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P R O C E E D I N G S

MS. FLORINI: Good morning everyone. I'm Ann Florini, Senior Fellow here at Brookings. And I am delighted to welcome you to this session on transparency in the world.

For the last four decades, Americans have taken a good deal of pride in their Freedom of Information Act, which builds on a long trend in this country for open government.

But in the last few years, we've seen quite a heated debate reemerging over what the limits on openness in government should be, if any, who has the right to know what, and who gets to decide.

This week is sunshine week in the U.S., where proponents of transparency are hosting events all over the country to debate these kinds of questions. But this morning, we're going to go global. We're going to look beyond the borders of the U.S. to discuss a new reality.

The debate over the relative merits of transparency and secrecy is not just an American debate any more. There are now some 60 countries around the world that have some version of freedom of information acts and the numbers are growing all of the time.

But there are also signs in many parts of the world, including our own, of a trend toward greater government secrecy.

So we're going to address some fairly basic questions this morning. One is: where does the U.S. now fit in this global picture? Another is, what are our own neighbors and fellow democracies doing about transparency and secrecy in the policy debate that results from those questions? And what are the prospects for the

ongoing battle between the proponents of transparency and the advocates of greater secrecy?

To help us answer these questions, we have had the great good fortune to assemble a fairly extraordinary cast of characters who are instrumental in this debate, both as analysts and as activists.

We're going to start this morning with Tom Blanton, who is the Director of the National Security Archive at George Washington University here in Washington.

You have undoubtedly read in the paper in the last few weeks several stories featuring the National Security Archive. They seem to be on something of a roll lately. They broke the reclassification story where it turned out that government officials had been going back, getting documents that had been declassified and reclassifying them, apparently according to no particular standards. There have been several other stories along those lines.

Tom is the author of several books, including one called "White House E-Mail, The Top Secret Computer Messages, the Reagan-Bush White House Tried to Destroy," which the New York Times described as "a stream of insights into past American policies, spiced with depictions of White House officials in poses they would never adopt for a formal portrait."

He's a founding editorial board member of what I consider an extraordinary Website called freedominfo.org, which has as much information as you can find in the world on everything having to do with transparency around the world.

And I strongly recommend a visit to the Website, if this is a subject of interest.

Our second speaker will be Tania Sanchez, who recently was in the presidency's office in Mexico for strategic planning and regional development. In 2004, she joined Fundar, which is a Center for Analysis and Research and coordinates their transparency project. Fundar is an independent interdisciplinary non-partisan organization at the forefront of advancing substantive democracy in Mexico.

Next we'll hear from Nikhil Dey and Aruna Roy of the Mazdoor Kisan Shakti Sangathan in India. Both Nikhil and Aruna are founding members of the MKSS, which is an extraordinary organization that a few of us have had the opportunity to see something of in India.

Nikhil received his law degree from the University of Delhi. Then he, Aruna and another colleague named Shankar Singh (ph) went in 1987 to Rajasthan to live for several years and in 1990 they founded, along with others, the MKSS.

He has been actively involved in drafting India's right to information act, and also the national rural employment guarantee act, both of which were recently adopted in India within the last year or so. And we had an event here at Brookings last week describing the importance of the two acts and how they interact.

Aruna Roy originally served as an officer in the India administrative service until 1975 and then resigned in order to devote her time to social work and social reform, moving along with Nikhil and Shankar to Rajasthan in 1987.

In 2000, she was awarded the Ramung Miksase (ph) Award for community leadership and international understanding. And she is currently one of the members of India's National Advisory Council.

Our final speaker will be Alasdair Roberts, who is an associate professor of public administration and the Director of the Campbell Public Affairs Institute of the Maxwell School at Syracuse University. Al holds both a law degree and a PhD. in public policy and is the author of a book that I think we have fliers for outside, called, "Blacked Out: Government Secrecy in the Age," which was just released by Cambridge University Press.

The way we're going to start this morning is with some country stories. Tom is going to address recent trends in the United States, quite a few of which have been in the headlines lately. We're then going to hear about what's been happening in Mexico and in India, two very different stories, both from major democracies. And we will conclude with a presentation by Al, largely, I think, drawing on the themes of his book, about what are the major questions and challenges facing the transparency movement in the world.

So with that, let me turn it over to Tom.

MR. BLANTON: Thank you very much, Ann. It's a real honor and a pleasure to be here with my friends and colleagues and actual sources of inspiration and energy.

Folks like Aruna and Nikhil and Tania and Al and Ann have been at the forefront of really what's an international movement for freedom of information and greater transparency.

But I've got a pretty depressing story to tell you this morning about what's going on in the United States. And I really don't want you to get so depressed that you go out and call up Vice President Cheney and offer to go on his next hunting trip.

[Laughter.]

MR. BLANTON: And so I'm really glad I got to go first. And then they get to cheer you up with some of the real advances that are happening.

And let me just summarize what's going on in the United States with a famous quote from an astronaut looking down at Earth, I think, from about the vantage point of the moon. He said, "Houston, we got a problem."

And the problem is that secrecy and the secrecy system and the pseudo-secrecy system in the United States has really gotten out of control.

It's a phenomenon that I think reminds me of old days in the state I grew up in, Louisiana, which is well known as one of the most corrupt places in the United States for decades. And a late, great governor of Louisiana, named Earl Long, once said about his attorney general, he said, you want to hide something from old Jack Grimual (ph), the attorney general, you just stick it between the pages of his law books.

And that's a little bit of what's going on in Washington. Nobody is looking at sort of what the law actually says. Over at the White House and the Justice Department, they got these photo copy machines and the copy machines, they only copy the even numbered pages. So their copy of the Constitution, it misses Article I. That's the one with the Congress in it.

They got Article II. That's the President. Missing Article III, that's the judiciary, the courts, right.

It goes on. These even numbered copies of the Constitution, they're all over town these days. And it's a real problem for openness.

And let me just give you a little roster of what we're facing here. Let's just start with a secret energy task force that had secret meetings with Enron that was running manipulations of the national gas market that was secretly misleading investors and secretly creating off shore bank accounts and funds to mask its losses.

And then we went on to secret warnings before 9/11 that bin Laden was going to attack in the United States. And then we go on to secret arrests after 9/11 and secret trials and secret deportations. And then you sort of segue on over and you get some secret renditions to foreign countries. And you got some secret torture memos.

And then you got some secret censoring of scientists out at the Atmospheric Administration. They were trying to publish stuff on global warming.

And then you got some secret evidence about mercury and the fish and the tuna fish that pregnant mothers and kids are eating. And then you got secretly censorship of what the government itself knows. And then you've got secret costs estimates about how much the Medicare drug plan is actually going to cost the taxpayers. And if the Congress had known the full dimensions, maybe they wouldn't have passed that mess of a bill.

And then you've got going from there and you get secret torture memos. And then you get secret authorities for the President to do whatever he

wants on a foreign battlefield. And you get secret arrests of American citizens who get secretly locked up in jails in South Carolina.

And then you get secret proceedings in court cases and secret seals on court orders. And then you get secret trials that we find out in secret dockets in the courts. And then you get secret wiretapping memos. And then you get what Ann just mentioned, a secret program to go back and look at the open shelves of the National Archives and pull off documents that have been out for decades and stick them back into the secret vaults.

Houston, we got a problem.

Let me just read you one of those secret documents that got pulled off the shelf and stuck back in the secret vault even though it had been published in a State Department history and is available on the Web and in about a thousand libraries here and around the world.

It's this interesting discussion where they're talking about briefing President Truman in January 1950. And it's a debate about what they should do about that daily briefing. Regardless of our views of the merits of the staff summary, which is what they called the brief in those days, every indication is the President likes it and wants it. And furthermore, there is no indication the President is aware of or disparages the fact that it duplicates State Department cables and stuff sent to him directly by the State Department.

Pulled. That's a secret.

Now why is that a secret? It's because right now there's a controversy about briefs to the President that the President of the United States got a brief on

August 6th, 2001 that said bin Laden is going to attack in the United States. It went into a top secret vault.

The 9/11 Commission concluded that we would have been safer as a country if that top secret document had been on the front page the next day instead of in the black hole. That's a real interesting conclusion.

But now, any mention of a president's brief in a secret document is like it's a fetish. They're rustling through the files out there in College Park. Mention the president's brief, whoop, pull that one out.

It's a little ironic secrecy (ph). There is no cost benefit analysis. But let me just make the second point about what I just read to you. And I do apologize right up front. I've just put you in legal jeopardy. This is classified information. You are now, because of what I just read, in possession, unauthorized possession—and that includes all of you and you're foreign citizens and you're in double jeopardy—unauthorized possession of classified information.

And you know what the Justice Department says about that today? The number two guy, Paul McNulty, the acting deputy attorney general says if any one is in unauthorized possession of classified information, they can prosecute you. It's a felony, criminal prosecution under the espionage act.

And that's at a time when Congressman Shays of Connecticut, Republican Chair of a Subcommittee, has established through a series of hearings, that even Don Rumsfeld's own Pentagon admits that 50 percent of what's classified should not be classified. Fifty percent—that's the minimum. Other estimates go up higher.

The head of the 9/11 Commission, who read all of the counter-terrorism information, the latest stuff on Osama bin Laden. He said 75 percent of what he saw that was classified shouldn't have been.

So what do you have here? You've got an invitation for abuse of power. You've got an invitation for selective prosecution. We've got trouble Houston. We've got to push back.

