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Partial Disclosures: Documentary Media and the Freedom of Information Act

A dissertation submitted in partial satisfaction of the
requirements for the degree Doctor of Philosophy
in Film and Media Studies

by

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September 2018

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Abstract

Partial Disclosures: Documentary Media and the Freedom of Information Act

by

Daniel Ray Grinberg

This dissertation will examine the intersections of documentary films and videos and Freedom of Information Act (FOIA) disclosures through a media studies framework. It will interrogate how these forms of official documentation mediate public knowledge of covert national security practices amid the Global War on Terror (GWOT). It will also trace the bureaucratic and technical difficulties of accessing audiovisual materials through FOIA. The first two chapters will analyze moving image media that government agencies such as the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI) created for internal use. By thinking about these works at the levels of production and circulation, I will explore how their public disclosure opens some partial apertures on state surveillance and violence. The latter two chapters will investigate how independent filmmakers have extracted documents through FOIA and creatively remediated them into their work. These discussions will reflect on the potentialities and logistical challenges of using this method to critique governmental abuses. Furthermore, it will discuss how the extraction of such records can reveal the risks of targeting that critical independent documentarians and their documents face. Ultimately, by questioning and complicating theories of transparency, access, and publics, this dissertation will argue that the mediating processes of critical non-fiction moving images and FOIA records are vital but precarious mechanisms of intervention.

Acronym Guide

ACLU – American Civil Liberties Union
AP – Associated Press
BLM – Black Lives Matter
BPD – Baltimore Police Department
CBP – U.S. Customs and Border Protection
CBPO – U.S. Customs and Border Protection Officer
CCTV – Closed-circuit television
CENTCOM – U.S. Central Command
CIA – Central Intelligence Agency
CII – Critical Infrastructure Information
CMSI – Center for Media & Social Impact
CSI – Center for the Study of Intelligence
DASPO – Department of the Army Special Photographic Office
DCI – Director for Central Intelligence
DEA – Drug Enforcement Agency
DHS – Department of Homeland Security
DIA – Defense Intelligence Agency
DIMOC – Defense Imagery Management Operations Center
DoD – Department of Defense
DoJ – Department of Justice
ECA – Economic Cooperation Administration
EFF – Electronic Frontier Foundation
E-FOIA – Electronic Freedom Act of Information Act
EIT – Enhanced Interrogation Technique
EPA – Environmental Protection Agency
EPIC – Electronic Privacy Information Center
FAA – Federal Aviation Administration
FADGI – Federal Agencies Digital Guidelines Initiative
FBI – Federal Bureau of Investigation
FOI – Freedom of Information
FOIA – Freedom of Information Act
FOIL – Freedom of Information Law
FOUO – For Official Use Only
FY – Fiscal Year
GWOT – Global War on Terror
ICT – Information and communication technology
IMLS – Institute of Museum and Library Services
IMSI – International Mobile Subscriber Identity
INS – Immigration and Naturalization Service
JFK – John F. Kennedy Airport
LAPD – Los Angeles Police Department
MPD – Minneapolis Police Department
MSA – Mutual Security Agency
MTA – Metropolitan Transit Authority

NARA – National Archives and Records Administration
NASA – National Aeronautics and Space Administration
NATO – North Atlantic Treaty Organization
NPS – National Park Service
NSA – National Security Agency
NSA – National Security Archive
NYPD – New York Police Department
OCA – Original classification authority
ODNI – Officer for the Director of National Intelligence
OSHA – Occupational Safety and Hazard Administration
OVb – Operation Vulgar Betrayal
OWI – Office of War Information
PA – Privacy Act
PAO – Public Affairs Office
PRB – Publications Review Board
RDI – Rendition, Detention, and Interrogation
SAC – Special Agent in Charge
SBU – Sensitive But Unclassified
SCLC – Southern Christian Leadership Conference
U – Unclassified
UF – Unidentified Female
UM – Unidentified Male
USIA - United States Information Agency
WUO – Weather Underground Organization

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Introduction
**“Mediating Documents: FOIA, Moving Images,
and Knowledge Formations”**

Recent revelations such as a black site detainee’s death by torture, the physical and digital monitoring of Black Lives Matter activists, and the warrantless search and seizure of digital devices at borders have all become public knowledge through Freedom of Information Act (FOIA) disclosures.¹ The admissions of these abuses by United States government agencies and departments became the basis of news coverage and helped elucidate heretofore covert practices of war, national security, and surveillance. Consequently, they have shaped how domestic and global publics are able to engage with U.S. policies. FOIA disclosures have also helped mobilize counter-responses and prompted internal reforms. Emphasizing the potent stakes of this legislation, journalist Patty Jane has observed, “If nobody practices our right to freely access government records via FOIA, shade will fall upon government operations. More and more government decisions will be made in secret. . . . If nobody exercises her right to view public records, public officials will soon forget how accountable to us they truly are.”²

In response to the question “What is FOIA?,” FOIA.gov, the official website dedicated to the act, states:

[T]he Freedom of Information Act (FOIA) has provided the public the right to request access to records from any federal agency. It is often described as the law that keeps citizens in the know about their government. Federal agencies are required to disclose any information requested under the FOIA unless it falls under one of nine

exemptions which protect interests such as personal privacy, national security, and law enforcement.³

Based on the website's database, 118 executive branch agencies and departments are subject to the law, including high-profile components such as the Department of Homeland Security (DHS) and Central Intelligence Agency (CIA) and lesser known ones like the Institute of Museum and Library Services (IMLS) and the Marine Mammal Commission (MMC).⁴ In addition, the departments collectively have another 391 subsidiary components that are required to respond to FOIA requests.⁵ For instance, the umbrella organization of the Department of Defense (DoD) contains 35 components, such as the Department of the Army, the National Security Agency (NSA), and U.S. Central Command (CENTCOM). Each of the 50 states has its own version of a Freedom of Information (FOI) law as well, which enacts their own variations in policies. Such figures reflect both the complexity and the enormous span of the world of government records.

Since its passage in 1966 and enactment in 1967, both taking place on the symbolically laden day of July 4, the federal-level FOIA has become a prominent instrument of the liberal democratic society.⁶ John Moss, the California representative who spearheaded the act's realization during an eleven-year campaign, repeatedly articulated its vaunted status within this political framework. In his statement to the House of Representatives in advance of the legislative body's 307-0 vote to approve the law, Moss remarked:

Mr. Speaker, our system of government is based on the participation of the governed, and as our population grows in numbers it is essential that it also grow in knowledge

and understanding. We must remove every barrier to information about—and understanding of—government activities consistent with our security if the American public is to be adequately equipped to fulfill the ever more demanding role of responsible citizenship.⁷

Yet, in practice, FOIA operations have not only upheld the liberal values of transparency and an informed citizenry, but revealed the limitations and contradictions of a strictly rationalist model of public deliberation. In light of more radical measures such as hacking, leaking, and violent confrontation, some critics have dismissed such legislation as an alibi that idealistically purports to promote openness and good governance, but actually re-entrenches the authority and legitimacy of the security state.⁸ From this vantage, the system inherently lacks the capacity to correct itself and can only yield minor reforms, but not deeper structural transformations.

Even remaining within the ambit of liberal state logics, the institution has frequently failed to live up to its lofty rhetoric that Moss once espoused. Although federal government agencies received a record-setting 769,133 FOIA requests in FY 2015, they also set records for less-than-full disclosures.⁹ One in six requests resulted in documents that could not be located, while a troubling 77% of requests led to the release of censored documents or denials.¹⁰ Such shortcomings prompted the House of Representatives Committee on Oversight and Government Reform to declare that FOIA is “systematically broken” and call for substantive overhauls.¹¹ After being in effect for over fifty years and influencing the passage of similar laws worldwide, the law is also arguably not keeping up with the efficacy and breadth of other countries’ more recent counterparts. According to the 2017 Global Right

to Information Rating, the U.S. instantiation ranked only 56th out of the 111 national models available for analysis.¹²

Given the Freedom of Information Act's clear role in managing the fluid boundaries of official transparency and opacity, it is vital to interrogate the ways in which it enacts a multifaceted media process. Most evidently, it negotiates every stage of knowledge production, including the creation of records, the granting or denials of requests for their disclosure, the partial or full censorship of their content, and their circulation, distribution, and reception. Through the parameters of this institutional structure, it produces the media objects that we recognize as official documents. Like all processes of media-making then, it is also critical to understand FOIA as a dynamic and contingent system. Over the course of five decades, the legislation itself has been subject to ongoing amendments, and the decisions to release, withhold, or even re-classify documents have depended on changing political and bureaucratic demands. The agencies and departments subject to it do not function as a monolith either—they vary in terms of their response rates, with the offices tasked with national security initiatives and classified projects disclosing far more sparingly than their counterparts. Even the operational culture of a single agency is not stable, as it will necessarily shift over time and adapt to different administrations' directives. Moreover, the adoption of new technologies and policies has substantially changed the methods of generating and archiving documents. At a more granular level, each individual disclosure additionally implements its own contingent and iterative acts of mediation.

The multiple definitions of “medium” further draw out how the stages of FOIA perform these mediations. The functions and productions of the legislation are simultaneously “a means by which something is communicated or expressed,” “an agency or

means of doing something,” “the intervening substance through which impressions are conveyed to the senses” and “a particular form of storage for digitized information.”¹³ Even a less common definition, “the middle quality or state between two extremes; a reasonable balance” resonates with the conventional wisdom that FOIA is an administrative compromise between more stringent control and freer flows of information.¹⁴ As a media process, the interventions of FOIA also simultaneously document evidential traces of past events and shape the emergence of present and future events. Therefore, the documents that are disclosed, the levels of redaction they undergo, the archives they enter or (fail to enter), the temporal durations they require to reach public visibility, their channels of distribution, their forms of remediation, and their subsequent coverage and public reception all *reflect* and *affect* the social conditions in which they participate.

In addition to the documents released through FOIA, there are many other associated media objects. This includes various forms of paper and digital communication—legal materials like the original 1966 legislation, its Congressional amendments and Presidential executive orders, and the documents generated by lawsuits; administrative materials like requests, FOIA officers’ responses, appeals, and annual reports; and electronic materials like agencies and departments’ online reading rooms of FOIA materials, websites, and internal databases. Moreover, the disclosures provide information that shape the cultural productions of actors like news organizations, advocacy groups, scholars, and media practitioners, which may, in turn, catalyze future requests and disclosures.

Though typically conceived of in terms of paper files, the media that a FOIA request can procure also span an extensive range of formats. On the Digital National Security Archive (DNSA), a nonprofit research initiative that provides digital access to over 100,000

declassified and FOIA-disclosed documents, there are 370 categories listed as search options.¹⁵ In addition to conventional bureaucratic genres like memorandum, intelligence report, and letter, there are also less commonly utilized types available such as diary, map, photograph, and telegram. With the growing centrality of digital communications in the last three decades, more and more public records have also originated in digital formats. After the Electronic Freedom Act of Information Act (E-FOIA) Amendments of 1996 clarified that FOIA did apply to electronic records, it helped establish standards for these proliferating formats. By 2003, the National Archives and Records Administration (NARA) was already cautioning that “we are seeing an explosion in the number of electronic text documents, financial presentations, photographs and images, e-mails, and web sites that constitute a significant part of the records of our Federal Government” and acknowledged “the challenges presented by this tidal wave of electronic records.”¹⁶

However, as this dissertation will explore in greater depth, there remains one conspicuous absence in the DNSA search options and in discussions of FOIA more generally. According to Nate Jones, the Director of the Freedom of Information Act Project at the National Security Archive (NSA), terms like “film,” “movie,” “moving image,” and “video” do not appear among the search terms because “believe it or not . . . we have not received any key documents in [those formats]. If we did, we would post it, and add it in.”¹⁷ Although the U.S. government has used film and video nearly since their inventions, primarily to create and preserve documentary non-fiction footage, gaining public access to analog and digital moving image media through FOIA has continued to lag. This appears most acutely true at the federal level, as state-level Freedom of Information (FOI) officers have demonstrated some greater willingness to release videos like police bodycam or

dashcam footage to requesters.¹⁸ Ironically, the absence of records about such records makes it difficult to detect wider patterns. The Department of Justice’s (DoJ) Office of Information Policy (OIP), which oversees federal agencies’ compliance with FOIA, has never tracked the different media formats in which agencies disclose documents. This year, the OIP did optionally ask agencies to identify their average rate of processing pages—an indication that it still conceives of FOIA in paper-based terms.¹⁹

The FOIA experts I spoke with attributed the lag in moving image disclosure to an outdated bureaucratic culture and a lack of technical expertise. Jones said, “It’s partial resistance to keep the status quo paper, because it’s easier and partially, it’s a lack of extreme lack of capability to review and redact. There’s probably even a dearth of knowledge on what can and can’t be released in video. [FOIA officers are] much more used to [working with paper] and they want to keep it that way.”²⁰ In one farcical case, a requester who asked for any Federal Bureau of Investigation (FBI) files related to a Maryland bank received a photocopy of a videocassette rather than the contents on the tape.²¹ Michael Ravnitzky noted that officers “are aware that you can redact video if you have to . . . but the government agencies, state, federal, and local, have never been at the forefront of this stuff, so they don’t understand it that well and they don’t know how to do it. If they get confused . . . they just say, ‘You can’t have it.’”²² In addition, the special equipment approved for viewing classified audiovisual materials may not be able to play back older or newer recording formats, which prevents such documents being reviewed, declassified, and reproduced.²³

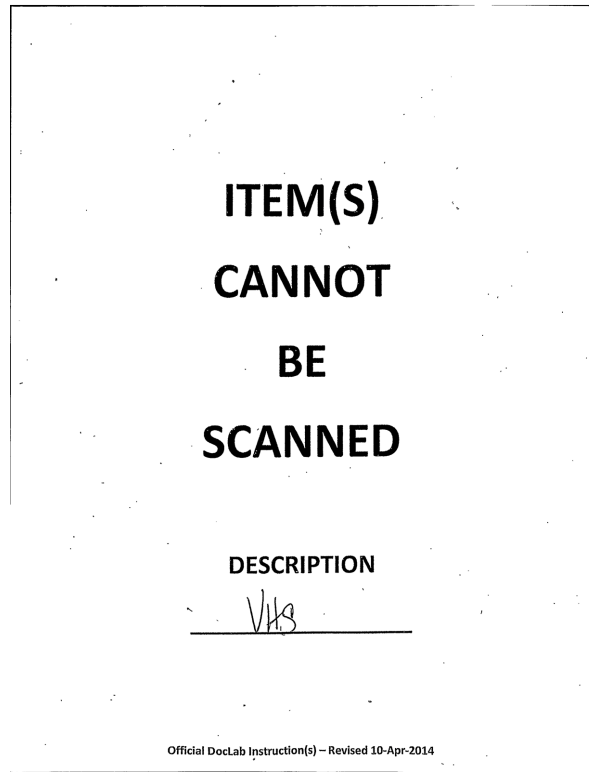


Figure 1. A page stating that a VHS cannot be scanned²⁴

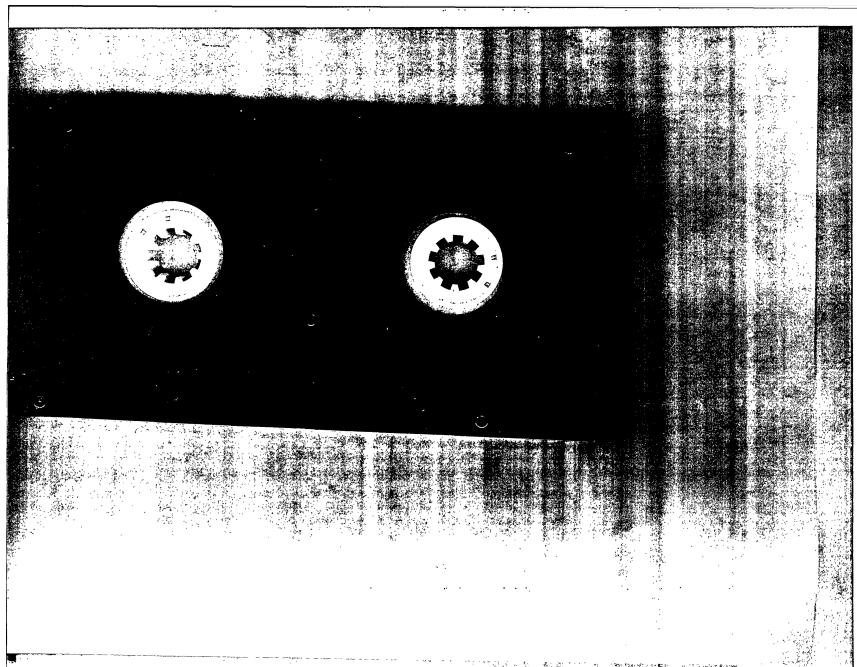


Figure 2. The disclosed photocopy of the videotape²⁵

The lack of technical familiarity has serious implications for archiving and preserving official forms of moving images as well. Improper handling and storage of physical recordings and suboptimal environmental conditions can erode the media quality over time. Likewise, as digitization has become a popular way to make analog recordings more accessible, the transfer between formats can result in losses of image and sound quality. Given the additional labor and care that preservation requires, agencies may decide to get rid of materials instead. Ravnitzky observed, “Because declassification is so laborious . . . and classification is rather easy, this stuff accumulates over time and you have massive quantities of classified multimedia. . . . There’s truckloads and truckloads and truckloads of importantly historical classified films that have been destroyed, and it’s just the saddest thing in the world to learn about that.”²⁶ Thus, audiovisual records that are not deemed significant enough to retain are at heightened risk of remaining outside of the reach of FOIA permanently. Along with the loss or degradation of these historical materials, there is also a loss and degradation of the histories they could have participated in constructing.

Besides the technical and cultural hurdles, the disproportionate reluctance to release films and videos through FOIA suggests an institutional discomfort with these formats. Ravnitzky said, “Video is a visceral medium. . . . If you ask someone for a video of something, it’s taken very differently than if you ask them for a piece of paper about something.”²⁷ For example, reading a file of a police-initiated shooting and seeing the dashcam footage of the violent encounter can reveal distinct kinds of sensory information and produce distinct affective responses. As a result, the public circulation of videos may, but will not necessarily, galvanize more vigorous responses. Talking about the potentialities of documentary films to inspire outrage, Jane Gaines wrote, “Yes, mimetic technologies *do* have the power to

explosively reproduce, to reproduce the world before us as well as to reproduce its intensities onscreen, and to reproduce them most strategically in the bodies and hearts of viewers.”²⁸ Indeed, such a desire to catalyze social change is an impetus for both documentarians of political issues and activists who turn to FOIA.

However, as the disparate interpretations of the bystander video of police officers beating Rodney King famously illustrated, the meanings of moving images are never fixed or self-evident.²⁹ The hermeneutic frames and reactions of viewers will vary considerably based on the images’ framing and exhibition setting, and should not be taken for granted. Thus, in addition to producing an array of visceral reactions, films and videos can also provoke responses like boredom, dismissal, or confusion. As Thomas Keenan noted about the 1990s conflict in Bosnia, the North Atlantic Treaty Organization (NATO)’s real-time panoptic monitoring of the battlefield and pervasive televised images of genocide did not prevent global inaction to halt the genocide, and may have even contributed to the prevailing sentiment of indifference.³⁰ The insufficiency of images to speak on their own prompted him to note, “What makes something public is precisely the possibility of being a target and of being missed.”³¹ When government agencies operationalize audiovisual recording technologies to put marginalized communities under surveillance, becoming the unwilling (and at times, unaware) subjects of moving image production also gains disturbing valences. Drawing on former Under-Secretary of State for Defense W.J. Perry’s observation that “once you can see the target, you can expect to destroy it,” Rey Chow and Paul Virilio have both investigated how states have weaponized the force of visualizing technologies.³² By gathering information and producing strategic knowledge about targets, documentary footage

can then become a pretext for Othering and attacking putative enemies in the name of security.

With these powerful capacities and tensions in mind, this dissertation will focus on the intersections of non-fiction moving images and FOIA disclosures. It will analyze how these enmeshed documentary forms work together to mediate public knowledge of national security practices amid the Global War on Terror (GWOT). Notably, at the root of both the documentary film medium and government records are the impulses to capture, convey, and circulate information. Lisa Gitelman has observed that “document” etymologically derives from the Latin root *docer*, which means to teach or to show.³³ For her, “documents help define and are mutually defined by the know-show function, since documenting is an epistemic practice: the kind of knowing that is all wrapped up in showing, and showing wrapped up in knowing.”³⁴ These forms also archive historical moments through more permanent technologies of inscription and preservation. Yet, Gitelman notes that documents can simultaneously engage in “the work of no show,” which resonates both with the bureaucracy into which many records are mundanely absorbed and the practices of opacity and obfuscation like redaction, classification, and falsification.³⁵ Relatedly, when incriminating information threatens to come to light through these formats, states and corporations retain asymmetrical power to quash its release or to constrict its ability to circulate through mainstream channels.

Both documentary images and official documents are also freighted with problematic assumptions of positivism, truth, and objectivity. Their putative proximity to reality and their association with social sciences like visual anthropology, law, information science, and history rhetorically and legally grant these genres an evidential status, despite their highly

subjective qualities. Bill Nichols has noted that documentary film “is a fiction unlike any other precisely because the images direct us toward the historical world, but . . . we are left to determine if the sounds and images we attend to also occurred in or outside of social history, within the web of fabrications needed to construct the time and space of a story of within the folds of a larger history. No guarantees exist.”³⁶ To contradict the fiction of universalizing scientific discourses, Donna Haraway has also advocated for the feminist alternative of partial perspectives.³⁷ She has called for “situated and embodied knowledges and an argument against various forms of unlocatable, and so irresponsible, knowledge claims.”³⁸ The acknowledgment of limits calls attention to the effects of particular production conditions, and helps deflate the unchecked authority of the most privileged voices. Comparably, Michel de Certeau has theorized the need for historians to more vocally recognize how their own observational positionalities shape the processes of historicization. He wrote that this framing “obscures the neat dichotomy that established modern historiography as a relation between ‘past’ and present’ distinct from each other, one being the producer of the discourse and the other being represented by it.”³⁹ de Certeau added, “If this is the case, then we must bring to light those ‘shameful’ aspects that historiography believes it must keep hidden. The discursive formation that will then appear is an interspace (between science and fiction).”⁴⁰

To mitigate assumptions of objectivity and universal truth, the perceptible partialities of both non-fiction moving images and FOIA disclosures can render what documentary film pioneer John Grierson called “the creative treatment of actuality” more perceptible as well.⁴¹ In the case of the former medium, formal manifestations like cuts and other edits, blank screens, obstructed views, or reflexively limited narration audiovisually gesture to broader

epistemological gaps. For the latter, the most prominent register and signature visual representation of FOIA's incompleteness is the black-box redaction. Analyzing its presence in GWOT torture memos, Joseph Pugliese noted, "Faced with these lacunae, I attempt to unsettle the anti-epistemological practices of redaction by reading the very processes of redaction as symbolic instantiations of state violence: they reproduce, textually their own figural black sites."⁴² He also recognized that the partiality of the law is tied to "*constitutively incomplete* scholarship" and stated, "It is an incompleteness determined by the power of the state to impose fundamental omissions of information . . . that establish the impossibility of disclosure."⁴³ Along with the literally and figuratively striking marker of the redaction, indicators like handwritten marginalia, crossed out classification statuses, and contradictory or disproven accounts further signal the mediations that leave gaps.

Furthermore, the multiple mediations that moving images and FOIA records undergo gesture to their impacts on historiographical potentialities.⁴⁴ They negotiate which kinds of evidence and argumentation become accessible, which then facilitates and circumscribes how actors like documentarians, journalists, and scholars can narrativize these topics for wider public consumption. Consequently, constructing a history based on FOIA materials is also an opportunity to create a history of gaps, lacks, and disjunctures. In theorizing an archaeological model of historiography, Michel Foucault has observed:

The document, then, is no longer for history an inert material through which it tries to reconstitute what men have done or said, the events of which only the trace remains; history is now trying to define within the documentary material itself unities, totalities, series, relations. . . . [Concurrently, o]ne of the most essential features of the

new history is probably [the] displacement of the discontinuous: its transference from the obstacle to the work itself; its integration into the discourse of the historian, where it no longer plays the role of an external condition that must be reduced, but that of a working concept⁴⁵

Extrapolating on these ideas, I argue that considering the mediations that disrupt linear, definitive retellings must also account for the intervening dynamics of documentary media processes.

In my own attempt to foreground the partialities of knowledge formations, this dissertation builds on the poststructuralist and social constructivist frameworks of theorists like Haraway, de Certeau, and Foucault to explore the epistemological functions of non-fiction moving images, FOIA records, and other documentary media. It constructs admittedly incomplete histories of and through the apertures of such media to interrogate how mediating stages like production, censorship, and circulation negotiate public understandings of covert state practices. By focusing on the spatially and temporally nebulous set of operations known as the GWOT, my under-recognized case studies also offer new vantages from which to consider the pivotal practices, technologies, and repercussions of this conflict. My juxtaposition of governmental and independent documentary archives further strives to enable new theoretical and situated observations about their interrelations. This approach can help reconceive the understandings of official documents and official moving images in media studies and their role in constructing national security imaginaries. Ultimately, by working through the partial disclosures of FOIA and film and reflecting on these limits, I

endeavor to critically reevaluate the documentation of state violence and explore the stakes of mediating secrecy and knowledge in the 21st century.

Literature Review

The Freedom of Information Act

Thus far, the considerable scholarly attention FOIA has received has primarily been based in social science fields like law, information science, and political science. Given the act's evident overlaps with these areas, it is not surprising that these disciplines have generated the most analysis. At times, their work has broached issues related to media, but this lens has rarely been the focus of the extant research. This presents a major lacuna in terms of the topics that receive consideration and the methodologies that are employed.

In legal scholarship, the principal question has revolved around the judicial rulings on FOIA. For instance, in 2015, Stephen J. Schulhofer discussed the efficacy of FOIA lawsuits in retrieving sensitive national security information. He argued that judges in these cases were too deferential in upholding executive secrecy claims and too dismissive of outsider knowledge.⁴⁶ Along similar lines, Mary-Rose Papandrea and Seth Kreimer have parsed the implications of FOIA rulings during the Global War on Terror.⁴⁷ Kreimer's 2007 examination of cases pertaining to the extralegal detention of so-called 'enemy combatants' argued that their attorneys sometimes achieved hard-fought victories in FOIA lawsuits against a deeply secretive Bush administration. The attorneys then complemented the disclosures with other public information and discovered secret archives that they could pursue in court. In this sense, Kreimer found that using FOIA to hold a hostile executive branch accountable was a makeshift process reliant on creative adaptation and perseverance.

Nonetheless, he critiqued the inefficiency of official transparency structures, which were reactive rather than active.⁴⁸

Meanwhile, political scientists have focused on related issues of governance and political power. In his 2006 book *Blacked Out: Government Secrecy in the Information Age*, Public Policy and Political Science scholar Alasdair Roberts contextualized the development of the United States' FOIA law in 1966 among the wave of analogous laws that other governments enacted over the following decades.⁴⁹ His elaboration of their differences highlights that the current version of FOIA in the U.S. is only one instantiation of public records policy and showcased the pivotal roles that political, economic, and cultural conditions contribute to the passage of national legislation. With the enactment of freedom of information laws in over 100 countries, his comparative analysis also helps convey the global dimensions of public access and the influence of the U.S. law around the world.

When issues of media have arisen, it is often related to information scientists and archivists addressing the ongoing challenges of digital records. One early article to grapple with these questions is Thomas Elton Brown's "The Freedom of Information Act: The Electronic Challenge to the People's Right to Know." Published in 1995, it was written before the Electronic Freedom of Information Act (E-FOIA) Amendments of 1996 updated the law's requirements. Hence, a year earlier, Brown was still noting that it was unclear if electronic materials qualified as records under FOIA.⁵⁰ He also pointed out examples of other technical quandaries that showed how debatable the decisions around digital disclosure were and continue to be.⁵¹ A few researchers, like Office of the Secretary of Defense employee Arthur E. Fajans in 1984 and historian Shannon E. Martin in 2008, have also studied how journalists have used FOIA records in news coverage.⁵² However, as digital technologies

continue to transform the logistics of FOIA and media production, updated analyses that more fully conceptualize the complexities of media processes are necessary.

To date, Anjali Nath has offered one of the rare looks at FOIA through a media studies lens. She used Edward Said's strategy of contrapuntal reading to analyze a set of torture documents and argue that the black spaces of hidden text can gesture toward more direct forms of violence that take place out of sight.⁵³ Rather than seeing them as failures of transparency and endpoints of interpretation, she asserted that redacted texts can "visually signify the ungraspable dimensions of detainee torture" and perform "a visual spectacle of nondisclosure."⁵⁴ Contrasting two versions of a memo, Nath also observed that redactions prompt readers to use contextual information to imagine what they conceal. For her, they also disrupt seamless understanding and show the disjunctures inherent in narrativizing. In addition, by discussing an aesthetics of redaction, she refuted that visibility is necessarily equivalent to transparency.⁵⁵ Her contribution signals the value of a humanities-based approach to FOIA, but also suggests an opportunity to analyze the law's mediations beyond paper files and the visualities of redaction.

Relatedly, studies of paper documents and state administration outside of the context of FOIA offer some instructive insights. One such contribution is Ben Kafka's *The Demon of Writing*, which considers what he calls "the psychic life of paperwork" and the cultural myths attached to bureaucracy.⁵⁶ Kafka observed, "First, paperwork is a refractive medium in that power and knowledge inevitably change their speed and shape when they enter it. Inevitably, but not invariably—it is precisely this variability that makes paperwork so tricky. . . . And second, paperwork is a refractory medium in that it is inevitably (but again, not invariably) uncooperative and unpredictable."⁵⁷ This theorization could be productively

extended to other media formats, while simultaneously attending to their specificities. Framing files as a media technology, Cornelia Vismann's work likewise has useful applications for a humanities-based FOIA analysis. Her materialist approach argued that manifestations of information influence their interpretations and legal consequences. Drawing on Friedrich Kittler and Wolfgang Ernst, she stated that "law and files mutually determine each other. A given recording technology entails specific forms and instances of the law. . . . It is only in such a diachronic description that the discourse of the law assumes its specific appearances" and "files acquire face, form, and format."⁵⁸ A materialist analysis could further build on this concept by attending to the costs, labor, technologies, and infrastructures involved in the production and release of official documents. Thus, like Nath, Kafka and Vismann's scholarship indicate this area's conceptual richness, but leaves many media-based aspects of FOIA open to exploration. In the case of my project, one of the most glaring gaps across all disciplines is the lack of attention paid to moving images.

Documentary Media Production

To address the role that U.S. government agencies and organizations have contributed to the production of non-fiction moving image media, scholars have tended to provide historical accounts of military-sponsored film projects. One early discussion of this topic was in Richard Dyer MacCann's book *The People's Films: A Political History of U.S. Government Motion Pictures*.⁵⁹ It began as a dissertation in 1951, but "had to wait 22 years, until heightened interest in films could support its publication."⁶⁰ In his book, MacCann devoted two chapters to the Office of War Information (OWI) and the Armed Forces' productions in World War II. He advocated for documentaries that catalyze action and stir sympathies rather than works that are neutral. More recently, in the 2018 anthology *Cinema's*

Military-Industrial Complex, Noah Tsika explored the multifaceted intentions of World War II-era productions, stating, “[T]he United States military embraced documentary film as an especially adaptable pedagogical agent, one that could instruct both new recruits and seasoned soldiers, build institutional consensus, and assuage citizens’ anxieties about the national costs of combat.”⁶¹ In the same book, James Paasche discussed the Department of the Army Special Photographic Office (DASPO)’s role in photographing and filming Vietnam War actualities. Although Paasche notes that the group’s output could be seen as propaganda, he directed his analysis toward the labor and production culture of its grunt workers.⁶²

In addition to military productions, scholars have analyzed how other U.S.-based institutional filmmaking has lent itself to goals of nation-building and ideological dissemination. For instance, the MacCann book also examined Pare Lorentz’s officially sponsored work to promote New Deal-era federal agencies and discussed how 1960s-era productions on behalf of the United States Information Agency (USIA) helped shape foreign policy.⁶³ Elizabeth Heffelfinger has also written production and exhibition histories of the propagandistic documentaries the Economic Cooperation Administration (ECA) and Mutual Security Agency (MSA) commissioned to sell the Marshall Plan to American audiences.⁶⁴

Yet, there remains a need for scholarly work on the contemporary roles that the U.S. government plays in documentary media production, especially in relation to its more secretive agencies and departments. To date, Simon Willmetts and Tricia Jenkins have examined the CIA’s history of influencing media, but their books concentrated on Hollywood productions and fictional representations.⁶⁵ Moreover, it is worth thinking of roles beyond overt governmental collaboration and sponsorship. By analyzing the impacts of

processes like FOIA on independent documentary production, it becomes possible to connect the management of state records and the repurposing of those records in non-fiction film. Such a link demonstrates that practices like document withholding, redaction, and disclosure are indirect but meaningful forms of government influence on filmmaking practices.

Another facet of this topic that merits more attention is the array of risks and challenges that documentary crews and participants face. Among the efforts to assess the challenges of the industry is “State of the Documentary Field,” a biannual survey that Caty Borum Chattoo of American University’s Center for Media & Social Impact (CMSI) organizes in collaboration with the International Documentary Association.⁶⁶ Another CMSI report, “Dangerous Documentaries: Reducing Risks When Telling Truth to Power,” interviewed 53 professionals to identify risks to documentary production such as threats to personal safety, securing insurance, and legal problems, and to recommend best practices. Published in 2005, it states, “[W]hile trouble is occasional, risk is real and largely predictable. Much of it can be managed, given knowledge, infrastructure and resources; indeed, it has been managed in journalism consistently over many decades.”⁶⁷

Given the overlaps between documentary film and journalism, interventions in the latter field can also illuminate some of the current dangers and counter-measures. For instance, in *Becoming the Story: War Correspondents Since 9/11*, Lindsay Palmer argued that the changing landscape for Anglophone war correspondents led to a rise of what she called *safety culture*, but noted this hierarchical preparation has not actually created safer conditions.⁶⁸ She also noted that stories about journalists at risk tended to highlight individual catastrophes and ignore the deeper structural causes of the dangers.⁶⁹ To complement such observations, it remains important to more fully historicize and theorize the changing risks to

documentarians amid new modes of waging conflict and the shifting capabilities of digital media technologies. Likewise, to bridge a divide between practical findings and critical analysis, scholars must more actively connect the challenges of documentary practitioners to the textual impacts on the records they create.

