on) while harming specific groups (for example, Vietnam veterans) or the public health more generally. Whereas other chapters focus more on circumvention tactics or on the misuse of national security claims to conceal misdeeds and embarrassments, these chapters return to the initial question from chapter 2: which secrets are legitimate? The case studies deliver a clear answer: *not these.* On top of the harms done to American democracy, secret science has had enormous public health consequences. As for the comparisons across administrations, Bush-Cheney deservedly attracted criticism, but there are many reasons why Reagan-Bush needed a chapter of its own.

Chapter 9 catalogs and describes in narrative detail every known effort by senior officials to illegally shred, burn, delete, or otherwise destroy secrets. For instance, the analysis revisits Oliver North and friends’ shredding party to get rid of Iran-Contra documents. It also covers the legal fight over White House e-mails that stretched across three administrations, which ultimately added another layer of institutional secrecy to the US government courtesy
of Clinton-Gore’s unilateral action. In all cases, government officials went beyond mere sunshine law “circumvention tactics” and instead reverted to crude acts of destruction, usually done during (secretive) fits of desperation. Given how unlikely it is that the public record contains the full universe of cases, the chapter generally refrains from making comparative conclusions.

Chapter 10 evaluates the unfinished Obama-Biden administration on each of the relevant dimensions (for example, FACA and secret law). In most categories, Obama-Biden began by taking important steps to rein in excessive secrecy, but officials soon retreated or else abandoned the mission along the way. The analysis shows that despite their frequent boasts about being the most transparent administration in history, Obama-Biden officials have a mixed record, one that does not support their rhetoric—at least not through the first term.

Why does the Obama-Biden administration sit alone, apart from the others covered in the thematic chapters? When I wrote this book, the Obama-Biden administration was a work in progress, with new data and stories appearing daily. Every comparative measure (such as the number of FACA violations) needed constant readjustment; each still deserves an asterisk. Every case history was a current event, subject to twists and corrections. In short, it was an incumbent administration with years to go, an ever-changing case. Incorporating the half-finished presidency into the other chapters would have sapped the strength of the comparative historical analysis.