And that's one of the reasons I'm really proud to be on this panel with folks who have been pushing back all over the world, because, you know, this is a universal, it's a universal attribute of governments, bureaucracies and power all over the world. Secrecy is the threshold tool that they use, the powerful use, to keep us in the dark, to keep their power, to keep control, to keep their turf, to keep their budgets. Because they are better off when we're in the dark. We're not safer in the dark.

And that's sort of the message of sunshine week.

I just want to move on to some of the more optimistic messages that you're going hear from some of these other countries because I think Tania is going to talk about how Mexico has accomplished on about three years what this country took about 20 years to accomplish under our Freedom of Information Act, from sort of starting at zero and moving up to a really effective implementation.

I think Aruna and Nikhil are going to talk about how you have an actual people's movement that brings this information that we need to change the power relationships that control our lives and turn that around. Information becomes the power, the threshold to change the balance of power between us and the power.

I think those are fundamentally hugely optimistic messages. I get my energy and my joy of this pursuit—I just with a sort of a message about the United States.

It's not as bad as I've just painted. We have a kind of a schizophrenia in our country, which is—I call it—particularly around the Freedom of Information Act. On the one hand, we've got some Freedom of Information Act requests, and you can go to our Website, nsarchive.org and you see the birthday cake from one of them that just turns 17. That would qualify them for driver's licenses in most states. You know, they're almost old enough to join the Army and another year hanging, stalling this FOI request. And they'll be old enough to vote.

And at the same time, if you go to the sunshineweek.org Website, you're going to see incredible examples from hundreds of newspapers all over this country who have used the open records laws to save people's lives, make us healthy, prevent corruption, clean up messes in government and actually make sure that our governments make better decisions.

Because the economists have this word, this 50 cent word, information asymmetry. It leads to huge imperfections in the markets. It means that the markets don't work efficiently if people don't make the right choices.

I've got a 5 cent word for information asymmetry. And that word is secret. It's a problem. It's not just our values. It's about how we're going to run things. How we're going to make them work, how we're going to make them work without corruption, how we're going to make them work in an accountable way.

And you can look at this both ways. There's a glass half empty, which is this incredible stalling ability of the government and these incredible urges,

political urges by this administration who are trying to turn around the restraints that we've put on them over the years. Bureaucratic urges that are universal across every system of government. Fundamental tools of power wherever you deal with power all over the world.

But on the other side, we've got some tools. We've got the Freedom of Information Act, the other open government laws. We've got activists. We've got energy. And we've got a fundamental, moral right to know.

And I think that power is ours. And I'm actually pretty—I can tell you that we will continue to face problems like this one where on the left hand side you see the version that came out in 1999. It's a biography of the Chilean dictator, Augusto Pinochet. Has his picture. Has a nice little description of him. And in 2004 when the government reviewed this, they blacked out, they took out the picture. They did all of these nice black blotches on the back. You can see one of them, really one of the most fun lines. It says that he likes to drink scotch and pisco sours, smoke cigarettes, goes to parties. It's blacked out—national security. Might be embarrassing.

That's the problem we're facing in the United States government today. We've got to push back. This dialogue is part of that pushing back. And I think today we, Americans, have awful lot to learn from the push backs that people are making in Mexico, and in India and as Al will talk about, in Canada and around the world.

I'm glad you're with us today. It's a real pleasure. Look forward to your questions.

[Applause.]

MS. SANCHEZ: Thank you, Tom.

I'm not as a fun speaker, but I'll try to give you an overview of what's happening in Mexico.

Yes, I couldn't agree more this is about power and about society having the tools to control power. So let me talk briefly about Mexico.

We can fairly say that Mexico is today a different country than the one it was say 10 years ago. We now have a more independent congress as of 1997. For the first time, the majority of congress is not from the same party of the president. In 2000, we had the first—we put the PRI, which was the party which had been in office in the presidency for 70 years, we put it out of office. And as of June 2003, Mexico can actively benefit from the right to ask and to know what are government plans and does as well as the costs, reasons and outcome of public decisions.

And this, as a result of the enactment of the federal law for transparency and access to public government information.

Indeed, as President Fox's administration comes to an end, analysts, scholars, activists are pointing to the transparency and access to information policy as one of the few most significant advances during his term.

Let me talk briefly about this law. To start it's important to point to the fact that our FOIA is the result of social mobilization. This has resulted from an initiative that first came into place by a group of activists, journalists, scholars, which gather together in a what I think a journalist calls the group Wahawka (ph) because they got it in the city that has that name, Wahawka. And they drafted one of the initiatives that was actually discussed in the congress.

In turn, it is fair to say that this administration has done its part by putting in place institutional framework to support the exercise of this right to access to information, including the state of the art technological tool in the Web, which can be accessed by anyone and from anywhere in the world to request public information from government agencies or even request personal information and personal data like medical or social security files, records, for instance.

The transparency law regulates two constitutional rights in Mexico. That's the right information established in the sixth article of our constitution, which was amended in 1977 and it established the rights to information will be guaranteed by the state.

The other constitutional right is the right to petition established in the eighth article which mandates that public servants will respect the right to petition.

In this way now it is possible for citizens to actually exercise the right under clear rules following formal and certain procedures in accessible matters (ph).

The transparency law establishes the fundamental elements necessary for a framework that allows and promotes access to information. So it establishes the right of every person, independently of nationality or age, gender of course, race, but nationality and age is not—it's not grounds for discrimination to demand information from the federal government.

The government—the obligation of all federal public agencies to abide by this law, including the three branches of the state, the executive, legislative, judiciary and the constitutionally autonomous bodies.

It's important to note that this law does not regulate what happens at the local level, the states or the municipal level.

And I will talk briefly about this in a moment, because it is a challenge.

Establish the principle of maximum publicity, establish a policy for active transparency, what's been called under that law transparency obligations. And this refers to certain information that public agencies have to publish even without having been requested. Things like the structure of the agency, director, the public officials, salaries and benefits, programs that the agency has.

The list, for example, the list of beneficiaries of social programs or any program that has beneficiaries—that has to be published. The budget projected and the exercise and evaluation. Jonathan has an interesting story, Jonathan Fox, our colleague here. He's been studying how accessible the evaluations of social programs are. So that needs to be public by law. Public procurement, contracts, concessions, that falls under the active transparency policy.

Our law also establishes what we call efficiency criteria. That is, it establishes deadlines for agencies to hand in information. It establishes costs. It establishes anonymity. So that's the criteria that will make easier for the citizens to exercise this right.

And then it establishes the rights to appeal public agencies' information denials without having to go to court. And it establishes an authority which is responsible to look at those appeals and then decide. That in Mexico is the Federal Institute Information Access called the EFI (ph) for the name in Spanish. And EFI is responsible for verifying the compliance of transparency obligations, promoting

the culture of transparency, and as I mentioned, deciding on information request appeals.

This means that if EFI resolutions are final, at least for the public agency holding the information, once EFI dictates an order, the government body cannot appeal. Whereas, if an individual or a citizen gets a denial or EFI confirms the denial, the citizen does have the right to go to court on the basis of requesting information.

So you can imagine how this institutional feature design has provided EFI with great power to open up governmental files. Where citizens have made specific requests, but an end there at least to secrecy, establishing transparency criteria and so on.

However, it is important to underline at three aspects of EFI and of the institutional design which have or may have an impact in the transparency policy and in the exercise of the right to know.

And mainly these issues have to do with the fact that EFI is not an autonomous agency, although it is an independent organization. In the strict sense, it is part of the executive.

Okay, so the first issue is that EFI has jurisdiction only over the executive branch. That is information denials and the ruling of the legislative, the judiciary and the autonomous bodies such as the National Commission for Human Rights or the Federal Elections Institute, the EFI, are not regulated by the EFI. In all cases, those legislative, the judiciary and the EFI and the National Commission for Human Rights have their own public information bodies that deal with these issues.

There's another fact, EFI does not have the legal capacity to impose sanctions over officials who do not comply with their decisions. The Institution of [inaudible] establishes that sanctions are to be imposed and enforced by the Public Function Ministry, which is the internal control agency. And of course, this agency is part of the executive.

And then there's another issue, the appointment of the five commissioners, EFI has five commissioners. And their decisions are collective, no. So appointment is made by the president. The senate approves and they have a veto power, but they don't have the capacity to propose. And of course, formerly civil societies are out of this process.

I might have time to go back to this. Okay, so what has been happening in practice? This is the law. This is on paper. What has been happening?

I'll talk briefly about some of the trends to give you a sense of what's been happening. At the federal executive level, we have in terms of level of compliance with the active transparency, which is what I just mentioned, publishing obligatory information by agencies, EFI reports a mixed record.

EFI carries out random evaluations of the agencies' Web pages. And they oversee 220 agencies, from which according to EFI evaluations, in 2004 and 2005, 149 of those 220 had complied in 100 percent.

For instance, almost all of the ministries would fall under these levels of compliance. And some of the worst performances we can see are the National Commission for the Protected Natural Areas, with 29.7 percent of compliance and the National Institute for Workers' Housing, with 19.2 percent. Compliance as of

November 2004, actually this institute [inaudible] for the name in Spanish has been involved in a great scandal dealing with, having to do with sons of the president's wife, Marta Sahagun. And the secret is very present there. They actually just reformed their statutes, the law that regulates this [inaudible] to leave EFI out of the information policy, of the public information policy. And they can do this because this institute has mixed resources, private and public. So they're finding a way to push transparency away from them.