Transparency and State Secrecy

Issues of transparency and state secrecy are central to both FOIA and documentary media production, which often seek to illuminate under-recognized practices. Drawing on some of the recent theorizations across disciplines, my project strives to complicate the interplay of secrecy and transparency rather than merely critiquing the former and lionizing the latter. It will point to the dilemmas and contradictions inherent in these two categories of visibility, and the ways that they co-constitute and re-form each other.

Outlining the security operations of the Cold War and the 21st-century counterterror regime from an anthropological perspective, Joseph Masco has argued that the rise of classifications and national security agencies has profoundly transformed the status of the secret. In building his argument, Masco identified how “the great theorists of secrecy”—Emile Durkheim, Georg Simmel, and Sigmund Freud—have each theorized the concept.⁷⁰ By contrast, he noted that the state’s compartmentalization of secrecy has now rendered all knowledge suspect. For him, this represents a profound shift in the social role of secrecy and transforms it into a “form of anti-knowledge in the United States, an empty signifier that stands in for governance, rationality, and evidence.”⁷¹ He illustrated these ideas through a discussion of the Sensitive But Unclassified (SBU) file, which occupies a liminal classification status and reflects the imprecision of records categorization.

Meanwhile, geographer and artist Trevor Paglen has analyzed the spatial dimensions of secrecy through his concepts of *dark geography* and *blank spots on the map*.⁷² Methodologically, he combined the lacunae in government documents and his embodied observations to track down secret government locations. The elucidation of these dark geographies then allowed him to fill in blank spots in the available scholarship and to publicize effaced counter-histories. While Paglen's risky methods are both compelling and ostentatious, his theoretical discussion of secrecy is limited. His conception diametrically opposed secrecy and transparency, and framed state secrecy as a tool of sovereign power. While this claim has some validity, it overlooks the many nuances and contradictions involved in disclosure and transparency.⁷³ Paglen more successfully highlighted the operative paradoxes when he observed that the inherent fallibility of secrecy continually strengthens it.⁷⁴

In her examination of airport security culture, Rachel Hall coalesced performance studies and communication studies frameworks to categorize various acts of transparency. She complicated the interpretations of transparency by emphasizing the physical and affective reactions of the observer and the observed. Within the context of security screenings, she offered the terms *voluntary transparency*, *involuntary transparency*, and *forcible transparency* to distinguish the levels of compliance and force involved in the encounters.⁷⁵ She also pointed to surveillance scholars' discussions of *asymmetrical transparency* to reflect on the state's greater ability to peer inside surfaces and demand information.⁷⁶ Throughout, Hall's attention to embodied experience demonstrated the contingency and variegation of transparency, and persuasively rejected the flattening of the concept.

Legal scholar Mark Fenster also complicated conventional assumptions about transparency. Along similar lines of argument as Jodi Dean, he challenged the Enlightenment narrative that imagines disclosed information resulting in straightforwardly public engagement and rational democratic participation.⁷⁷ To theorize a more complex reality, he contradicted the established Shannon and Weaver communication model and the notion of a coherent public sphere. Fenster wrote, “Transparency and secrecy, like the communication model on which they are built, are inadequate to explain complex, contingent social and political phenomena. They propose an idea of the state and attempt to develop practices that rely upon the assumption that the state can control information.”⁷⁸ Consequently, he contended that the effects of transparency can be unpredictable or limited, but also averred that the state is increasingly unable to maintain secrets.

Following such insights, the lens of media studies can again add a valuable layer to the extant framings and ask how the domains of FOIA and documentary film affirm or challenge these conceptions. By considering how these media processes negotiate public awareness of state abuses, I can underscore how they simultaneously mediate dynamics of openness and opacity. Based on my juxtaposition of two documentary forms that have rarely been thought of in conjunction and the analysis of case studies that have not received scholarly consideration, this dissertation can thus expand the ways to historicize and conceptualize the interplay of transparency and state secrecy.

Methodology

To more fully evoke the complex and dynamic operations of FOIA, I believe that it is critical to employ a mixed methodology. Each of the methods that I have used here contributed toward understanding the processes of disclosing and remediating public

information. The interrelated findings based on these methods cumulatively allowed me to outline the interrelations between the stages of documentary knowledge, including at the levels of production, censorship, distribution, circulation, reception, and preservation.

First, I used textual analysis to investigate the array of legal, political and cultural ideas that disclosed records about practices of national security materialize. In addition to bureaucratic paperwork, the most typical manifestation of FOIA disclosures, I examined documents in moving image formats. These hermeneutic readings of records noted the semiotic value of details such as their aesthetic qualities, formats, and genres, and sought to highlight the multisensory dimensions of audiovisual materials. I further considered these formal aspects in relation to the information the texts convey and elide. Along with reading FOIA documents in conjunction with documentary films and videos, I also analyzed paratexts like intermediate legal files, press releases, and news media coverage.

Linked to the method of textual analysis is the use of discourse analysis. Apropos to a FOIA project, my understanding of discourse aligns with Foucault's description of it as "a series of discontinuous segments whose tactical function is neither uniform nor stable."⁷⁹ To elaborate on these shifting functions and meanings, I interrogated how the rhetorics of disclosed documents participate in shaping the tenors of official and public responses. My goal was to historically situate the discourses within the political, legal, and cultural contexts in which they circulate. This approach also questioned the logics that motivate the emergence of discourses rather than regarding them as mere informational content.

I also conducted interviews with a range of actors to observe how individuals and organizations participate in and respond to FOIA's mediations. One such group was FOIA experts engaged in advocacy work and research. Collectively, they have filed thousands of

requests and retrieved thousands of disclosures, which gives them a firsthand knowledge of the logistics of this process. In addition, I interviewed independent documentarians who have employed FOIA to better understand their rationales and experiences. These interviews have helped me identify the forms of labor involved in this system, the strategies behind operationalizing and remediating the disclosures, and the responses that the remediations have engendered. Moreover, these conversations have illuminated the temporal and affective aspects of working with FOIA, and what FOIA as a media process facilitates and delimits.

In addition, this project about documentary and FOIA archives is based on archival research. In Madison, Wisconsin, I visited the Wisconsin Center for Film and Theater Research to explore the FOIA files of director Emile de Antonio. Additionally, digital archives organized by FOIA research centers and advocacy organizations, such as the National Security Archive, MuckRock, the Electronic Frontier Foundation (EFF), and the Electronic Privacy Information Center (EPIC), provided a wealth of background information and documents. Furthermore, I drew on agencies and departments' electronic reading rooms, on which their officers selectively post FOIA disclosures they judge to be of public interest. In doing so, I addressed how the collection and organization of documents in specific archives affected how they are accessed and interpreted. In an effort to be reflexive about archival practices, I also considered how these collections negotiated acts of knowledge production, but also potentially enacted their own conditions of selective amnesia and historiographical violence.

Building on the findings of these other methods, this dissertation also drew on media theory and produced theorizations of new terms. Because there is so little humanities-based scholarship on FOIA, I felt a need to create additional ways to conceptualize the intersections

of documentary media and the public records law. In the following four chapters, I will introduce the terms *redacted publics*, *transparency optics*, *classified logistics*, and *consibilities* to name less recognized dynamics of these processes. While extrapolating on these concepts, I have also linked them to extant theories that can expand their frameworks.

Initially, I also intended to center the critical practice of my own FOIA requests in my methodology. Indeed, I filed about fifteen requests with various agencies and departments and received a diverse set of responses. This practice was meant to give me firsthand experience of the process's logistics and affects and an opportunity to glean valuable information from both the content and responses. However, because of the compressed timeline of this project, the bureaucratic lags and epistemological challenges that make FOIA a fascinating topic of study made this method too difficult and unpredictable to rely on. Still, I will continue to make requests and will consider incorporate my findings in future versions of this project.

Chapter Breakdown

The first chapter of this dissertation will examine films and videos that the government made for internal use. It will focus on *The People's Right to Know*, a FOIA training video that the Department of Defense (DoD) produced in 2001, and *Extraordinary Fidelity*, a documentary film that the Central Intelligence Agency (CIA) produced in 2011. It will discuss how the disclosure of these works through FOIA helped reveal the heroic imaginaries that these organizations were constructing for their employees. By juxtaposing analyses of these instructional texts, this chapter will study how their divergent content and ideological valences impacted their releases and circulations. For instance, I will note that the hagiographic latter film, which deflected attention from the CIA's contemporaneous

detention and torture program, received greater public visibility and prominent placement among the agency's public relations materials. By connecting the project's content to contemporaneous political developments, the chapter will also consider how contexts of disclosure influence how and when sensitive audiovisual records come to light.

The second chapter will look at another form of internal audiovisual production: the digital footage of Baltimore protesters that the Federal Bureau of Investigation (FBI) aerially recorded in 2015. It will investigate how this covert surveillance was discovered and analyze the records the American Civil Liberties Union (ACLU) extracted from the agency through FOIA. It will consider what the documents, including the 18-plus hours of aerial surveillance footage, can reveal about the racial and technological dimensions of contemporary state surveillance. In framing the secretive agency's uncharacteristically forthcoming acts of disclosure, I will also identify some of the logics of transparency that may have motivated it. I will then discuss these records' epistemological limits and the shortcomings of applying ocularcentric approaches to digital processes. Finally, this chapter will contrast the FBI's panoptic vantage of the protests with the embodied, ground-level perspective of *One Document for Hope*, a local participant's documentary film about the events.

The third chapter will examine how independent documentarians have used FOIA to research national security issues and reveal abuses of surveillance and targeting. It will first outline a brief history of documentarians who have employed this method to date. It will then argue that the opaque workings and inefficiencies of FOIA have often exacerbated the challenges of independent documentary labor and required practitioners to adopt new skills in response. In particular, the chapter will note how temporal, economic, and legal issues can create unexpected complications during the production process. Along with detailing such

challenges, it will note what FOIA disclosures can enable for filmmakers and how these archives have impacted their work. Finally, it will analyze the range of creative techniques that they have implemented to compellingly remediate the documents they retrieved into the audiovisual contexts of documentary film.

Lastly, the fourth chapter will attend to the variety of risks that critical independent filmmakers confront to expose government abuses. It will consider the threats to the documentarians and their documents, as they chronicle incidents of state surveillance while they are themselves under state surveillance. It will do so by constructing alternative production histories of Laura Poitras' 2014 documentary film *Citizenfour* and Emile de Antonio, Mary Lampson, and Haskell Wexler's 1976 film *Underground*. These histories are primarily based on the FOIA files that the filmmakers extracted from the government agencies that targeted them. This chapter will argue that these records provide an under-explored vantage on the logistical and affective dimensions of making a dissident film. In addition, it will re-view the films to investigate how the mechanisms of censorship and state interference have registered perceptible traces in these texts. Consequently, I will argue that the troubling histories captured in both the FOIA documents and the films can also trouble the authority of official historiography.

¹ See Jason Leopold, "Barbaric Conditions That Led to a Detainee's Death Are Laid Bare in CIA Reports," *VICE News*, June 14, 2016, <https://news.vice.com/article/cia-black-site-conditions-that-led-to-detainee-death-laid-bare-by-report>; George Joseph, "Exclusive: Feds Regularly Monitored Black Lives Matter Since Ferguson," *The Intercept*, July 24, 2015, <https://theintercept.com/2015/07/24/documents-show-department-homeland-security-monitoring-black-lives-matter-since-ferguson/> and George Joseph, "Undercover Police Have Regularly Spied on Black Lives Matter Activists in New York," *The Intercept*, Aug. 18, 2015, <https://theintercept.com/2015/08/18/undercover-police-spied-on-ny-black-lives-matter/>; and "Government Data About Searches of International Travelers' Laptops and Personal Electronic Devices," *American Civil Liberties*

Union, Sept. 7, 2010, <https://www.aclu.org/government-data-about-searches-international-travelers-laptops-and-personal-electronic-devices>.

² Patty Jane, “Why FOIA Matters More Than Ever,” *Medium*, July 7, 2016, <https://medium.com/@pattyjane/why-foia-matters-more-than-ever-7441e358e0d5>.

³ “What is FOIA?,” *FOIA.gov*, n.d., <http://www.foia.gov/about.html>.

⁴ “Annual data,” *FOIA.gov*, 2017, <https://www.foia.gov/data.html>.

⁵ I calculated this by selecting the components for all of the listed departments on “Annual data,” *FOIA.gov*.

⁶ Because scholars have already produced several histories of FOIA, I do not delve into its incipient developments here. For one useful narrativization of the enactment of FOIA, see Michael Schudson’s chapter “Origins of the Freedom of Information Act” in his book *The Rise of the Right to Know: Politics and the Culture of Transparency, 1945-1975* (Cambridge, MA: Harvard University Press, 2015), 28-63.

⁷ “The Freedom of Information Act,” *United States House of Representatives*, n.d., <http://history.house.gov/HistoricalHighlight/Detail/15032443727>.

⁸ For one discussion that smartly punctures the mythos of public records laws in the liberal democratic state, see Aradhana Sharma, “State Transparency after the Neoliberal Turn: The Politics, Limits, and Paradoxes of India’s Right to Information Law,” *PoLAR: Political and Legal Anthropology Review* 36.2 (2013): 308-325.

⁹ Ted Bridis and Jack Gillium, “US gov’t sets record for failures to find files when asked,” *Associated Press*, Mar. 18, 2016, <http://bigstory.ap.org/article/697e3523003049cdb0847ecf828afd62/us-govt-sets-record-failures-find-files-when-asked>.

¹⁰ *Ibid.*

¹¹ “FOIA Is Broken: A Report,” *U.S. House of Representatives Committee on Oversight and Government Reform*, 2016, iii.

¹² “Year 2017,” *Global Right to Information Rating*, 2017, <http://www.rti-rating.org/year-2017/>.

¹³ “Medium.” *New Oxford American Dictionary*, Second Edition, ed. Erin McKean (New York: Oxford University Press, 2005).

¹⁴ *Ibid.*

¹⁵ “Advanced Search,” *Digital National Security Archive*, n.d., <http://search.proquest.com/dnsa/advanced>.

¹⁶ National Archives and Records Administration, Annual Report 2003, *National Archives and Records Administration*, 2004, <https://www.archives.gov/files/about/plans-reports/performance-accountability/annual/2003/2003-annual-report.pdf>.

¹⁷ Nate Jones, personal correspondence, Apr. 2018.

¹⁸ Richard Zlotowitz, personal interview, Mar. 2018.

¹⁹ Jesse Panuccio, “Department of Justice Chief FOIA Officer Report 2018,” *Office of Information Policy*, 2018, 11, <https://www.justice.gov/oip/page/file/1042446/download>.

²⁰ Nate Jones, personal interview, Apr. 2018.

²¹ Federal Bureau of Investigation, “Any FBI files pertaining to Maryland Permanent Bank & Trust Company, Ownings Mills, Maryland 1995 to 2005” records response to Don Stone, *MuckRock*, 2017-2018, <https://www.muckrock.com/foi/united-states-of-america-10/any-fbi-files-pertaining-to-maryland-permanent-bank-trust-company-ownings-mills-maryland-1995-to-2005-46152/#comms>.

²² Michael Ravnitzky, personal interview, Feb. 2018.

²³ Ibid.

²⁴ Federal Bureau of Investigation, “Any FBI files pertaining to Maryland Permanent Bank & Trust Company, Ownings Mills, Maryland 1995 to 2005” records response to Don Stone, *MuckRock*, Feb. 28, 2018, 9, <https://www.muckrock.com/foi/united-states-of-america-10/any-fbi-files-pertaining-to-maryland-permanent-bank-trust-company-ownings-mills-maryland-1995-to-2005-46152/#file-177054>.

²⁵ Ibid., 10.

²⁶ Michael Ravnitzky, personal interview.

²⁷ Ibid.

²⁸ Jane Gaines, “The Production of Outrage: The Iraq War and the Radical Documentary Tradition,” *Framework: The Journal of Cinema and Media* 48.2 (2007): 40. Emphasis in original.

²⁹ See, for example, *Reading Rodney King/Reading Urban Uprising*, edited by Robert Gooding-Williams (London: Routledge, 1993).

³⁰ Thomas Keenan, “Publicity and Indifference: Media, Surveillance and “Humanitarian Intervention,”” in *Killer Images: Documentary Film, Memory and the Performance of Violence*, edited by Joram ten Brink and Joshua Oppenheimer (London and New York: Wallflower Press, 2012).

³¹ Ibid., 25.

³² Rey Chow, “The Age of the World Target: Atomic Bombs, Alterity, Area Studies” in *The Age of the World Target: Self-Referentiality in War, Theory, and Comparative Work* (Durham, NC and London: Duke University Press, 2006), 31 and Paul Virilio, *War and Cinema: The Logistics of Perception*, translated by Patrick Camiller (1984; London and Brooklyn: Verso, 2009), 4.

³³ Lisa Gitelman, *Paper Knowledge: Toward a Media History of Documents* (Durham, NC and London: Duke University Press, 2014), 1.

³⁴ Ibid.

³⁵ Ibid. For a more extensive discussion of the logics of bureaucracy, see Max Weber, “Bureaucracy” in *From Max Weber: Essays in Sociology*, translated and edited by H.H. Gerth and C. Wright Mills (1922; Berkeley and Los Angeles: University of California Press, 1991), 196-244.

³⁶ Bill Nichols, *Representing Reality: Issues and Concepts in Documentary* (Bloomington, IN: Indiana University Press, 1991), 160, 162.

³⁷ Donna Haraway, “Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective,” *Feminist Studies* 14.3 (1988): 581.

³⁸ Ibid., 583.

³⁹ Michel de Certeau, *Heterologies: Discourse on the Other*, translated by Brian Massumi (Minnesota and London: University of Minnesota Press, 1986), 214.

⁴⁰ Ibid., 214-215.

⁴¹ John Grierson, "The Documentary Producer," *Cinema Quarterly* 2.1 (1933): 8.

⁴² Joseph Pugliese, *State Violence and the Execution of the Law: Biopolitical Caesurae of Torture, Black Sites, Drones* (New York and London: Routledge, 2013), 29.

⁴³ Ibid., 27. Emphasis in original.

⁴⁴ For a foundational discussion that theorizes mediation in documentary film, see Michael Renov, "Re-thinking Documentary: Toward a Taxonomy of Mediation," *Wide Angle: A Quarterly Journal of Film History, Theory, Criticism & Practice* 8.3-4 (1986): 71-77.

⁴⁵ Michel Foucault, *The Archaeology of Knowledge*, translated by A.M. Sheridan Smith (1969; New York and London: Routledge, 1989), 7 and 9.

⁴⁶ Stephen Schulhofer, "Access to National Security Information under the U.S. Freedom of Information Act," NYU School of Law, Public Law Research Paper 15-14 (2015): 1-15, <https://ssrn.com/abstract=2610901>.

⁴⁷ Mary-Rose Papandrea, "Under Attack: The Public's Right to Know and the War on Terror," *Boston College Third World Law Journal* 25.1 (2005): 35-80 and Seth Kreimer, "Rays of Sunlight in a Shadow 'War': FOIA, the Abuses of Anti-Terrorism, and the Strategy of Transparency," *Lewis & Clark Law Review* 11.4 (2007): 1141-1220.

⁴⁸ Kreimer, 1163.

⁴⁹ Alasdair Roberts, *Blacked Out: Government Secrecy in the Information Age* (Cambridge, UK: Cambridge University Press, 2006).

⁵⁰ Thomas Elton Brown, "The Freedom of Information Act in the Information Age: The Electronic Challenge to the People's Right to Know." *The American Archivist* 58.2 (1995): 202-211.

⁵¹ Ibid., 206-208.

⁵² Arthur E. Fajans, "Media Use of the Freedom of Information Act," *Government Information Quarterly* 1.4 (1984): 351-364 and Shannon E. Martin, *Freedom of Information: News the Media Use*. (New York: Peter Lang, 2008).

⁵³ Anjali Nath, "Beyond the Public Eye: On FOIA Documents and the Visual Politics of Redaction," *Critical Studies* ↔ *Critical Methodologies* (2014): 25-26.

⁵⁴ Ibid., 22 and 24.

⁵⁵ Ibid., 27.

⁵⁶ Ben Kafka, *The Demon of Writing: Powers and Failures of Paperwork* (New York: Zone Books, 2012), 10, 15.

⁵⁷ Ibid., 117-118.

⁵⁸ Cornelia Vismann, *Files: Law and Media Technology*, translated by Geoffrey Winthrop-Young (Stanford, CA: Stanford University Press, 2008), xiii.

⁵⁹ Richard Dyer MacCann, *The People's Films: A Political History of U.S. Government Motion Pictures* (New York: Hastings House, 1973).

⁶⁰ Edgar Dale, Review of Richard Dyer MacCann's *The People's Films: A Political History of U.S. Government Motion Pictures*, *AV Communication Review* 22.1 (1974): 101.

⁶¹ Noah Tsika, "From Wartime Instruction to Superpower Cinema: Maintaining the Military-Industrial Documentary" in *Cinema's Military-Industrial Complex*, edited by Haidee Wasson and Lee Grieveson (Oakland, CA: University of California Press, 2018), 192.

⁶² James Paasche, "Shots Made Around the World: DASPO's Documentation of the Vietnam War" in *Cinema's Military-Industrial Complex*, edited by Haidee Wasson and Lee Grieveson (Oakland, CA: University of California Press, 2018), 241-258.

⁶³ MacCann.

⁶⁴ Elizabeth Heffelfinger, "Foreign Policy, Domestic Fiction: Government- Sponsored Documentaries and Network Television Promote The Marshall Plan At Home," *Historical Journal of Film, Radio and Television* 28.1 (2008): 1-21.

⁶⁵ Simon Willmetts, *In Secrecy's Shadow: The OSS and CIA in Hollywood Cinema 1941-1979* (Edinburgh, UK: Edinburgh University Press, 2016) and Tricia Jenkins, *The CIA in Hollywood: How the Agency Shapes Film and Television* (Austin, TX: University of Texas Press, 2012).

⁶⁶ Caty Borum Chattoo, "The State of the Documentary Field: 2016 Survey of Documentary Industry Members," *Center for Media & Social Impact*, 2016, http://cmsimpact.org/wp-content/uploads/2016/09/CMSI-IDA-State-of-the-Documentary-Field-Study_9-26-16-f.pdf.

⁶⁷ Patricia Aufderheide *et al.*, "Dangerous Docs: Reducing Risk When Telling Truth to Power," *Center for Media & Social Impact*, 2015, 21, <http://archive.cmsimpact.org/sites/default/files/documents/dangerousdocs-feb2015.pdf>.

⁶⁸ Lindsay Palmer, *Becoming the Story: War Correspondents Since 9/11* (Champaign, IL: University of Illinois Press, 2018), 2-3.

⁶⁹ *Ibid.*, 3.

⁷⁰ Joseph Masco, *The Theater of Operations: National Security Affect from the Cold War to the War on Terror* (Durham, NC and London: Duke University Press, 2014), 123.

⁷¹ *Ibid.*, 124.

⁷² Trevor Paglen, *Blank Spots on the Map: The Dark Geography of the Pentagon's Secret World* (New York: Dutton, 2009), cover and 11.

⁷³ For more nuanced theories of secrecy and transparency, which rightly recognize the shortfalls of total transparency, see Clare Birchall, "Transparency, Interrupted: Secrets of the Left," *Theory, Culture & Society* 28.7-8 (2011): 60-84; and Jack Bratich, "Public Secrecy and Immanent Security," *Cultural Studies* 20.4-5 (2006): 493-511.

⁷⁴ Paglen, 16.

⁷⁵ Rachel Hall, *The Transparent Traveler: The Performance and Culture of Airport Security* (Durham, NC and London: Duke University Press, 2015), 8-10.

⁷⁶ *Ibid.*, 14.

⁷⁷ Jodi Dean, *Publicity's Secret: How Technoculture Capitalizes on Democracy* (Ithaca, NY: Cornell University Press, 2002).

⁷⁸ Mark Fenster, "Transparency in Search of a Theory," *European Journal of Social Theory* 18.2 (2015): 162-163.

⁷⁹ Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction*, translated by Robert Hurley (1978; New York: Vintage Books, 1990), 100.

Chapter 1 **Revealing Truths: Internal Films, Contexts of Disclosure, and Redacted Publics**

“Releasing or denying access to records can be a tricky business,” a Humphrey Bogart-inspired narrator tells the audience with a tip of his fedora. “In the end, it’ll be up to you to do the right thing and provide as much help as you can. And remember, I’ll be looking at you, kid.” This scene comes from *The People’s Right to Know*, an instructional video that the Department of Defense (DoD) produced for internal use in 2001. Borrowing its title from the seminal 1953 Harold Cross book that influenced the passage of the Freedom of Information Act (FOIA), the text uses a conceit of spies and secret agents to teach the department’s FOIA officers how to respond to citizen requests.

Eight years later, the Central Intelligence Agency (CIA)’s Center for the Study of Intelligence (CSI) commissioned a documentary for its own internal use. The resulting 57-minute film, *Extraordinary Fidelity*, recounts the capture of CIA spies John T. Downey and Richard G. Fecteau during a 1952 aerial surveillance mission in China. Completed in 2010, the sober, hagiographic work then chronicles the torture and two decades of imprisonment that these “unsung heroes” endured in a Chinese prison.¹ It shows how they resisted their captors’ harsh interrogation tactics and traces the agency’s efforts and the historical developments that eventually secured their release.

While the tones of these projects are strikingly different, their juxtaposition reveals some important similarities. Both texts draw on the intrigues of espionage and surveillance, while also celebrating the mundane but necessary labor of bureaucracy. They also comparably use audiovisual means for pedagogical ends, attempting to make the learning of seemingly dry procedural or historical information more engaging. Hence, both belong to the

non-commercial category of filmmaking that Haidee Wasson and Charles R. Acland have called *useful cinema*. They describe this form as “a tool that makes, persuades, instructs, demonstrates, and *does* something” and is “deployed... to satisfy organizational demands and objectives.”² More specifically, these projects strategically construct selective imaginaries for employees that conveniently overwrite the darker realities of the Global War on Terror.

Notably, both *The People’s Right to Know* and *Extraordinary Fidelity* also became publicly available because of FOIA requests. In the case of the former, the DoD FOIA office delayed disclosure for 18 months and only sent the video to the individuals who requested it. It then took 11 years for the video to become publicly accessible on the Internet. By contrast, the CIA office released its documentary 11 months after its premiere and prominently displayed it among the agency’s digital public relations materials. Like the records they uncover then, the discrepancies between these disclosures can offer their own revealing points of information.

To analyze the wider dynamics of official disclosure, this chapter will connect the content of these projects to their varying circulations. It will elucidate why only certain versions of records attain visibility and under which institutional and political conditions they come to light. I will consider the consequences of such selectivity and variant levels of publicity through the term *redacted publics*. Furthermore, this chapter will trace how the interpretations of official films change upon their releases, depending on their audiences, exhibition contexts, and historical conjunctures. For instance, I will ask how the FOIA release of another archive, the CIA files related to the agency’s Rendition, Detention and Interrogation (RDI) program, casts new light on the depictions of detainee interrogation in *Extraordinary Fidelity*. As I will note, the contentious decade-long battle to extract the RDI

documents further evinces how national security agencies are largely instrumentalizing FOIA to suit their own objectives.

Producing and circulating *The People's Right to Know*

Made for \$70,500, the 23-minute instructional video *The People's Right to Know* attempted to make bureaucratic guidelines more enticing to learn. The DoD originally intended it to be an introductory installment to a four-part series, with follow-up videos that would cover other aspects of FOIA policy.³ The video's screenwriter, Tory Salvia, said that he didn't want people to fall asleep when they watched it.⁴ Similarly, then-DoD FOIA director Henry McIntyre admitted that video is "actually somewhat corny."⁵ However, he added, "it's a heck of a lot better than someone standing up on stage talking about exemptions and disclosures and paperwork."⁶ Although the Pentagon internally distributed approximately 100 copies of the VHS tape, the other proposed portions in the series were never produced.⁷

To overview the nuances of the administrative policy, Salvia scripted a film noir homage to *Casablanca* (dir. Michael Curtiz, 1942). The World War II-inspired story centers on Trench Coat, a hard-boiled journalist who is supposedly the son of Bogart's character Rick Blaine.⁸ In addition to narrating the action in a Bogart accent, he "keeps a close eye on a Large Man and a Veiled Lady as they attempt to gain access to the contents of a mysterious envelope that arrives in the Pentagon mailroom."⁹ He also offers guidance on FOIA "from exotic locations such as a corner table in the Cafe Informatif, the gun deck of one of the last [World War II] Liberty Ships, and the cockpit of a Presidential helicopter."¹⁰



Figure 3. Trench Coat addresses Department of Defense FOIA employees

Aesthetically, the video exhibits the constraints of its low budget. With its self-serious, hammy acting and “comically dumb” premise, *The People’s Right to Know* resembles an educational video shown in high school classrooms.¹¹ Despite its amateur production values, it does present a helpful, if somewhat basic, overview of FOIA logistics to department employees. Through both Trench Coat’s direct address to the audience and the PowerPoint-style superimposition of bullet points, the video outlines the differing standards of disclosure. For instance, Trench Coat notes that “News Media, Educational and Non-Commercial Scientific Requesters” such as himself do not have to pay for the time spent searching for and reviewing documents. They are also entitled to receive free reproductions of the first 100 pages of materials. On the other hand, commercial requesters like the Large Man must pay any costs for search, review, and reproduction over \$15. Throughout the video, the protagonist also frames FOIA as a noble process that is integral to the operations of the DoD.

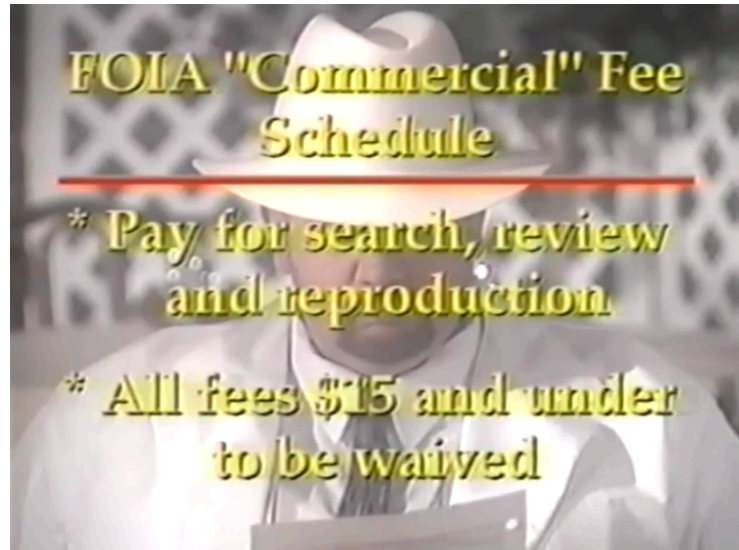


Figure 4. Explaining the commercial fee schedule

Ironically, despite such textual endorsements of the law, the DoD rejected the initial requests to release *The People's Right to Know*. In 2003, when journalist and FOIA advocate Michael Ravnitzky filed the first known request for the video, officers curiously cited the exemption of trade secrets to deny his request and appeal.¹² However, the actual reason for the denials was that the video contained prominent excerpts of copyrighted footage. This includes television news clips of historic events like Hank Aaron's 1974 breaking of the Major League Baseball home run record, the 1985 discovery of the sunken Titanic, and the 1996 Summer Olympics, as well as scenes from movies like *Casablanca*. Like the secret agent conceit, the use of major documentary and fictional pop cultural artifacts reflected an effort to hold FOIA employees' attention and perhaps even make the bureaucratic work feel more monumental by association. Yet, because the department had not foreseen making the video public, it had to retroactively obtain permission from the copyright holders. After two attempts, Army lawyer Suzanne Council concluded, "We couldn't get approval; we tried our darnedest."¹³

Critics rightly pointed out that the presence of copyrighted information did not qualify for any of the nine FOIA exemptions. Lawyer David A. Schulz argued that the denial “makes no sense; this is silly. This is a novel effort to apply a provision that clearly has no proper application here.”¹⁴ Charles Davis, the executive director of the Freedom of Information Center at the University of Missouri’s School of Journalism, also described the decision as “hysterical.”¹⁵ He noted, “This is just such a perfect anecdotal example of what goes on every day all over the country when people make requests for things that are so obviously not secret and then are rejected.”¹⁶ In addition, legal experts observed that the use of the footage likely fell under the protection of fair use, which exempts copyright in the case of educational purposes.¹⁷ Yet, rather than release the tape in full, the DoD, in consultation with the Army Office of the Chief Attorney, decided to redact the copyrighted portions. The department replaced the clips in question with a black screen reading “COPYRIGHTED MATERIAL REMOVED FOR PUBLIC VIEWING,” while leaving the audio track intact.



Figure 5. The redaction of copyrighted clips

The groundwork of the initial requests and the internal labor of content removal did eventually culminate in the video's disclosure. By 2014, almost eighteen months after it had made its request, the Associated Press received a copy of the redacted version.¹⁸ It also took eighteen months for *Arizona Daily Star* military reporter Carol Ann Alaimo to obtain a copy through FOIA.¹⁹ The former prompted a feature article that focused on the multiple levels of censorship, while the latter resulted in a similarly critical editorial entitled "Hide it Again, Sam." Michael G. Powell, then an Anthropology graduate student who was studying Polish transparency laws, received a copy of the video in 2014 as well.²⁰ Commenting on the unpredictability of the process, Powell said, "I didn't hear anything back for a couple years. . . . There was no prompting and I don't think I made any appeals. It just showed up one day. It was a hell of a thing, because I didn't own a VHS machine any longer, and had to have someone transport it into digital format."²¹

In contrast to the orderly, standardized practices depicted in the video, the delayed disclosure of *The People's Right to Know* inadvertently reflected a more accurate reality of FOIA. The lags demonstrated the irregular vicissitudes of information release, with some requests even taking several years and multiple appeals to fulfill and others nonetheless ending in denial. In addition, extracting the desired documents can require requesters to engage in nebulous legal and semantic debates over which forms of information qualify under the legislation. As Powell's experience suggests, the issue of shifting media formats can also become a hindrance for both FOIA officers and requesters. In the case of rarer or defunct media technologies, outdated formats can even effectively result in the loss of information otherwise subject to disclosure.