Okay, it is important to note that these evaluations focus on the quantity aspect of information. They don't really tell a lot about quality, about the veracity of information. We've seen cases where the information that's published on the Web differs from the information that you receive when you actually request information through the Web page, through the system.

And we can talk a lot about the issues of quality of information. For instance, the level of desegregating the budget and the things you cannot really see and that they say the devil is in the details. So that's an issue there.

In terms of the number of requests of information to the federal government, EFI reports that in 2003 they received 24,097 requests. In 2004, 37,732. And in 2005, a little over 50,000.

So it's been growing. We can tell that there's a growing interest of exercising this right through that mechanism.

The number of appeals EFI has received in 2003 that was 636. In 2004, 1431. And in 2005, 4106. So there's also a growth in the volume of the EFI's work in terms of processing demands when information has been denied.

To give you a sense of where the user's interest is, I'll tell you that the six agencies that receive the most requests are the Mexican Institute for Social Security, the Ministry of Revenue and Finance, the Public Education Ministry, the Natural Resources and Environment Ministry, the Public Function Ministry and the General Attorney's office.

So at least the numbers don't talk about, for instance, national security being a big issue right now. Just judging by the numbers, we could talk about it case by case.

On average in May 2005, it takes agencies 12 working days to hand in information requested. The law gives them 20 days.

Okay, at the local level, we could talk a whole day about this. But at the local level, I can tell you that 29 out of 32 states now have an access to information law. Interestingly, the three states that still do not have a transparency law are Wahaka (ph), where this group first met, Chapas (ph) and Tabasco (ph), all three southern states with let's resilient authoritarian structures.

[Laughter.]

MS. SANCHEZ: So what is information being used for? We don't really have statistics for that, but and here it gives me the opportunity to talk briefly about the challenges we identify.

Okay, I think we can—and excuse me for simplifying realities so bluntly, but I think we have three kinds of challenges in Mexico. One is the challenge of completing the normative of the formula, the laws, or improving them. Then there's the challenge of implementation. And thirdly, which is, I think, the

biggest challenge, is the social use of this whole structure, which of course we're looking to have an empowerment affect over society.

Okay, for the normative side of the formula, let me briefly say legislation still not complete. We are lacking a public archives law. We are lacking a privacy law. So the legal framework still is not complete. There is needed (ph) advance of legislation in the states.

I talked about 29 states having laws. Some of them are even better than the federal. We have for instance, the law in Chihuahua, which is a northern state, which requires for public agencies to publish information desegregated by gender. This is really progressive. But we have very restrictive laws that modern access to information are yet secrecy laws.

So actually, EFI and some social groups are pushing for what they're calling for the constitutionalization of access to information.

In Mexico, it seems like if decisions are not constitutionalized, they won't happen and everything has to be pulled down from the constitution.

So they're pushing for that. They're pushing to establish a basic criterion in the constitution that will try to even out what's happening in the states.

In the implementation part, there is—I think the challenge right now and in the juncture of elections—we're having national elections in July—is to sustain what we have achieved. That's somewhat of a political challenge. We can expect different kind of backlashes and the power pushing back.

Even from those who may have supported this whole process in the beginning, we can see veiled threats, such as having government agencies quietly

disobeying EFI's decisions, resolutions or reducing EFI's budget or even appointing commissioners who are not committed to openness.

Or we can even have open and front out threats like reforming the law in ways that undermine the exercise of the right to access information.

Yes, that would fall under the implementation part. And then I just think I—two minutes, yes. I just want to finish with a question I think that will have to do with what everybody here will talk about, especially perhaps AI. But I think a big issue we're facing apart from all of the things I pointed out, is a question in the sense of analyzing, researching over the concept of transparency. Are we being too narrow in our understanding of transparency? Should the concept apply to broader social agents such as companies, organizations, unions?

For instance, in Mexico political parties do have to abide by the law but not directly. So I guess the question is more conceptual perhaps; and what are we understanding for transparency? Who is obliged by the laws that we put in place?

And thank you for your attention.

[Applause.]

MS. ROY: I've just come back from Illinois where I was invited to talk about speaking truth to power. I went there to deliver a memorial lecture. And it was amazing how similar problems in Illinois and Rajasthan are.

They are divided by miles, but—and different cultures, yes—but those of us who are concerned with social justice, with equality, with rights are not divided. This world is shrinking. We are forced to drink Coca Cola in my village.

We are forced to buy a kind of development we don't want because that's what international, multi-lateral agencies would rather have us do.

At this point in time, this kind of solidarity means a lot to us because people who feel that secrecy is a crime, feel that not be obligated to be accountable to the people is a crime, must also join hands. And I think located as we are today in the United States is of particular importance. The United States today gives a mandate to the rest of the world, and what we see here and what you do here, should also affect us positively.

So while I'm going to speak about the Indian experience, I'm going to speak about very small things, but small is not only beautiful, but small is vitally important. Because if the small doesn't exist, the large doesn't work. And that's what we've understood in India.

I come from the Mazdoor Kisan Shakti Sangathan, which is a worker's and people's organization. It's a non-party political organization. I'm a social and political activist. But I'm also a member of the National Campaign for People's Right to Information. And I also am a member of an advisory council that has been set up by the federal government in Delhi to monitor their commitment to the people of India to give a right to information law, to make true to our policy. So it's a been a long struggle and a long journey.

But I'll just get back to what I have to speak about to you today. Tom said lots of things but I'll add to his list by saying that secrecy is really anti-democratic, that secrecy is really anti-people, that secrecy is anti-truth, that secrecy is anti-social justice.

And that's what we realized when we were fighting for minimum wages, for the right to have a ration card, a right to food, a right to get to the hospital and get anti-snake serum, a right to get into a bus and ask for a ticket, a right to ask for land revenue records, as a woman a right to know as in a rape case, what the doctor is writing about me.

None of these things were accessible because power is—information is power. And people who wield power know that sharing information is sharing power.

We couldn't get lists of people below the poverty line, which is a published document when we went to the block development officers, I mean the local officer, she refused 20 years ago to share it with us in daylight.

She told me, you are a woman, so I will give it to you. You can read it at night and give it back to me in the morning.

So that's the level of absurdity to which secrecy has been used in India. And it is really something which hits at our right to live. Poor people in Rajasthan fighting for the right to know didn't have a huge abstract idea of what it would do to democracy in general. But they certainly knew what it would do to their lives.

When we mobilized to fight for minimum wages, for the payment of a wage or access to food, we realized that transparency is a vital tool.

We also had an official secrets act, which the British left us. And left everywhere they ruled in the world. They left it in Africa. They left it in the Indian subcontinent. They left it everywhere. And no independent government has set it aside.

So though we have a constitution which gives us the right to freedom of expression, we needed a specific right and an act of a right to know that set aside and superseded the official secrets act.

Nikhil will be talking about the law in detail. But this transparency, what did it mean to us in actual terms?

We fought in the beginning because we had access to bills and vultures and legalisms of the local council. And we knew they were cheating us. We wanted this information painted outside on the council walls.

It was a very simple thing, but we really had to fight very hard. We had to sit down in picketing strikes. People like to be mobilized. People got mobilized. People understood the link between the micro need the macro. People understood the importance of our scheme for this kind of information and across the board.

It was interesting that at what began as a poor people's right to know, then sat in the first picket, sit down strike, across the board—trade unions, political parties, members of political parties, all kinds of organizations understood that without transparency, no democratic right would really be possible India.

Because we are cheated at every nook and cranny. Tom talked about big policy issues which concern us all, but to get to those big policy issues, we had to begin at the very, very small, and completely tangible, specific levels.

What did we do? The two things that affect poor people, one is corruption. As you know, everywhere in the world, corruption is a huge problem. And in India, it's a problem too. Gandhi, when he was prime minister of India, said

that if they sent one rupee to the village, we only get 13 piase, which means 85 piase just goes all over the place. Where do these 85 go and how does it affect us?

So in this whole business of getting a corruption-free system, which would deliver all of these services to us, we wanted to know what was happening.

The second thing we wanted to know was about the arbitrary use of power. It's something which affects us. False cases, if we go and ask for information, false cases against us. There can be all kinds of false cases. Misuse of authority, misuse of all of the institutions that are there, set up to regulate the system are all corrupt. The anti-corruption department is corrupt. If you want to go and file a case in the vigilance department, you've got to bribe somebody.

So wherever you go, to go to court, you've got to bribe somebody. If you go to the police, you've got to bribe somebody. Where do you go? Also to ensure that there's a rule of law and to get the statutory organizations to work for us, we needed the right to know.

Transparency in itself is not sufficient. We wanted transparency but we needed a platform to do it. So we started a process of sharing this information, and we started having public hearings, which we called jansoways (ph), the open-ended meetings, if you like, where people came and gave testimonies of what was wrong.

We invited the government because if it's a corrupt government, they wouldn't listen to us in any case. So they had to be present to hear what people had to say. And enormous courage of ordinary people, who could have been beaten up, who have been denied all rights, who came and testified in front of thousands of people to say what was wrong with records.

And I think that made the middle class in India understand now irresponsible they have been in not asking questions. The most important thing to make a democracy work is to ask questions and to ensure that we retain those places of dissent that democracy creates for us.