Further belying the promise of its title, the FOIA release of *The People's Right to Know* only made the video public in a very limited sense. The journalists and academic researchers who specifically requested it received copies, but it was not easily accessible to others. Seemingly embarrassed by the low production quality and redactions, the Department of Defense never featured *The People's Right to Know* in its electronic reading room. There appeared to be no digital copies of it online until John Cook uploaded one on *Gawker* in 2014. He stated, "As far as I can tell, [the video] hasn't been posted on the internet until now. . . . I received a VHS copy of 'The People's Right to Know' recently from a friend, who had originally obtained it from . . . Michael Powell."²² Cook's description demonstrates how many FOIA documents linger in obscurity unless they can circulate to networks that extend beyond the individual requesters. Yet, even the eventual posting on *Gawker* did not guarantee the long-term visibility of the video. Amid the ongoing oversaturation of digital information, the story did not gain enough traction to have a substantive impact.²³ Moreover, when a contentious legal battle prompted the news website to shut down in 2016, the video file ceased to play on the article page. (However, as of this writing, it can still be viewed via the Internet Archive's Wayback Machine.²⁴) Such volatility of access underscores that digital archives are not necessarily more secure or permanent than their analog counterparts and face new kinds of challenges.

Ultimately, the practice of granting disclosure only to specific requesters produces a state that I call *redacted publics*. Michael Warner has theorized the concept of a public by observing it "is the social space created by the reflexive circulation of discourse. . . . Anything that addresses a public is meant to undergo circulation."²⁵ By making information public only at the individual level, it forestalls the potential for deeper and more sustained

social interaction. It limits debate and dissent by hindering the expedient dissemination of internal documents and tasking the requesters with the responsibility of wider circulation. This practice privileges established institutions with the requisite staff, finances, and stature, including private corporate-owned news organizations, to amplify the content of specific disclosures while diminishing the voices of individual citizens.

At the same time, the idea of redacted publics acknowledges that information access is always functionally, if not explicitly, circumscribed in other ways. Namely, members of marginalized social groups may feel unable or unwilling to fully participate in a system that has continually effaced their agency. In Audre Lorde's warning "[T]he master's tools will never dismantle the master's house" is a remembrance that the potential civil remedies of FOIA do not hold equal appeal to all publics.²⁶ Nancy Fraser has noted that in stratified societies, "whose basic institutional framework generates unequal social groups in structural relations of dominance and subordination, . . . full parity of participation in public debate and deliberation is not within the realm of possibility."²⁷ While every public is redacted to some degree by its nature, oppressed groups' justified sense that they cannot successfully affect systemic change within the confines of the liberal democratic state nonetheless re-inscribes their excisions from that system. Such ingrained inequity further constrains and subdivides networks of circulation, and disproportionately overwrites the perspectives of the disempowered.

One means of reducing the proliferation of redacted publics depends on government agencies and departments sharing information more widely and proactively. Certainly, it is not feasible to post every single disclosure in an agency's electronic reading room, nor would producing such a surfeit of information necessarily or straightforwardly enhance the pursuit

of a critical transparency. Still, the storage capacity of digital archives does enable far more content to enter the public domain this way and meaningfully facilitate access. Currently, isolating the reach of disclosure instead redacts the conditions to form publics and counterpublics and restricts “the widening of discursive contestation.”²⁸ Like a black-box redaction then, individual releases technically fulfill the requirements of disclosure, but simultaneously obscure and obstruct the underlying spirit of public knowledge. Making this improvement would still do little to ameliorate the sense of disenfranchisement and disillusion that the second sense of redacted publics evokes however.

Producing and circulating *Extraordinary Fidelity*

On June 15, 2010, the Bubble, the “retro, igloo-shaped auditorium” at CIA headquarters in Langley, Virginia, held an unconventional world premiere.²⁹ It was the setting of the first screening of *Extraordinary Fidelity*, a documentary that the agency made for its internal use. The 57-minute film recounts the story of two CIA spies who were captured and imprisoned during a failed 1952 aerial surveillance mission in China. Its subjects, John T. Downey and Richard G. Fecteau, received standing ovations from the standing-room-only audience. Attendees also formed long lines to get the men’s autographs after the screening.³⁰

Commissioned by the Center for the Study of Intelligence (CSI), the film was intended to communicate an instructive episode in agency history. According to former Director of Central Intelligence (DCI) James Schlesinger, the CIA had established the CSI in 1974 to “think through the functions of intelligence and bring the best intellects available to bear on intelligence problems.”³¹ The CSI’s mission statement adds that its team of professional historians and practitioners “attempt[s] to document lessons learned from past

activities, to explore the needs and expectations of intelligence consumers, and to stimulate serious debate about current and future intelligence challenges.”³² Throughout its decades of work, the staff has primarily recorded its findings through the printed word. This includes classified and unclassified versions of the scholarly journal *Studies in Intelligence*, as well as monographs and other books.³³

Although the CIA’s Public Affairs Office has a long history of involvement in the production of commercially distributed feature films and televised documentaries, the turn to filmmaking marked a largely new strategy for the CSI.³⁴ It had first outsourced the production of a film, the topic of which remains secret, in the 1990s.³⁵ The impetus to make another film came when former CSI historian Nicholas Dujmovic published an article about Downey and Fecteau in *Studies in Intelligence* in 2006. He had intended a more accurate, comprehensive retelling to rectify the incorrect accounts that were in circulation.³⁶ Spurred by the GWOT, an influx of Congressional funding for the CSI’s Lessons Learned program offered a prime opportunity to then pursue an adaptation of his article.³⁷ Officials noted the importance of imparting lessons from earlier eras to its current personnel, given that half had joined the agency since the 9/11 attacks.³⁸ Reinforcing the story’s pedagogical worth, the agency’s Director at the time, Leon Panetta, added that it “is really one of the most impressive and important in CIA’s history. It carries enduring lessons about the values of the agency and the caliber of people who accomplish our mission.”³⁹ Dujmovic also framed the employment of digital film in terms of engaging a younger demographic. He stated, “For this new generation . . . this is an effective way of doing our history. This, we are hoping, is the start of a series.”⁴⁰

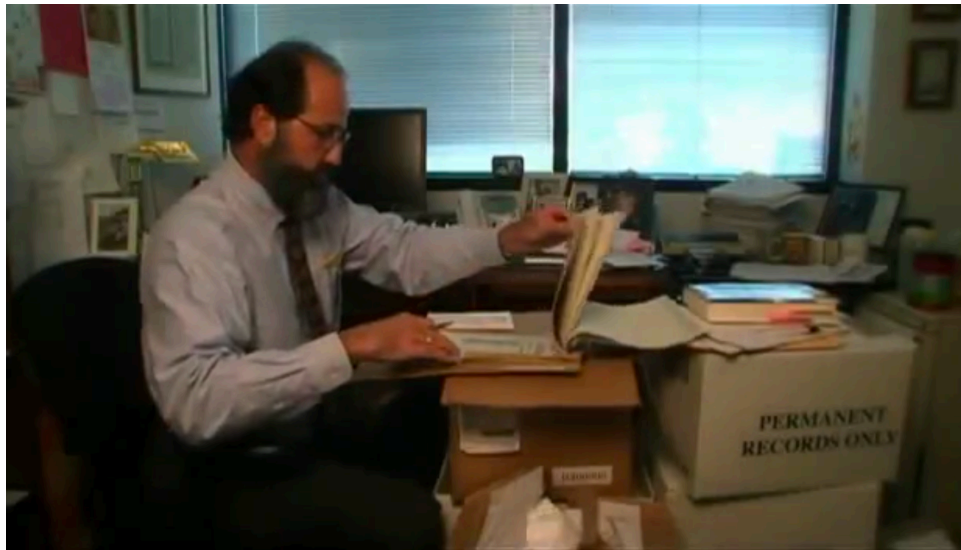


Figure 6. Historian Dujmovic appearing in *Extraordinary Fidelity*

Directed by Paul Wimmer over the course of fifteen months for “less than a quarter of a million dollars,” *Extraordinary Fidelity* is a considerably more competent work of filmmaking than *The People’s Right to Know*.⁴¹ Perhaps unsurprisingly, given its institutional imprimatur and intended audience, it relies on a rigidly traditional form that would not be out of place on The History Channel. One of its primary techniques is the use of talking heads, including with Dujmovic, former DCI George Tenet, and the octogenarian subjects. It also draws heavily on reenactments to depict the Chinese military’s imprisonment and interrogations of Downey and Fecteau. In addition, it makes extensive use of so-called ‘voice-of-God’ narration to provide key expository information, as well as archival photographs, files, and videos to offer corroborating visual evidence.⁴² Because the film was created for internal use, granting a few journalists access to the premiere created unexpected issues. The CIA’s Public Affairs Office (PAO) had invited Peter Finn of the *Washington Post* and Robert Burns of the Associated Press (AP) to attend with the stipulations that they could not take any notes or film anything they saw.⁴³ Both men still published articles about the event, providing the first public knowledge of the film’s existence. “We didn’t think that



Figure 7. A talking head account from the real Downey

through,” Dujmovic said, “because once the fact of the film is out there, then people are going to FOIA it. . . It was sort of an ‘oh shit’ moment.”⁴⁴

The immediate filing of FOIA requests by the AP and three others caused a dilemma for the CIA. To make the film, its representatives had promised Downey and Fecteau that it would remain behind closed doors.⁴⁵ Yet, because the agency had commissioned a publicly funded documentary that contained no classified information, its lawyers determined that none of the nine FOIA exemptions applied. Dujmovic then had to go back to the film’s subjects and explain why the CIA had to backtrack on its initial terms.⁴⁶ The documentary also then had to pass through the agency’s Publications Review Board (PRB), which typically screens the content and classification status of written texts before publication. Marking the first time it had reviewed a documentary film, the board, despite some preliminary concerns, approved release without any redactions.⁴⁷ After completing these processes, it became the first internal documentary film that the CIA released to the public.⁴⁸

Unlike *The People’s Right to Know*, extensive public outreach accompanied the fulfillment of these FOIA requests. On June 2, 2011, eleven months after the screening at the

Bubble, the CIA posted *Extraordinary Fidelity* and a full transcript to its online library.⁴⁹ It also uploaded the film to its official YouTube account, where it has garnered nearly 100,000 views in seven years.⁵⁰ Underplaying the agency's initial reluctance to comply with FOIA, spokesman George Little publicly attributed the disclosure to it being "the right time to tell the story of heroism of two agency officers who risked a great deal and sacrificed a great deal."⁵¹ Also undercutting the veneer of total transparency, the agency did not fulfill the AP's request to ascertain the cost of the film or Wimmer's salary at the time.⁵²

Along with the public disclosure, the documentary also continued to factor into internal strategies. For years, officials exhibited it to new employees during their training period and to operations officers when they were about to go on missions.⁵³ According to Dujmovic, the film demonstrated to the personnel "that this agency takes care of its people, that it goes to extraordinary lengths to deal with bad situations, that we're open about mistakes—with some caveats on that."⁵⁴ Members of other agencies, like the China team at the FBI and "some [agencies] you've never heard of," also received official screenings.⁵⁵ In addition, *Extraordinary Fidelity's* internal success led the CSI to commission Wimmer to make additional entries in the Lessons Learned documentary series. He made *This Was Personal*, which chronicled the 1997 capture of fugitive Mir Qazi, the Pakistani man who shot and killed two employees at CIA headquarters.⁵⁶ He also directed *Tradecraft: Keeping Jack Strong*, which told the story of Ryszard Kukliński, the Polish colonel who provided tens of thousands of pages of Soviet documents to the CIA between 1972 and 1981.⁵⁷ (*Jack Strong*, a Polish feature film that Wladyslaw Pasikowski made about the same subject, came out in 2014.) A fourth CSI film, which concerns the hunt for Osama bin Laden, is currently in the works.⁵⁸

However, perhaps learning its own lesson from the FOIA disclosure of *Extraordinary Fidelity*, the CSI's default mode of production subsequently became classified. Thus far, the inclusion of classified information has prevented the disclosure of the other documentaries. Wimmer even re-edited *Tradecraft: Keeping Jack Strong* to attempt to create an unclassified version.⁵⁹ Dujmovic and Wimmer believed that much of the sensitive information in the re-edited film had already been published in a 2004 book.⁶⁰ Other details about techniques like dead drops and the CIA's use of text messaging "had been well-known for years."⁶¹ Nonetheless, the PRB pointed to several technicalities of classification to prevent the approval of this version.⁶²

The tighter grip on the later documentaries demonstrates how one disclosure can have repercussions on future practices. It can not only shape whether a request is fully fulfilled, partially fulfilled, or denied, but also the subsequent production processes of government records. When sensitive information does pass through the sieve of FOIA, it can reshape policies to prevent the possibility of such incidents occurring again. In the case of *Extraordinary Fidelity*, that could mean barring journalists from attending internal film premieres or concealing the existence of such projects. Thus, the effects of disclosure should be viewed beyond their individual successes and failures and across both short- and long-term temporalities. In fact, each individual act of revelation participates in a continuum of transparency and opacity and can yield unpredictable effects internally and externally.

Contexts of disclosure

In part, *The People's Right to Know* and *Extraordinary Fidelity's* divergent paths to public visibility are based on their textual content. However, to more fully understand their

varying circulations and receptions, it is necessary to situate these texts within broader contexts of disclosure. Positioning their FOIA releases amid specific political milieus can demonstrate how social conditions formatively shape internal decision-making. Here, I argue that the September 11 attacks and the GWOT have been especially potent influences on the ways in which viewers could access and interpret these instructional films.

Most pertinently, experts have pointed to the wave of aggressive governmental opacity that followed the post-9/11 period. Invoking national security threats to curtail information access, the flagrant secrecy of the George W. Bush administration had serious implications for FOIA. Seth Kreimer has stated that the Bush administration “has sought to flout constitutional principle by establishing law-free zones and constitutional black holes. It has engaged in duplicitous parsing of its legal obligations, and has invoked extralegal executive authority.”⁶³ In 2004, a Committee on Government Reform report that Representative Henry Waxman (D-CA) commissioned detected “a consistent pattern in the Administration’s actions: laws that are designed to promote public access to information have been undermined, while laws that authorize the government to withhold information or to operate in secret have repeatedly been expanded.”⁶⁴ That same year, Senator Patrick Leahy (D-VT) also declared that the post-9/11 period had constituted “the single biggest rollback in FOIA ever.”⁶⁵

As one early sign of restriction, then-White House Counsel Alberto Gonzalez drafted Executive Order 13233 to limit access to former Presidents’ records.⁶⁶ In 2002, the Intelligence Authorization Act also prevented foreign governments, international organizations, or their representatives from requesting materials from the federal “intelligence community.”⁶⁷ This included many national security agencies and departments,

such as the CIA, FBI, DHS, and the Defense Intelligence Agency (DIA), a highly classified component of the DoD. Prior to this amendment to FOIA, the requester's identity had not been taken into consideration and could not be cited as a reason for denial. The establishment of new records categories, such as Sensitive But Unclassified (SBU), For Official Use Only (FOUO), and Critical Infrastructure Information (CII), was another chief mechanism to deny the release of previously available information.⁶⁸ These categories gave FOIA officers far more leverage to declare an array of records off-limits, based only on their speculations of misuse. In 2003, Bush also signed Executive Order 13292, which expanded classification for national security information and made declassification harder to achieve.⁶⁹ This order exacerbated the abuses of classification, which was already increasing fivefold as of 2001.⁷⁰ With an estimated annual net gain of 250 million classified pages, it only widened the vast gulf between public and secret archives.⁷¹

The government's ability to restrict information flows also empowered agencies to strategically release politically convenient documents and maintain an illusion of transparency. Citing precedents of high-ranking officials who attempted to shape public opinion in earlier eras, Mary-Rose Papandrea argued, "[D]uring the so-called 'War on Terror,' the political process has led to the arbitrary and calculated declassification and release of information."⁷² She noted that this practice "raises the concern that the government is abusing the 'national security' umbrella to conceal its counterterrorism efforts that have been less than successful and in turn to 'spin' public debate on the government's performance."⁷³ Thus, in a fraught historical moment that requires especially vigilant public oversight, agencies have instead been using the auspices of threat to undermine and manipulate important channels of knowledge production.

Viewed amid this contentious political and bureaucratic context, *The People's Right to Know* feels like an outdated artifact of an earlier era. Conceived of and produced before September 11, 2001, the rupture of that day's events subsequently gave the video unforeseen new valences. Its cheap aesthetic quality and playful tone clashed with the image of a department tasked with waging exorbitantly costly wars in Iraq and Afghanistan. Moreover, seemingly innocuous references in the text gained a retrospective uneasiness. For example, one sequence features a moving aerial shot of the Pentagon and the whirring of helicopter blades, which unintentionally evoke the hijackers' aerial attack on the federal building. The following shot displays Trench Coat dressed in a military flight suit, sitting inside the cockpit of a Presidential helicopter. He discusses how DoD employees can "carry out the FOIA mission." Later, he also boards a Navy ship, dons a Navy uniform, and says, "You know, along the way, I did a couple of tours at sea." This conflation of FOIA officer and military officer presages the department's increasing operationalization of government records in times of war.



Figure 8. Trench Coat inadvertently revealing intersections between military strategy and information access

In addition, the training video repeatedly celebrates FOIA's qualities of openness and universal access, which were already being circumscribed by the time of its public release. Three minutes into its runtime, Trench Coat announces, "All people, even those in foreign countries, have rights under FOIA." Later, standing beside a globe, he reiterates, "FOIA is an American law that applies to any person from any nation." Though foreign citizens can still legally make FOIA requests, the passage of the Intelligence Authorization Act for Fiscal Year 2003 did add caveats to that universality. During his history lesson, the protagonist also cites 1993 as a touchstone year in which then-President Bill Clinton and then-Attorney General Janet Reno "renewed the Freedom of Information Act" and "called for a stronger spirit of openness in government." By nodding to the former administration's since-rejected ethos, this optimistic pronouncement only adds to the outmoded feel of the video.

Furthermore, the training video discordantly focuses on the attentiveness and professionalism of the employees who perform the everyday labor of FOIA. Its rhetoric equates the public-sector work with "customer service," with Trench Coat stating the department "wants every request handled with a positive, polite, businesslike attitude." In one scene, the Cafe Informatif's tuxedo-wearing maître d' welcomes viewers and assures them the restaurant's motto is "The people deserve to know." He adds, "Here, you are always numero uno" and asks how he can be of service. When an offscreen hand gives him a sheet of paper asking for "recent war plans," he replies, "Ah, yes, we have quite the store of records on that. Yes, I believe I can help you." In a subsequent scene, a waitress in a bowtie dutifully helps the Veiled Lady fill in items missing in her request. Following this act of assistance, Trench Coat informs viewers, "In keeping with the spirit of FOIA, you have an

obligation to help requesters develop acceptable requests. This policy reflects DoD’s commitment to making information more accessible to the public.”



Figure 9. A waitress assists the Veiled Lady with her request

According to the DoD’s mandated annual FOIA reports, the department’s employees did indeed continue to effectively fill tens of thousands of requests per year. For instance, in FY 2000, the annual report notes that its offices processed about 96,000 initial requests. They granted about 57,000 (58.9%), partially denied about 11,000 (12%), and fully denied about 2300 (2.4%).⁷⁴ Comparatively, in FY 2005, amid the waging of war on multiple fronts in the Middle East, DoD offices processed about 78,000 initial requests. They granted about 36,000 (46.4%), partially denied about 15,000 (19.4%), and fully denied about 1700 (2.2%).⁷⁵

However, such statistics cannot fully convey the heightened culture of secrecy that obstructed the release of more sensitive records. As Jane E. Kirtley has discussed, one such symptom of bureaucratic entrenchment was the DoD ignoring the AP’s 2004 FOIA request for the transcripts of detainee military tribunals.⁷⁶ When the AP sued, the department released versions that redacted detainees’ names and cited the “personal privacy” clause of

Exemption 6. Another example was the attempt to keep the notorious photos, videos, and other evidence of detainee abuse at the Abu Ghraib prison in Iraq from the public. To deny the ACLU's 2003 request, the DoD again cited the expectation of personal privacy; Exemption 7(f), which prevents release of information that could endanger individuals; and the Geneva Conventions.⁷⁷

In September 2004, when *The People's Right to Know* was disclosed, institutionalized state secrecy remained at an apex. However, as Kreimer has noted, the GWOT's enduring abuses prompted some federal judges to grow more skeptical of recognizing blanket exemptions.⁷⁸ Over time, they demanded narrower restrictions and ruled that redacted versions of documents would not jeopardize national security. Some rulings even pointed out the dishonest reasoning in the government's arguments. Regarding the tribunal transcripts, Judge Jed Rakoff stated that "some might think it strange, even hypocritical, that the military officials who held the detainees incommunicado for so many months now express such solicitude for the detainees' privacy rights."⁷⁹ Two years after the AP's initial request, Rakoff forced the Pentagon to turn over the names of detainees. Similarly, Judge Alvin Hallerstein ruled in favor of enforcing redacted disclosures of the Abu Ghraib media. He declared, "Our struggle to prevail must be without sacrificing the transparency and accountability of government and military officials. These are the values FOIA was intended to advance, and they are at the very heart of the values for which we fight in Afghanistan and Iraq."⁸⁰ When *Salon* preemptively published 279 photos and 19 videos from Abu Ghraib, the government dropped its appeal and authenticated the materials in the lawsuit. However, the DoD continued to withhold 29 photos and 2 videos, which still have never been disclosed.⁸¹

Based on both the content of *The People's Right to Know* and the timing of its disclosure, it appears that the video was eventually released because it was comparatively innocuous. With more pressing legal battles to fight, trying to deny the requests on questionable grounds no longer made sense for the department. Though the tape's low-quality aesthetics, ironic redactions, and outdated tone were minor embarrassments for the DoD, officials could count on its release making few waves amid the din of higher-profile investigations and scandals. As Ravitzky observed, "It was the withholding that provoked interest. If [the department] had released it right away, no one would have cared much."⁸² Thus, the easiest response was to disclose the tape to the few requesters who had asked for it, but to prevent its appearance in the electronic reading room. The DoD could claim it was fulfilling its purported objective of transparency, even as it persisted in rejecting and defending against the release of more sensitive state records.

By June 2011, when the CIA posted a digital copy of *Extraordinary Fidelity*, the context of disclosure had shifted somewhat. The day after his inauguration in 2009, Barack Obama issued a statement averring, "My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration."⁸³ Though Obama rhetorically invoked the value of transparency throughout his presidency, scholars and watchdog organizations observed mixed results at a policy level. Encouragingly, his first change was the signing of Executive Order 13489, which reversed George W. Bush's order to classify former presidential records.⁸⁴ His issuing of Executive Order 13526 later that year also aimed to speed up declassification with the creation of the National Declassification Center. Yet, the same order also permitted agencies to retroactively classify

national security documents that would have otherwise been subject to FOIA.⁸⁵

In a comparative study of the two administrations, Ben Wasike found that the improvements to FOIA logistics were partial. He concluded, “The release of information in full steadily dropped after Bush took office in 2001 and has worsened under Obama. However, the release of partial information has been climbing at a steady rate and accelerated during Obama’s tenure. Inversely, the full denial of information has been on the rise since 2001 and has accelerated under Obama.”⁸⁶ More promisingly, the processing times for requests and the workload of individual employees both showed marked declines in the latter era.⁸⁷

While increased efficiency may have contributed to the timelier release of *Extraordinary Fidelity*, I speculate that the film’s accommodating ideological stakes played a larger role. As the CIA’s ongoing internal exhibition of the documentary attests, the agency approved of the production and saw pedagogical value in its content. Beyond its function as a historiographical document, the film promoted a heroic, uplifting image of the agency at a time when its extralegal actions in the Global War on Terror had tarnished its already-troubled reputation. By recuperating this forgotten chapter for incoming recruits, the CIA gained a resource with which to reframe its image for its newest employees. Though the CSI had conceived of the project to educate internal audiences, the boosterism of the text just as capably lent itself to the challenge of reshaping public opinion.

The lionizing ambitions of the project are evident, beginning with its title. It ostensibly refers to the CIA’s Director’s Medals, which bear the inscription “Extraordinary Fidelity and Essential Service.” When then-DCI George Tenet awarded the medals to Downey and Fecteau in 1998, he stated, “Better words were never written or spoken to

describe” the recipients.⁸⁸ By extension, the title also references the spirit of the men, who reputedly embodied that high level of faithfulness to their mission and their country. In addition, the title valorizes the devotion of the agency and its employees, who reciprocally displayed a decades-long commitment to the imprisoned men. In addition, it alludes to the high quality of the history being told. Unlike a wave of documentaries in the 1980s and 1990s that reflexively flaunt what Linda Williams calls “a newer, more contingent, relative postmodern truth,” this more traditional work doubles down on the accuracy of its account.⁸⁹ Its fidelity to reconstructing a single, objective reality fits with Dujmovic’s belief that CIA history should “be true, as closely as it can be made true by fallible humans.”⁹⁰ In a 2011 article, he rejected the notion that internal histories of the agency were propaganda. He countered that they, in fact, were based on “deal[ing] with the evidence critically and objectively.”⁹¹

Despite the historiographical intent of criticality, the documentary almost exclusively portrays the two men as virtuous and heroic. In the opening lines, the narrator says that Downey and Fecteau “survived two decades of hardship in Chinese prisons. They refused to become victims. They never lost hope, and they knew the Agency would never abandon them.” It also depicts their enduring qualities of cleverness and resolve. For instance, a reenactment acclaims Fecteau’s ability to remain defiant under the questioning of Chinese officers. He misleads the interrogators by confessing the names and physical descriptions of Boston University’s football team in place of actual contacts. Even in solitary confinement, when the men verge on mental breakdown, they find ways to maintain their sanity. Downey describes his tactic of scheduling every part of his day, while Fecteau talks about picturing himself driving through the streets of Gloucester, Massachusetts. To illustrate this last

technique, the film visually transitions from a shot of the actor playing Fecteau to the image of a tree-lined road. This vantage into Fecteau's subjectivity aims to both affirm the liberatory power of his imagination and to intensify viewers' empathetic bonds with him.



Figure 10. Transitioning from Fecteau to his imagined subjectivity

Likewise, the representation of the agency is noticeably sympathetic. Contradicting popular conceptions of the agency as shadowy and deceptive, the documentary instead presents it as ethical and forthright. It also repeatedly shows officials' ongoing concern for the captured men. In the present day, both Tenet's impassioned testimony and his embodied presence onscreen attest to the depth of this loyalty. In a talking head, he states, "We absolutely, unassailably can look you in the eye and say, 'If you are one of us and part of our family, we won't forget you, we won't forget your family. We will take care of you, no matter what the circumstances.' And, you know, this is living proof to everybody, that the Central Intelligence Agency looks after its people." To demonstrate the agency's historical support, the film also relays the story of CIA officer Ben DeFelice. It presents him as "an unwavering advocate" of Downey and Fecteau's interests and the narration dramatically

states that “their plight consumed [him]. For 16 years they became his primary focus.” The spotlight on the bureaucrat’s deft maneuvering of policy to secure Downey and Fecteau’s pensions after their releases further suggests that CIA employees do operate according to the rules in place. Even their occasional exploitation of loopholes in the system, DeFelice’s story insists, is actually a well-intentioned means of making that system more humane and responsive.

Furthermore, the film attempts to defuse highly delicate issues like indefinite detention and interrogation by making the Americans the targets of these controversial acts. Looking back at their imprisonment, the older Downey refers to it as “an indefinite period of incarceration.” The narrator also repeatedly outlines the grim details of their treatment, reporting, “The interrogation lasted up to twenty hours a day. Both men forced to stand until they collapsed. Sleep deprivation was part of the ordeal. No more than a half hour [of sleep] at a time in a remorseless cycle that went on for weeks.” In conjunction with these descriptions, which take care to avoid the word “torture,” the narration foregrounds the men’s broken down affective, mental, and physical states. For instance, it reports that the interrogations and sensory deprivation made Downey feel “totally alone and scared” and use of weeks of solitary confinement made him “shak[e] uncontrollably.” Visually, these scenes feature frequent close-up shots of the pained facial expressions of the actors playing the captured Americans. Their bodies also predominantly occupy the center of the frame, with the unnamed Chinese characters positioned on the periphery or altogether absent from the shot.



Figure 11. Foregrounding the American victim of interrogation

Because *Extraordinary Fidelity* upholds the valor of the officers and the agency, the disclosure of the documentary provided a prime public relations opportunity. It allowed the CIA to present itself as doubly transparent—both through the content and the unprecedented act of sharing an internal documentary. If the agency had not decided to seek Downey and Fecteau’s approval, it is likely that the disclosure would have occurred even sooner. The film’s prominent placement on the CIA’s electronic reading room and the issuing of a press release that ensured widespread news coverage evince how the film then became a means of reforming the agency’s public image. By trumpeting this individual act of disclosure, the agency was hoping to render it synecdochic of institutional openness.

In reality though, the CIA, like the DoD, has fiercely resisted the release of records of its GWOT abuses. This discrepancy is revealing, because some of the contested records also deal with indefinite detention and euphemistically “Enhanced” Interrogation Techniques (EITs)—albeit perpetrated by the United States in this case. As part of an ACLU FOIA lawsuit, the government admitted in 2009 that the CIA had destroyed 92 videotapes. In defiance of judicial rulings and pending FOIA requests, then-chief of the Directorate of

Operations José A. Rodríguez, Jr. ordered the destruction of these incriminating records in 2005.⁹² The tapes had shown its officers conducting interrogations of two al-Qaeda suspects, Abu Zubaydah and Abd al-Rahim al-Nashiri, at a Thai black site in 2002.⁹³ They were believed to contain disturbing footage of waterboarding sessions and other brutal techniques. In 2005, the CIA also destroyed at least two videotapes of detainee interrogations at Guantanamo Bay.⁹⁴ It again took this action even after a judge had ordered the preservation of “all evidence and information regarding the torture, mistreatment, and abuse of detainees now at the United States Naval Base at Guantánamo Bay.”⁹⁵ Alarming, this deliberate destruction of evidence risked emboldening other agencies to destroy their own portions of a videotape archive of nearly 24,000 Guantanamo interrogations.⁹⁶ Even as late as 2014, a judicial panel rejected a FOIA lawsuit to declassify photographs and videos of detainee Mohammed al-Qahtani’s interrogations. Returning to a Bush-era rhetoric, the judges ruled that the release of this media “could logically and plausibly harm national security because these images are uniquely susceptible to use by anti-American extremists as propaganda to incite violence against United States interests domestically and abroad.”⁹⁷

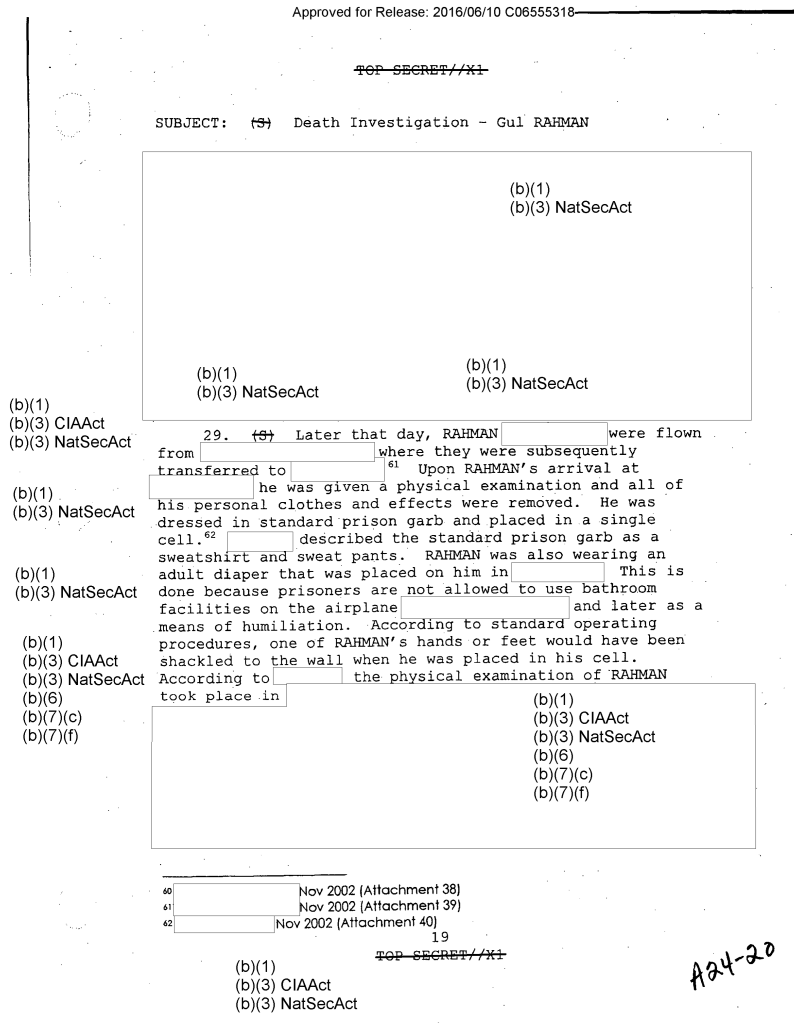
By 2016, when the context of disclosure had shifted somewhat again, the CIA did finally declassify and release fifty documents about its Rendition, Detention, and Interrogation (RDI) program in response to an ACLU FOIA request. Posted on the agency’s electronic reading room, these digitized files provide a more in-depth understanding of the extralegal abuses that detainees endured.⁹⁸ They further show why the agency had fought to keep these records hidden for over a decade. For example, a 2002 memorandum with the subject line “Description of Physical Pressures” outlines a range of physical and psychological methods to break down detainees. It includes explanations of techniques such

as Facial Slap (Insult Slap), Cramped Confinement, Sleep Deprivation, Water Board, Use of Diapers, and Mock Burial.⁹⁹ Nonetheless, the author, recipient, office of the recipient, and a portion of the written text were all redacted on the basis of numerous exemptions. The resulting text indicates the ongoing partiality of its admissions and its resistance to a fuller transparency.¹⁰⁰

Another released memo, “Death Investigation – Gul RAHMAN,” simultaneously details and attempts to justify the treatment of a detainee who died at the Salt Pit, a notorious CIA black site in Afghanistan.¹⁰¹ The 2003 record states that a forced cold shower led to Rahman “shivering and showing early signs of hypothermia” at the start of his detention.¹⁰² Yet, despite his weakened state, interrogators continued to subject him to cold conditions and sleep deprivation with little to eat or drink.¹⁰³ They also kept him nude from the waist down, and shackled his arms so that he could not cover himself.¹⁰⁴ Amid copious white-box redactions on every one of the memo’s 35 pages, the report conveniently concludes that Rahman’s death from hypothermia was not deliberate and that his own noncompliant conduct was partly to blame.¹⁰⁵

Such excisions in the Rahman memo and other RDI files gesture to another dimension of what I have discussed as redacted publics. In addition to isolated disclosures circumscribing the formations of publics and disenfranchised groups feeling excluded from participation, the redactions in the FOIA files themselves textually expunge certain groups from discursive existence. One such population is the organizers and perpetrators of state violence, who have the privilege of authority to maintain their anonymity. At the other pole of power are the marginalized and precarious targets of violence, whose identities or experiences of abuse are overwritten by blank boxes. The rigorous management of

information about this category of people becomes a way to neutralize public opposition. At the same time, it rhetorically removes the victims of coordinated abuses from belonging to a recognizable public and effectually reduces them to negligible non-entities.



Approved for Release: 2016/06/10 C06555318

Figure 12. A heavily redacted page from the Rahman memo¹⁰⁶

Viewed in relation to the RDI archive and other disclosures of CIA involvement, *Extraordinary Fidelity* can take on darker significations for some viewers. Tenet's affirmation of unquestioned loyalty to officers begins to suggest a willingness to protect

extralegal transgressions and the agency's reputation at the expense of justice. The film's empathy for the unjustly held men and its treatment of indefinite detention as an affront to American democratic values also become hypocritical in light of the United States' own conduct toward terror suspects. Furthermore, its valorization of the men's ability to withstand outsiders' efforts to extract information and withhold secrets against all odds takes on an uncomfortable resonance with the CIA's stonewalling of FOIA requests.

Moreover, the juxtaposition of the documentary and RDI documents suggests official anxieties around the power of the image. Tellingly, the files posted in the electronic reading room were all written files rather than pictures or videos. In addition to the CIA's destruction of interrogation videos and the DoD's efforts to withhold the Abu Ghraib media, the Rahman memo pointedly insists that no photographs of his death were taken.¹⁰⁷ (Whether this is true remains an open question.) CSI historians had also proposed making a documentary about the RDI program, but "the people that initially brought it up . . . got cold feet."¹⁰⁸ When the existence of the former program was publicly acknowledged, there was further discussion about reviving the study as a written text. However, as Dujmovic noted, "I doubt very seriously that there would be any [more] consideration to do this as a film study." According to the historian, this is because "[written] text is neutral; film is not. And it can go bad in a number of ways with film, and I think people would be too afraid of that."¹⁰⁹ While his claim of the written word's neutrality is refutable, the moving image does have a strong affective capacity to move viewers. Consequently, under the control of a powerful government agency, only some audiovisual evidence is permitted to exist, let alone survive. Only selected histories can be officially recorded and released, while other truths must continue to be denied until a more hospitable context of disclosure emerges.

Conclusion

This chapter traced the production and circulation logics of two government-commissioned films, *The People's Right to Know* and *Extraordinary Fidelity*. Despite their aesthetic differences, I identified similar uses of the moving image to educate employees on relevant historical events and bureaucratic procedures in more engaging ways. Their eventual releases through FOIA have also offered external viewers unexpected vantages into projects that were originally only intended for internal purposes. The two projects' disparate trajectories toward public visibility, with the laudatory CIA documentary receiving a prompter release and more agency support, further suggest how the content of records can influence their distribution. The ability to limit the reach of embarrassing or sensitive records leads to one form of the state I have called *redacted publics*, and fulfills only a perfunctory notion of public access.

In addition, this chapter analyzed these texts in relation to the broader social contexts in which they participate. Because decisions about individual disclosures can be contingent upon that era's political climate, the treatment of contentious records helps index the tenor of official transparency of a moment. It further underscores the ongoing tensions between national security interests and the freedom of information. The success or failure of requests, as well as their repercussions and receptions in the information ecosystems they enter, can also yield unforeseen ripple effects on future decisions.

Thus, given the multifaceted uses of useful cinema, including training videos, documentary films, and interrogation videos, as internal tools, requesters should seek out other examples of such materials and pursue them tenaciously to establish precedents. However, as recent history shows, there remains little oversight in place to prevent an agency

like the CIA from destroying significant audiovisual evidence with impunity or to compel its compliance. Beyond the obstruction that occurs at the level of circulation, the institutional awareness of film's communicative efficacies can also circumscribe the types of audiovisual projects that are sanctioned to enter production at all.

¹ The film refers to Downey and Fecteau as “unsung heroes” in its opening line. All of the following quoted references to *Extraordinary Fidelity* that I do not provide citations for are also direct quotations from the film.

² Haidee Wasson and Charles R. Acland, “Introduction: Utility and Cinema,” in *Useful Cinema*, edited by Charles R. Acland and Haidee Wasson (Durham, NC and London, Duke University Press, 2011), 6 and 3.

³ “More Projects,” *Tory Silvia*, 2004, archived on the *Wayback Machine*, https://web.archive.org/web/20061224123905/http://www.salvia.com:80/salvia_dot_com/recent_projects/recent-3.htm.

⁴ Editorial Board, “Hide it Again, Sam,” *Arizona Daily Star*, Aug. 31, 2004, 14.

⁵ Associated Press, “Defense Department keeps wraps on FOIA video,” *First Amendment Center*, Feb. 14, 2003, archived on the *Wayback Machine*, <https://web.archive.org/web/20041117184611/http://www.firstamendmentcenter.org/news.aspx?id=6295>.

⁶ Ibid.

⁷ Associated Press, “Military censors video on access to information,” *NBC News*, Sept. 1, 2004, http://www.nbcnews.com/id/5888224/ns/us_news-weird_news/t/military-censors-video-access-information/.

⁸ “More Projects.”

⁹ Ibid.

¹⁰ Ibid.

¹¹ John Cook, “The FOIA Training Video that the Pentagon Redacted,” *Gawker*, March 21, 2014, archived on the *Wayback Machine*, <https://web.archive.org/web/20140322024013/http://gawker.com/the-foia-training-video-that-the-pentagon-redacted-1549037834>.

¹² Associated Press, “Defense Department keeps wraps on FOIA video.”

¹³ Associated Press, “Military censors video on access to information.”

¹⁴ Ibid.

¹⁵ Associated Press, “Defense Department keeps wraps on FOIA video.”

¹⁶ Ibid.

¹⁷ Associated Press, “Military censors video on access to information.”

¹⁸ Ibid.

¹⁹ Editorial Board.

²⁰ Michael G. Powell, *The Emergence and Institutionalization of Regimes of Transparency and Anti-Corruption in Poland*, 2006, Rice University, PhD dissertation.

²¹ Michael G. Powell, personal email correspondence, Jan. 2017.

²² Cook.

²³ Though there is no definitive way to quantify impact, the story only received 42 comments in contrast to the hundreds of comments that other *Gawker* stories could attain. The posting of the video also did not noticeably result in other news sites discussing it.

²⁴ As of January 2018, the playable version of the video remains archived at the *Internet Archive’s Wayback Machine* at <https://web.archive.org/web/20140322024013/http://gawker.com/the-foia-training-video-that-the-pentagon-redacted-1549037834>.

²⁵ Michael Warner, *Publics and Counterpublics* (Brooklyn: Zone Books, 2002), 90-91.

²⁶ Audre Lorde, “The Master’s Tools Will Never Dismantle the Master’s House” in *Sister Outsider: Essays and Speeches by Audre Lorde* (1979; Berkeley, CA: Crossing Press, 2007), 112.

²⁷ Nancy Fraser, “Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy,” *Social Text* 25-26 (1990): 66.

²⁸ Ibid., 67.

²⁹ Peter Finn, “CIA offers its history lessons in film,” *Washington Post*, July 7, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/06/AR2010070605141.html>.

³⁰ Ibid., 67.

³¹ CSI’s mission statement appears in every issue of *Studies in Intelligence*. The official archive of back issues can be found in its digital library at “Studies in Intelligence,” *Central Intelligence Agency*, last updated 2018, <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/index.html>. Because the wording of the mission statement was revised in 2011, the quoted section appears in issues from 2010 and earlier.

³² “Studies in Intelligence.”

³³ Ibid.

³⁴ For more on the involvement of the CIA in Hollywood productions, see Tricia Jenkins, *The CIA in Hollywood: How the Agency Shapes Film and Television* (Austin, TX: University of Texas Press, 2012).

³⁵ Nicholas Dujmovic, personal interview, Dec. 2017.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Finn.

⁴¹ Nicholas Dujmovic, personal interview.

⁴² See Charles Wolfe, "Historicising the "Voice of God": The Place of Vocal Narration in Classical Documentary," *Film History* 9.2 (1997): 149-167, which complicates the typical analysis of this mode of narration.

⁴³ Nicholas Dujmovic, personal interview.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Adam Goldman, "Coming to Internet: CIA film about 2 held in China," *San Diego Union-Tribune*, June 2, 2011, <http://www.sandiegouniontribune.com/sdut-coming-to-internet-cia-film-about-2-held-in-china-2011jun02-story.html>.

⁴⁹ The video is available at "CIA Videos," *Central Intelligence Agency*, 2011, <https://www.cia.gov/library/video-center/cia-videos/#Z0Mh7EiXRJI>. The transcript is available at "Extraordinary Fidelity," *Central Intelligence Agency*, 2011, <https://www.cia.gov/library/video-center/video-transcripts/extraordinary-fidelity.html>.

⁵⁰ "Extraordinary Fidelity," *YouTube*, posted by Central Intelligence Agency, June 2, 2011, <https://www.youtube.com/watch?v=Z0Mh7EiXRJI>.

⁵¹ Lee Ferran, "CIA Releases Film on Blown China Spy Mission," *ABC News*, June 2, 2011, <http://abcnews.go.com/Blotter/cia-releases-film-chinese-capture-torture-agents/story?id=13743541>.

⁵² Goldman.

⁵³ Nicholas Dujmovic, personal interview.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Nicholas Dujmovic, personal email correspondence, Jan. 2018.

⁵⁷ Nicholas Dujmovic, personal interview.

⁵⁸ Nicholas Dujmovic, personal email correspondence.

⁵⁹ Nicholas Dujmovic, personal interview.

⁶⁰ Benjamin Weiser, *A Secret Life: The Polish Officer, His Covert Mission, and the Price He Paid to Save His Country* (New York: PublicAffairs, 2004).

⁶¹ Nicholas Dujmovic, personal interview.

⁶² Ibid.

⁶³ Seth Kreimer, “Rays of Sunlight in a Shadow ‘War’: FOIA, the Abuses of Anti-Terrorism, and the Strategy of Transparency,” *Lewis & Clark Law Review* 11.4 (2007): 1142.

⁶⁴ United States House of Representatives Committee on Government Reform – Minority Staff – Special Investigations Division, “Secrecy in the Bush Administration,” *Federation of American Scientists*, 2004, iii, <https://fas.org/sgp/library/waxman.pdf>.

⁶⁵ Leahy made this remark to in an April 2004 speech to the American Society of News Editors according to *Access Reports* 30.8 (2004).

⁶⁶ *Executive Order No. 13233, Further Implementation of the Presidential Records Act*, 66 FR 56025, 2001. For a discussion of critiques of Executive Order 13233, see Jane E. Kirtley, “Transparency and accountability in a time of terror: The Bush administration’s assault on freedom of information,” *Communication Law and Policy* 11.4 (2006): 488.

⁶⁷ *Intelligence Authorization Act for Fiscal Year 2003*, Pub.L. 107-306, 116 Stat. 2383, § 312, 2002.

⁶⁸ Lotte E. Feinberg, “FOIA, Federal Information Policy, and Information Availability in a Post-9/11 World,” *Government Information Quarterly* 21.4 (2004): 443-444.

⁶⁹ *Executive Order No. 13292, Further amendment to Executive Order 12958, as amended, classified national security information*, 68 FR 15315, 2003.

⁷⁰ Peter Galison, “Removing Knowledge,” *Critical Inquiry* 31.1 (2004): 233.

⁷¹ Ibid., 230.

⁷² Mary-Rose Papandrea, “Under Attack: The Public’s Right to Know and the War on Terror,” *Boston College Third World Law Journal* 25.1 (2005): 35-80.

⁷³ Ibid.

⁷⁴ “Department of Defense (DoD) Freedom of Information Act Program for Fiscal Year (FY) 2000,” *Department of Defense*, 2000, 9.

⁷⁵ “Department of Defense (DoD) Freedom of Information Act Program for Fiscal Year (FY) 2005,” *Department of Defense*, 2005, 8.

⁷⁶ Kirtley, 500.

⁷⁷ Ibid., 501.

⁷⁸ Kreimer, 1217-1219.

⁷⁹ *AP v. US DOD*, 395 F. Supp. 2d 15 (S.D.N.Y. 2005).

⁸⁰ *ACLU v. DOD*, 389 F. Supp. 2d 547, (S.D.N.Y. 2005).

⁸¹ Kirtley, 502.

⁸² Michael Ravnitzky, personal correspondence, Apr. 2018.

⁸³ Barack Obama, “Memorandum for the Heads of Executive Departments and Agencies,” 2009. Subject: Transparency and Open Government,” *White House*, Jan. 21, 2009. This memo was formerly available at the *White House Press Room*, but disappeared with the inauguration of Donald Trump. It can still be accessed through the *National Archives* at <https://obamawhitehouse.archives.gov/the-press-office/2015/11/16/memorandum-transparency-and-open-government>.

⁸⁴ *Executive Order No. 13489, Presidential Records*, 74 FR 4669, 2009.

⁸⁵ *Executive Order No. 13526, Classified National Security Information*, 75 FR 707, 2009.

⁸⁶ Ben Wasike, “FoIA in the age of ‘Open. Gov’: An analysis of the performance of the Freedom of Information Act under the Obama and Bush administrations,” *Government Information Quarterly* 33 (2016): 423.

⁸⁷ *Ibid.*, 424.

⁸⁸ *Ibid.*

⁸⁹ Linda Williams, “Mirrors without Memories: Truth, History, and the New Documentary,” *Film Quarterly* 46.3 (1993): 11.

⁹⁰ Nicholas Dujmovic, “Getting CIA History Right: The Informal Partnership Between Agency Historians and Outside Scholars,” *Intelligence and National Security* 26.2-3 (2011): 229.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Mark Mazzetti, “U.S. Says C.I.A. Destroyed 92 Tapes of Interrogations,” *New York Times*, Mar. 2, 2009, <http://www.nytimes.com/2009/03/03/washington/03web-intel.html>.

⁹⁴ Mark Denbeaux, Joshua Denbeaux, *et al.*, “Captured on Tape: Interrogation and Videotaping of Detainees in Guantanamo,” *Seton Hall Law Review* 41.4 (2011): 1308.

⁹⁵ *Abdah v. Bush*, 2005 U.S. Dist. LEXIS 17189 (D.D.C. 2005).

⁹⁶ Denbeaux, Denbeaux, *et al.*, 1308-1309.

⁹⁷ *Ctr. for Constitutional Rights v. CIA*, 765 F.3d 161 (2d Cir. N.Y. 2014).

⁹⁸ “Documents Related to the Former Detention and Interrogation Program,” *Central Intelligence Agency*, 2016, <https://www.cia.gov/library/readingroom/collection/documents-related-former-detention-and-interrogation-program>.

⁹⁹ “Description of Physical Pressures,” *Central Intelligence Agency*, written in 2002, posted in 2016, 2-3, <https://www.cia.gov/library/readingroom/docs/0006552083.pdf>.

¹⁰⁰ Further underscoring the partiality and fierce politicization of the files, the 2018 nomination hearings of current CIA director Gina Haspel affirmed that the context of disclosure had not shifted nearly far enough to compel greater transparency or to hold her accountable for her role in supporting torture.

¹⁰¹ “Death Investigation – Gul RAHMAN,” *Central Intelligence Agency*, written in 2003, posted in 2016, <https://www.cia.gov/library/readingroom/docs/0006555318.pdf>.

¹⁰² *Ibid.*, 21.

¹⁰³ *Ibid.*, 23.

¹⁰⁴ Ibid., 28.

¹⁰⁵ Ibid., 33.

¹⁰⁶ Ibid., 19.

¹⁰⁷ Ibid., 30.

¹⁰⁸ Nicolas Dujmovic, personal interview.

¹⁰⁹ Ibid.

Chapter 2

Tracking Movements: Black Activism, Aerial Surveillance, and Transparency Optics

“I can’t breathe,” Freddie Gray, Jr. told a Baltimore Police Department (BPD) officer after his arrest on April 12, 2015.¹ Under suspicious circumstances, Gray had sustained neck and spinal injuries while being transported to jail without a seatbelt. The 25-year-old Black man entered a coma and died seven days later.² Activists organized to protest this evident injustice, as well as to condemn the epidemic of racialized police brutality and killing occurring in their city and around the country.³ These marches became violent at times, and resulted in the injuring of 20 police officers and the police deployment of tear gas, smoke balls, and pepper balls.⁴ As mainstream media coverage disproportionately reported, some protests also included the destruction of businesses and property and led to over 250 arrests.⁵ Though news coverage typically characterized these events as ‘riots,’ many activists rejected that term in favor of ‘uprisings.’⁶

In response to the civil unrest, Stephanie Rawlings-Blake, the city’s mayor at the time, issued a weeklong citywide curfew for adults. In a statement, she deemed those who destroyed property “thugs” and said, “We won’t stand by and let our community be destroyed.”⁷ Larry Hogan, the state’s Governor, also declared a state of emergency and deployed an additional 3,000 police officers from Maryland Army National Guard troops on the city streets.⁸ The state of emergency lasted until May 6, five days after the coroner had ruled Gray’s death a homicide.⁹ By September, none of the six officers involved were held culpable, either due to mistrial, acquittal, or the dropping of charges.¹⁰

In the wake of these divisive attempts to maintain order, the ACLU’s use of FOIA uncovered another more covert encroachment of law enforcement in Baltimore. Following

the lead of an amateur aviation enthusiast, the organization's lawyers filed requests to learn about the aircrafts that had been hovering over the protests. Surprisingly, these requests prompted the FBI to admit its involvement. The agency also released an array of documents, including the "complete collection" of digital video footage that it had recorded from April 29 to May 3, 2015.¹¹ Spanning over 18 hours, these video files provide a compelling, if partial, vantage onto the current states of Black activist surveillance and domestic aerial surveillance.

In comparison to the internally produced government films I discussed in Chapter 1, this archive of official footage appears to be a rawer form of documentation. Yet, the traditions of documentary film and electronic surveillance inform each other in several revealing ways. For instance, the former has its own long history of employing hidden cameras to capture unplanned actualities and real reactions, including in early films like Jean Vigo's *À Propos de Nice* (1930) and landmark works like Claude Lanzmann's *Shoah* (1985). More recently, as Craig Hight has noted, "Devices such as webcams, phonecams, amateur camcorders and other means of visual surveillance are all drawn upon within contemporary documentary, which has expanded to include not only regimes of institutionalized surveillance but also more personalized forms of expression and surveillance."¹² Yet, even supposedly thoughtless automated surveillance technologies like closed-caption television (CCTV) rely on the interplay of many "creative treatment[s] of actuality."¹³ Among the decisions involved are the design of the technology, the selection of the device, and the angles and locations of its placement. Like documentary film, subjects of surveillance that know they are being observed will also consciously and unconsciously change their behavior. Viewers of both genres must also make subjective interpretations and choose whether to take

action based on the audiovisual evidence presented to them.¹⁴ Moreover, when state-produced films or surveillance footage become public records, the FOIA process appends further mediations.

To frame the evidential stakes of these surveillance videos, this chapter will first situate this case of targeting of Black activists among antecedent civil rights struggles in the 1960s. It will historicize how FOIA requests have shed light on earlier uses of electronic surveillance to monitor and discredit Black leaders. Next, it will address the processes through which the videos and other records of the Baltimore protests became public. By discussing the release and circulation of these documents, I will examine how FOIA selectively divulges contemporary security practices. I will also introduce the term *transparency optics* to suggest several logics of transparency that drive government disclosure. Next, I will analyze the footage to argue that it provides some evidence of racialized top-down visualities. Furthermore, it begins to reveal the technologies now deployed in aerial surveillance, and the growing enmeshment of state and corporate interests. Conversely, the following section will interrogate what this archive fails to visualize, and the epistemological and historiographical limits of seeing through the lens of official media. Finally, I will consider an alternative documentary vantage of the Baltimore uprisings and how it enables other critical apertures into the precarity of Black lives.

Black activist surveillance and FOIA

“I recommend that authority be granted to install a technical surveillance at the residence of Malcolm K. Little, 23-11 97th Street, East Elmhurst, Queens, New York, or at any address to which he may move in the future,” then-FBI director J. Edgar Hoover wrote to Attorney General Robert Kennedy in 1964.¹⁵ According to this record, the emergence of

Black nationalist leaders who “will participate in racial demonstrations and civil rights activities” deeply concerned the FBI.¹⁶ The agency received approval to install a telephone wiretap, or ‘tesur,’ of the man who would become Malcolm X.¹⁷ Operative for four months, the wiretap provided what the Special Agent in Charge (SAC) described as “valuable information” that “was furnished immediately to the Bureau and was disseminated to the Department [of Justice] and interested agencies.”¹⁸ Located in Malcolm X’s file of over 10,000 pages, these sensitive surveillance records were not declassified until 1983.

As a surfeit of FOIA-disclosed records elucidate, the monitoring that Malcolm X faced paralleled many other Black civil rights leaders’ experiences in the 1960s. Throughout the Civil Rights Movement, which sought to dismantle racial discrimination against Black people and secure long-denied legal protections, this campaign of FBI surveillance represented a contradiction of interests. Kenneth O’Reilly has noted that the agency’s “dual mandate, in effect, required the bureau to spend part of its time protecting the civil rights and civil liberties of black citizens and the rest of its time violating those same rights and liberties.”¹⁹ Though these records sometimes describe the use of photographic methods, they also indicate the FBI’s prioritization of auditory surveillance at the time.

Perhaps the most notorious example of this campaign was the years of surveillance that Martin Luther King, Jr. endured. In that case, Robert Kennedy approved the wiretapping of King’s Atlanta residence and the Southern Christian Leadership Conference (SCLC) office in New York City. The putative goal of this incursion was to investigate King’s ties to the Communist party.²⁰ Records show that the FBI also installed microphones in at least thirteen hotels King stayed at and wiretapped some of those sites as well.²¹ Yet, instead of collecting evidence of Communist collaboration, agents in Atlanta’s field office captured the

leader's liaisons with women in a volume "largely concerned with Dr. King's love life."²² The FBI then anonymously mailed King audiotapes of the affairs with a disapproving letter ghostwritten on behalf of "all us Negroes," which implied that he should commit suicide.²³ Another wiretap record that became public through FOIA captured King's despondent reaction to receiving these materials. During a phone call with a close friend, he lamented the violation of his privacy by saying, "They are out to get me, harass me, break my spirit."²⁴

In the 1960s, the FBI expanded COINTELPRO, or Counterintelligence Program, which it started in 1956 to target Communists. The wider range of targets included white hate groups, Puerto Rican nationalists, the New Left political movement, and what the agency referred to as "black extremists."²⁵ Initiating the COINTELPRO-BLACK HATE program in 1967, a FBI memo stated: "The purpose of this new counterintelligence endeavor is to disrupt, misdirect, discredit, or otherwise neutralize the activities of black nationalist, hate-type organizations and groupings, their leadership, spokesmen, membership, and supporters, and to counter their propensity for violence and civil disorder."²⁶ Now-public files show that the program relied on a mix of manual and electronic tactics like wiretapping, microphone bugging, neighborhood informants, and opening mail.²⁷ By revealing that the agency classified avowedly non-violent activists like King and the SCLC as violent, hateful agitators that merited targeting, the internal documents also betray the underlying racism of the program.

FOIA disclosures have also helped divulge contemporary iterations of Black activist surveillance. Troublingly, they demonstrate that the advanced surveillance capacities of digital media technologies have made the auditory, optical, and digital collection of data on large groups much easier to achieve. For instance, the hundreds of DHS documents that *The*

Intercept's George Joseph obtained confirm that the department was monitoring Black Lives Matter (BLM) protesters since at least the 2014 Ferguson protests.²⁸ Some of its strategies included tracking the group's activities on major social media sites, collecting location data, and creating Google maps of the activists' movements.²⁹ Through New York's state-level Freedom of Information Law (FOIL), Joseph also obtained files that showed Metropolitan Transit Authority (MTA) and Metro-North counterterrorism units were coordinating with the New York Police Department (NYPD) to track BLM. In response to such developments, activist Angie Brilliance noted, "We need to be aware, especially given the digital organizing of the modern era, about how we're being tracked. I know we and many groups we're affiliated with try as much as possible to not put any plans down on digital documents, to meet in person, and other strategies I probably shouldn't make public — we have to learn from what the state did to break up our ancestors' struggles."³⁰ As this generation of Black activists continues to asymmetrically confront covert mechanisms of surveillance, scholars must also vigilantly provide historical and analytical lenses to contextualize such government operations.

The discovery and circulation of documents

During the 2015 unrest in West Baltimore, the appearance of low-flying Cessnas prompted some locals to investigate. Benjamin Shayne, who streams live BPD transmissions on his website Scan Baltimore, tweeted, "Anyone know who has been flying the light plane in circles above the city for the last few nights?"³¹ Only seven minutes later, fellow resident Pete Cimboric, an aviation enthusiast and former ACLU employee, had traced the oddly looping flight path on the aviation radar website Flightradar24.³² He also shared that the two planes he had detected were registered to Virginia-based company NG Research.³³ Another

investigator then used public records to identify NG as an FBI front.³⁴ Cimboric passed these findings to the Maryland branch of the ACLU, which referred them to the national organization to investigate further.³⁵

As the ACLU prepared to file FOIA requests with agencies and departments such as the FBI, Drug Enforcement Agency (DEA), U.S. Marshals Service, Justice Department, and the Federal Aviation Administration (FAA), the FBI admitted its involvement.³⁶ An agency spokeswoman claimed, “The aircraft were specifically used to assist in providing high-altitude observation of potential criminal activity to enable rapid response by police officers on the ground. The FBI aircraft were not there to monitor lawfully protected First Amendment activity.”³⁷ Meanwhile, *Baltimore Sun* reporters followed Cimboric’s example and used Flightradar24 to locate a third plane.³⁸ All three of these vehicles had squawked FAA transmission codes that were reserved for law enforcement.³⁹ The particular models, Cessna 182 and 206, had also been marketed to law enforcement as Cessna Enforcers, with the promise that “You can transform your Cessna propeller aircraft into a stealth eye-in-the-sky machine.”⁴⁰

These preliminary discoveries attest to the force of co-constitutive knowledge and its potentialities for counter-surveillance. What began as embodied, localized observation gained momentum through crowd-sourced social media collaboration and the triangulation of public data websites. It relied on a mix of individuals, investigative journalists, and engaged institutions with different resources and capabilities to contribute toward a collective understanding. Likewise, each new finding provided new apertures to build upon and request more information about. Yet, this collaborative act of counter-surveillance also raises uncertainties about knowledge production in the current climate, as a hostile Trump

administration puts public data at even greater risk. Concurrently, the proliferation of opaque dataveillance threatens to chill the interventions of those who would otherwise ask questions and register critiques online.⁴¹

In the following months, the ACLU pursued the developing leads with FOIA requests that used “broad, catch-all language.”⁴² According to Nathan Freed Wessler, the ACLU Speech, Privacy, and Technology Project staff attorney who drafted the initial requests, “FOIA work can be a critical part of what we’re doing in order to assess whether the government is violating people’s rights or abiding or not abiding by the Fourth Amendment. When it comes to surveillance, which is surreptitious by design, one of the first steps is to file a FOIA request.”⁴³ Citing the organization’s retrieval of George W. Bush-era RDI documents from the CIA, he observed, “We frequently get substantial information from the government through FOIA.”⁴⁴

By late October 2015, nearly six months after the surveillance campaign began, Wessler’s requests retrieved several documents. The FBI disclosed a memo that justified the flights, evidence logs, flight logs, an excerpt from the agency’s Domestic Investigations and Operations Guide, and its Aviation Regulations Policy Directive and Policy Guide. In addition, the FAA turned over registrations and airworthiness documents for one of the planes.⁴⁵ Wessler posted all of these documents on the organization’s website and highlighted their most salient findings. For instance, they reveal that the FBI flew 10 surveillance flights for 36.2 hours over Baltimore from April 29 through May 3.⁴⁶ Most of the flights occurred at night, and half of them had a BPD representative accompanying FBI personnel.⁴⁷ Meanwhile, the evidence logs show at least half of the flights conducted video surveillance. Flights also conducted “other electronic surveillance” beyond the capabilities of

video cameras, but the specifics of these other electronic methods are redacted in the file.⁴⁸ The FAA documents further establish that the FBI had outfitted one of the Cessnas with advanced surveillance technologies, including a FLIR Talon multi-sensor camera system with features like a thermal imager, laser illuminator, optical camera, electron magnification, and multi-target autotracking.⁴⁹ Promoting the militarization of domestic spaces, FLIR's website boasts that the company's camera system is "military hardened and qualified" and that it has "proven quality, reliability, and performance in the most demanding military environments."⁵⁰ The company also uses the grandiose and disconcerting tagline of "The world's sixth sense" and states, "At FLIR Systems, we provide superpower vision."⁵¹ By comparing the visual arrangement of onscreen data in other parts of the disclosed video footage, media scholar Abram Stern then further deduced that the higher-resolution images came from a L3 Wescam MX-15.⁵²

Beyond the logistical information, the disclosures also provide some content of rhetorical interest. Foremost is the last page of the evidence logs, which describes the event as "consensual monitoring" and the evidence type as "consensual."⁵³ This categorization raises questions as to what qualifies as consent, and which parties are framed as capable of granting it. In the case of these events, the protesters did not agree to be recorded and were not even aware that it was occurring. Only the mayor and governor, who requested the presence of the National Guard and FBI, had permitted this incursion. Thus, their consent overwrote the agency of those precarious individuals who were subjected to the government's watch. In addition, the background description of the logs misspells the name of Freddie Gray as Freddy.⁵⁴ A typo at one level, this error nonetheless gestures to an institutionalized disregard for Black lives and victims of (alleged) police brutality.

By August 2016, the FBI responded to the ACLU's follow-up FOIA requests with even more revealing disclosures. The agency sent DVDs that contained the footage it had shot from April 29 to May 3, 2015. The relatively accommodating disclosure of these videos exceeded the expectations of the requesters. Wessler and ACLU Speech, Technology, and Privacy specialist Naomi Dwork noted, "Although these videos are within the scope of our FOIA request, we did not specifically ask for them and were surprised to receive them."⁵⁵ They stated that they had been planning to review the footage and "make public the portions of them in which the public interest in disclosure outweighed any privacy concerns. Before we could do so, however, the FBI posted all of the footage online."⁵⁶

That same month, the FBI posted the videos as 53 downloadable files on the Vault, its version of the electronic reading room that the E-FOIA Act Amendments of 1996 required federal agencies and departments to create.⁵⁷ The voluntary public posting of over 18 hours of internal recordings is notable, because each agency retains the ability to decide which documents it will archive on its site and which documents it will only release to individual requesters. Even more surprising than the disclosure and inclusion in their reading room was the FBI's production of abridged versions of each day of footage. Agency officers posted these shorter videos both on the Vault and on the FBI's official YouTube account.⁵⁸ On the former, the description states that the videos "have been edited for time and ease of viewing" while the latter points out, "This video has been modified and only represents a portion of the video surveillance."⁵⁹ The duration of these versions range from one minute to ten minutes, and averages about seven minutes. Yet, the criteria for which footage was included in these excerpted versions (Is it on the basis of representative events? Exceptional moments? Some other logic?) have not been clarified. It remains unclear to me even after multiple viewings.



Figure 13. The Vault listing some of the aerial surveillance video files⁶⁰

This individual act of dissemination should be viewed within the larger patterns of the agency's disclosures. Notably, the FBI has developed a reputation for obstructiveness and uncooperativeness among FOIA experts. In the years leading up to and during the GWOT, its office has maintained among the lowest rates of granting requests.⁶¹ In 2009, the National Security Archive, the nation's leading FOIA research center, awarded the agency the Rosemary Award for "outstandingly bad responsiveness to the public that flouts the letter and spirit of the Freedom of Information Act."⁶² The center singled out its delayed response times and outdated search protocols in comparison to other agencies. It also noted that the FBI only granted a paltry 89 requests in full that year.⁶³ More recently, advocates criticized the FBI for trying to alter its digital FOIA policy. In February 2016, the agency announced plans to do almost entirely away with email FOIA requests, limit users to one request per day, and constrain the request to 3,000 characters.⁶⁴ After public outcry, it backtracked on these plans.⁶⁵

Given such patterns and the official wariness about releasing videos (see the Introduction and Chapter 1), it is worth asking why the FBI was uncharacteristically

forthcoming in this instance. Though requesters will receive varying degrees of explanation for denials, we should also be critical about why and when the state does release information. To explain the surprising level of disclosure here, I offer several theories that tie into the notion I call *transparency optics*. At one level, transparency optics refers to the public relations attempts to strategically manage the dissemination of information and uphold a positive public image. This framing opposes the ideal of transparency as an objective good in and of itself, which tends to efface the political and logistical circumstances that determine the flows of official information. At the same time, the concept of transparency optics emphasizes the visualities of disclosure and how information manifests in the public eye. It also conversely seeks to question what does not register visually, either through forms directed at other sensory modes or through deliberate invisibilization and obfuscation. Ultimately then, my discussion of this term seeks to demonstrate that transparency exists across gradations of knowability and operates through a multitude of intersecting logics.

One explanation for the FBI's disclosure is that the system functioned in accordance with FOIA's founding intentions. Though the decisions to release documents are always subjective and contingent on individual and institutional conventions, there are guidelines that outline which records should fall under the act. I refer to this most straightforward and widely accepted understanding of information access as *transparency as procedure*. Wessler suggested this functionality as one possibility, stating there might have been "a diligent FOIA officer who was working through the request and thought they were done and realized there was a whole set of requests that were responsive."⁶⁶ This theory optimistically recognizes the enduring power that functionaries maintain in day-to-day bureaucratic operations and retains hope that the system works more often than it malfunctions.