If those places of dissent are not nurtured, there is no democracy. And we also have a right to monitor. I remember Sushela (ph), one of my colleagues, who had just studied up to the fourth class. She came with us to Delhi in 1996-97 when we went to advocate the use and the right and the need for a law. And when we were in a press conference and there was Mr. V.P. Singh, was ex-prime minister of India, also present in the same meeting, the press asked her why she was interested in these billions of rupees. And she said something—I'm going to repeat myself I don't know how many of you came on the 9th to her speak—but she said if I send my son with 10 rupees to the village market, I ask for accounts.

The government spends billions of rupees in my name. So it's my money, it's my accounts, it's our money, it's our accounts.

And these messages went straight to people. There was no need to explain that if money is spent in my name, those are accounts are mine, and I need to know.

In this mobilization, it has been extremely important. And they're mobilized not only—and Nikhil will speak about the law—but even in the process of law making, people have been involved. People do not know how to formulate a section of the law.

Yes, we need lawyers for that. But they certainly know what they want. So we took this process of lawmaking from small town to big town to Delhi,

to various places. We had meetings all over the country, also in Rajasthan, to find out what kind of law we wanted.

People participated in the lawmaking. And they said it in their own language. The idiom was different, but what it should contain was very clear, that there should be no compromise on transparency and that there should be some kind of penal action on people who fail to deliver. That if there was none of those things, the law would be toothless was said to us again and again.

The law is collective. And Rajasthan said we don't want an order. We want a justiciable act. And if the state of Rajasthan is not going to give us a justiciable act, the lawyers, the entire trade unions, organizations will go and protest to the chief minister and prolong the agitation to get a law.

So everything was done with the people. And that was the most empowering thing about the Indian campaign, that this law has been given to us because we wanted it.

The second aspect of it was the accountability aspect. One chief minister of Rajasthan made a commitment in an assembly. We realize that it was not just corruption and arbitrary uses of power. It was democracy. No elected representative can make a promise in an institution, which has been created by democracy and not fulfill it.

Civil servant friends of mine in the administration said, well, it's only an assurance. There are thousands of assurances political bosses make and chief ministers make and we don't have to comply with them. But this campaign realized that accountability is not only money, it's a promise made to give us a law. So we stuck to it, we made them give the law. And it was a long battle.

The same struggle has taken us to Delhi. Now when some of us sit in the National Advisory Council, it is to make the government implement their promise to us. And this present government, the United Progress of Alliance that rules in Delhi today, the coalition, made a promise to the people of India in a document called "the National Common Minimum Program" in which this said they will give us many things, including a national rule and employment guarantee act, and a better right to information act.

Though the formulation and the law making has been important, the lobbying has been equally important. The access to the bureaucratic modes by which this law was turned around where they removed a few words in each clause making it ineffective. And how to fight it at each stage to go back to the press, to protest to the press, back again to the lawmaking, back again to the bureaucracy (ph), back again to the street. And that's how this law has been such a strong law in India, because people have been involved.

I would also like to mention briefly that this is a political, economic and social right. We have had to argue with organizations which have been dealing with people's movements, how important it is on the bottom line not only the right to know, but to have democratic accountability.

Whether it's big dams or fisher folk who are struggling, whether it's dallots (ph)—I hope that some of you know what dallots are—they are people who are caste-wise at the bottom rung of the social structure. Whether it's gender, we need the right to know. Economically, we need to know what policies are being signed, what markets are being opened, what is happening as for instance I won't go into the details, but in Delhi, we managed to prevent the government of Delhi from

signing a contract to privatize water because we know what kind of economic affect it would have on us. And the middle class in Delhi and the fashionable colonies of Delhi, and the resident welfare associations of rich people joined us in the campaign, we because we accessed information. Otherwise, it wouldn't have been possible.

Politically, it's important because we need to know whose name is on the voter list, why is it not on the voter list. What are the affidavits that re being filled by the candidates? How do we access those affidavits? How do we spread it out in the remotest places? How do we ask for political, even in the narrowest definition, of electoral accountability? They have used it for that.

I'll end by saying that this campaign us in India, and I have been all over the country to Tamil Nadu (ph), to Bengal, to Maharashtra, to so many other places, to [inaudible] and everywhere we now understand that this right to information law is an enabling law for democracy. It is true that it's anti-corruption. It's true that we are fighting for economic rights, but it is a very, very important part of democracy that we should have the right to ask questions.

This led us into a very, very important part of the campaign we had for the right to work. And this is extremely unusual. It goes against international trends, but in India, the state has taken the responsibility for addressing poverty.

You cannot privatize and you cannot leave it to the market. The state has a responsibility to see that people don't die of hunger, that they have basic employment. And they accepted—there is another campaign which we are part of and that campaign's demands are accepted. Now we have a national rule, employment guarantee act, which assures 100 days employment to every poor

household, to every household in the rural areas, whoever is willing to do unskilled work.

And one of the biggest problems we have had to face is the probability or the assurance of people say of corruption in these programs and those billions of rupees that go to poor people will be siphoned off.

Now we have the Right to Information Act as well. And we think the use of the Right to Information Act in public learning, which now we call them social audit processes, where people learn how to access those records and see them, which will prevent pilferage to the extent which we can prevent it. And it will ensure that people have the right to information and the right to work together.

It's an extremely important thing, and for us, we've been struggling for all of these acts together and to work with poor people. It's been a great, significant victory.

Of course, there's many, many more miles to go before we can even rest in peace.

In any case, the [inaudible] the huge battle. And as my friends say, the right to know is the right to live. The campaign slogan has been the right to know, the right to live. And in fact, for all of us, who are in the margins, and also those who are steadily going beyond reducing their economic levels because of all sorts of campaigns and political decisions, and now the numbers are rising of people who are marginalized. It is indeed the right to know and the right to live.

And of course, as I said before, it's not only our money and our accounts, it is also our policies. It's also our lives.

So we need to know, not only for India, but I think for the whole world.

Thank you.

[Applause.]

MR. DEY: Aruna has given the whole campaign background, so I'll try and focus actually on points in the law, which were part of this dialogue between people and the law itself and the campaign and the law itself and specific provisions.

I'd like to start actually by Tom talked about how each thing is being pulled away and made secret and being put into a dark hole, a black hole. Twenty years ago in India when the Official Secrets Act was there, India was a black hole because the Official Secrets Act basically said that any information given out without specific authorization is a violation of the law and the person giving it out can be prosecuted.

So when I think back 15 years ago and when we asked for the master roll list, at that time, just to see the master roll, the Chief Secretary of the state where we are said, Impossible, how can you see it? It's a secret document. It's a government bill and it's a secret document. If you like, I can unofficially show it to you, just like that block development officer, you come to my office and I'll show you that particular list because you're friends of mine, but you are not allowed to see it.

Today across the country the changes that it is required by law and the master roll lists are becoming a very important part of all government programs, that you have to put them out, you have to them on notice boards, you have to read them aloud, you have to put photocopies, you have to put them on the Web. So that same document that years ago we began with and people began with is today there is a sea change, and it's taken 10 years.

So what really is the law-making process in India is an extraordinary process in 10 years. It's something that's happened in different ways across the world, but in India it's been an extraordinary process in 10 years of when we started

off we just said show us that master roll. We didn't say very much more. We didn't ask for all the documents, we didn't ask for national documents, we didn't ask for policy documents, we were asking for one single document and local level expenditure of how people who were employed on the work and the material that has come for that work.

The first set of orders that we asked for as Aruna said was to paint it on the wall that how much money has been sanctioned for a particular area and what works, and copies of those documents, or even just showing us. The first order that came about in Rajasthan was to paint those walls in 1997 after a 4-year struggle where we had sit-down strikes for 40 days and 54 days continuously, that's the kind of struggle it took when 200 people had to sit before we got those sets of orders.

The first order that the government issued was that people can inspect documents, those documents, but they cannot get copies of them. When we kept insisting that we need photocopies of them, some people even accused us of being agents of Xerox which is the main company because they said that you are just to promote photocopiers be there all across the state and that's what you're trying to push.

So in that process of trying to push, people said we need certified copies so that we can prove it. We'll see the document, we'll see the lies in it, but we can't prove it in court, we can't prove it anywhere else, we need it to be able to prove it. So that dialectic that Aruna talked about where people kept pointing out what is it that we need in the law, what kind of things, and it began with just a simple kind of question regarding expenditure in their areas, where did it go, and I'll just focus on five things quickly.

First of all, what does the law cover? The shift from a small executive order just dealing with local expenditure, to a law governing first the state and then the whole country—what will the law cover? The initial laws all covered only government and over and over again people said you cover private institutions, you must cover NGOs, you must cover political parties; the law must cover all institutions of government. Today in the national law you still have because the government insisted that, no, only government sector will be covered, but you have a very interesting provision that has been inserted again by the campaign which says that the law will cover all kinds of information, meaning Emails, memos, documents, all kinds of information, and very specifically, any information relating to a private body that is either required to be or is held by government under any other law in force.

India has a million laws under which private bodies are supposed to, political parties are supposed to, submit their accounts, under the Companies Act, companies are supposed to submit all kinds of things, under environmental laws companies have to give environmental information. So we can use those provisions of the law to in fact insist that the government does its job and provides that information. So that's one kind of key element of how we managed to look at the private sector also.