Another explanation is that the agency decided that releasing the videos would defuse the speculation over their contents and outweighed the advantages of keeping them classified. I refer to this strategy as *transparency as defense*. Wessler described this approach as “[the FBI arguing,] “Don’t worry about this aerial surveillance. All we’re doing is looking at people and cars out in public spaces. We’re not seeing through the walls of houses. We’re not tracking individuals over long periods of time by following them. This is the kind of thing that anyone in any aircraft . . . would be able to see too.””⁶⁷ When some critics do object to the secrecy and overreach of targeted monitoring, the FBI can also use disclosures to argue that it is being as transparent as possible. In addition, the organization may have assumed that few viewers would bother to download 53 files and watch 18-plus hours of largely mundane and murky footage. Even the far shorter YouTube versions have only attracted a limited audience. As of May 2018, the video of the first day had received over 3300 views, but none of the others had broken 100 views.⁶⁸

Nonetheless, the unexpected YouTube edits, which were apparently made for “ease of viewing,” suggest that the agency did desire some greater visibility for these videos. Thus, I also suspect a connection to what I call *transparency as test*—gauging public reactions and seeing how much its actions can transgress cultural and legal limits. The agency’s move may also be a means of normalizing the FBI operation as an unobjectionable, quotidian act and seeing how successfully it can render the exceptional ordinary. Ironically, the more often citizens see this practice, the more that it may deflate, rather than catalyze, critique. If little public notice or opposition materializes, the agency then gains leeway to expand its reach in the future.

Furthermore, this logic ties into what I call *transparency as trigger*, in which the militarized visuality and fetishistic flaunting of technological prowess may actually build support for the agency. This identification with the superpower aggressor frequently occurs in mainstream war coverage, including the example of MSNBC anchor Brian Williams fawning over the DoD video of “beautiful” US missiles striking Syria in 2017.⁶⁹ With the ubiquity of propagandistic war footage on news shows and the dominant ideology it painstakingly cultivates, this aerial perspective may even prompt viewers to see the activists as deserving targets. Collectively then, the dissemination and circulation of internal documents can paradoxically enact the logic that I call *transparency as opacity*. To build on this notion, I will now explore what these videos reveal and what they do not. In doing so, I will argue that they ultimately obscure more than they elucidate.

What the documents reveal

With each FOIA disclosure, it is vital to inquire what kinds of information this newly available corpus of records can make available. In the case of the Baltimore protests, the extraction of the FBI documents has provided some valuable opportunities to counter-surveil the agency’s operation. Both the digital scans and video files can offer glimpses into the mechanics and rationales of secret government tracking. Furthermore, the latter media exhibit the agency’s electro-optical vantage onto the protests, as well as supply abundant moving image documentation of a historically significant event. As an archive, the video files show various cameras recording in color during the day and in infrared black-and-white at night. They also display numerous scenes of street protest, violence and property destruction, and police presence. Yet, in addition to thinking about what the videos make

overtly visible on the screen, it is worth re-viewing their “raw” footage as evidence of multiple techno-cultural mediations.

One of the most conspicuous aspects of the footage is its top-down directionality. As aerial surveillance technologies are outfitted with formidable new flight and recording capacities, scholars have responsively updated theories of the aerial realm’s spatial dynamics. This includes Caren Kaplan’s idea of *militarized aeromobility*, which she theorized in the context of the post-9/11 moment.⁷⁰ She noted that commercial and private planes were grounded in New York in the hours following the Twin Towers attacks while military and police forces continued to have access to these airspaces.⁷¹ She then connected the NYPD’s routinization of technologized and mediatized aerial surveillance as a mechanism of homeland security to the ongoing militarization of everyday civilian spaces.⁷² Lisa Parks has also proposed the term *vertical hegemony* to account for the technical and cultural strategies of US policy in the Global War on Terror. Citing examples like the US military’s domination of radio frequencies and aerial distribution of war propaganda in Afghanistan, Parks described the term as “the ongoing struggle for dominance or control over the vertical field, which here includes combinations of terrestrial, aerial, spectral and/or orbital domains. . . . The struggle for vertical hegemony is undergirded by the assumption that controlling orbit, air, and spectrum is tantamount to controlling life on earth.”⁷³

In this case, seeing the predominantly Black Baltimore protesters unknowingly march under this top-down vantage can help render the racializing gaze of government monitoring more evident. (However, other viewers will undoubtedly interpret the images and draw other inferences, including some that reinforce racist beliefs.) Though demographic information is hard to gauge from the videos alone, the census data of Baltimore, a city that is

approximately 63% Black, and West Baltimore, a neighborhood that is about 83% Black, suggest a racial motivation to the aerial targeting.⁷⁴ Uncoincidentally, before the events in Baltimore, the FBI had already conducted aerial surveillance of Black-led protests in Ferguson, Missouri in response to the police killing of Michael Brown.⁷⁵ The NYPD had also deployed helicopters to monitor the BLM protests in the wake of the police killing of Eric Garner.⁷⁶ The fact that many of these mobilizations of Black resistance are themselves responses to the police's racist monitoring and fatal violence directed toward Black populations only compounds these injustices.



Figure 14. Daytime filming of a street protest on April 29, 2015⁷⁷

The lineage of targeted aerial surveillance can also be located in the slang term *ghetto bird*, which refers to the police helicopters that fly over Black neighborhoods and shine down high-wattage searchlights. In his 1993 song “Ghetto Bird,” Los Angeles-based rapper Ice Cube responded to the discriminatory use of force with sentiments of anger and defiance. He rapped, “Cause every time that the pigs have got me/ y’all rub it in with the flying Nazi

military force, but we don't want ya/ Standin' on my roof with the rocket launcher/ So fly like an eagle/ But don't follow us wherever we go/ The shit that I'm saying, make sure it's heard/ Motherfuck you and your punk-ass ghetto bird.”⁷⁸ Ice Cube's evocation of a “military force” echoes with the omnipresent crosshairs in the videos and the linkages between vision and violent obliteration. Recent events also suggest that this link will continue to strengthen as technological capabilities advance. In 2015, North Dakota legalized weaponized police drones armed with stun guns, tear gas, and rubber bullets.⁷⁹ In 2017, a bill in the Connecticut state legislature also attempted to allow police to arm drones with lethal weaponry.⁸⁰ In contrast to the police helicopters armed with lights, the far more developed surveillance technologies in the FBI videos show that it is now harder than ever for those disproportionately targeted to run or hide.

In her formative scholarship on surveillance and Blackness, Simone Browne has outlined several terms applicable to the FBI campaign over Baltimore. One such concept is *racializing surveillance*, which Browne defined as “a technology of social control where surveillance practices, policies, and performances concern the production of norms pertaining to race and exercise” a categorical and classificatory power.⁸¹ Entangled in the unmarked dominance of normative white ideologies, racializing surveillance is a technology that reifies boundaries and constructions of race. Browne also proposed the notion of *black luminosity* to complicate the functions of visibility and opacity. This refers to a manifestation of boundary maintenance that places Black bodies under intensified spotlights, sometimes literally as in the case of discriminatory 18th century lantern laws.⁸² Black luminosity paradoxically subjects its targets to heightened visibility while also dehumanizing them and keeping them un-visible.⁸³

In the disclosed FBI videos, the infrared lens, or thermographic camera, literalizes Browne’s notion of black luminosity. The predominantly Black people subjected to the gaze of the cameras at night appear as shadowy, amorphous figures of dark clothing and glowing white spots. By transforming heat into an electronic signal and then a thermal image, the cameras reduce the protesters to their basic corporeal forms and biological expressions. Through the restrictive optic of this lens, they are both unwillingly registering their precarious humanity and being dehumanized. Moreover, the monochromatic scheme and current limits of the camera technology renders the collective into a barely distinguishable mass. Describing the pernicious reductions of the racialized gaze in *Invisible Man*, James Baldwin wrote, “When they approach me they see only my surroundings, themselves, or figments of their imagination—indeed, everything and anything except me.”⁸⁴ Thus, this instantiation of black luminosity placed an already-vulnerable group of putative Others under enhanced scrutiny in the name of securitization. However, the individuals’ inability to inhabit



Figure 15. Infrared filming of nighttime gathering on April 29, 2015⁸⁵

public space under the cover of darkness without being made exceedingly visible avows the suspicion that still governs Black mobility.

The hypervisibility of this racializing surveillance could also prompt the recognition of broader tendencies of contemporary black luminosity in Baltimore and beyond. Prior to the Freddie Gray protests, Baltimore was already under the unblinking eye of 700-plus closed-circuit television cameras on poles through the CitiWatch program.⁸⁶ Positioned closer to the ground level, these publicly installed devices could tilt, zoom, and pan. As of 2014, the city also asked private businesses to provide access to their hundreds of additional cameras.⁸⁷ In part, due to these developments, reporter Lily Hay Newman characterized Baltimore as “America’s laboratory for spy tech” and a “modern urban American panopticon.”⁸⁸ Describing the initiative, an official website for the city stated, “CitiWatch Services provides state-of-the-art CCTV [closed-circuit television] cameras throughout the City of Baltimore in an effort to assist Police and other City agencies with public safety. The cameras are monitored 24 hours a day and 365 days of the year by certified CCTV monitors with law enforcement backgrounds.”⁸⁹ Challenging this narrative of dutiful omniscience, Sierria Warren, a resident of the area where Freddie Gray was arrested, noted the suspicious withholding of footage that pertained to Gray’s arrest. She also stated, “These CCTV cameras — they work, but they work for police.”⁹⁰ Another local, Ralph Prichett, added, “I thought the cameras were supposed to protect us. But I’m thinking they’re there to just contradict anything that might be used against the City of Baltimore. Do they use them for justice? Evidently not.”⁹¹ Two years before his untimely death, the CitiWatch cameras had also captured footage of Gray standing on a street corner. The police used that evidence to arrest him and claim that he was the lookout for a drug deal.⁹²

The duration of the FBI video footage—18-plus hours over the course of five days—also indicates the growing ease of collecting vast stores of information from the air. As technologies’ recording capabilities, analytical capacity, data storage, and ability to coordinate with other massive archives of personal information advance, government agencies can assemble unprecedentedly sophisticated archives from the aerial realm. The law’s failure to keep pace with the abilities of these extremely powerful digital surveillance technologies are further facilitating these kinds of vertical incursion. This technological and legal asymmetry is especially pertinent as state-operated and commercial surveillance drones are drastically unsettling the dynamics of aerial observation.

Following the FBI surveillance, Baltimore has been subject to yet another secret, legally nebulous surveillance program since 2016. Supported by a conservative donor, a private company fittingly called Persistent Surveillance Systems has flown Cessnas with wide-angle cameras that cover about 30 square miles at once.⁹³ The images these planes capture are sent to analysts in real-time, and amassed on hard drives that can be reviewed weeks later.⁹⁴ In about seven months, the company had logged over 300 flight hours over Baltimore and recorded over one million pictures.⁹⁵ In addition to demonstrating the encroachment of corporate interests on public security, the aerial presence of Persistent Surveillance in Baltimore reaffirms the eroding boundary between wars overseas and the militarization of domestic spaces. Namely, its current technologies are based on Angel Fire, the “wide-area, live-feed surveillance system” that the company’s founder, Ross McNutt, designed for the U.S. Air Force.⁹⁶ The military used Angel Fire to create digital archives of entire cities in Iraq and create what McNutt has called “Google Earth with TiVo capability.”⁹⁷ In addition to Baltimore, Persistent Surveillance has sold its services to the Los

Angeles Police Department (LAPD) to monitor the predominantly Black neighborhood of Compton, as well as Mexico and still-confidential countries in Central America and Africa.⁹⁸ Though McNutt has frequently framed the company's choice of targets based on the prevalence of crime, this discourse provides a convenient alibi for racial discrimination. The focus on crime prevention also obscures the clandestine nature of this surveillance, and the lack of public debate and input from the communities directly targeted. The inability of FOIA to access the private company's documents further exacerbates issues of transparency, as even more opaque private partnerships increasingly take on the design, implementation, and labor of public surveillance.

What the documents don't reveal

While FOIA disclosures can provide vital information and catalyze significant public policy shifts and social movements, it is also important to register their epistemological and historiographical limitations. These lacunae are partially signaled by the most distinctive visual marker of the FOIA document: the black and gray box redactions that appear throughout the videos, and the white boxes in the digital scans. They are reminders that a FOIA officer has evidentially removed these segments from the archive, both making these records available for public consumption and potentially effacing critical sources of information. Still, as Anjali Nath has argued, "Redaction does not negate the possibilities of interpreting and making meaning from these files. . . . The visual politics of redaction offer a point of entry that allow us to read these documents as more than simply the failure of transparency."⁹⁹ Following her call for a contrapuntal reading of these absences as images, I more broadly suggest a hermeneutic analysis of the many elements that these documents do not reveal.

Such analyses should also acknowledge the absences and obfuscations that the documents do not visualize. In addition to redactions, official records, like other documentary media, may contain self-serving omissions, falsifications, errors, and ambiguities. We should also weigh individual disclosures against the potential archive of non-disclosed documents, as we ask why and when certain records have been deemed admissible. With FOIA marking its fiftieth year in effect in 2017, employees of agencies and departments subject to it have also found numerous ways to evade its reach. Some methods include talking on the phone or meeting in person instead of communicating in writing, unnecessarily classifying huge swaths of categories of documents, offloading work to private companies beyond the grasp of public disclosure, and using private emails and servers.

In the case of the FBI surveillance videos, perhaps the most outstanding absence to note is the lack of sound. The technical specifications for the FLIR and Wescam camera systems all focus on optical technologies, and they do not appear to record auditory information. Therefore, the deployment of this system suggests an ocularcentric privileging of visual data. While I am not advocating for government agencies to deploy yet more elaborate technologies of sensory monitoring, it seems curious that sounds such as voices, which convey significant semiotic and affective information, are omitted from consideration. The isolation of visual imagery also silences the activists and strips away another index of their agency. In effect, this detached framing risks exacerbating the looking practice that Donna Haraway has called *the god trick*.¹⁰⁰ Though this footage offers a seemingly objective aerial and omniscient vantage, it is, in fact, mediated by a complex techno-cultural assemblage. With her question, “With whose blood were my eyes crafted?,” Haraway also

acknowledged that looking relations are always deeply fraught, historically contingent, and intricately tied to legacies of violence.¹⁰¹

However, the lacuna of sound may actually point to another glaring gap. According to the FOIA disclosures the ACLU obtained, some “other electronic surveillance” was supplementing the video surveillance. This extremely broad description does not indicate the nature of the additional monitoring, how many other electronic technologies it incorporated, and what kinds of records it produced. One possibility is the IMSI (International Mobile Subscriber Identity) catcher, also known as a StingRay and a cell site simulator. The IMSI catcher simulates a cellphone base station to intercept mobile phone data from every cellphone in the area, sometimes including the content of texts and calls, and to monitor the phone users’ movements.¹⁰² If these devices were on these flights, it would be possible to collect and analyze the data of thousands of people in the vicinity, including those who were not attending the protests. Such a prospect of still-secret digital and auditory data collection highlights one risk of adopting FOIA as a method. Though the disclosure of the videos purported to reveal the totality of the FBI’s records, the agency may have used employed another strategy—*transparency as deflection*—to direct attention away from another archive. Notably, the BPD kept its own use of IMSI catchers secret for years, due to a nondisclosure agreement it signed with the FBI. However, when a judge compelled a detective to testify in court in 2015, he disclosed that the BPD had already used IMSI catchers in investigations over 4,000 times.¹⁰³

Related to these other technologies, the videos alone cannot reveal the analytic technologies the FBI used to process its records in real-time and subsequently. This, too, reinforces the limits of human vision and ocularcentrism. As the labor of digital visualization

and analysis becomes increasingly automated, most viewers will have even greater difficulty, in the words of James C. Scott, “seeing like a state.”¹⁰⁴ Fortunately, the marketing copy of one corporate partner, Geofeedia, has enabled advocates and scholars to learn more about the data analytics processes that took place in Baltimore. In the case study it published, Geofeedia described how it assisted the BPD in combing the feeds of nearby users’ social media platforms like Twitter, Instagram, YouTube, Flickr, and Picasa. The company, which received funding from CIA investment firm In-Q-Tel, stated, “Using Geofeedia’s real-time, location-based social media monitoring, [the police team coordinating with the company] was able to heighten officers’ situational awareness and help them stay one step ahead of the rioters. In some cases, police officers were even able to run social media photos through facial recognition technology to discover rioters with outstanding warrants and arrest them directly from the crowd.”¹⁰⁵ In response, the ACLU of California filed FOI requests with 63 state law enforcement agencies, and retrieved documents that showed Instagram, Twitter, and Facebook had been providing special access to Geofeedia.¹⁰⁶ When this collusion came to light, all three companies reversed course and severed access to the company.¹⁰⁷

Yet, it remains unclear which other data analytics the FBI has deployed. As developers refine the ability to conduct automated recognition across wide radiuses, this issue will become even more urgent in the coming years. As of April 2017, the Department of Homeland Security’s IDENT database already contained over 170 million fingerprints and facial images captured from non-citizens entering the United States.¹⁰⁸ The FBI’s facial-recognition system was also able to scan across 411 million photos in state and federal databases.¹⁰⁹ In 2013, the FBI initiated a study of digital image processing and analytics, and solicited companies to exhibit their facial, vehicle, and license-plate recognition

capabilities.¹¹⁰ In particular, the agency, like the industry, was seeking to improve the capacity to track and algorithmically sort images of people recorded by moving cameras. The ramifications of this exceedingly powerful technology will become even more troubling as it is installed in unmanned aerial vehicles. Already, U.S. Customs and Border Patrol (CBP) has solicited companies to build drones with facial recognition technologies to use for border security.¹¹¹ Like West Baltimore and other predominantly Black neighborhoods, the U.S.-Mexico border is another site where powerful actors are marshaling racist discourses of criminal Others to normalize militarized surveillance and maximize their profits at the expense of the vulnerable.

Finally, the FBI videos fail to offer any understanding of the uprisings' structural causes. With no narration and no explanatory context on the Vault or YouTube, the footage never engages the underlying complexities of the community or the histories that inform the mobilizations of protest and violence. For West Baltimore, like other comparable communities, these issues include poverty, rampant unemployment, a paucity of public educational resources, drug addiction and drug violence, legacies of incarceration, and the longstanding distrust of police. According to a team of researchers, another under-recognized but compounding factor is the shortage of public health initiatives.¹¹² Rather than subjecting the protesters to a criminalizing gaze at a distance then, state and federal funding could repair inequities in social services. However, this option would require not viewing the events as an isolated and spectacularized eruption, but rather as a long-term opportunity to invest in sustainable, resident-driven community building. By promising a putatively omniscient perspective with little understanding of the substance on the ground, these videos efface that kind of engagement. Ultimately, such lack of social context renders the aerial objectifying

gaze less transparent than it appears, and furthers explain why these disclosures were able to reach the public eye.

Alternative vantages of the protests

To bring the capabilities and shortcomings of official perspectives into sharper relief, it is also necessary to contemplate alternative vantages. One such divergent view of the protests is the short 2016 documentary *One Document for Hope* by Baltimore-based filmmaker Margaret Rorison.¹¹³ In contrast to the FBI surveillance videos, Rorison’s film provides a ground-level look at the events that transpired from April 28 to May 3, 2015. It shows protesters marching in the streets and holding signs with messages like “Stop Police Terror” and “Justice For All.” It also captures footage of police officers in riot gear as they observe the protests at barricades. Rorison stated, “I felt like I needed to document this . . .



Figure 16. Police observing the protests in *One Document for Hope*

because it all felt really surreal and intense.”¹¹⁴ Although she “didn’t want to be a voyeur,” she sought to offer a counterpoint to the reductive and sensationalistic coverage of national news media.¹¹⁵

One remarkable aspect of the seven-minute documentary is the predominance of helicopters. The film consistently shows them flying behind skyscrapers or exiting the frame. One early sequence features a series of rapid-cut shots of helicopters hovering in the distance, with an average shot length of only two seconds. This sequence helps convey the vehicles’ pervasive presence over the city, as well as the difficulty of visually capturing the aerial technology that is (potentially) capturing the protesters. Rorison found herself filming the vehicles because they are “a common part of the cityscape. However, that week, there were many more in the sky. They kept passing over my bedroom window, some heading west towards Pennsylvania and North Ave. Others would circle and hover over my neighborhood. I would watch them through my window and it made me feel even more anxious.”¹¹⁶ While she was protesting, officers in helicopters were yelling down at the activists through loudspeakers. “The fact that there were so many in the sky felt very oppressive,” she said. “Whenever we were marching, there was always one that would follow us. . . . [There was a] beautiful energy on the streets and then I would look up and want to yell at the hovering wasp to ‘Go away!’ . . . The rotor blades are loud, the sound so dominant, and it felt like such a force.”¹¹⁷ In another actualization of black luminosity, officers also used the helicopters to enforce the 10 p.m. curfew by shining spotlights down on the streets and again ordering people to disperse through loudspeakers.¹¹⁸



Figure 17. Documenting the constant presence of helicopters

Given that the power of the helicopters and protests both heavily relied on sonic components, it is notable that Rorison’s footage, like the FBI videos, is silent. This is because the camera she was using, a 16mm Bolex camera, cannot record sound. Instead, *One Document for Hope* pairs the protest visuals with a soundtrack of Baltimore City Police Scanner transmissions from April 27. By reappropriating this publicly accessible audio record, Rorison was seeking to contrast the scanner communications’ “sterile and procedural narrative” and “the precious moments of gathering, celebration and protest” on the streets.¹¹⁹ The calm exchanges of information that are audible on the soundtrack largely give voice to the bureaucratic aspect of policing. However, occasional moments, such as an officer asking, “What are you seeing out there, besides the obvious carnage?” over a siren’s wail, gesture to the impending state of emergency. Furthermore, Rorison’s decision to overlay the police transmissions onto shots of protesters, police, and helicopters suggests the ubiquity of the multimodal surveillance apparatus in Baltimore. It also reminds viewers that these protests were direct responses to the largely unchecked issue of policing Black communities.

The documentary's visual qualities further separate it from the FBI videos. This distinction is partly due to the Bolex, which can only hold 100 feet, or about three minutes, of film. Rorison explained, "I've developed an intimacy with that way of thinking. I work off of intuition and observation. With video, I tend to just let it run, and I'm more thoughtful with my shots with 16 [millimeter]." ¹²⁰ Her shooting style, which privileges intimacy and intuition, is pointedly opposed to the dragnet mode of FBI's digital surveillance. Rather than trying to capture vast areas and accumulate as much visual data as possible, Rorison's film maintains the personal quality of a participant offering embodied glimpses. Although she converted the black-and-white 16mm reels to digital video, the documentary also maintains the textural imperfections of the earlier medium. In contrast to the FBI surveillance videos, whose technical deficiencies of blurriness and imprecision suggest that the cameras' optical features require further advancement, the grainy analog traces educe a nostalgia for past media technologies. At one exhibition, curators even showed Rorison's film alongside aesthetically comparable 16mm footage of the 1968 Baltimore riots.

Reflecting the partial, situated perspective of the film, Rorison has said that she felt apprehensive about *One Document for Hope* inadvertently totalizing the experiences of the protests. She noted her positionality as a white participant and an unwillingness to supersede the voices of the Black activists. After having conversations with a Black co-worker, who framed the events in terms of the Martin Luther King, Jr. quote "With this faith we will be able to hew out of the mountain of despair a stone of hope," she saw a way to offer some useful qualification. She stated, "Once I found the title, then somehow I could show [the film]. Then it just presented that it was just one document, it was just one excerpt, how this footage could represent a small little fraction of what went on and what I felt." ¹²¹ Thus, rather

than attempt to impose a panoptic view that objectifies the people it captures, Rorison's document finds a sense of hope in its limited, localized vantage. As one view among the many others that community members recorded during the Baltimore uprisings, it can contribute toward a more complex and collective picture of activism in action.



Figure 18. An activist reclaiming the streets of Baltimore

Conclusion

In this chapter, I first situated the FBI's 2015 aerial surveillance of predominantly Black activists in Baltimore in relation to antecedents of the FBI's electronic surveillance of 1960s Black leaders. I then discussed the ways that the contemporary case of aerial monitoring came to light, and how FOIA participated in revealing key pieces of information. Notably, in addition to the disclosure of digital files, the ACLU's requests to government agencies catalyzed the FBI to post the videos it had covertly recorded over the course of five days. This unexpected development prompted me to theorize the various strategies of transparency at work, and how the concept of *transparency optics* can evoke some underlying logics of public relations and public visibility. Rather than seeing openness as a

progressive value in and of itself, it is important to interrogate the motives for selectively disclosing and circulating certain documents.

Next, I analyzed what the videos and other records can elucidate and what they fail to show. Because state-generated media largely reiterate official biases, I outlined the visible and unmarked lacunae in these documents and noted the epistemological restrictions of ocularcentric approaches. Even when records do visualize a pattern of racialized abuses, the incapacitating force of cultural prejudices prevents some viewers from accepting what they see. As Judith Butler has argued, “[I]t is possible within this racist episteme that no black person can seek recourse to the visible as the sure ground of evidence.”¹²² Thus, as governments increasingly operationalize aerial surveillance technologies to document marginalized populations and wage wars worldwide, such issues of observation and oversight remain crucial to work through.

To partly mitigate the shortcomings of the official lens, we must also supplement its often-dehumanizing and criminalizing gaze with alternative perspectives of collective action. As one example of participants who chronicle unfolding events at a more embodied level, Margaret Rorison’s *One Document for Hope* affirms that the partiality of knowledge can register a powerful counter-statement. After experiencing the distressing affects of pervasive aerial surveillance in her hometown, Rorison turned the camera back onto the helicopters overhead and coopted excerpts from the Baltimore police blotter as a soundtrack. In making these formal choices, her documentary does not seek to employ transparency toward a strategy of optics. Instead, it makes a small but meaningful gesture of re-centering long-unseen and unheard individuals who are demanding change from a system that has failed them.

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⁷⁶ Lauren C. Williams, “How NYPD Surveillance Could Affect Eric Garner Protesters,” *ThinkProgress*, 2014, <https://thinkprogress.org/how-nypd-surveillance-could-affect-eric-garner-protesters-bae06c073f34/>.

⁷⁷ Screenshot of “Footage of Protests in Baltimore, Maryland, April 29, 2015.”

⁷⁸ Ice Cube, “Ghetto Bird,” *Lethal Injection*, 1993.

⁷⁹ Ariha Setalvad, “Police in North Dakota can now use drones armed with tasers,” *The Verge*, Aug. 26, 2015, <https://www.theverge.com/2015/8/26/9211165/north-dakota-armed-drones-tasers>.

⁸⁰ Erik Ortiz, “Weaponized Drones: Connecticut Bill Would Allow Police to Use Lethal Force From Above,” *NBC News*, Apr. 27, 2017, <https://www.nbcnews.com/news/us-news/weaponized-drones-connecticut-bill-would-allow-police-use-lethal-force-n745291>.

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⁸² Ibid., 78-80.

⁸³ Ibid., 67-68.

⁸⁴ James Baldwin, *Invisible Man* (1952; New York: Vintage Press, 1995), 3.

⁸⁵ Screenshot of “Footage of Protests in Baltimore, Maryland, April 29, 2015.”

⁸⁶ Luke Broadwater and Justin George, “City expands surveillance system to include private cameras of residents, businesses,” *Baltimore Sun*, Oct. 30, 2014, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-citiwatch-20141029-story.html>.

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⁹⁴ Ibid.

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¹⁰⁸ Russell Brandom, “The US Border Patrol is trying to build face-reading drones,” *The Verge*, Apr. 6, 2017, <http://www.theverge.com/2017/4/6/15208820/customs-border-patrol-drone-facial-recognition-silicon-valley-dhs>.

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Chapter 3

Compelling Sources: Independent Labor, Official Archives, and Classified Logistics

“I didn’t think it would be this hard. I had no idea really,” Assia Boundaoui, the director of *The Feeling of Being Watched* (2018), told me. Because she was still in the process of making her first full-length film, one could assume that she was commenting on the precarious state of documentary media production. Even as digital innovations have lowered some production costs and created new platforms for distribution, contemporary independent filmmakers continue to face a multitude of logistical challenges to create and circulate their work. The challenges are even more heightened for practitioners like Boundaoui, who focus their critiques on issues of national security. Yet, in fact, her observation to me was addressing the complications arising from one specific but under-recognized facet of documentary labor. Like other chroniclers of state abuses, Boundaoui had turned to FOIA in the hopes of uncovering valuable sources of official information. Despite the governmental rhetoric that frames the law as an efficient mechanism of transparency and accountability, such attempts to extract sensitive records from secretive agencies have instead revealed patterns of bureaucratic failings and deliberate obstruction.

To explore the issues of production and access, this chapter will first offer a brief history of documentarians who have used FOIA as a research method. Next, based on my interviews with filmmakers, it will explore several legal, economic, and logistical challenges of documentary labor. I will introduce the concept of *classified logistics* to extrapolate on how the limits of FOIA have compounded the issues independent practitioners face in ways they rarely anticipated. This chapter will then discuss the primary potentialities and evidentiary functions that FOIA archives have enabled for this group. Lastly, it will outline

some of the aesthetic and formal techniques of remediating FOIA disclosures in the audiovisual contexts of documentary film. To my knowledge, these topics have received almost no scholarly consideration so far and merit more thorough analysis in documentary studies and production studies.

A Brief History of Documentary Film Production and FOIA

Since the enactment of FOIA in 1967, it is unclear how many documentarians have successfully or unsuccessfully attempted to employ it during their research process. Nor is it apparent who the first documentarians to adopt this method were or when it was first attempted. This gap in knowledge persists, because production methods are not necessarily evident unless a filmmaker reflexively incorporates them in the text or discusses them in interviews or other paratexts. My own method of identifying such documentarians is similarly limited, and relies primarily on my findings via search engine results.

One early application of FOIA is artist Margia Kramer's 20-minute video *Freedom of Information Tape 1: Jean Seberg* (1980), which was first exhibited at New York's Artists Space Gallery in 1980.¹ When Jean Seberg committed suicide in 1979, Kramer used FOIA to request the FBI files about the actress. Though it took Kramer only two months to receive about 300 documents from the "very cooperative" agency, the files were heavily redacted.² Still, this archive revealed that the FBI had ordered an "active discreet investigation to be instituted on . . . Seberg who is providing funds and assistance to black extremists including leaders in the Black Panther Party."³ The agency had also declared Seberg a "sex pervert" and deployed COINTELPRO to "tarnish her image with the public."⁴ One step it took was planting a rumor in a *Los Angeles Times* gossip column that claimed that a Black Panther

Party member had impregnated the actress.⁵ Upon acquiring these files, Kramer self-published two book volumes entitled *Essential Documents: The FBI File on Jean Seberg* in 1979 and 1980 respectively.⁶ She also used the FOIA materials to make the experimental documentary video, which intercuts interviews with the actress, clips of her iconic role in Jean-Luc Godard's *Breathless* (1963), and news reports about Seberg's life. It screened at galleries and museums around the country, including at the Museum of Modern Art (MOMA) in 1980 in an installation Kramer organized called "Jean Seberg/The FBI/The Media."⁷ She followed this video with two more Freedom of Information tapes on other subjects and in 1988, published another book of FOIA materials entitled *Andy Warhol et al.: The FBI File on Andy Warhol*.⁸

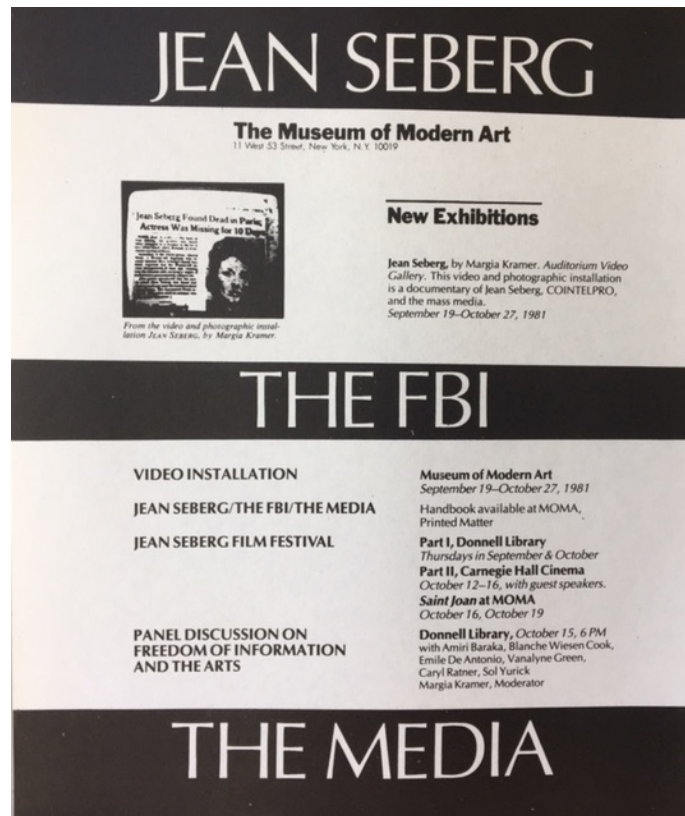


Figure 19. A poster for Seberg's MOMA exhibit⁹

Another early project that used FOIA is Marcel Ophuls' *Hôtel Terminus: The Life and Times of Klaus Barbie* (1988). To make this acclaimed movie about the eponymous Nazi SS officer known as the "Butcher of Lyons," Ophuls relied on a research team led by investigative journalist and "Freedom of Information wizard" Christopher Simpson.¹⁰ In the process of retrieving documents through FOIA, Simpson discovered proof that U.S. officials in occupied Germany helped smuggle Barbie to Bolivia.¹¹ He also obtained a list of other former Nazis, like Barbie, that American counterintelligence agents had recruited to spy on European Communists.¹² The list led Ophuls to embark on a frustrating quest to track down the named contacts and try to convince them to appear on camera. Simpson also used FOIA findings to prepare dossiers about the subjects and brief the director before he conducted interviews.¹³

Since such works in the 1980s, documentarians have continued to employ FOIA to request diverse forms of information. They have faced varying degrees of complications and achieved varying levels of success. Among the films that have incorporated FOIA materials are *The Imposter* (dir. Bart Layton, 2012), which used Interpol files sent to the FBI to tell the story of an international con artist who impersonated a murdered child, and *Blackfish* (dir. Gabriela Cowperthwaite, 2013), which featured video footage of killer whale abuse from the Occupational Safety and Hazard Administration's (OSHA) lawsuit against SeaWorld.^{14 15} A producer of *Fuck* (dir. Steve Anderson, 2005) even filed a FOIA request with the National Aeronautics and Space Administration (NASA) to obtain an audio recording of astronauts saying the titular curse word on the moon.¹⁶

However, many of the recent documentaries that prominently employed FOIA methods center on issues of war, security, and surveillance. By extension, this corpus also

often deals with related topics like identity-based discrimination, activism, terrorism, and incarceration. Most of these projects have drawn on paper-based files retrieved from the FBI. They include *Brother Outsider: The Life of Bayard Rustin* (dir. Nancy Kates and Bennett Singer, 2003), which discusses the FBI surveillance campaign against Black, gay civil rights activist Bayard Rustin; *The Camden 28* (dir. Anthony Giacchino, 2007), which details the FBI sting of 28 activists who destroyed draft records amid the Vietnam War; *William Kunstler: Disturbing the Universe* (dir. Emily Kunstler and Sarah Kunstler, 2009), which profiles the provocative civil rights attorney and FBI surveillance target William Kunstler; *1971* (dir. Johanna Hamilton, 2014), which discusses the eight activists who stole files from an FBI field office and helped exposed COINTELPRO; and *The Feeling of Being Watched* (dir. Assia Boundaoui, 2018), which examines the FBI's surveillance of a Muslim community in Illinois. In addition to paper files, *Better This World* (dir. Kelly Duane de la Vega and Katie Galloway, 2011), which chronicles two activists that the FBI charged with domestic terrorism, and *The Newburgh Sting* (dir. Kate Davis and David Heilbroner, 2014),



Figure 20. FBI surveillance video in *The Newburgh Sting*

which shows how an FBI informant entrapped four Muslim men into a domestic terrorism plot, used other disclosed media like photographs, surveillance videos, and audio recordings.