Another very important thing was that the law first began with this idea of just documents, whatever you have either on paper or on film. But there is in India a very important thing, a very important debate that's been going on about file notings. On one side you have the documents, but on the other side you have the opinion of the officers on the left side of the file about what should be done about

those documents. So on the left side of the file the government wanted to prevent that left side of the file from coming out, but the law says under the law initially which we drafted advice, opinion, Emails, memos, notings, we said that, and the bureaucrats took out notings. They just took out that word and they felt very secure because they thought now notings don't have to come out.

In fact, what is a noting? It's an advice and it's opinion. So today the law says that you will get access to advice and opinion. When after this law was passed the bureaucrats started refusing, and the Prime Minister's office issued a press statement saying that filing notings will not be made public. What happened was, one of the information commissioners the next day in a press conference said, the Prime Minister is a citizen of India and he is entitled to his opinion, but we will rule by the law and the law says that notings will be allowed.

So again in that whole thing there was a lot of pressure from the citizen side that all file notings, otherwise it's useless. If you don't know who is asking for what to be done, only knowing what was done is of little use. There have been rulings after that by the—

[End Side A. Begin Side B.]

MR. DEY: [In progress] —provide file notings.

A third part of this is what is the right to information? It's not just a document. It's not just a film. It also includes the right to inspect and that many of the state laws, India had nine state laws before the national law came about, many of the state laws did not have the right to inspect. So you went to an office and they said, what do you want? What copy do you want? And you don't know out of those thousands of files what you want. So the right to be able to look through

them, decide what exactly you want, that is one very important right that has been put in.

The second is to take material samples also. When you get your food grain, can you take that a sample of that, a certified sample? Can you take out a sample from the road that's been badly built? Can you take a sample from a building that's not right the right ratios? That has also been included in the law.

The fourth thing that I'd like to talk about are the exemptions. There are several exemptions. They have been curtailed. Many people say that they are what the Supreme Court has held that you can curtail the freedom of speech on the following exemptions, that's what's been included. But there is a public interest override that can override all exemptions by the public authority if it is in favor of the public, number one.

There is another very interesting clause which is unique only to India which says that any information that must not be denied to a member of the state or national legislature cannot be denied to the ordinary citizen; a member of Parliament or the State Legislature cannot be denied to the ordinary citizen. It was a very important linkage. We vote someone into power, we are the authority giving them power to go and sit there on our behalf. Obviously, we can't be denied information that they should not be denied. It links the voter with the member of Parliament and also with their elected representative.

Another thing is Section 4 which has 17 provisions of the duty to disclose which is sua moto [?] disclosure. You have to paint it out and you have to publish it. There are 17 different things, and they are extremely comprehensive. What we have been using in the law since the law came into force on the 12th of

October is asking many, many officers what have you done to follow Section 4's various provisions. Give us that answer. That's our first question under the right to information, what have you done to follow the provisions of Section 4.

The last thing that I'd like to talk about the penalty provision which Aruna mentioned. The Indian law has comparatively strong penalties. This was the biggest debate, the biggest fight right through when Aruna was on the National Advisory Council and we knew that it was going on. The law says that for every day of delay, the bureaucrat will have to pay from his pocket or her pocket 250 rupees fine for every day of delay.

That is a revolution for Indian law. We have seen the impact of it because as we've been asking questions when we set up a campaign to ask questions as soon as the law came into force, we've seen for the first time we are fairly powerful locally, but we never got answers from government. We never got answers to our questions. Even Aruna as a senior ex-bureaucrat wouldn't get answers. But now after this law has come into force, with our requests for information we have a plethora of answers. We don't even know how to deal with them. They are also scared that if they don't need that 30-day limit of giving answers, they'll start getting fined from their pocket and it will go on their service record. Someone rang up Aruna and said you haven't come to take your information and I shouldn't get fined. So penalties work. At least in India they work. I think they would work around the world. It is a very important provision in the Indian law.

The last thing is that there is a very strong Information Commission. We empowered it. We fought for its power. Unfortunately, they have appointed a

series of bureaucrats who have come in with a mind set of protecting information and spending years within the bureaucracy of protecting information. You can't get rid of them because we put it in that you almost have to impeach them, they are so powerful; so we are facing those sets of problems. There is a lot of debate around the bureaucrats and there is a lot of pressure on those information commissioners. In fact, they have gone public saying, from our point of view, we don't have an appeal against us because they are so powerful that you can only appeal under the jurisdiction. But they say every morning we see the appeal of activists who are badgering us for every decision that we take, so they are under a lot of scrutiny.

I'd just like to say that from the right to information, the experience started with poor people in India and as the employee guarantee law gives us an opportunity to go out amongst hundreds of thousands of people across the country because they can see how information can help them get their other rights and take the right to information amongst the people. But it's also built up alliances amongst the middle class.

For instance, Bush's visit to India, people in the U.S. are concerned about the nuclear agreement, people are concerned about the nuclear agreement, and that is shrouded in secrecy. It is an example of where from here you can ask questions, from there we can ask questions, and we can start chipping away because nuclear is secret and nuclear agreements are secret and international agreements are shrouded in secrecy, but we can start chipping away at both ends and so that citizens get to know. A group of 50 ex-ambassadors in India signed a letter saying we want to know the contents of that nuclear agreement because we are very concerned about it. If we can join alliances with them and join alliances across

countries, there is a great opportunity as Aruna said of citizens' action on this kind of provision to make sure we have a better world.

[Applause.]

MR. ROBERTS: It never occurred to me until a few moments ago when Nikhil spoke that Xerox might be a very good sponsor for the right to know campaign.

[Laughter.]

MR. ROBERTS: I think everyone on the panel has had probably a moment where you get absorbed in your daily work and then you realize that you are to your surprise in the midst of a really extraordinary moment, and I've certainly felt that way and I'm sure all of you have. Just looking around the world, there has been this extraordinary movement to establish the norm of transparency as a prerequisite for legitimate government. One of the measures of that is the rapid up-take of laws that establish a right to information.

Just 10 years ago there were perhaps 20 countries around the world that had laws like the American Freedom of Information Act which is, coincidentally, celebrating its fortieth birthday this year, perhaps 20 countries, the rich democracies. Today there are perhaps 65 countries that have adopted similar pieces of legislation, and hardly a week goes by when there isn't another country that doesn't add itself to the roster. I believe Uganda adopted a freedom of information law earlier this week.

The OECD issued a report just a few weeks ago in which it talked about trends in global governance and it say in the very first chapter on the very first page that governments are beginning to appreciate that if they wanted to be

regarded as legitimate in the eyes of their electorates, they need to honor the principle of openness. So we have a lot of talk about what I will call the norm of transparency, this idea that governments need to honor the principle of openness.

One of the issues is what roadblocks are we going to encounter going forward as we try to translate that norm into everyday practice, and I just wanted to touch on briefly five of the battles remaining for advocates of transparency. One which I will just note very briefly is the question of how you implement freedom of information legislation in poorer countries. As I said, the countries that essentially invited this policy instrument were countries like the United States or Australia or Canada. These were rich democracies with a vibrant and well-founded civil society and a commitment to rule of law. One of the interesting challenges over the last 4 or 5 years has been that this policy instrument is being picked up and now put into countries that are in a very different circumstance, and that raises a whole bundle of new challenges in terms of implementation and making sure that governments honor the commitments that are embodied in the law. So that's problem one.

Problem two is the problem of what I will call executive push-back. We're seeing this quite vividly here in the United States, and I'll just start off by pointing to Donald Rumsfeld who I think of as sort of the house philosopher of the Bush administration on questions of information policy. Rumsfeld has a story which he has told repeatedly which I think is half right and half wrong, and he most recently told it at a Council on Foreign Relations talk in New York a couple of weeks ago.

He said governments operate in a much more complicated world these days. There are more voices out there who are exploiting the opportunity presented

by information technology to get their messages around the world. Those messages for good or for ill travel very quickly. Then we also suffer the breakdown of traditional hierarchies, those traditional constraints that kept information inside the walls at home. The question he then poses is how do we govern effectively in a world like that? I think actually the diagnosis part of that story is pretty accurate. The place he goes off the rails I think is in the prescription because the prescription is essentially a story about information control, the diagnosis. The prescription is that in order to retain the capacity to govern in that kind of world, you have to propagandize, you have to use various kinds of methods for pushing your message out, and at the same time you have to impose more rigorous controls to make sure that unfavorable information does not get outside the walls of your own bureaucracy whether it's by clamping down on freedom of information or clamping down on whistle blowers and leaks. That is I think an area where he goes completely off the rails. I think there is a big question of whether that sort of strategy of information control is even practicable in the modern age.

But it is certainly true that that preoccupation with governability, that question of how you maintain control of the policy agenda, is going to be with us even after the Bush administration is replaced by another administration regardless of political party. You can see the same phenomenon of political executive push-back happening in other countries with established laws, whether it's the Canadian law, Australia, New Zealand, countries that have had laws for two decades. The United Kingdom has a very interesting situation where they have just adopted a new freedom of information law and the Labour Government is already retreating from its commitments.

We sometimes think this is generated by arrogance. I think it's actually generated by an underlying anxiety on the part of people at the top about their capacity to retain control. That's problem number one and that's going to be with us for a long time. It's going to require sustained political action by a well-organized coalition over the long haul.

The second problem is dealing with the security sector. Over the last 20 years, we had in many countries throughout Latin America, Eastern Europe, South Africa, these extraordinary moments where the archives of the security sector of government were opened up and activists saw these really extraordinary documents revealing abuses of power by individuals in intelligence, law enforcement and defense agencies. Some activists thought we'd reached this new moment where we'd established the critical importance of transparency with regard to the security sector. I think the answer is that what really happened was that we established the principle of transparency for the security sector of failed regimes.