Projects from the last five years have also featured disclosures from other agencies and departments to explore state abuses and injustices. Examples include *Uniquely Nasty: The U.S. Government's War on Gays* (dir. Michael Isikoff, 2015), which drew on multiple government agencies' documents to expose high-level monitoring and persecution of gay employees; *Free CeCe!* (dir. Jac Gares, 2016), which used Minnesota's state FOI law to detail the attack on and imprisonment of Black trans activist CeCe McDonald; *National Bird* (dir. Sonia Kennebeck, 2016), which used DoD investigation files to shed light on a U.S. drone attack in Afghanistan; and *My Fugitive* (dir. Nina Gilden Seavey, in development), which used multiple agencies' records to examine domestic surveillance and subversion programs that targeted the 1960s and 1970s antiwar movement in St. Louis, Missouri.

Yet, other filmmakers have been stymied by delays or rejections and had to forgo access to documents during production. Some examples are *Under Our Skin* (dir. Andy Abrahams Wilson, 2008), whose senior producer Kris Newby requested three Center for Disease Control and Prevention (CDC) employees' emails about Lyme disease, and *If A Tree Falls: A Story of the Earth Liberation Front* (dir. Marshall Curry, 2011), which sought DoJ video and audio files about the environmental activists the department charged as domestic terrorists. Newby stated, "For five years the [CDC] strung me along with frivolous denials, mysterious delays, shifting explanations and false promises. In essence, the delays became an improper, off-the-books FOIA denial."¹⁷ Because the film had been released by the time the agency granted the half-decade-old request, Newby gave the 3,000 pages of emails, including 1200 whited-out pages, to journalists to report on instead.¹⁸ Although such cases make the

shortcomings of FOIA most apparent, my interviews with documentarians show that even successful requests can still formatively complicate the labor of independent production.

Classified Logistics and Production Issues

Above all, the use of a FOIA methodology is unpredictable. It can yield revelatory insights into and provide vivid evidence of untold histories or become a discouraging quagmire that derails the momentum of a project. One primary reason for this uncertainty is that the documentarians who pursue this approach come up against the conditions that I call *classified logistics*. The multiple significations of this term point to the institutionalized asymmetries of knowledge and access, and how those asymmetries threaten future formations of critical independent knowledge.

First, the term evokes the secret and classified truths about how police, national security, and military operations are being waged. Martin van Creveld has argued that “logistics make up as much as nine tenths of the business of war,” while Deborah Cowen has observed that logistics are “deeply tied to the organization of violence.”¹⁹ Trying to elucidate the hidden layers of DoD operations, Trevor Paglen also noted that the U.S. annually spends over \$50 billion “to fund a secret world of classified military and intelligence activities, a world of secret airplanes and unacknowledged spacecraft, ‘black’ military units and covert prisons, a secret geography that military and intelligence insiders call the ‘black world.’”²⁰ The first FOIA exemption fosters this culture of governmental secrecy by enabling officers to withhold or redact any information they interpret as intending to protect national security. The excessive use of top-level classifications and redactions has also kept otherwise responsive documents out of requesters’ reach for decades. Yet, for documentarians trying to

broach sensitive issues, their progress often depends on identifying and retrieving exactly these kinds of elusive records.

At another level, classified logistics refers to the coordinated processes that manage the flows of sensitive records. It invokes the bureaucratic infrastructures, communication technologies, FOIA offices, and administrative policies that undergird intricate systems of information access and classification. In FY 2016, there were over 4,000 full-time FOIA staffers and an estimated total \$514.6 million was spent on FOIA operations.²¹ Agencies and departments collectively received a record-high 788,769 requests, with the DHS receiving 325,780 of these.²² In the same time period, there were 2,215 original classification authorities (OCAs), or original classifiers, who had the power to designate documents as classified.²³ Agencies also reported over 39,000 original classification decisions and over 55 million derivative classification decisions during that time.²⁴ The size of these contending systems suggest the power and influence of U.S. bureaucracy, as well as the complexities of navigating its various components.

Thus, my use of classified logistics further seeks to acknowledge the difficulties of extracting sensitive records, especially those pertaining to national security. The internal logistics of the FOIA process can themselves be opaque, inconsistent, and confusing for outsiders and beginners. As Max Weber observed in 1922, “Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of ‘secret sessions’: in so far as it can, it hides its knowledge and action from criticism.”²⁵ For him, the implementation of bureaucracy has driven the invention of the “official secret.”²⁶ Thus, when officers use exemptions to justify redactions or denials, it is not easy to assess the validity of

these claims. Likewise, when several agencies give very different responses to the same request, it indicates that the mechanisms of disclosure depend on many variable, but not necessarily legible, factors. Knowledgeable parties like lawyers, FOIA experts, and experienced documentarians can help demystify and optimize the process for newer requesters. However, even going through the proper channels is no guarantee of success, because classified logistics, like the logistics of war, adapt over time. They inherently rely on maintaining secrecy and deploying strategic obfuscation, which only complicates the challenges for requesters.

Timing issues

Often, the most daunting task is receiving the desired FOIA documents from agencies. Depending on their level of sensitivity and their centrality to the project, the maneuvering of this process can substantially hinder filmmakers' work. Despite the cursory requirement of a response in twenty business days, the realities of disclosure are far more unwieldy and haphazard. In the most egregious cases, requesters have been forced to wait over a decade or even two decades to obtain documents.²⁷ The uncertainty around timing can delay production schedules, prompt the unexpected adoption of alternative methods, or even cause the abandonment of projects. Because independent documentarians already face many other issues of timing, this bureaucratic hindrance can especially impact this group of requesters.

The delays and denials of FOIA did alter the trajectory of Assia Boundaoui's production, which addresses a secret FBI investigation of her hometown of Bridgeview, Illinois. She noted, "It totally dictates the timeline. You're just waiting."²⁸ At first, her

workaround was to start filming the testimonies of members of the predominantly Muslim community that the agency targeted without evidence for over a decade. However, to juxtapose their experiences with official accounts, she needed to request all the documents pertaining to the investigation, Operation Vulgar Betrayal (OVV), and its related operations. She also asked her family members and neighbors to sign Privacy Act (PA) waivers, so that she could request the files that mention them by name.²⁹ After eight months of receiving the so-called Glomar response—“we can neither confirm nor deny the existence of this record”—or denials based on national security, a FOIA officer finally informed her that there were 33,120 pages of responsive documents.³⁰ Boundaoui was also told that it would take the agency over three years to process the pages, with no guarantee that she would receive anything after that time.³¹ Viewing this elongated timetable as unreasonable, she retained lawyers and sued the FBI. She said, “It’s so frustrating. But you know what? They have no idea. I don’t care. I’m super stubborn too. I’ll litigate this for the next 35 years if that’s how long it takes. So you just have to be really persistent. That’s the only thing. It’s the long game. It is a looonng game.”³²

The prospect of gathering FOIA materials also became the foremost challenge for Nina Gilden Seavey. After working on *My Fugitive* on and off for thirty years, she decided that she needed agency records to proceed with the project. Initially, she directed her requests about domestic surveillance and subversion programs to the FBI, but the scope of the inquiry grew to encompass the CIA, Department of the Army, and National Archives and Records Administration (NARA).³³ She also requested files about her late father, Louis Gilden, the civil rights attorney who represented the film’s primary subject, antiwar activist and eventual fugitive Howard Mechanic. In addition, she requested records related to 27 living and 58

deceased individuals, 75 organizations, and 12 government programs.³⁴ Growing to 386 separate requests, her action was classified as a “Behemoth request” and may have become the largest in FOIA history.³⁵ Yet, the agencies either did not respond to the requests and appeals or, as in the case of NARA, cited a four-year processing delay. Even when the FBI did relent to release documents, it would only agree to a rate of 500 pages a month. Seavey noted, “Well, if I have 150,000 pages, it’s going to take them 60 years. . . . I’m not that young and I’m not going to be alive when they finally got around to finishing it up. So we sued for 5000 pages a month.”³⁶ Like Boundaoui, she saw legal recourse as the best way to obtain the records in a timely manner.

The uncertainties of FOIA has prompted some directors to seek workarounds. Jac Gares used Minnesota’s FOI state law to request all the materials in CeCe McDonald’s legal case, including audio and video recordings, photographs, and police reports. However, when the information was not forthcoming, she asked McDonald’s lawyers to supply her with the documents that they had obtained through motions of discovery.³⁷ She also continued to press the Minneapolis Police Department (MPD) for a response. Nonetheless, after a year into the requesting process, she stated, “I really didn’t get any movement on it until I had gotten the okay from Michael Friedman, from the Hennepin County Prosecutor’s Office.”³⁸ After Friedman, who was familiar with Gares’ work in public television, vouched for her, she received everything she had requested except a recording of the 911 call. This procedural shortcut shows how personal relationships and reputations can influence the timing of disclosures, but also suggests the potential for favoritism and discrimination against less established or esteemed requesters.

To compensate for bureaucratic inefficiencies, Marshall Curry also adjusted his tactics during the making of *If A Tree Falls*. He first enlisted a pro bono lawyer to request video files, audio files, and any other materials related to environmental activist Daniel McGowan’s case. When FOIA officers denied that attempt, the lawyer appealed “but they rejected our request again. At that point, we were in the edit of the film and running out of time because this had gone on for months and months.”³⁹ He then restricted his request to the hidden wire recordings the DoJ took of Earth Liberation Front members. Because Curry had heard the recordings played in court and McGowan’s lawyer had provided him with written transcripts of the tapes, “we thought they would be very easy to get.”⁴⁰ However, when the request was again rebuffed on the basis of confidentiality, production deadlines led the director to sidestep FOIA. Instead, he approached the prosecutor, who he had been interviewing for the film, and said, “These things are not secret. Can you just get them for me?”⁴¹ In addition to sending the audio files that had been played in court, the prosecutor sent his team’s PowerPoint presentations, which contained video clips and photographs to

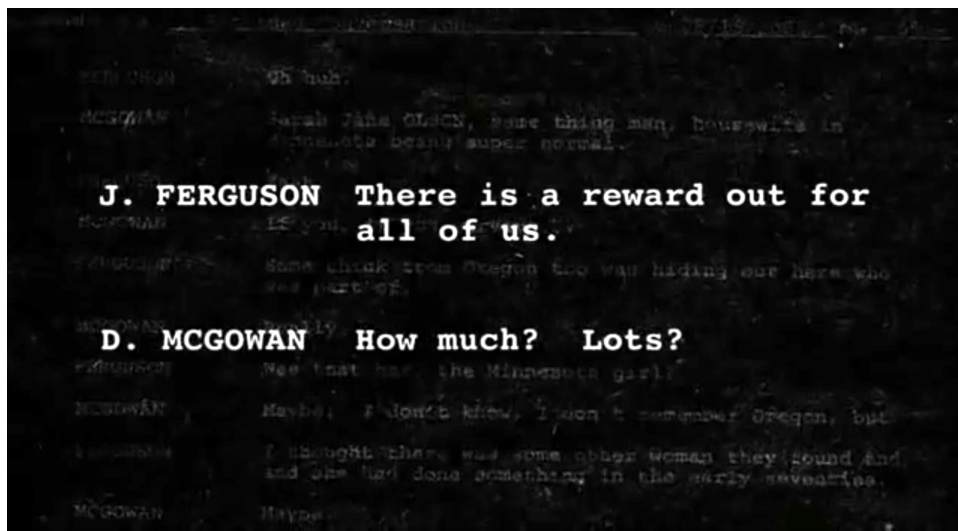


Figure 21. The audio recording and transcript in *If A Tree Falls*, neither of which was retrieved through FOIA

which Curry had not had access. He concluded, “In the end, FOIA was useless. It did not accomplish anything. Everything we got was because of this prosecutor who thought we were decent and asked on our behalf . . . It seems like there should be a fairer system than having to navigate a personal relationship.”⁴²

Another tactic that documentarians have used to circumvent classified logistics is drawing on already-disclosed archives. Although employing publicly released documents can dampen the exclusivity of a film’s intervention, it alleviates the need to wait an indeterminate period to receive an indefinite set of records. For Sonia Kennebeck, finding FOIA-disclosed materials on the ACLU’s website shaped her methodological approach. The organization had posted a radio traffic transcript of a U.S. drone crew that carried out a fatal attack in the Uruzgan province of Afghanistan, as well as the medical records of the attack’s victims and survivors. This digital archive contained almost 2000 scanned pages in PDF form, which she downloaded and printed. She said, “That actually was the starting point for me, because I decided to try and find these victims and survivors, these families. I tried to extract as much information as possible from those files, and I worked with researchers in Afghanistan on the ground trying to pass as much specific information as possible to find the families and see if they wanted to be interviewed.”⁴³ When Kennebeck made FOIA requests for the same files from various agencies, the irregularities of this method became apparent. While some offices responded quickly, others took much longer or never responded. She also tried to obtain audio and video recordings of the Uruzgan drone strike, but officers rejected these requests on the grounds of national security, privacy, or an inability to locate the files.⁴⁴

Similarly, Johanna Hamilton drew on an existing FOIA archive as a measure of expedience. She relied on *Washington Post* reporter Betty Medsger’s collection of FBI

documents as a starting point. Because the agency's investigation into the Citizens' Committee to Investigate the FBI had been one of the largest in FBI history, the sprawling archive was 33,698 pages long. Hamilton noted, "I had this wealth of material from Betty that was immensely helpful that was at my disposal. I was also very conscious that there were these finite periods of time that we had and I was very conscious of the sheer amount of time it takes to obtain these documents. Oftentimes, it takes years."⁴⁵ Because these materials were not otherwise publicly available, Medsger, who used them as a basis for her 2014 book *The Burglary: The Discovery of J. Edgar Hoover's Secret FBI*, and Hamilton were not racing others to break a story. In this sense, the exclusivity of redacted publics (see Chapter 1) does have a potential benefit. It allows actors like journalists, documentarians, and scholars to take more time with the materials they receive, which ideally produces stories of greater depth and consideration.

Legal issues

Although "FOIA is intended to work without court intervention," documentarians sometimes take legal action to contest redacted documents, delays, or denials.⁴⁶ Such a step may seem daunting for those without legal experience or who fear taking on the additional costs of legal representation. It may also inadvertently further prolong the lifespan of a project, as backlogged courts or unanticipated legal developments can substantially slow the pace of rulings. Staying informed about and participating in the various stages of adjudication also add other logistical elements that filmmakers must factor into their already busy schedules. Yet, several of the filmmakers framed a lawsuit as an increasingly important

step of the FOIA process. Without judicial involvement, receiving the documents they needed in a timely matter would have been impossible.

After the FBI cited over three years of processing time and rejected her appeal for expedited processing, Boundaoui viewed a lawsuit as the next step. She found a law firm that agreed to represent her pro bono and coordinated with civil rights attorney Christina Abraham. However, as Judge Thomas Durkin was about to rule on the FBI's proposal to disclose only 500 documents a month, the attorneys representing the FBI and DoJ filed an emergency Open America stay. Using burdensome FOIA backlogs as a justification, the stay would have granted the agency as much time as they needed to process the documents without a judge being able to intercede. The state attorneys also questioned whether Boundaoui's project was actually serving the public interest. She stated, "They really tried to disparage me at one point. 'Well, she's basically making a personal home video thing.' . . . They compared it to a case where somebody sued for a Princess Diana video and the judge was outraged by that. [He said,] 'This is terrorism. That's not the same.'"⁴⁷ In addition, she noted that "they tried to question my credibility as a journalist as one of the ways to get out of having to expedite this."⁴⁸

Like a FOIA officer, a judge's individual subjective interpretation is informed by existing guidelines and prior precedents, and can have repercussions on future decisions. In this case, Durkin's strong ruling affirmed the importance of documentarians and journalists' contributions. First, he overturned the Open America stay and instead ordered the FBI to start turning over 3000 documents a month. Furthermore, he ruled that Boundaoui deserved expedited processing, which granted her subsequent requests privileged status. She described that ability as a "really powerful weapon" that motivated her to request more information and

receive it more quickly.⁴⁹ To ensure compliance, Durkin also ordered both sides to file monthly reports that documented how closely the FBI was adhering to the ruling. As the agency has begun to release documents, Boundaoui has used these reports to challenge what she saw as further attempts to flout the spirit of FOIA. So far, she has objected to the many “superfluous” redactions and the FBI’s claim that it lost a third of its files about Operation Vulgar Betrayal.⁵⁰ Boundaoui said that the latter statement was “just utter bullshit. Because I see in the files that I have that multiple other agencies have copies and multiple other field offices, besides Chicago, have copies, including the U.S. Attorney’s Office. So have they gone and requested them from other agencies?”⁵¹ Despite these frustrations, the ability to seek judicial accountability has given her considerable advantages over other requesters.

Reflecting on her FOIA experiences to date, Boundaoui stated:

The truth is if you’re not with a big news organization, if you’re indie, . . . a journalist or an independent filmmaker researching this thing, you will never get expedited processing. That means you will wait three to five years for anything. You will have no right to argue over any redactions. You’re just going to have to take what they give you and be happy with it. If they stop giving you something, you just have to wait.⁵²

She emphasized that filing a lawsuit is currently the only way for independent researchers to access sensitive or large archives in a reasonable timeframe.

Nina Gilden Seavey’s experiences also uphold the efficacy of filing FOIA lawsuits, even if they do not go to court. Like Boundaoui, the government’s extensive delays and

failures to respond stymied her progress. Unlike more secretive agencies, Seavey attributed NARA's four-year processing estimate not to a deliberate desire to obfuscate, but the overtasked agency's inability to review the materials faster. She said, "[W]e're sorry you're underfunded, but you need to go to Congress and get more money. It's not our problem. . . . Our problem is that we need the documents."⁵³ Based on the pending lawsuits, her attorney, Jeffrey Light, was able to negotiate settlements with the CIA and NARA. The former agency stated that Congress had mandated the destruction of its relevant documents in 1978, and had no materials to turn over. The latter agency signed an agreement that stipulated a staggered release that commenced immediately and is scheduled to last until 2041.⁵⁴ Seavey said, "Once we sued them, they knew they had no choice. . . . [W]e got moved to the front of the queue. I understand that's not fair, but honestly, everybody needs to sue them."⁵⁵ However, the threat of a suit was not sufficient to pressure the FBI into renegotiating its terms. Her lawsuit against the agency remains in progress, but Judge Gladys Kessler has issued rulings strongly in support of *My Fugitive* thus far. Kessler declared, "The agency's desire for administrative convenience is simply not a valid justification for telling Professor Seavey that she must wait decades for the documents she needs to complete her work."⁵⁶ She too affirmed the vital role that independent documentary film plays in public knowledge formation and recognized the need to efficiently access government files. As such, this case shows how rulings can both establish strong judicial precedents and illuminate some of the inner workings of classified logistics.

Economic issues

In addition, being an independent documentarian is already financially difficult and requires taking economic risks. In a 2016 “The State of the Documentary Field” report that surveyed 580 documentary film professionals, 40% of respondents said that their most pressing challenge was acquiring funding, while 28% said that it was sustaining a career.⁵⁷ Related to those concerns, 78% reported that they could not make their primary living from their documentary work, with 36% earning no salary and 30% earning less than half of their salary from their most recent projects.⁵⁸ Thus, bringing a film to fruition may involve taking loans, cutting into personal savings, or going into debt. As filmmakers seek out funding methods like grants, institutional partnerships, or crowdsourcing, limited economic resources can narrow a project’s timeline and scope. Taking on additional costs to pay for a sizable FOIA release can also add a steep, unanticipated expenditure to the budget and necessitate cutting other production costs. Conversely, filmmakers’ inability to extract and show off noteworthy documents can limit the viability of their pitches to funders and further curtail their financial resources.

Frequently, the economics of FOIA centers on a requester’s fee status. Though submitting a request carries no initial costs, the fee category determines how much a requester will pay for the search, review, and reproduction of files. The most expensive category is for commercial use, while educational and non-commercial scientific institutions and news media representatives receive reduced rates. In addition, the legislative guidelines offer opportunities for fee waivers when “a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily

in the commercial interest of the requester.”⁵⁹ However, the subjective standards for what constitutes public interest or a significant contribution can become pivotal topics of debate.

For instance, the size of Seavey’s behemoth request made her claim of a fee waiver essential to realizing her project. Despite the educational and investigatory aspects of *My Fugitive*, she said that “the government made the contention that the documents I was requesting would not fall under the fee waiver, because it wasn’t going to add to the public’s knowledge about anything. Obviously . . . I felt differently, and we had to go about proving that was not the case.”⁶⁰ Without the waiver, Seavey would have faced about \$30,000 in FOIA expenses. Noting that almost no independent filmmaker could absorb such costs, she suggested that denying waivers was one institutional strategy to effectively deny approved requests.⁶¹ In pursuit of a fairer precedent, Seavey also decided to litigate this issue in court. In her opinion, Kessler ruled that “Professor Seavey certainly meets [the requirement of enhancing public understanding]. She has presented a clear and totally persuasive argument that the materials she seeks will enable her to present to the public the distinct experience of student activists and their interactions with the local law enforcement bodies.”⁶² Kessler granted her a full fee waiver, a “highly unusual” sign of support that acknowledged how prohibitive the costs of FOIA can otherwise become.⁶³

Technical Issues

In addition, bureaucratic and technical complications can exacerbate problems with FOIA. One major difficulty Boundaoui faced was the FBI’s unwieldy system of organization. Even after she submitted a collection of signed privacy waivers, the agency has not released any files on the named individuals. She argued that the problem lies with the limited ways

that FOIA officers search their digital archives.⁶⁴ She noted that the officers reject requests if they cannot find the searched names in sub-file titles, even though sub-files do not have individuals' names in the titles. Instead, they typically have titles based on practices such as "Physical Surveillance" or "Telephone Monitoring."⁶⁵ Based on his own exasperating experiences with FBI searches, FOIA activist Ryan Shapiro asserted, "One of the chief means by which the FBI maintains its functional immunity from the Freedom of Information Act is its utilization of deliberately deficient FOIA search protocols."⁶⁶ He referred to these as 'Failure By Design' protocols.⁶⁷ As further evidence of classified logistics in practice, Boundaoui pointed to the FBI's unwillingness to turn over any records about the reopened investigation. Even though the investigation and identifying number remained the same, the dropping of the Operation Vulgar Betrayal moniker was enough of a basis on which to deny access to the later files. However, she planned to pursue litigating this aspect of the denial in court.⁶⁸

Incongruities between media formats can also create time-consuming complications for filmmakers. Jac Gares received the digital files she requested on a thumb drive, but the proprietary video format of the Minneapolis police footage required "a really, really roundabout, convoluted process" of file conversion.⁶⁹ Even when the production team found a way to export the moving images into a usable format, it had to extract the audio separately and edit it back in. These additional steps help demonstrate the ongoing dilemmas over what constitutes public access. It raises questions of what kinds of work an agency should legally be responsible for performing, what counts as meaningfully accessible information, and how FOIA depends on requesters of less typical formats to employ advanced digital skills.



Figure 22. Surveillance video of McDonald in police custody

Processing issues

Even if the documentarians successfully retrieve the requested documents, they face another daunting production task: sorting through the materials in a timely manner.

Classified logistics can confound this work as well, as obstructions like disorganized files, copious redactions, technical language, or immense page counts are not always evident in advance. Thus, in addition to acquiring new forms of legal, bureaucratic, and technical knowledge, filmmakers working with FOIA disclosures may also need to develop skills related to library science and archiving.

During the making of *The Feeling of Being Watched*, Boundaoui and her attorney, Christina Abraham, served as the primary researchers. They first took on the tedious task of arranging the temporally scattered documents into chronological order. Next, they went through each stack of files by year and noted any important findings. After they double-checked each other's work, an assistant digitized the notes. Because new batches of disclosures are still arriving, their processing will continue over the next years. Despite



Figure 23. Boundaoui and Abraham sorting through FOIA documents in *The Feeling of Being Watched*

the time and meticulous effort this labor requires, Boundaoui said, “We keep learning things—new tactics that the FBI used, more information about what other agencies were copying [its practices] . . . It’s something that would be hard to totally delegate, because I’m very personally interested in these records.”⁷⁰

Johanna Hamilton and her associate producer also worked intermittently over three to four months to sort through Medsger’s archive. In their case, the staggered workflow was the result of an abundance of files. Hamilton said, “It was overwhelming at times what we had to pick and choose from. I spent many hours in Betty’s apartment combing through [the papers]—she has an entire closet that is filled with these FOIA documents.”⁷¹ Hamilton also had access to the thousands of pages that Bill Davidon, the de facto leader of the Citizens’ Commission, received when he submitted a request with the FBI. In part, his file showed that the agency had wiretapped his phone and had amassed hundreds of pages that transcribed his conversations. Thus, the sheer size of materials presented both an array of valuable information and major logistical challenges. However, as Medsger’s acknowledgments

section in *The Burglary* attests, the director and author's collaboration also reciprocally facilitated their workflows. Medsger's descriptions of Hamilton as a "great colleague" and their working relationship as "creative, dynamic and mutually supportive" emphasize that working with FOIA, like filmmaking and book writing, is always a collective effort that builds upon others' labor.⁷²

Gaining access to graphic or painful media can create other challenges for documentarians. For instance, Jac Gares received formats like surveillance video and photographs that showed the violent fight involving McDonald and its bloody aftermath. She also received audio recordings of police interviews with some of the perpetrators. Because she had been working closely with her subject, reviewing such visceral records had a strong affective impact on her production team. She described hearing the voices of people she had read about as "chilling" and "so emotional for us to listen to."⁷³ She said, "[Y]ou have no idea how long it's going to take you to process the material. It's emotionally gut-wrenching on all levels, for everybody involved. You feel for everybody who saw this, who experienced this, especially for the people [whose lives you are documenting]."⁷⁴ Gares' comment connects the logistical processing of files to the affective processing that researchers must undergo. In both cases, it can be difficult to predict how long these processes will take. Even with a clear plan, both the excesses of emotional bonds and of bureaucratic archives can become unexpectedly intense and messy. Their intermingling can also further complicate the boundaries between professional obligations, personal feelings, and ethical commitments.

What FOIA enables

Still, filmmakers' struggles to extract documents through FOIA persist, because of how revelatory these records can be. This newfound access can provide all kinds of crucial government information and invaluable primary source materials. The information can confirm or contradict directors' impressions of their topics and add previously unconsidered nuances to their thinking. Depending on the stage of production, disclosures can become the impetus for making a project, shift the film's aesthetic and discursive techniques, or even dramatically alter the course of the onscreen narrative.

For Boundaoui, receiving the FBI files became one effective way of corroborating her sources' verbal accounts. Throughout her interviews, she noticed that the Bridgeview residents referenced Immigration and Naturalization Service (INS) agents working alongside FBI agents. She believed that the agency used the presence of INS in a community largely composed of immigrants "as a kind of blackmail. If your papers are not in order, then you feel compelled to have to talk to them or work as an informant."⁷⁵ Among the disclosures, she did locate "documents that suggest that [the FBI] did exactly that" with plentiful mentions of INS, references to specific INS agents accompanying FBI agents on neighborhood visits, and the copying of the immigration agency on electronic communications.⁷⁶

In addition, the massive archive helped her comprehend the multiple scales of OVB. It demonstrated the high level of agency coordination, with 41 out of 56 FBI field offices involved in the investigation at some level, and the many grand jury subpoenas that state prosecutors had issued. Yet, the records also indicated that this covert operation was "so much bigger than just Bridgeview" and how it informed other investigations.⁷⁷ Boundaoui noted, "You see how much these things build on each other, and how it accelerated after

9/11.”⁷⁸ Thus, like the aerial surveillance videos I discussed in Chapter 2, her recovery of these FOIA materials became a basis for situating one operation within broader histories of racialized government surveillance.

Befitting this goal, Boundaoui also took inspiration from earlier archives of FOIA materials. She examined the disclosed FBI files about COINTELPRO, which bears obvious historical resonances with OVB. Given the passage of decades, these older files are now available in unredacted form in contrast to Boundaoui’s own heavily redacted files. She said, “It’s amazing to see a page without redactions. It gets so frustrating after a while to [look at them]. Even reading between the lines, there are so many conclusions that we’ve been able to come to.” Most significantly, the motives behind the earlier surveillance program suggest a comparable rationale for OVB, whose stated justifications remain concealed in the documents. Rather than focusing on investigating a specific crime, the FBI in both cases seemed more intent on disrupting the mobilization of minority communities and sowing paranoia and mistrust among individuals in these networks. Through methods like planting suspicious cars and obvious observers, it refers to this strategy as ‘rattling the cage.’⁷⁹ Tellingly, this term evokes histories of incarceration and detention and the animalistic dehumanization of targets. Furthermore, this practice shows how the agency combines overt markers of surveillance and the unconfirmed possibility of secret monitoring to chill activism and dissent.

In building her documentary profile of McDonald, Gares also saw FOI laws as a vital mechanism for extracting unseen materials. Because her subject did not stand trial, much of the information she requested was not public and had not received coverage in news reports. The variety of materials she received helped fill in missing pieces of the narrative and

provided evidence of how the disputed events around the altercation unfolded. Following the earlier discussion of emotional processing, the brutality of the records also impacted the tone of the film. Gares observed that accessing the disclosures made the documentary more serious and more about fear.⁸⁰ She decided to integrate police photos of McDonald after the attack, because she felt that these images recreated the scene in a more visceral way.⁸¹ She also wanted viewers to become witnesses by proxy and to grasp the effects of the attack perpetrated on McDonald.⁸² At the same time, the records provided new opportunities to showcase McDonald's humanity amid dire circumstances. Gares included excerpts of a police surveillance video of McDonald laughing even while she was shackled in custody, because it's "deep visuals like that that make the film so powerful."⁸³ In addition, the use of this clip presented a way to reappropriate an official perspective and resituate it in a critical new context.

Accessing official perspectives was also a concern for Kennebeck and her exposé of drone warfare. She noted that FOIA enabled documentarians to strengthen their arguments by taking the government's points of view into account. Rather than presenting a one-sided polemic, the inclusion of opposing opinions could create a fuller understanding of complex political issues. In cases like the Uruzgan drone strike in *National Bird*, the presence of military voices also became a way to validate the film's critiques. As U.S. Army Major General Timothy McHale, the investigator of the strike, noted in his condemnatory report, "The tragic loss of life was compounded by a failure of the commands involved to timely [*sic*] report the incident. The strike occurred because the ground force commander lacked a clear understanding of who was in the vehicles. . . . The Captain who was supposed to act as a safety observer stated that there was a 'Top Gun' mentality amongst the Predator crews."⁸⁴

Though skeptics could attempt to smear a critical independent documentarian as being unpatriotic or uninformed, the substantiation of a military investigator helped neutralize this claim.

Moreover, the extensive information in the Uruzgan records became Kennebeck's determining factor for selecting that incident. Again recognizing the heightened scrutiny that national security issues attract, she was seeking a case study that she could carefully verify. She knew that errors or ambiguities in her work could become a way for detractors to more generally discredit the critiques about the drone program.⁸⁵ As a method of ensuring the information she presented was as accurate as possible, she said that "the result of this FOIA request was amazing. It's a very, very important resource."⁸⁶ First, Kennebeck and her production team used the medical records in the files to contact the Afghan survivors of the attack. For the subjects willing to appear on camera, she was then able to match their testimonies through the injury reports. Though this process raises several ethical quandaries of a FOIA methodology, such as public records encroaching on victims and survivors' privacy and the well-documented tendency of official reports to underrepresent injuries and deaths, Kennebeck sought to foreground the Afghan voices respectfully. She did not uphold the official records as definitive or infallible, but rather triangulated them to affirm the validity of survivors' claims.

Techniques of remediation

Once filmmakers have obtained and processed the FOIA records, they must then decide how this archive will inform their film texts. This process includes making aesthetic choices such as how and when to feature the documents onscreen (if at all) and what kinds of

audiovisual techniques could supplement the documents. Bill Nichols has also pointed out the need to frame the information within an argument, writing, “Factual documentation serves as evidence, but evidence *of what* becomes a fundamental question.”⁸⁷ Thus, rather than relying on these primary source materials to stand as an apparent, self-evident truth, the documentarians must determine the narrative and discursive contexts into which they will place these records. Particularly in the case of paper files, as the following examples involve, there is the added challenge of making the older media format of the page feel engaging to film audiences.

For Boundaoui, the FOIA documents she retrieved manifest in her film in several ways. One visual method she used was to film her neighbors talking and then freeze their images into grainy black-and-white stills that evoke surveillance photography. Over these images, she superimposed the observations that FBI agents had registered about these people. This technique suggests how surveillance turns the people in the neighborhood into suspects, and how the monochromatic accounting of a file fails to capture their humanity. Even more formatively, because the records took Boundaoui so long to extract, “the process of trying to get the truth” grew into the main narrative arc of the project.⁸⁸ With the director doubling as the central subject, *The Feeling of Being Watched* documents Boundaoui traversing the various stages of FOIA. This includes her finding the existing disclosures about OVB, making her own requests, rallying neighbors to sign privacy waivers, and receiving letters from the agency’s FOIA office. It also features her going to court multiple times to negotiate better terms, receiving the first production of documents, processing its contents with Abraham, and sharing their findings with the community. In one powerful scene, she also shows her family members the documents the FBI created about them. Because Boundaoui

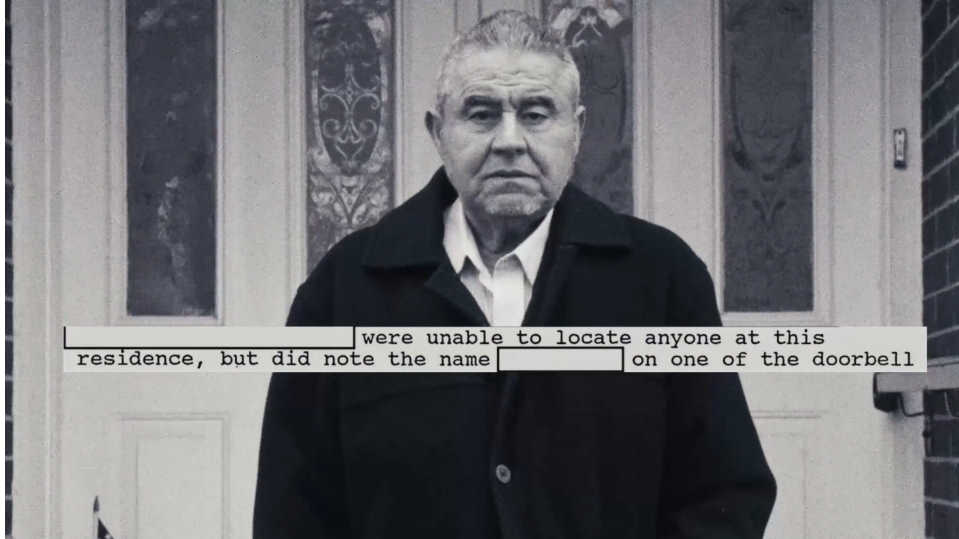


Figure 24. A neighbor and an excerpt of the FBI file about him



Figure 25. Boundaoui showing FBI files to her family members

will continue to receive files even after the film's premiere in 2018, the narrative ends on a tentative note "and coming to some conclusion based on what we have."⁸⁹ By chronicling her exciting successes and frustrating setbacks throughout the FOIA process, the documentary simultaneously offers viewers insights into the affective toll of uncovering classified logistics.



Figure 26. Boudaoui emoting in response to classified logistics

During the production of *1971*, Hamilton’s aesthetic decisions revolved around making the documents tell a story. Describing the archives of over 33,000 pages as an “embarrassment of riches,” the director had to narrow down the most narratively rich documents to feature.⁹⁰ She then collaborated with motion animator Dave Texan to bring these seemingly static files to life. Texan came up with the idea of retyping some of the records onscreen, as if an FBI agent were composing it in the moment and transmitting it to another field office via telex. In a pursuit of verisimilitude, he conducted research to match the typeface and texture of the paper. The animation also zooms in on key lines, lightens some text to draw attention to more relevant passages, and focuses on records’ handwritten marginalia. Hamilton said, “We didn’t want it to be like paint drying. While we all found it fascinating, we were very conscious that a general audience might not and I felt very strongly that I wanted it to appeal to a cross-generational audience.”⁹¹ The reenactment of a record’s creation and transmission emphasizes its nascent states of production and circulation. It also makes the historical documents feel more contemporary, which is fitting for an exposé of a

secret government surveillance operation that still painfully resonates with more recent revelations.

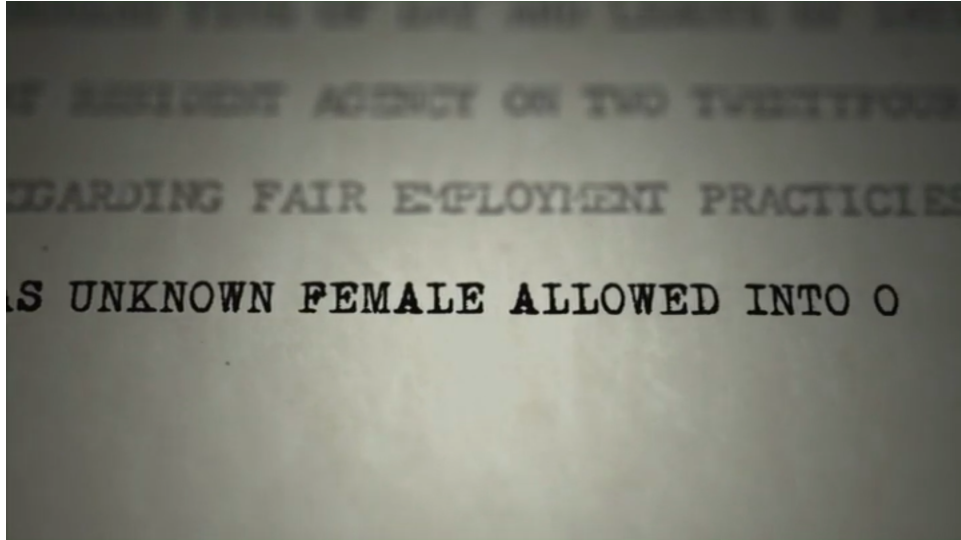


Figure 27. The recreation of typing in 1971

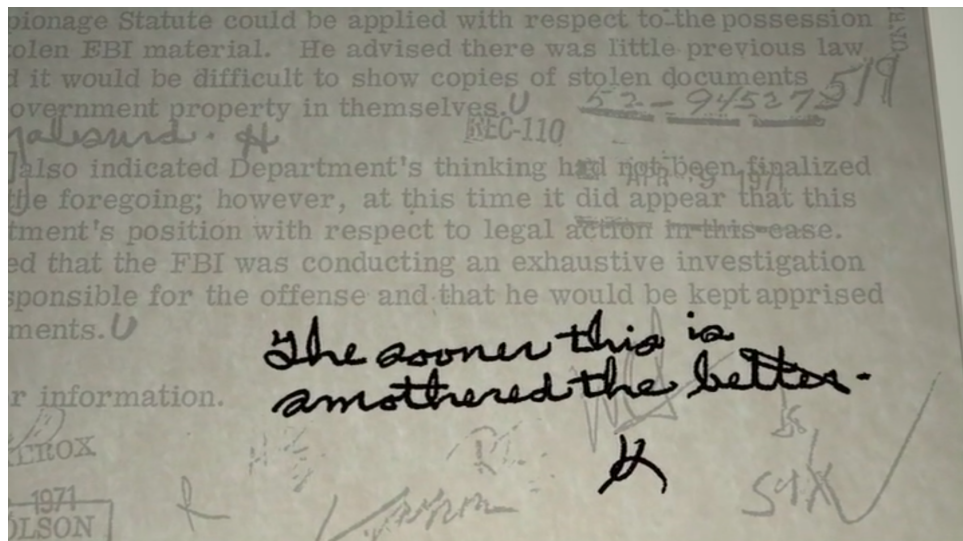


Figure 28. Focusing on J. Edgar Hoover's handwritten note

Like Hamilton, Kennebeck saw reenactment as a primary remediation technique. She used the FOIA disclosures to recreate the Uruzgan drone strike as accurately as possible. The scene was based on a variety of released materials, including the radio traffic transcript,

photographs of the aftermath, screenshots of the actual drone footage, maps, and survivors' testimonies. Kennebeck noted, "I think the video reenactment is as close as it gets to the real thing. At least according to veterans who've seen the film, who've seen thousands of drone videos, they said it looks really realistic."⁹² The production team staged the strike at a sand mine in Brandenburg, Germany, because its desert landscape looked like the site in Afghanistan. The actors resembled the real victims and survivors, and the child actors were the same ages as the real subjects. The cast also wore traditional Afghan clothes, carried prayer carpets, and rode in cars similar to the original vehicles. Kennebeck even hired pyrotechnicians to convincingly simulate the missile explosions. Although the team recreated the attack "to a [level of] detail that you can't even see in the film," their attentiveness reflected the depth of their research and the variety of data in the files.⁹³ It further demonstrated their desire to preclude criticisms of inaccuracy and misinformation.

Discussing such techniques of restaging, Janet Walker has observed, "Reenacted sequences function in documentary film texts much as psychic reenactments function in a traumatic psychic landscape."⁹⁴ She added, "The point is to appreciate the historiographic properties of the reenactment without losing sight of its fictive aspects. Reenactments are powerful not just because they resurrect what was but because they constitute something that is not there."⁹⁵ Though Walker was describing traumatic incidents that were never recorded, the evidentiary gap for Kennebeck is the denial of access to existing digital audio and video recordings. Even if the official audiovisual records had become available, they could still only provide one partial vantage onto the fatal violence of the strike. Thus, by juxtaposing the reenactment and the survivor testimonies, this scene of *National Bird* makes the bereaved families' enduring trauma far more palpable.



Figure 29. A carefully staged reenactment of the drone strike

Due to the ongoing nature of the FBI releases and the enduring threat of racialized government surveillance, Boundaoui also anticipates remediating the documents through forms beyond a theatrically released film. One concept she has pondered is creating a documentary Web series with installments that would chronicle the ramifications of the upcoming disclosures. As of now, she also plans to create a website that will host the documents online. Rather than redacting the formations of publics, this archive would make the resource more widely accessible and enable actors like academics and journalists to build their own forms of knowledge production upon its foundation. The site would also complement her film by enabling other kinds of epistemological and aesthetic capacities. In addition to being a repository for government files, this site would invite “people around the country to share their own stories of surveillance.”⁹⁶ As Boundaoui proposes, “Maybe you have a cluster of a lot of documents in Minneapolis for example, and you have a lot of people’s stories from that place and you know that you have something interesting that’s worth investigating or reporting on. So not just a data dump . . . but featuring people’s stories

side by side, layering the stories on top of the documents and making it a map.”⁹⁷ Such a cross-pollination of files and personal experiences fosters exciting possibilities for counter-mapping vernacular cartographies that challenge official narratives.⁹⁸ Importantly, this choice reinforces the fact that a documentary film is only one version of public knowledge. Though this genre can powerfully bring state abuses to light and expose the violence committed against marginalized groups, it always depends on and contributes to many other documentary media that aim to speak truth to power.

Conclusion

This chapter outlined a brief history of documentarians that have used FOIA and analyzed the legislation’s affordances and shortcomings. It identified some adversities of independent documentary labor and suggested that FOIA can paradoxically intensify these production challenges. Rather than working efficiently to lessen complications for filmmakers, the act can exacerbate the temporal, legal, economic, and technical difficulties they face. Because classified logistics obscure the practices of national security, while also obfuscating the procedural mechanisms through which records of these practices can be retrieved, FOIA is an unpredictable lever of access. Such hurdles of institutional opacity have compelled documentarians to accumulate new forms of practical knowledge. In particular, as lawsuits become an increasingly necessary step to obtain sensitive records, the need to secure legal representation takes on greater urgency. Even when requests are granted, documentarians must then decide how to effectively (and affectively) process the records and engagingly remediate them in the medium of film. Bringing greater scholarly attention to

these stages of production is key to understanding the multifaceted labor of documentary filmmaking.

Furthermore, as this chapter discussed, hurdles like delays, overzealous redactions, and rejections can drastically affect timelines and diminish the scope of important critiques. At the same time, the inadvertent and deliberate shortcomings of FOIA threaten to preclude the emergence of new voices. Discussing her long fight to obtain a behemoth request, Nina Gilden Seavey noted that her reputation and thirty years of filmmaking experience granted her some advantages. She said:

You can only do this sort of thing at a certain phase in your career. A young documentarian making their first or second film, you can't do this. You have to get work out there. I don't feel that pressure anymore. I've made dozens of films. I don't feel the need to have something out there constantly in distribution. So, because the process is so long and arduous, even if you want any document, that can take a couple of years. So you have to do it at a phase in your career when you have the fortitude and you don't have any expectation that this is somehow going to be a fast process. Because it's not.⁹⁹

While Boundaoui's example shows that some early-career documentarians can persevere, others have undoubtedly been unable to realize the projects they envisioned. Yet, just like there is no way to accurately assess how many documentarians have used FOIA as a tool, there is no way to gauge how many have been dissuaded by its frustrating logistical limits. Based on the reluctance to adequately fund and staff FOIA offices and the lack of momentum

for serious overhauls, it seems unlikely that the system's conditions will noticeably improve for requesters soon. Thus, amid these challenges, it is worth imagining the potentialities of the records that will remain undiscovered, the interventions that will remain unmade, and the abuses that will remain unquestioned as a result.

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⁴ Ibid.

⁵ Ibid.

⁶ Margia Kramer, *Essential Documents: The FBI File on Jean Seberg, Part I* (Self-published, 1979) and Margia Kramer, *Essential Documents: The FBI File on Jean Seberg, Part II* (Self-published, 1980).

⁷ Michael Coates-Smith and Garry McGee, *The Films of Jean Seberg* (Jefferson, NC: McFarland & Company, Inc., 2012), 211.

⁸ Margia Kramer, *Andy Warhol et al: The FBI File on Andy Warhol* (Self-published, 1988).

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¹² Span.

¹³ Spiegelman.

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²⁵ Max Weber, “Bureaucracy” in *From Max Weber: Essays in Sociology*, translated and edited by H.H. Gerth and C. Wright Mills (1922; Berkeley and Los Angeles: University of California Press, 1991), 233.

²⁶ Ibid.

²⁷ James Eli Shiffer, “Oldest FOIA requests: 20 years, and still waiting,” *StarTribune*, July 19, 2015, <http://www.startribune.com/oldest-foia-requests-20-years-and-still-waiting/317038511/>.

²⁸ Assia Boundaoui, personal interview, Dec. 2017.

²⁹ Ibid.

³⁰ For information on the incident that prompted the Glomar response, see “Neither Confirm nor Deny,” *Radiolab*, Feb. 12, 2004, <http://www.radiolab.org/story/confirm-nor-deny/>.

³¹ Assia Boundaoui, personal interview.

³² Ibid.

³³ “Fact Sheet for *Seavey v. Department of Justice et al.*,” n.d. Unpublished document provided to author by Nina Gilden Seavey.

³⁴ Ibid.

³⁵ Ibid.

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- ³⁶ Nina Gilden Seavey, personal interview, June 2017.
- ³⁷ Jac Gares, personal interview, May 2017.
- ³⁸ Ibid.
- ³⁹ Marshall Curry, personal interview, June 2017.
- ⁴⁰ Ibid.
- ⁴¹ Ibid.
- ⁴² Ibid.
- ⁴³ Sonia Kennbeck, personal interview, November 2017.
- ⁴⁴ Ibid.
- ⁴⁵ Johanna Hamilton, personal interview, December 2017.
- ⁴⁶ *Landmark Legal Found. v. EPA*, 272 F. Supp. 2d 70 (D.D.C. 2003).
- ⁴⁷ Assia Boundaoui, personal interview.
- ⁴⁸ Ibid.
- ⁴⁹ Ibid.
- ⁵⁰ Ibid.
- ⁵¹ Ibid.
- ⁵² Ibid.
- ⁵³ Nina Gilden Seavey, personal interview.
- ⁵⁴ “Fact Sheet for *Seavey v. Department of Justice et al.*”
- ⁵⁵ Nina Gilden Seavey, personal interview.
- ⁵⁶ *Seavey v. DOJ*, 266 F. Supp. 3d 241 (D.D.C. 2017), 8, https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2015cv1303-67.
- ⁵⁷ Caty Borum Chattoo, “The State of the Documentary Field: 2016 Survey of Documentary Industry Members,” *Center for Media & Social Impact*, 2016, 5, http://cmsimpact.org/wp-content/uploads/2016/09/CMSI-IDA-State-of-the-Documentary-Field-Study_9-26-16-f.pdf.
- ⁵⁸ Ibid.
- ⁵⁹ “FAQ: How much does it cost to make a FOIA request?,” *FOIA.gov*, n.d., <https://www.foia.gov/faq.html#cost>.
- ⁶⁰ Nina Gilden Seavey, personal interview.
- ⁶¹ Ibid.

⁶² *Seavey v. DOJ*, 253 F. Supp. 3d 269 (D.D.C. 2017), 7, https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2015cv1303-59. Emphasis in original removed.

⁶³ Nina Gildea Seavey, personal interview.

⁶⁴ Assia Boundaoui, personal interview.

⁶⁵ Ibid.

⁶⁶ Ryan Shapiro, “Failure By Design: The FBI’s Deliberately Deficient Freedom of Information Act Search Protocols,” unpublished, 2018, 2.

⁶⁷ Ibid., 1.

⁶⁸ Assia Boundaoui, personal interview.

⁶⁹ Jac Gares, personal interview.

⁷⁰ Assia Boundaoui, personal interview.

⁷¹ Johanna Hamilton, personal interview.

⁷² Betty Medsger, *The Burglary: The Discovery of J. Edgar Hoover’s Secret FBI* (New York: Vintage Books, 2014), 556.

⁷³ Jac Gares, personal interview.

⁷⁴ Ibid.

⁷⁵ Assia Boundaoui, personal interview.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Jac Gares, personal interview.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Timothy P. McHale, Memorandum for Commander, United States Force-Afghanistan/International Security Assistance Force, Afghanistan, *Department of Defense*, April 3, 2010.

⁸⁵ Sonia Kennebeck, personal interview.

⁸⁶ Ibid.

⁸⁷ Bill Nichols, *Representing Reality* (Bloomington, IN: Indiana University Press, 1991), 117. Emphasis in original.

⁸⁸ Assia Boundaoui, personal interview.

⁸⁹ Ibid.

⁹⁰ Johanna Hamilton, personal interview.

⁹¹ Ibid.

⁹² Sonia Kennebeck, personal interview.

⁹³ Ibid.

⁹⁴ Janet Walker, *Trauma Cinema: Documenting Incest and the Holocaust* (University of California Press: Berkeley, Los Angeles, and London, 2005), 110.

⁹⁵ Ibid.

⁹⁶ Assia Boundaoui, personal interview.

⁹⁷ Ibid.

⁹⁸ For more on the notion of counter-mapping, see, for example, Nancy Lee Peluso, “Whose Woods are These? Counter-Mapping Forest Territories in Kalimantan, Indonesia,” *Antipode* 27.4 (1995): 383–406.

⁹⁹ Nina Gilden Seavey, personal interview.

Chapter 4
**Troubling Histories: Risky Productions,
Counter-Surveillance Tactics, and Censibilities**

“For now, know that every border you cross, every purchase you make, every call you dial, every cell phone tower you pass, friend you keep, article you write, site you visit, subject line you type, and packet you route is in the hands of a system whose reach is unlimited but whose safeguards are not,” director Laura Poitras states in the opening minutes of her 2014 documentary *Citizenfour*. She is reading one of the first messages she received from the film’s principal subject, National Security Agency (NSA) whistleblower Edward Snowden. Paired with her voiceover, a montage of three government documents appear onscreen. Visually corroborating the heightened scrutiny, these incident logs reveal a few of the dozens of occasions on which U.S. border agents detained and searched Poitras in transit.

The documents, each of which are redacted to varying degrees, are part of a small set the government initially released to the documentarian through FOIA. After her requests for additional records were ignored or denied, she sued the DoJ, DHS, and Office of the Director of National Intelligence (ODNI) in 2015 and finally received more than 900 pages of responsive documents.¹ In part, these disclosures show that the FBI had investigated Poitras, subpoenaed her records from numerous sources, and convened a classified grand jury to look into filing conspiracy charges against her.²

By reappropriating FOIA materials in her work, Poitras has publicized the enhanced security measures that she routinely faced for six years, including during the making of this documentary. As such, the film becomes a meta-document that communicates its own fraught processes of production. It both recorded the conditions of life in a state of pervasive surveillance amid the GWOT and is a record produced by and in response to these distressing

conditions. Consequently, this reflexive focus on production provides a significant interpretive lens through which to view the Academy Award-winning *Citizenfour*, her prior War on Terror documentary *The Oath* (2010), and other projects Poitras has made under scrutiny.

Yet, Poitras is only one filmmaker who has chronicled state surveillance while under state surveillance. An antecedent that merits renewed analysis is Emile de Antonio, director of the Joseph McCarthy exposé *Point of Order!* (1964) and anti-Vietnam War essay film *In the Year of the Pig* (1968). In 1975, de Antonio initiated work on *Underground* (1976), a documentary about the radical leftist organization the Weather Underground. Foreshadowing Poitras and Snowden's motives, de Antonio and his creative collaborators, cinematographer Haskell Wexler and sound recordist/editor Mary Lampson, risked their personal safety to expose wartime abuses and refute official narratives. They filmed five fugitive members of the organization at a secret location, as these dissidents decried U.S. policies on civil rights and the Vietnam War.

This chapter will first historicize de Antonio and Poitras' production processes primarily through the FOIA files about them. This approach will elaborate on the variety of challenges that can threaten and obstruct critical documentary filmmaking in the United States. Namely, it will investigate how the acts of recording, disseminating, and archiving information about governmental surveillance have jeopardized the security of documentarians and their documents. (Another vital entry point would be to consider how documentary subjects are vulnerable to enhanced monitoring and blowback, and how this danger can be seen through FOIA records. However, that topic demands an exploration that falls outside of my purview here.) As these histories will also demonstrate, Poitras and her

predecessors devised counter-surveillance tactics to partially offset the targeting procedures. By recuperating and remediating official records, they were able to create responsive works that publicized the campaigns against them. Simultaneously, this discussion will expand thinking about the roles that the state plays as an agent in the documentary production process—as a catalyst, a hindrance, and even an unexpected archivist of dissident production practices.

Next, this chapter will re-view the filmic records of *Underground* and *Citizenfour* in relation to these production practices. This approach builds on Lisa Parks' observation that the latter film simultaneously “exposes state-led mass surveillance programs” and “just as significantly models how to make a documentary on a politically volatile topic in the face of programs of intensified state monitoring, detentions, and interceptions.”³ It will argue that analyzing the formal and aesthetic qualities these film texts archive (or fail to index) more fully recognizes the perilous states, affective qualities, and logistical limitations through which the filmmakers created and preserved them. Along these lines, I will also discuss how these texts make the pressures of censorship perceptible to multiple senses through the idea of *consibilities*. By materializing the presence of such lacunae, the films, like FOIA documents, signal the gaps and uncertainties inherent in all arrangements of information. Thus, as they partially reveal the truths of troubling histories, these forms also trouble the authority of official historiography.

Re-viewing the risks to documentarians

Throughout the lineage of documentary cinema, filmmakers and their crews have confronted risks to collect, arrange, and disseminate audiovisual evidence. Most prominently, this includes venturing into war zones to capture combat footage and facing threats like

kidnapping, injury, and death. One such example is *Restrepo* (2010) co-director and conflict photographer Tim Hetherington, who was killed while documenting the Libyan civil war in 2011.⁴ Though less recognized than conflict documentary, the exposure of governmental abuses, collaboration with dissidents, and disclosure of surveillance mechanisms can also endanger the individuals behind the camera. Moreover, state surveillance is typically secret and impossible to demarcate, and can endure long after the production process is complete.

For Emile de Antonio, the threats of federal monitoring formatively shaped the production of *Underground*. During the three days of filming, he, Lampson, and Wexler undertook extraordinary measures to avoid detection. To meet his subjects at a California safehouse, de Antonio drove down dead-end streets to check for tailing vehicles, used secret rendezvous points, and deployed code names for telephone conversations.⁵ Yet, despite these efforts, the FBI still became aware of the project and both conspicuously and covertly initiated surveillance of the filmmakers.

To discover the extent of the scrutiny he and his team were placed under, de Antonio filed copious FOIA requests. Frustrated by what he viewed as obstructive efforts, he repeatedly sued the agencies and sent contentious correspondences to government officials. In 1979, he wrote to the director of the U.S. Department of Justice's Office of Privacy and Information Appeals:

Most of what I have received was 'whited out' and useless. Do I with my tax dollars support not only the criminal activity of the FBI but also pay for being given blank sheets of paper under the FOIA? When do you think the Department Review Committee will make up its mind? Your xeroxing committee might consider

returning my money. Did I really pay \$8.00 an hour or something like it? The FOIA has become a rich man's toy, like raising prize ponies.⁶

In 1983, when de Antonio received about 800 pages of FBI documents, a review had deemed a remaining 2100-plus pages exempt.⁷ In response, he wrote a pointed letter to the Section Chief of the FBI's FOIA office that read in part: "I forgive you personally and organizationally for the 8 years it has taken to give me a part of my files. . . . I'm also genuinely pleased that you have appreciated my patience and cooperation. I might have been more pleased were I patient, but I'm not. I think it's time to give me all the material you have on me."⁸

By the 1980s, he had managed to accumulate thousands of revealing FOIA-disclosed pages. In his following documentary and final film, *Mr. Hoover and I* (1989), de Antonio used these disclosures to chronicle the ways that FBI had monitored him for decades.⁹ (In recognition of the parallels between them, Poitras co-curated a retrospective of de Antonio's oeuvre, including *Underground* and *Mr. Hoover and I*, in tandem with *Astro Noise*, her 2016 solo exhibition at the Whitney Museum of American Art.¹⁰) Though the collection of documents only contained a few hundred pages that addressed *Underground*, this archive deepens the understanding of the risks de Antonio and his team faced. Above all, it demonstrates the elaborate coordination the FBI marshaled to track the filmmakers. The agency's fieldwork involved a sizable labor pool and information sharing among regional offices throughout the country. Its surveillance tactics comprised of everything from copying de Antonio's credit card receipts to listening to his phone calls to attending speeches he gave at universities.¹¹ It further consisted of taking Polaroids in front of the director's house,

monitoring the activities of his friends and family, and organizing stakeouts.¹² After the release of the film, agents also gathered coverage about it in domestic and international newspapers and even the media studies journal *Jump Cut*.¹³ Such this unwelcome attention was not unprecedented for de Antonio, who had been on an FBI watchlist since the late 1940s.¹⁴

On the third and final day of filming, the risks to the team's anonymity became even more pronounced. In what de Antonio later referred to as a "horrible blunder," the Weather Underground members insisted on filming in public.¹⁵ They wanted to interview a group of doctors on strike to demonstrate their solidarity with working-class struggles.¹⁶ Though the participants and crew only stayed at Martin Luther King Hospital in Los Angeles for ten minutes, this shoot may have initiated the FBI surveillance campaign. According to a FOIA-disclosed FBI memo, "[T]he producers and WUO [Weather Underground Organization] fugitives realized that they were possibly being photographed by others following the strike. At this time they left the area."¹⁷ Yet, a large redaction under that text invited de Antonio to speculate about other ways the team may have been betrayed. In that blank space, he penciled in additional theories: "Informer? SOUND STUDIO?"¹⁸ Thus, despite the promises of transparency, its always-partial knowledge can paradoxically inspire greater paranoia and anxiety.

The FOIA documents also relay the wide scope of surveillance practices and the communications media upon which they relied. For instance, on June 5, 1975, an unidentified FBI agent wrote: "Telephone call placed from Antoinette Cooper's phone by de Antonio to his daughter in N.Y. who had been picking up de Antonio's mail for him. Daughter was reading mail during the phone conversation."¹⁹ Along with these multiple

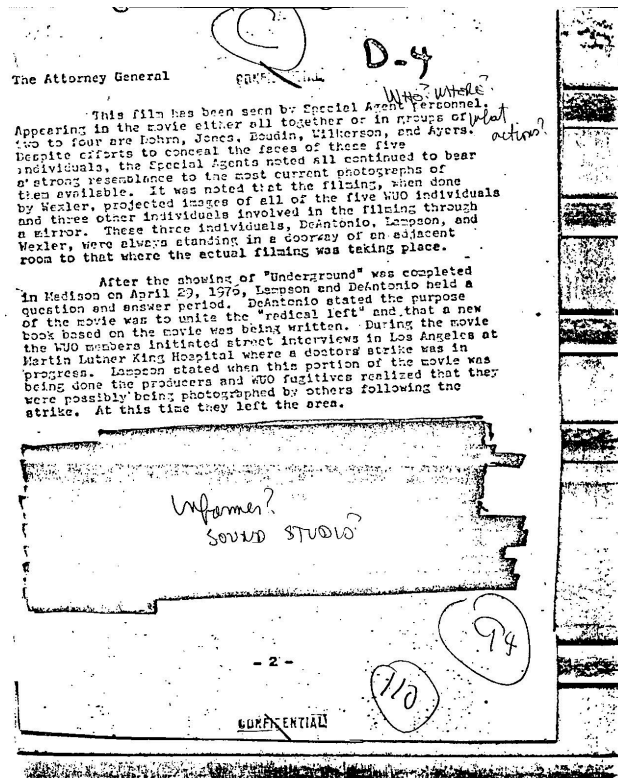


Figure 30. FBI notes appended with de Antonio's notes²⁰

levels of mediation, these logs suggest the multifaceted economy of looking that took place. On May 19, 1975, the agent recorded, "Surveillance around Wexler's house; pictures taken of his cars, particularly Mazda. (Seen by Wexler.)"²¹ In effect, these two sentences elucidate at least five layers of visibility: FBI agents watching Wexler and photographing his property, Wexler spotting the surveillance in action, the FBI noticing and recording that Wexler spotted it, de Antonio counter-surveilling the FBI operation through FOIA, and the director publicizing the files.

To supplement the surveillance methods, the government also pursued legal tactics to try to intimidate de Antonio's team. Included in his FOIA archive, a Confidential memo indicates the possible charges on which to indict the documentarian. These included Rebellion or Insurrection, Advocating Overthrow of the Government, Anti-Riot Laws, and

Unlawful Possession of Destructive Devices.²² The hyperbolic overreach of these charges show how malleable and politically motivated the application of law can be, and the indefinite vulnerabilities that filmmakers face if they dare to challenge the state. (Ultimately, due in part to high-profile public attention, de Antonio and his team were never charged with any crimes.)

These various intimidation efforts did not result in the director backing down. Instead, he became more confrontational and committed to completing his film. The surveillance logs exhibit one such instance of de Antonio's resistant behavior. According to the document, on May 27, 1975, "D [de Antonio] calls New York Field Office of FBI. Identified himself. Gave phones and addresses. Protested surveillance and directed them to stop."²³ This response suggests that surveillance, like documentary production, is an unwieldy process that does not necessarily yield the expected reactions from the observers or subjects. It also demonstrates how different perspectives on the same event can produce divergent discourses. In his own retelling, de Antonio said that he reacted to the appearance of agents at his house by calling the New York field office and demanding, "Can you get your fucking gumshoes off my back please."²⁴

Yet, the combative de Antonio has also articulated the affective weight he felt during the production process. He recalled being startled by street sounds and said, "We heard the noises that one ordinarily hears that have no meaning. Under the conditions of being in a closed space with the leaders of the Weather Underground, noises like backfires become magnified. . . . In your mind, everything becomes something it isn't."²⁵ He also described the constant nervousness he and his team felt as they filmed, because they knew that any mistakes could lead to the arrest of the organization's members.²⁶

During her filmmaking career, Poitras has faced similar burdens of disproportionate scrutiny. In her case, the surveillance apparatus materialized most aggressively during the logistics of travel. The American director's aforementioned placement on a secret watchlist resulted in agents detaining and questioning her every time she flew to the U.S. border from July 2006 to April 2012.²⁷ The international trips she took were primarily professional in nature, and often related to making or promoting the Academy Award-nominated *The Oath* (2010), *Citizenfour*, and other projects. On intermittent occasions, border agents also detained her during domestic travel and in transit outside of the U.S.²⁸ During these various detentions, agents justified their actions by claiming that she had a criminal record (which she did not), was on a security threat database, or that she had been added to the No Fly List.²⁹

The alarming extent of Poitras' targeting is partly documented in the 2015 Complaint for Injunctive Relief her attorney filed to sue for withheld FOIA records. That complaint states that border agents had subjected her to Secondary Security Screening Selections over fifty times in total.³⁰ The document's descriptions of the screenings emphasize their characteristics of intimidation and force. One such entry under the heading of Factual Allegations reads, "Upon her arrival in Newark, Plaintiff was met by border agents, detained, and questioned. During the course of her detention, several security officers repeatedly threatened to handcuff Plaintiff for attempting to take notes, claiming her pen could be used as a weapon."³¹

Since 2012, Poitras has repurposed the FOIA documents she received to comment on and counteract the deleterious effects of being watchlisted. When *The Oath* was screened as part of Whitney Museum's biennial that year, the curators asked the artists to create

statements for the exhibition catalog.³² While most contributors wrote essays that addressed their projects' artistic influences, four of the six pages Poitras provided were FOIA-disclosed airport incident logs. The bookending two pages display still images from her films. One of the images is an extralegal interrogation session of a detainee at an Afghan black site, which she excerpted from *The Oath*. Another captures the construction of the NSA's massive top-secret data collection center in Bluffdale, Utah, which was from the work-in-progress that became *Citizenfour*. This visual arrangement signals the inseparability of mass surveillance and the GWOT, and the global and domestic scales at which the conflict simultaneously operates. It also emphasizes that Poitras' works about surveillance should be viewed in relation to and in response to her personal experiences of surveillance.