Going forward, when you look at the transparency laws that are being adopted today, there are usually, one way or another, some kind of statutory mechanisms that protect those institutions from the full brunt of transparency whether it's by excluding institutions entirely or giving them some other kind of special treatment under the law.

The problem actually becomes even more intractable because of the advent of what I'll call security networks which is the metastasing of internationally and even within countries these collaborative exercises of security agencies working together in the name of collective security. There is nothing wrong with working together in the name of collective security. The detail is in the details and

the terms in which it's done, and very often the terms are that information is shared within the network on the assurance that no information, classified or unclassified, sensitive or not, will ever be divulged to any party outside of the network whether that's a legislator or a citizen or a noninformational organization. So we have, for example, the phenomenon of citizens in Canada and Germany trying to find out what their governments did or did not do in partnership with U.S. agencies with regard to the extraordinary rendition of their citizens and the inability to find out what was happening inside the network.

You have throughout Eastern Europe countries adopting new state secrets laws as a condition for joining NATO but being unable to find out what in fact NATO is insisting that their governments do. You have citizens in the United Kingdom asking to see the unclassified agreement which their government signed with the American government on ballistic missile defense and being unable as a right to obtain that document.

And you have domestically here in the United States a similar phenomenon where activists in Oakland are trying to find out what their local police forces agreed to when they signed cooperation agreements with the FBI through joint terrorism task forces. That's the new world of security partnerships that we're moving into and that's going to be a very difficult problem for transparency advocates to deal with.

The third problem is privatization. I'll just touch on this briefly. It's been noted that in Iraq, the second biggest component of the allied force if you go by straight head count is not the British, it's contractors working for the Americans. A memo that came out of the Coalition Provisional Authority, a working group on

private security companies made the observation last year that the allies were building the largest private army history has ever known. What's the accountability issue? And I should say, too, that it's not just a matter of military affairs. When you look in many countries around the world, areas that were formerly dominated by the public sector whether it's schools, hospitals, prisons, highways, are being turned over through various forms of public-partnership to the private sector. It raises a basic question because the entire transparency regime which we have constructed to built to accommodate government entities or public entities staffed by public servants, so we have to sort out how we're going to deal with transparency as public work moves to the private sector.

Then finally we have the phenomenon of globalization. This is a story of shifting power as well. This is a story about power shifting from national governments to international bodies, whether it's international financial institutions like the IMF or the World Bank, or international nongovernmental organizations such as ICAN [?], the entity that sets much policy for the Internet. We can see policy influence shifting to these entities, but these are so far as transparency is concerned organizations outside the law. They do not honor a right to information in the same way that national governments are increasingly to honor a right to information. They will tell you that they make vigorous efforts to put information in the public domain, that they make an effort to be transparent in their own way, but they do not honor a right to information.

That raises another policy predicament that was raised earlier on, what exactly do we need in order to establish transparency? Does it have to be something like a national disclosure law? Aside from those policy questions,

there's a basic question about how do you mobilize a transnational coalition to press bodies like the World Bank or the IMF to honor policy? How do maintain popular support when you get into really arcane discussions about what the World Bank should or should not put in the public domain?

So there are five big roadblocks, battles still ahead, and it suggests that while we've made a great of progress, there is still a lot of heavy lifting to do in the struggle for openness. Thanks.

[Applause.]

MS. FLORINI: We've just heard quite a collection of stories and themes from around the world dealing with some of the most fundamental questions that we could possibly face. While I give my fellow panelists to put on their mikes so we can open up the floor to questions, I just want to go back to the questions that I opened with very briefly.

First, the question of where does the U.S. now fit in this global picture? It is clear that the U.S. is probably still ahead of many if not most countries in terms of the openness of its government, but as Tom said in his view from space, it is clear we also have some problems and issues that need to be addressed.

The other question is, what are our neighbors and fellow democracies doing? In Mexico we saw a political struggle still underway, one that is probably going to come to something of a head with the presidential election since the current law is so strongly identified with the incumbent president and does not appear to have been picked up by any of his potential successors.

India, on the other hand, is clearly undergoing a political and social transformation that I think is one of the most exciting models for the world as a whole and I case I think we're going to watch very closely.

In terms of the prospects for the ongoing battle between the proponents of transparency and the proponents of secrecy, for all the reasons that Al just outlined, I think it is very much still an open question and is going to depend not on any immutable forces out there in the world, but really on what citizens around the world decide that they want to do and what they're going to decide they want to do. How hard they're going to push for transparency, how much push-back there will be from the proponents of secrecy is going to come down to a values debate over what value does secrecy have and what value does transparency have.

There are clearly some cases where secrecy is valuable. National security is the obvious one, although the definition of that is a matter of some debate. Governability as Al was talking about becomes much more difficult in some ways in a very transparent government.

But there are great values to transparency as well, many of which have been touched on today. Anticorruption is an obvious one, but even in cases where you have a noncorrupt government, the government is far more effective when it is forced to be open and answerable to its citizens it can get information it can't get otherwise. Democracy fundamentally depends on transparency and access to information. The public control of public functions depends on transparency even when those functions themselves are being handled by private actors as is increasingly the case as has been mentioned.

Finally, these questions of governance in the age of globalization where no one government really has control over all of the entities and forces that are affecting its own country. If they are able to jurisdiction shop as sometimes happens, people affected by a World Bank go to the World Bank and say we are affected and the World Bank says we can't give you the information, the country must give you the information and the country government says we can't give you the information, the World Bank must give you the information, if you have lack of transparency on both sides, the citizens are the ones who get stuck in the middle.

So with those brief comments, I'd like to open the floor to questions and comments from the audience. We do have a microphone. I ask that you briefly identify yourself. If there is a specific member of the panel that you want to address your question to, please let us know.

QUESTION: [Off mike] American Geophysical Union. I have two separate questions. The first one is to Aruna Roy and Nikhil Dey. With the earthquake that took place in India, I'm a seismologist, and I know there has been a lot of corruption and a lot of questions of what's happening; how is the need to know being used by whoever?

The second one has to do with the role of Google and what happened in China where there was an attempt to limit. The Google one is for anybody.

MR. DEY: I'll say the earthquake, and not just the earthquake, tsunami relief, earthquake relief, and disaster relief, right to know questions have come right up front and they've come rapidly. The earthquake was a little earlier. Before that there was a cyclone in Orissa where for the first time during the cyclone was the first time where groups started using social audit, public audit which has been

used a lot in India and is being used in other parts of the world also. But from the cyclone, to the earthquake, to tsunami, and in tsunami there are many, many groups demanding information of what money has come in, how it's been used not just from government, but also from large NGOs which also need to be accountable and not just on corruption, but how they have spent the money. Many NGOs have lifestyles that eat up money that goes for relief.

So it's being done not enough yet, but it is a culture that is certainly increasing. I know of at least two public hearings that were held in the earthquake relief that I think is helpful.

MR. : If I could just pick up on that point, we have a mutual acquaintance who is actually just starting to do a little work on the question of transparency of NGOs engaged in this sort of relief, and this gets into the question of what are the transparency obligations of organizations outside the conventional public sector. Right now he's just at the preliminary stage of contacting the international secretariat of this organization and the national offices asking a very simple question, what is your information disclosure policy? And it stumps them if they respond, which very often they don't, it stumps them. So there's a big sector out there that is clearly influential in countries such as India that have not even begun to think properly about transparency.

MS. ROY: There is one major problem especially in Tamil Nadu, a southern state in India. There are groups that have asked questions about tsunamis and they have been threatened with violence because the present government doesn't want to have any public statement criticizing the mode in which it has addressed the issue of compensation for victims. So none of these issues are far away from state

violence, from misuse of state authorities, from misuse of police, misuse of the law. So none of these issues are simple. It's not just a matter of bringing it up front and talking, it also depends on the state of the political powers in the particular individual state in India and how strong the transparency groups are and how strongly they have mobilized democratic forces to fight it. I just wanted to add that small note.

MS. FLORINI: Let me just pick up on the second question, the one on Google in China. China is actually a fascinating story right now in the transparency debate because even though it very strongly restricts certain flows of information, it has phenomenal controls on the flows of information on the Internet, we have heard all of those stories, there has also been a policy decision taken at the highest levels over the last several years that in order to compete as a modern economy, China has to informationize their economy and there are several municipalities that have adopted fairly forthcoming access to information regulations, including ones as large as Shanghai. So you have something of a pro-transparency trend going on in China, and we're going to have a visitor here in a few weeks from China talking about what may become the regulations that will be functioning at the national level in China.

At the same time, you have what is clearly an autocratic system where the fear of the spread of information is deeply ingrained within the system. This is part of the larger transformation that is going on in Committee. I don't think any of us know how this is going to play out. There is no other case like it where you have a highly autocratic, highly secretive centralized government that at the same time has decided that it must informationize.

MR. SNIDER: Jim Snider from the New America Foundation, for Tom, but others might want to answer. How would you compare national versus local public access to information? Do you subscribe to the trickle-down theory that if you solve the problem at the national level, it will trickle down to the local level? My observation is that actually however bad it is at the national level, it's much worse at the local level. There aren't Tom Blantons or the other types of folks up there that are paying attention to what's going on at the local level. You don't have scholars going through archives comparing records from one era to another. I live in Anne Arundel County. They have all sorts of neat little laws like the Public Information Act of Maryland is pretty good for 30 days, but then the county has the policy where they destroy all Emails within 30 days. You're supposed to take them out if you want them and print them out. So it's a completely nullified law. There is no enforcement that I can determine.

It seems to be much worse at the local level than at the national level and to what extent is this a concern or can anything be done about it? Some local newspapers don't care about it, but a lot of local newspapers in the United States are very smug and they don't really care about public access to information, it's the high-level publications that I think.

MR. BLANTON: I would say it depends on where you live because if you're a local school board member in Escambia County, Florida who just got out of spending 60 days in jail for stonewalling on an open records request, it puts the whole notion of penalties, 250 rupees a day is a little bit less than 60 days in jail, into a whole different context.

If you are a Texas local official who just spent a week in jail for violating the public records law, you might have a different point of view. Senator John Cornyn who is a Republican from Texas who was Attorney General, in that state the Attorney General has to prosecute the law, and they prosecuted people and put people in jail, and he talks about if we just had Texas level openness here in Washington, we'd be better off. I'm not sure that the people in the White House would be better off, and that's why we don't have Texas levels of openness here in Washington. He's right in his analysis. The problem would be, it would be a revolution in culture.

In a lot of other states if you look around, the state level legislators are just cranking out these new little provisions to take back parts of the open records laws, but if you actually get it to a vote and get it to the people and you look at what happened in Florida a few years back, they invented this idea of Sunshine Sunday where the newspapers around the state all joined in, this is where Sunshine Week came from, Orlando Sentinel put a little sun marker, a little yellow marker, on every story in the newspaper on that Sunday that was based on an open records law. So the obituaries had a sun on them, the birth notices had a sun on them, the City Council minutes, the School Board minutes, the real estate transactions, purchases and sales, the government contracts, the police arrest blog, all those things had little suns on them. We only knew about them because of these open records laws, and one of the results of that level of public education was the people of Florida got a referendum that made the legislature—they can only pass a restriction on the right to know, it takes a two-thirds vote of the legislature, a constitutional amendment in Florida. That would be a real good provision to have

in the United States Constitution where there is no explicit right to know, it's just inferred from a variety of other provisions. We could use that.

Anne Arundel County may be a disaster area, Escambia County in Florida, I think they've got the message that there are a lot of local officials that are looking over their shoulders and they're producing the records.

MS. FLORINI: Tanya, do you want to comment on that with regard to Mexico? You did on the question of local government.

MS. SANCHEZ: Yes. In Mexico it is a right issue right now being discussed. Actually, when the law was first being drafted, there was a debate if this should be a so-called in the Mexican tradition a general law which would apply to all levels of government, or if it should be a federal law as it is right now. The decision was because it was politically so unviable to try to make it a general law because you have autonomy issues dealing with the levels of government.

So we have a federal law and I was talking about how this has evolved so differently in the States. Right now—and different groups from society are pushing for this what I talked about the constitutionalization of access to information to try to provide a minimum standard for all states. It's being discussed but, yes, we have very different results and it seems that it is a clear result from how hard society is pushing locally. The Indian example really tells a lot about that relationship.

As I was saying, the three states that still do not have a law in Mexico are southern states where you do have very active social groups or organizations, but you don't really have a critical mass, you don't have a constituency that pushes for improvement in transparency. So it's very uneven as I was saying.

I mentioned you have very progressive laws like the one in Chihuahua where information desegregated by gender is required, but then you have also a problem in implementation. For example, in Michoacan which is central west of Mexico, the law is not bad, but, for instance, the costs of copies or the costs imposed to get the information is so high that you're inhibiting the exercise of this right.

So, yes, in Mexico it is a big issue and now there are issues not even just federal and state level, but also the municipal level. There is not a clear standard. For example, municipalities which is the third level of government, have the right to create their own ruling, their own laws which is—it's not actually a law but it's—or they have to abide by the state law, and there are some interesting things going on and the question is in the air.

MR. BLUM: I'm Rick Blum with openthegovernment.org. One of the things that we fear with the growth of secrecy in the United States is that it will have a negative impact on the worldwide movement towards transparency. I'm wondering if you can talk a little bit about whether you see any influence either in specific ways by taking maybe public-private partnerships that you talked about, AI, or other impacts that you may have seen of the growing emphasis on secrecy especially after 9/11 in other ways around the world.

MR. : The United States does two things. It exports a certain norm about transparency. It has had a very big influence in terms of exporting the norm about freedom of information, for example, that statutory model. But it also exports its ideas about information control as secrecy as well. Essentially, I think what we have to recognize is it exports the whole package of information policies

for good or for ill. That's why, and I mention this in the book, in Central and Eastern Europe, for example, over the 1990s we saw this extraordinary phenomenon of all of these countries emulating the United States in terms of their openness law. They all adopted something that looked like a freedom of information law. They did it in part as a repudiation of the old regime and establishing who they new allies were.

But then in the late 1990s, all of these countries started adopting new state secrets laws. The question is, what's going on? The answer was, you want to join NATO, if you want to join the party, you have to have the same kind of mechanisms for classifying and securing information that the United States with its NATO allies crafted in the early 1950s, so you get the whole package.

MS. ZAMAN: My name is Miskha Zaman [ph]. I work for an NGO here called Bank Information Center. We monitor the IFIs. My question is to Nikhil and Aruna, India is increasingly playing a very vital and powerful role at the World Bank and the Asian Development Bank and both institutions are going to be lending to the tune of \$6 billion over the next 3 years. In your campaign, is there any discussion or thought being given to look at how India is taking decisions at the boards of these institutions and what kinds of projects are getting approved in the name of Indian citizens at these institutions?

MS. ROY: Actually, it's a matter of very great concern and it's an issue we've all been debating about. But you see, when you ask these questions, there are two sets of questions you ask. One is the very broad generalized questions when you ask about what is on the anvil, what kind of policies. For instance, a colleague of ours is now going to ask a question and has probably asked

the question already to know how many World Bank officials are now either on deputation to the government of India or vice versa. So now it seems to be a kind of neat pack, so you transfer yourself from the World Bank to the government of India, you take the same policy there, you formulate the same policies, you get them approve. It's a neat arrangement.

The people of India know very little. So for us, whether it's the Planning Commission or whether it's the government of India or the separate departments that deal with it, we need to know. I think a part of the ruling elite is also bothered because in this whole debate on how much of privatization or multilateral agencies you will allow, there is a debate even with the ruling party sitting in government, I'm not talking of the left which is outside and agitating against it, but even within the sitting government to what degree you go. Are you going to allow for working, public sector undertakings to be closed down or not, what kind of privatization are you going to allow, and there are disagreements which are quite visible.

So both at the level of getting those disagreements far more visible to the public eye, understanding what's going on, asking questions, it is a very big job.

But the more important thing so far as us campaigners are concerned, I'm going to take a little bit of time and talk about Parivartan, this group of young people in Delhi called Parivartan has done with the Delhi Jal Board.

MR. DEY: Jal Board is the Water Board.

MS. ROY: The Delhi Jal Board is Delhi government's water supply port set up by the Delhi government. There were problems of accessing water in the poorer parts of Delhi. So people who were part of the Delhi Right to

Information Campaign decided that India's ex-ambassador to Portugal, who happens to also be a good friend of all of us joined the campaign, filed the first application for right to information with the Delhi Jal Board asking for information. She filed the application and access to about 4,000 pages of information. This information was then brought to the Delhi Right to Information Campaign and tabled because lots of technical analysis had to be done and a lot of financial analysis had to be done. And a whole group of engineers and management experts got together and looked at it.

In a nutshell, what happened at the end of it, we have a small report which if you want you can photocopy. We accessed these documents and we sifted out 400 pages of very important sheets of information. We realized that the World Bank was actually putting unnecessary and illegal pressure on the Delhi Jal Board, first to appoint PricewaterhouseCoopers as the evaluating agency. Norms were changed four times and people were removed from the Delhi Jal Board, the authority of the Delhi Board, who were deciding on matters and substituted so that the right decision would be taken. It's absolutely unethical.

Secondly, the kind of water policy that was being brought into Delhi, there was no consultation with people, there was no consultation with users, and water would have quadruples. The price of the water supply would have gone up astronomically because there were foreign experts who had come in to all the 23 zones of Delhi and each zone would have had 11 experts who would have been paid 13 lacks [ph] rupees salary. Who would bear the cost? So when all this came out into the public domain, you had people of all the welfare associations take up the cause, there were public hearings in Delhi in which everyone was invited to come,

and even the Planning Commission, even the Deputy Chairman of the Planning Commission and the Prime Minister when they were faced with these facts, they said we have to verify these facts and we said they are verified documents from your own government department. What are you going to try to verify? So either you agree or disagree, you see they are tenable or not tenable. You don't have to verify these documents. And even in the National Advisory Council when this issue was brought up, it was hotly debated. So information access is vitally important we now understand to stop this.

In Chennai, in Calcutta, in Mumbai, in other small towns, in Jaipur where water is now threatened, where there is a big threat of privatizing the water supply, this whole exercise has become of great value. So now we know what to access and what information to take.

But when we went to the World Bank, they called us; in fact, I got a letter from the World Bank saying why don't you come and discuss this over a cup of tea? So we said not over a cup of tea, but we'd like a more serious meeting. So we went, and when we went in we asked for information, they said the World Bank policy for disclosure does not allow disclosure of these papers. So now it's an issue for those of you who sit here and parley with the World Bank and those of us in the government of India who parley with the World Bank will have to take up to see whether the disclosure policy of the World Bank will also be such as allows people like us to access information. We certainly need to know both whether it's ethically sound, whether it's technically sound, and whether it's financially sound, and all these things interlink to form a good decision. So campaigns in India are learning that now we'll have to access information.

MR. MITCHELL: Gary Mitchell from the Mitchell Report. I will do my best to turn this into a question. It's generated predominantly by Dr. Roberts' list of five key challenges. I was thinking that if we were to add a sixth it would be human nature.

Looking at it in parochial terms, in other words, in terms of the United States, I'm struck by I think it was the second executive push-back and how that has sort of morphed into majority party push-back. That's a premise with which you may not agree, but I think just a shade behind Bush, Cheney and Rumsfeld is Pat Roberts because I think it sort of comes along with the territory.

Where this leads me, and I said I was going to have trouble turning this into a question, I'm wondering if both the House and Senate might benefit from having what I would consider sort of parallel to the House and Senate Select Committees on Intelligence and whether what we need is House and Senate Select Committees on Transparency so that there is some constituency for transparency the way there is a constituency for intelligence. And to the extent that that's a question and you want to respond, I'd be interested in anybody's reaction to that.

MR. ROBERTS: My first cut at it would be that the engine for transparency is going to be civil society, it's going to be outside Congress, and this is not just based on the U.S. experience, but the experience of other countries, that even legislators unless they've got their feet consistently to the fire on transparency issues are going to drop the ball. So then the question is how do you build political communities where transparency is a key value that people actually fight for. You've told stories about Florida and Texas where it seems to get entrenched in

political culture, and then you get other areas where the law becomes a dead letter and for some reason there's just no momentum established behind it.

My inclination would be not to look necessarily at Congress, but around the world the question is how do you build these coalitions. Actually, the U.S. is in relatively good shape. It's probably the world leader in terms of national coalitions that are effective in pushing the government in openness because of people like Tom.

MS. FLORINI: Do you want to comment?

MR. BLANTON: I'll just take the compliment.

MS. FLORINI: We have time for just a couple of very quick questions.

MR. LYDAY: Corbin Lyday from the International Division of the National Center for State Courts. This is a very grassroots question to our colleagues in India and by implication the rest of the developing world. With regard to your social audit processes, it must be quite challenging, you're teaching poor people how to do basic performance and financial audits. That's not something that people who are educated even here in this country know how to do. How do you actually do this and what kinds of problems come up with that? I think this is really where the rubber hits the road in terms of these kinds of questions. How do poor, illiterate communities get control over financial and performance information? How do they know which questions to ask? How do they know how to read this stuff? Thank you.

MS. FLORINI: Since we're very short on time, I'm going to group the remaining questions and then ask for the responses all at once.

MS. HYDE: My name is Susan Hyde. I'm from Brookings. I just have a quick question. A lot of you, or several of the panelists talked about the role of individual citizens and citizens' groups in demanding transparency and I wonder if someone could comment briefly on the role of the news media in this global movement.

MS. McRAE: I'm Heather McRae [ph] with the World Resources Institute. I wanted to follow-up to ask Aruna for the tail end of her story about water in Delhi, whether ultimately by exposing this information there were new and improved alternatives for solving the water problem that came to light and into the discussion.

I had a second question that probably lumps with the recent two, and that's really about what are the key capacities for citizens to make use of these new freedom of information provisions?

MS. FLORINI: I think that should bring in most of the panel, but we'll start with Aruna.

MS. ROY: I'm just going to answer your question and a little bit about social audit, and I think Nikhil will say a little bit more.

I've been taught my social audit process by illiterate people. Let me begin by saying that literacy has nothing to do with ethics. Literacy has nothing to do with common sense. Literacy has everything to do with corruption in my country. Every literate person in my country who takes up any job from the smallest revenue official to the constable is corrupt. So literacy doesn't have a correlation to ethics in any case.

Understanding simple economics of how much money has come and gone is extremely easy for illiterate women and men to understand. They know how much cement has come, they count the bags. They know how much sand has been put in; there are the laborers who mix the sand. They know how many hours they worked. They know how deep the foundation is. They know how much money has been spent on the wages. They know how much they have got into their pocket. They don't know how much it says in the record. The record might say 60 rupees, they might have got 25, and they have phenomenal memories. They remember every bag, they count the bags of cement, they count numbers of people who are on the work site, they identify everybody, they know them by name, and they know them three generations before. So they know who has come, who hasn't come.

They also know the village council head man, how many of those people who were supposed to be on the government site worked in his private field. So they verify. So social audit is extremely possible with poor people and I'll allow Nikhil a little bit of time to expand on it.

But I'll answer your question and then pass it on to Nikhil; the Indian Institute of Technology has exported all its graduates to the United States, the U.K. and everywhere else. The Indian Institute of Management, I think only 2 percent stay in India and the rest come and work in all the multilateral and other organizations all over the world.

The alumni of the Indian Institute of Management and the Indian Institute of Technology were appalled in Delhi that there should be a private-public partnership in which they are paying so much money to foreign agencies of what is a simple technological matter and a simple management issue. So they met with the

government and said if you really want to involve an alternative factor in delivering water, here we are, and we'll do it at a small fraction of what you will pay foreign agencies.

So they are on the next step of looking at problems and solving them, but we go a step further, the campaigns go a step further and say we are the users. Why don't you sit with us? If we are pilfering water, you will tell us where the water shortage is. But if you look at the statistics, if you look at the amount of water they say is pilfered, there you should be in floods. Where is this water going? There are questions.

There is a very, very beautiful book I read when I was young called How to Lie With Statistics. It was a Penguin book. If you look at it you know that statistics can always be played around with. So we want these facts brought to us and laid in the public domain. We want to look at it. The water is going and where is it going. Solve the problem with us because are the consumers and we will ensure that water comes to us, and if you are going to give us 24/7 water supply we will be the happiest, but at what cost.

MR. DEY: On the public audit I won't add too much except I'd like to say that the whole concept of public audit, really it's a question of back to basics. Audit itself from what I understand comes from the word oratory which means to read out loud, to hear and respond, and that's how initially audits were done and it's got more and more specialized and more and more where you have people who are mystifying knowledge which people can demystify and use very well. As Aruna said we have learned all our tools of public audit from people themselves who know

the basics and essentials of it and they know how to do it, it's a question of developing those alternative tools which they do best.

They have a number of films on sale using public audit, and actually I'd just like some of the other panelists who've come there and seen, either Tom or Al, Ann didn't come to the public audit, but she's seen some of the things, to comment on how dramatic the impact of illiterate people doing it. But I think that public audit, the idea that people can do it, and democracy, that people can do it, which is again back to basics, by the people, or the people, those are the basics of democracy, and these are the basics of audit. If we go back to those basics, we'll I think have better governance.

MS. FLORINI: Tom and Al?

MR. BLANTON: Let me just brag about Al's book because he's too modest to do so and it'll make him blush. The first chapter of Al's book is a social audit carried out in Rajasthan at a village where the issue was corruption by the ration shopkeepers who were folks who were empowered by government to make sure the poorest of the poor got a basic ration, a basic survival ration. These folks came forward at that public hearing and talked about I only got this amount of kerosene or wheat, but the ration shopkeeper reported a much larger amount back to the government to refill their supplies. And where did those supplies go? They were sold on the black market to enrich the ration shopkeepers.

What was fascinating to me about the confrontation as people sort of brought their ration books up, had them read out in public in front of the hundreds of people in the village, the ration shopkeepers were also there along with government officials, and the muttering started rising and they started congregating

and you could just see their muscles sort of swelling and they started having testosterone attacks. And they then raced to the microphone, grabbed the microphone, cut the wire I think at one point to the microphone as the ration results are being read out. Then they're milling around the foreign guests turned to Aruna and saying, wait a second, what's going on here? Aren't you going to try to put a stop to it? She said, no, no, no. It's up to the local officials. It's their job to keep public order, we're having a public meeting, it's their job and we'll wait for them. It was like theater, actually. It was really an extraordinary moment.

Then after order really was restored and the microphone had power again, it wasn't just the reading out of the ration books of the very poor people, it was also the ration keepers got to stand up there and say, the government doesn't give us enough to actually make a living. They've got us on such short wages, there is now way we can possibly make a profit or have a distribution system that both feeds people and allows us to buy our food. We have to be corrupt because of the way the system is.

The end result of this discussion which took 5 to 7 hours including breaks for the microphone going out and fist fights and the like was an offer from the poor people's organization, look ration shopkeepers, if you want to change the way the government handles this, we'll go down with you to Jaipur. We'll go have a sit-in like we did on that law. We'll talk about making a system that works. But you can't do it by stealing our lives, our food. You can't do it that way. It was an extraordinary moment.

MS. FLORINI: I'm afraid we have run to the end of our time, and I think that's a rather good, dramatic note for us to end on. As you can see, there is a

rather extraordinary global story behind the transparency movement and one that is being very little reported in the debates that we usually see in the headlines over secrecy versus open government.

I hope you have found this as intriguing and heartening as I usually do when I hear from these extraordinary people, and I want you to join me now in thanking them.

[Applause.]

[END OF TAPED RECORDING.]

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