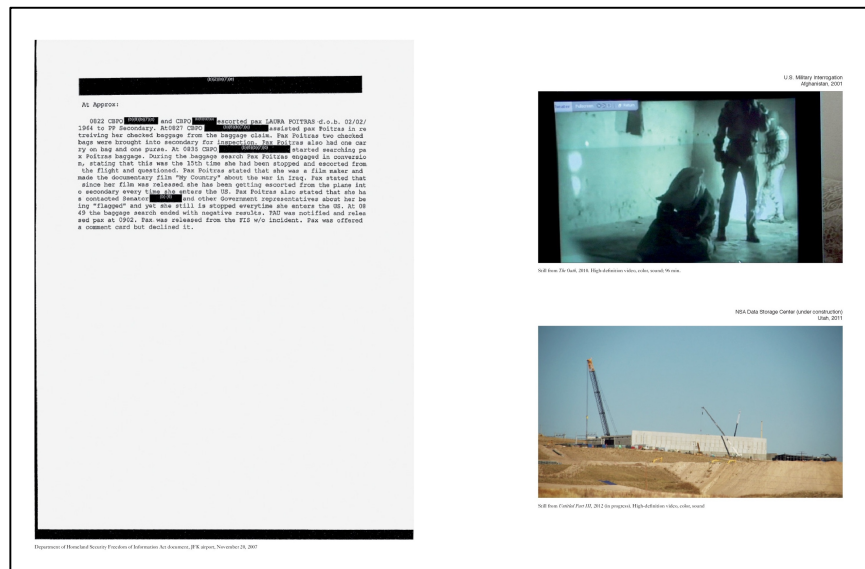


Figure 31. FOIA file and documentary images as artist's statement³³

Cumulatively, the incident logs in the artist's statement present evidence of the regimen Poitras faced each time she flew into New York City, where she lived at the time. By itemizing the procedures of a screening, a February 12, 2008 log from John F. Kennedy

(JFK) Airport offers a glimpse into the administrative and temporal logistics of being on a watchlist. It states, “1641 – Poitras, Laura positively identified at Gate/ 1650 – Pax [passenger] referred by Primary to Full Primary by CBPO [U.S. Customs and Border Protection Officer] [REDACTED] . . . 1720 – [REDACTED] CBPO [REDACTED] authorized release of pax [passenger] / . . . 1751 – Pax released without further incident.”³⁴

Another page in the catalog conveys Poitras’ frustrations and attempts to remedy the situation, albeit from the security agent’s vantage point. The unknown author wrote, “Subject was cooperative to an extent during this examination. The Subject took frequent notes during exam and requested the names of the two officers conducting the exam. The Subject also voiced dismay at going through this process ‘every time’ she travels and asked for a suggestion as to how she can avoid this in the future.”³⁵

However, the juxtaposition of the logs beside the far more direct violence of detainee interrogation help put Poitras’ surveillance in context. Though she was unjustly held and questioned over fifty times, the JFK incident report (whose veracity she did not dispute) shows that the February 12 security procedure lasted a little over an hour. In contrast to the people indefinitely detained and tortured without trial in the GWOT, she also retained more avenues of legal recourse. Seen in light of the wave of bodycam and cellphone footage of police officers killing Black men and the racist tenor of Trump’s attempted travel bans, the incident logs inadvertently betray differential applications of surveillance and force. Poitras has acknowledged this grim reality, stating, “Let’s be honest. If I had darker skin, or was carrying a different passport, the cast of guilt, the shadow, would go a lot longer.”³⁶ In the press release that accompanied her FOIA lawsuit, she also framed her actions in pluralistic terms. She noted, “I am also filing this suit in support of the countless other less high-profile

people who have also been subjected to years of Kafkaesque harassment at the borders. We have a right to know how this system works and why we are targeted.”³⁷

After her lawsuit yielded another 900-plus pages, Poitras was finally able to learn why she had been watchlisted. Again, she creatively remediated excerpts from these documents to publicize the new information. The resulting installation, *November 20, 2004*, became a central element of *Astro Noise*, Poitras’ 2016 surveillance-themed exhibition at the Whitney Museum. This mixed-media artwork consists of twelve transparencies of government documents hanging in lightboxes, a digital video playing on a screen, and an audio recording of the documentarian explaining their connection. The video shows about eight minutes of seemingly unremarkable footage she had shot in Baghdad on the work’s eponymous date. It was intended for, but not used in her 2006 Iraq War documentary *My Country, My Country*. Meanwhile, the audio recording of her video elucidates that it was this footage, which was shot in the same neighborhood where an American soldier was killed,

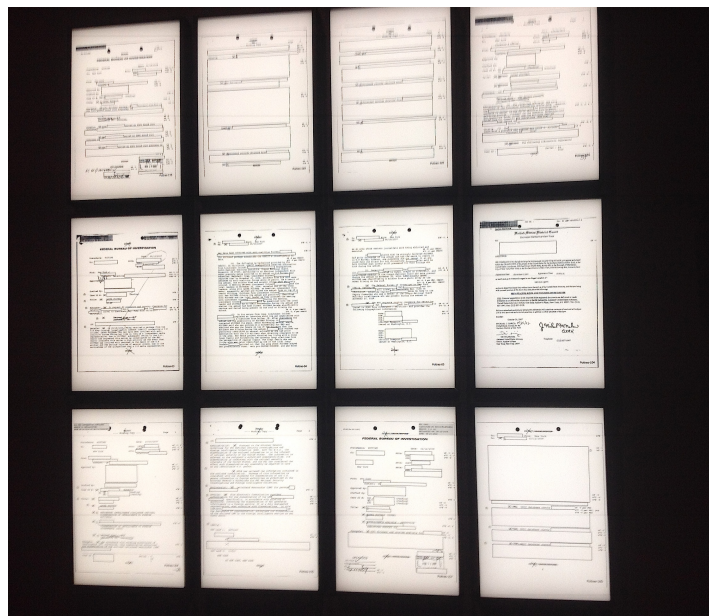


Figure 32. The documents on display in *November 20, 2004*

that had instigated her watchlisting.

As the documents in *November 20, 2004* reveal the government's internal logic, they simultaneously gain new meanings. Building on the FOIA-based work of artists like Arnold Mesches, Margia Kramer, and Jenny Holzer, Poitras has used visual arts techniques to recontextualize bureaucratic papers designed to be mundane and anti-aesthetic.³⁸ The curation and enlargement of the documents, their arrangement in a museum setting, and the bright, almost spectral lighting all transform the files into stylized art objects. This visual and conceptual reframing invites viewers to adopt a hermeneutic gaze that critically interprets details like the abundant redactions and crossed-out markings. Even the material onto which the documents are replicated—the transparency—sardonically gestures to their paradoxical status as both stubbornly opaque and newly transparent.

On this archive's most forthcoming page, an unidentified author wrote, "[REDACTED] states that he strongly believed POITRAS had prior knowledge of the ambush and had the means to report it to U.S. forces; however, she purposely did not report it so she could film the attack for her documentary. [REDACTED] also said he felt POITRAS most likely still possessed the film footage she took during the ambush."³⁹ However, the unedited footage playing in the installation contradicts these accusations—it shows no direct recording of the ambush and it discloses no sensitive information. Thus, the doubts registered in the document, through phrases like "strongly believed" and "he felt," are not based on substantive evidence. In fact, the FBI had never even requested to view the disputed footage during its investigation. As Poitras' attorney, David Sobel, stated, "It's a good case of demonstrating the importance of transparency and allowing people to understand what information the government has. If it's a secret system where people can't give their version

of events, you're creating a very dangerous situation in terms of civil liberties.”⁴⁰ Instead of erring on the side of transparency, the agency relied on baseless suspicion to place Poitras on a watchlist for six years. They also refused to confirm her placement on the watchlist for another three years.

Though the lack of later FOIA documents could imply that her targeting ended in 2012, other sources intimate the continuation of surveillance. After the documentarian relocated to Berlin to find “a place to edit without fear that [her] footage would be taken at the border,” she recorded her ongoing trepidations in a diary.⁴¹ These entries, which date from November 2012 to May 2013, occurred during the initial production stages of *Citizenfour* (which began as a more general exposé of mass surveillance) and persisted after Snowden first established contact. In 2016, Poitras published these diary sections in *Astro Noise: A Survival Guide For Living Under Total Surveillance*, an edited collection and companion volume to her museum exhibition.

Serving as a first-person counterpoint to the systematized Homeland Security incident logs, these passages disclose the onus of documenting surveillance while under surveillance. Dated November 4, 2012, the first entry reads, “I haven’t written in over a year for fear these words are not private. That nothing in my life can be kept private.”⁴² Another entry from the same month reads, “On Monday I had a nightmare that has hung with me for days. I was being detained on a U.S. military base . . . They tried to blindfold me w/goggles and put a straightjacket on me.”⁴³ Other entries from February and March 2013 maintain a similar level of exasperation and anguish. During these months, Poitras wrote, “I panic/vertigo. I can only imagine falling. I’m frozen. Woke up in a sweat.”⁴⁴ She also noted, “God, my life is really over in terms of privacy. It is terrifying to think I might never feel confident I’m not being

watched.”⁴⁵ Exceeding the orderly recordkeeping of the bureaucratic logs, these entries poignantly reveal the trauma of perpetual insecurity and the indelible impacts on her affective state.

Here too, Poitras situated this textual production in relation to the FOIA documents she received. The slipcover that contains the *Astro Noise* book is entirely black, except for a few lines of metallic silver on the back. The faintly visible message states, “AT NEW YORK, NY. (U) [Unclassified] A possible new address for the captioned subject is being provided. Ensure that any new address information, name spelling variations, and/or identifiers are [REDACTED].” This cover recreates a 2010 FBI document that Poitras’ lawsuit had retrieved, and divulges that the agency was tracking her home addresses. The near-total opacity of its design evokes the threats of redaction and disappearance, even as the book’s contributors critique the ‘black box’ of information suppression. In addition to the slipcover, Poitras reprinted nine pages of heavily redacted FOIA disclosures as a chapter in the book. This choice defiantly publicizes and aestheticizes their contents through yet another medium. At the same time, the files’ appearance in the same book as the diary entries shows the enmeshment of these archives. Together, they materially affirm the physical and mental consequences of being a critic, and assert Poitras’ commitment to continue speaking out through her art.

Re-viewing the risks to documents

Closely related to the risks faced by documentarians are the risks posed to recorded information and completed documentaries. Obstacles such as censorship, restricted access, legal action, and seizure have all prevented the dissemination of critical and controversial

arguments. They have also motivated an immeasurable but undoubtedly substantial amount of self-censorship throughout documentary history. The ever-present prospect of legal and political interference delimits which forms of information can publicly circulate, who is permitted to speak out, and who is empowered to determine these shifting boundaries. One instantiation of such dangers is John Huston's 1946 documentary *Let There Be Light*. Although the U.S. War Department had enlisted Huston to show veterans heroically recovering from post-traumatic stress disorder, he underscored the enduring psychic scars of war instead. As a result, the government confiscated Huston's print and held it for 35 years. After the department cited the pretext of safeguarding the soldiers' privacy, Huston discovered that the participants' signed releases had disappeared.⁴⁶

In the case of *Underground*, the sensitivity of the project rendered the possession of materials especially precarious. To obscure the Weather Underground participants' identities, de Antonio and his collaborators had used scrimms and other experimental cinematographic techniques to hide their sources' faces. However, when they needed to process the film, they feared that errors would reveal identifying traces. They also worried that lab technicians would relinquish the single copy they had to the authorities. As de Antonio stated, "The lab represented a major security risk. There's kind of a policy mentality around labs because the FBI hangs around there. During the days of Vietnam, the largest single customer of the labs was no single studio or network; it was the U.S. government turning out propaganda shit by the millions of feet."⁴⁷ They considered taking the film out of the country, but ultimately went through Wexler's usual lab and disguised it as his project to deflect attention.⁴⁸

To convert the separate soundtrack to 16mm tape, de Antonio turned to a local editing company called Sound Services, Inc. He told the sound technicians that the recording

contained an experimental group therapy session, and that they should not listen to these “highly confidential” tapes due to legal and ethical restrictions.⁴⁹ Yet, as the FOIA disclosures corroborate, the suspicions that de Antonio registered as “Informer? SOUND STUDIO?” were correct. Someone at the lab did listen to the soundtrack and, in the words of then-FBI director Clarence Kelley, “a cooperative individual in Los Angeles was willing to make a copy of the voice tapes available to us.”⁵⁰

Through the persistence of his FOIA requests, de Antonio also recovered the transcript that the FBI made of his soundtrack. Despite its original purpose as an investigative tool, this record has gained the unanticipated function of performing film historical preservation. Because de Antonio later destroyed all of the footage as a security measure, this transcript has become an important surviving artifact of the Weather Underground conversations. Though it does not transcribe the entirety of the eleven-and-a-half-hour soundtrack, it preserves exchanges that were excised from the film. Thus, the efforts to censor de Antonio became a counterintuitive extension of his project’s lifespan.

In addition, the transcript inadvertently documents the gaps in the agents’ knowledge and the piecemeal work of investigation. The typewritten transcript largely refers to the speakers as Unidentified Male (UM) and Unidentified Female (UF), with handwritten comments matching possible names to various lines of speech. It also corrects erroneous attributions and adds refutations to the Weather Underground members’ statements. Moreover, the handwritten comments note the background noises that the agents could hear on the soundtrack. These observations, such as “bus or truck,” “sounds like another bus,” “HORN NOISE,” and “puppy whining birds,”⁵¹ were most likely attempts to identify the organization’s safehouse. Their attention to auditory details indicate how even seemingly

innocuous information can become risky or revelatory based on the intentions of particular viewers.

However, when the FBI failed to intercept de Antonio's footage of *Underground*, its agents again attempted to employ the force of legal tactics. In addition to threatening the director with the long list of possible charges, prosecutors issued a subpoena against de Antonio, Lampson, and Wexler in May 1975. Also included in the FOIA disclosures, de Antonio's subpoena states, "You are hereby commanded . . . to testify before the Grand Jury and bring with you any and all motion picture film, including, but not limited to all negatives, working copies and prints, and all sound tracks and sound recordings made in connection with the filming of such motion pictures, concerning a group known as the Weathermen or Weather Underground."⁵² In order to protect the documentary footage, de Antonio and his collaborators refused to comply and risked the prospects of contempt citations and jail.⁵³

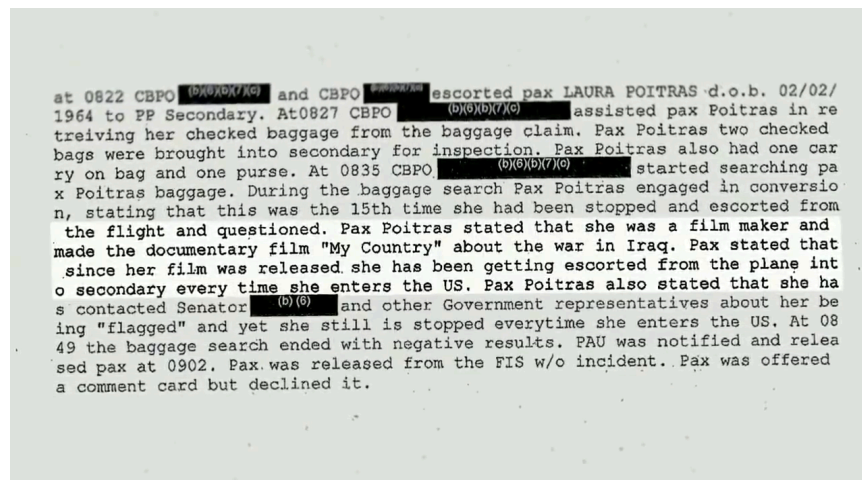
The attempt to seize the materials, according to Roland Lewis, "became an immediate cause célèbre, touching a nerve in the Hollywood community and evoking images of the McCarthy era, when the exigencies of anticommunism circumscribed the subject matter of films."⁵⁴ At a press conference to defy the subpoena, de Antonio and his collaborators presented a petition in support of directorial freedom. Among the forty-three signatories were actors like Sally Field, Warren Beatty, and Jack Nicholson; directors like Terrence Malick, William Friedkin, and Elia Kazan, and Pentagon Papers leaker Daniel Ellsberg.⁵⁵ Charles Nesson, de Antonio's attorney, also argued, "The subpoena was prior restraint that would really have stopped the production process."⁵⁶ It may have even marked the first time in American history that the federal government had tried to stop a documentary film before it had been made.

Internally, a DoJ official was also pointing out that governmental overreach would backfire and reflect badly on the department. In a memo that refers to de Antonio as [*sic* throughout] “the academy award winning cameraman who accompanied actress Jane Fonda on her trip to North Vietnam,” Guy Goodwin wrote: “It should be anticipated that the subpoenaing of these individuals to testify about their filming of Weather Underground figures and to produce the film made of these figures, will result in widespread publicity about the misuse of the Federal grand jury, violations of First Amendment rights, and harassment of film makers and the media.”⁵⁷ In the version disclosed to him, de Antonio drew a line beside that paragraph and, in the marginalia, emphatically wrote in large capital letters: “UH HUH!”⁵⁸ Bowing to the internal and public pressure, the FBI acquiesced and withdrew the subpoena. *Underground* went on to have its world premiere in Madison, Wisconsin on May 1, 1976, exactly one year after the May Day on which it had begun production.⁵⁹

Amidst this embattled legacy, Laura Poitras has contended with the similar vulnerability of her documentary materials. The incident logs that she featured in *Citizenfour* delineate some of the searches routinely performed on her possessions. The report from 2008 states [*sic* throughout]: “At 0827 CBPO [REDACTED] assisted Pax Poitras in retrieving her checked baggage from the baggage claim. Pax Poitras two checked bags were brought into secondary [screening] for inspection. Pax Poitras also had one carry on bag and one purse. . . . At 0849 the baggage search ended with negative results.”⁶⁰ As part of her FOIA lawsuit, Poitras filed a 2016 declaration that attested to the regularity of such searches. In it, she noted that “on about ten occasions, border agents made photocopies of my reporters’ notebooks and/or the contents of my pockets and wallet” and duplicated documents like passport pages,

receipts, business cards, and credit cards.⁶¹ In that same document, she attributed her relocation to Berlin to the invasive searches. She stated that the ongoing scrutiny of her belongings made her incapable of protecting her sources and source material.⁶²

Yet, in contrast to filmmakers like de Antonio, contemporary documentarians like Poitras must now also contend with the acute risks posed to digital information and communication technologies (ICTs). As one border agent reportedly informed the director, “If you don’t answer our questions, we’ll find our answers on your electronics.”⁶³ In Poitras’ 2016 declaration, she also described a particularly invasive encounter that occurred when she was returning home from filming *The Oath*. She stated, “On August 1, 2010, I was detained, questioned, and searched after a flight from Yemen via Dubai to JFK. During the course of this detention, CBP agents confiscated my laptop, video camera, footage, and cellphone. My digital devices were held for 41 days.”⁶⁴ Thus, despite the popular conception of digital data as dematerialized and ubiquitous, the tremendous storage capacities of flash drives, hard drives, and digital cameras in transit make physical interception a serious concern.



at 0822 CBPO (b)(6)(b)(7)(C) and CBPO (b)(6)(b)(7)(C) escorted pax LAURA POITRAS d.o.b. 02/02/1964 to PP Secondary. At 0827 CBPO (b)(6)(b)(7)(C) assisted pax Poitras in retrieving her checked baggage from the baggage claim. Pax Poitras two checked bags were brought into secondary for inspection. Pax Poitras also had one carry on bag and one purse. At 0835 CBPO (b)(6)(b)(7)(C) started searching pax Poitras baggage. During the baggage search Pax Poitras engaged in conversation, stating that this was the 15th time she had been stopped and escorted from the flight and questioned. Pax Poitras stated that she was a film maker and made the documentary film "My Country" about the war in Iraq. Pax stated that since her film was released she has been getting escorted from the plane into secondary every time she enters the US. Pax Poitras also stated that she has contacted Senator (b)(6) and other Government representatives about her being "flagged" and yet she still is stopped everytime she enters the US. At 0849 the baggage search ended with negative results. PAU was notified and released pax at 0902. Pax was released from the FIS w/o incident. Pax was offered a comment card but declined it.

Figure 33. An incident log in *Citizenfour*

When journalist Glenn Greenwald (himself a key subject in *Citizenfour*) exposed

Postras' screenings and effectively ended the practice, he also cited FOIA disclosures in his argument.⁶⁵ His 2012 *Salon* article drew on the thousands of pages the ACLU had received from the DHS. These disclosures reveal the disturbing regularity with which U.S. border agents seize and copy travelers' private materials. In one 20-month period, beginning in October 2008, the DHS subjected over 6,500 passengers to electronic device searches without reasonable suspicion.⁶⁶ Border agents most frequently searched cellphones, but also targeted laptops, cameras, flash drives, hard drives, and DVDs.⁶⁷ As the documents show, the employees transferred data from these devices to other federal agencies hundreds of times.⁶⁸ In addition, nearly half of the searched travelers were American citizens, which indicates a routine denial of Fourth Amendment protections at border checkpoints.⁶⁹ Greenwald reappropriated this information not only to advocate for Postras, but to emphasize how vulnerable all digital information is in physical transit. He wrote that the capacity to search extends to:

your emails, the websites you've visited, the online conversations you've had, the identities of those with whom you've communicated, your cell phone contacts, your credit card receipts, film you've taken, drafts of documents you're writing, and anything else that you store electronically: which, these days, when it comes to privacy, means basically everything of worth.⁷⁰

Moreover, the intense capabilities of mass digital surveillance, which supersedes national borders and operates instantaneously, make the use of all ICTs a calculated risk for documentarians. Each time they employ these tools to store works-in-progress, research

information, or contact sources can severely compromise their production processes. How well Poitras maintained her own anonymity online was also closely tied to the security of her primary subject, Edward Snowden, and the archive of NSA documents he entrusted to her. As such, the permeability of digital media is double-edged: the ease that it affords users to access, collect, and circulate information also gives government agencies and corporations (which may willingly or forcibly cooperate with governments) far greater abilities to access, collect, and circulate information about users.

Some of Poitras' diary entries potently articulate how the threats of targeted surveillance altered her use of digital technologies. In December 2012, even after her relocation to Germany, she suspected that she was being tracked through her computer.⁷¹ In February 2013, she changed apartments and explained, "Off the grid at the moment unless I'm being physically surveilled. I will try to keep it disconnected for as long as possible. No phone, Wi-Fi."⁷² The following month, she added, "I'm trying to keep this new flat off the radar, so no phone, no connecting to the Internet without Tor. I've created my own isolation, so they win. They always win. I can fight all I want and I will lose. I will be destroyed, paranoid, forsaken, unable to sleep, think, love."⁷³

To mitigate the very real possibility of interception, Poitras deployed an array of digital counter-surveillance tools as she filmed. As *Citizenfour* prominently visualizes, all of Poitras and Snowden's digital communications took place through GPG encryption. She has connected her reliance on this method to the experience of secondary screenings, stating that being on a watchlist "taught me to be more secure about my communication. Because I felt like I couldn't trust my computers, I started using encryption so I could communicate securely. So by the time Snowden contacted me, I had a lot of experience using encryption

and how to protect source material.”⁷⁴ The director and subject used encryption since their first contact and brought in Greenwald when he had learned the process as well.⁷⁵

Throughout the recording process in Hong Kong, Poitras also used TrueCrypt software to prevent the government from viewing her work-in-progress.⁷⁶ She said, “I was really worried that someone would bust down the door. I was backing up footage on encrypted drives, I was making sure to have something off-site so if anyone raided the hotel they wouldn’t get everything. I was making sure to destroy all the unencrypted recording media, so if anything was ever seized, all they would get was encrypted material.”⁷⁷ In addition, she used very long passwords that she frequently changed and granted the 30-plus people involved in the making of the film different levels of access to the drives.⁷⁸ Along with this range of technological workarounds, those involved in post-production did not bring their phones and shut the windows before engaging in sensitive discussions.⁷⁹

Following such elaborate precautions can also be clearly traced back to the routinized seizure and copying of Poitras’ materials at the U.S. border.

In the film’s credits, the director acknowledged other free resources she used to secure the film. This list includes Tor, a browser that anonymizes traffic; SecureDrop, a submission system many high-profile journalist organizations use to protect whistleblowers; and OTR Instant Messaging, which encrypts messages over instant messaging services.⁸⁰ In addition, she has passed on her knowledge of this subject to other documentarians of sensitive issues. David Felix Sutcliffe and Lyric R. Cabral, whose film (*Terror*) (2015) chronicles the undercover FBI surveillance of a terror suspect, and Johanna Hamilton each received encryption training from Poitras.⁸¹ Thus, by publicizing the use of digital security

measures, Poitras has sought to lessen the risks other directors and their documents face in the future.

Re-viewing the risks to histories

By interfering with the processes of production, the pressures of state surveillance also constrain and alter the historical records that filmmakers are able to create. Yet, these limitations, like the FOIA challenges I discussed in Chapter 3, can also paradoxically enrich these records by prompting unexpected techniques or unforeseen narratives. To elaborate on the textual traces of surveillance, I will juxtapose production histories and hermeneutic readings of the films here. This interweaving invites viewers to re-view the films' formal and rhetorical properties through the conditions in which they emerged. Returning to the texts from this vantage also underscores the historiographical risks they register through their profilmic presences and absences.

I refer to the documentarians' attempts to make the risks of censorship they faced palpable onscreen through the term *consibilities*. Though the censorship of film is often described in terms of visual qualities, consibilities denote the full range of sensory techniques and experiences that moving image media can convey. This includes the aural, haptic, and affective registers that filmmakers draw on to transmit their embodied phenomenological sensations of being at risk to viewers' bodies. Though the feelings of producing a documentary under surveillance and watching that documentary are not equivalent, the creative force of consibilities can help enliven the stakes of dissident filmmaking. Like a counter-surveillance tactic, these techniques seek to expose and mitigate the imbalance of power and reorient the directionality of targeting.

In *Underground*, it is immediately evident that the film's secret production and the need to protect the participants bore deep traces on the project's aesthetics. In the first minute, the conditions of opacity materialize onscreen through the hanging scrim Wexler used to obscure the subjects' identities. Because of these occluded optics, sound has to convey information that facial expressions and other corporeal signifiers cannot. A blurry figure, who identifies himself as Weather Underground member Jeff Jones, also refers to the scrim as a symbol of social divisions. As he bats the fabric, he notes, "You could say that this screen between us is a result of the war in Vietnam or is a result of racism. It's an act, it's an important act to overcome this barrier, and we're going to reach through it." Jones' statement recognizes that the scrim both allows the subjects to speak more freely and distances them from viewers. As a security measure, it was explicitly designed to withhold key visual information from the historical record. In place of unobstructed sight, the censibility of grazing a gauzy boundary object stands in. Like the separation of the film screen, Jones is trying to reach beyond this mediation and make contact.



Figure 34. Jones brushing against the dividing screen

Yet, the shrouding effect visible in the film was not actually a result of the fabric. In a note de Antonio left for future archival researchers, he explained [*sic* throughout], “Because Haskell fucked up in shooting with the scrim, because tests were not used by him in determining whether or not the scrim really obscured enough of the weather faces, Mary and I spent many, many Sundays in an optical house making many different shots and sequences conform to drawings in this envelope. with an optical printer.”⁸² de Antonio described him and Lampson painstakingly painting on a gel over revealing frames and making new negatives of the film print.⁸³ Ironically, this process closely paralleled FOIA officers’ contemporaneous use of red or brown markers and photocopiers set to high contrast to redact revealing pages.⁸⁴ Once they had manually painted over the Weather Underground members’ faces, de Antonio stated that he burned the original and secondary negatives in his fireplace. Fatalistically, he informed researchers, “[U]nlike previous films all the material here is destroyed, you will get zero film and zero track.”⁸⁵ In this case, these incriminating documentary records were too dangerous to admit into the realms of the visible and audible.

On one hand, de Antonio’s incendiary self-censorship corroborates the severe risks that state surveillance posed to his historiographical work. The materials’ absence literalizes Jacques Derrida’s observation that “secrecy is the very ash of the archive” and Antoinette Burton’s assertion that “[t]he history of the archive is a history of loss.”⁸⁶ However, cognizant of the challenges of historicization, de Antonio replaced the burned media with redacted sketches that could survive intact. Along with the indexical traces on the film frames, these sanitized traces both fill in gaps for scholars and are fascinating records in their own right.

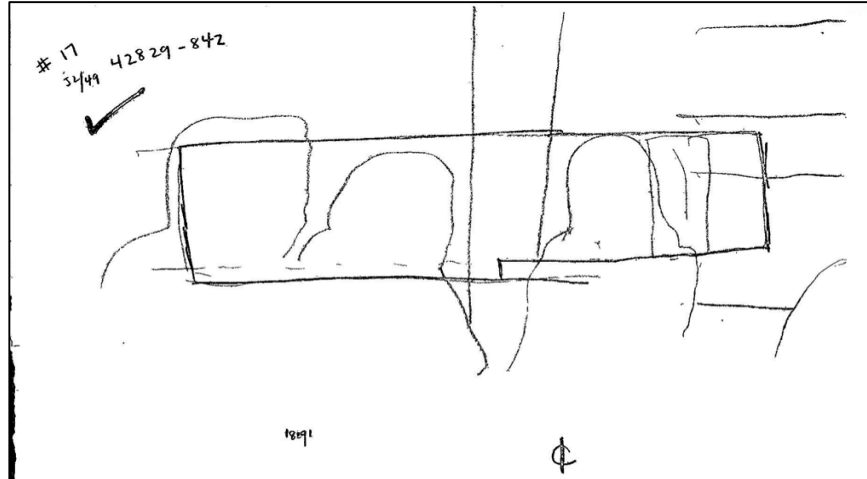


Figure 35. A sketch of shrouding the faces in post-production⁸⁷



Figure 36. The shrouding effect of the same scene on film

Because of their doubts about the scrim, de Antonio, Lampson, and Wexler also improvised other techniques of censorship to conceal the subjects' identities onscreen. One tactic was to place the interviewees in the shadows, while lighting the area behind them. They positioned the subjects in front of a hanging quilt (which the Weather Underground participants later gave to de Antonio as a gift) that reads, "The future will be what we the people struggle to make it." This successfully renders the faces and bodies as opaque silhouettes, and foregrounds the qualities of sound again. Intentionally or not, these shots

most closely enact a FOIA censorship in the film. The silhouettes evoke redactions, while the surrounding text frames the figures like a document stripped of sensitive information. In addition, this lighting arrangement subverts the traditional talking head technique that is a cornerstone of expository documentary. If, as Chon Noriega argued, “the talking head must always belong—at some level—to a body politic,”⁸⁸ *Underground*’s aesthetics signal that these defaced, dissenting (no)bodies have been excised from social legibility.

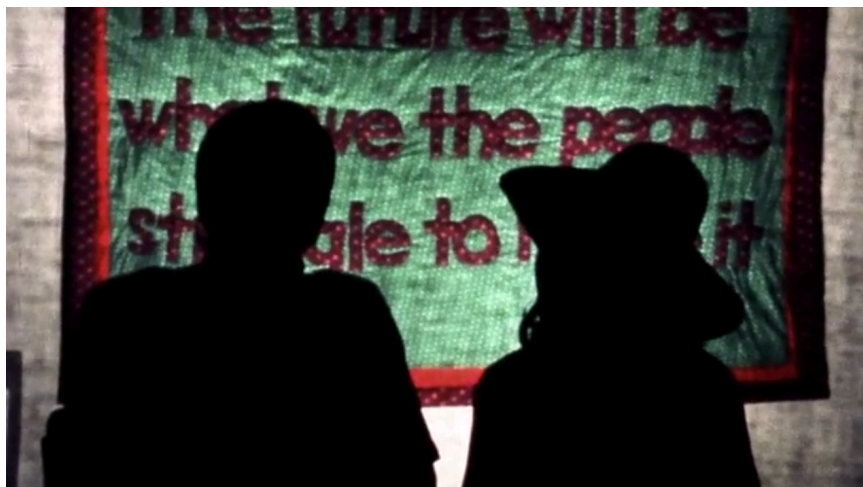


Figure 37. A FOIA censorship achieved through shadow and lighting

By contrast, another experimental technique brings the filmmakers into view of the camera. In this attempt at obfuscation, Wexler recorded the five participants with their backs to a mirror, while aiming the camera directly at the mirror. The resulting effect shows viewers the backs of the dissidents’ heads, while making de Antonio, Lampson, and Wexler visible from the front. The optical reversal of the typical interviewer and interviewee positions reflect the Weather Underground’s and de Antonio’s mutual desire for a more collective, non-hierarchical system of knowledge production. Comparable to Snowden’s articulated desire for transparency, this perspectival trick also suggests that the filmmakers

had nothing to hide. According to Bill Nichols, “Documentary convention upholds the expectation of presence, of an ethic of witnessing, of a situated view, and yet [it usually] excises the bodily evidence” of the filmmakers’ presence.”⁸⁹ Here, de Antonio, Lampson, and Wexler embodied their politics on film by standing in for the bodies under enhanced surveillance. However, assuming that kind of risk did result in the FBI targeting them as well.



Figure 38. Seeing the *Underground* filmmakers in the mirror

Re-viewing *Citizenfour* can similarly illuminate the links between the film’s production and its textual manifestations. As George Packer’s behind-the-scenes profile of Poitras illustrates, the need to vigilantly maintain her participants’ security deeply informed the director’s choices. During a consultation with the film’s editor Mathilde Bonnefoy, Poitras became apprehensive about revealing an anonymous source. She asked Packer to turn away from the monitor and told her editor, “There’s one identifying thing. Scroll down, scroll down. I think you just take this out altogether. The whole thing. It’s too identifying. I think, given the risk, we should be careful. What I have the clearance to do is focus on the

drone strikes and the watch list.”⁹⁰ According to Packer, “Poitras and Bonnefoy [then] spent a few minutes redacting frames while I looked at the wall behind them.”⁹¹ Recalling both de Antonio and Lampson’s frame-by-frame redactions and the FOIA officers’ line-by-line redactions, Poitras was also seeking to balance the imperatives of discretion and disclosure. Because of the historical significance of her footage, she further had to weigh the historiographical consequences of including or removing particular records.

In addition to the digital excisions, some redactions manifested onscreen in the first exhibitions of *Citizenfour*. As a precautionary measure, Poitras would not let the funders and distributors of the film watch a complete version of it. Instead, she showed them cuts with black boxes superimposed over sensitive frames.⁹² These boxes were only removed at the public premiere at the New York Film Festival. Yet, even this version screened in March 2014 omitted the climactic final scene.⁹³ This scene, which shows Snowden and Greenwald reuniting in a Moscow hotel room and covertly discussing a new whistleblower’s leaks through a series of paper messages, is one that Poitras was not “ready to reveal.”⁹⁴ The unnamed source’s leaks contained significant classified information, including one troubling revelation that uncomfortably intersected with Poitras’ own experiences. Unseen in the festival version, this moment captures Greenwald informing Snowden that 1.2 million people were on some stage of a governmental watchlist. This news astonishes the mostly unfazed Snowden and prompts him to reply, “That’s fucking ridiculous.”

Even after the complete version did circulate, the text has continued to bear indelible traces of censorship. For instance, intertitles on black backgrounds periodically punctuate crucial moments in the film. Echoing the black bars on the FOIA-disclosed airport logs, these cuts to a black screen can provoke jarring and disorienting sensations in viewers. They

indicate unknowable lacunae that were either edited out of the final version or were never filmed. In part, these gaps in the record of Snowden's historic meeting with Poitras and Greenwald exist because of the demands of narrative efficiency. In addition, they resulted from the precarious shooting conditions that rendered some footage too risky to obtain. To fill in these lacunae, white lines of text supply missing pieces of information. One such instance occurs when Snowden leaves his Hong Kong hotel room and an intertitle from Poitras' perspective states, "Snowden applies for refugee status through the UN and goes underground. I stay in Hong Kong, hoping to continue filming but realize I am being followed. Six days later, I return to Berlin." Narratively and stylistically, this technique parallels film preservationists' accounts of missing footage in works like Fritz Lang's *Metropolis* (1927).

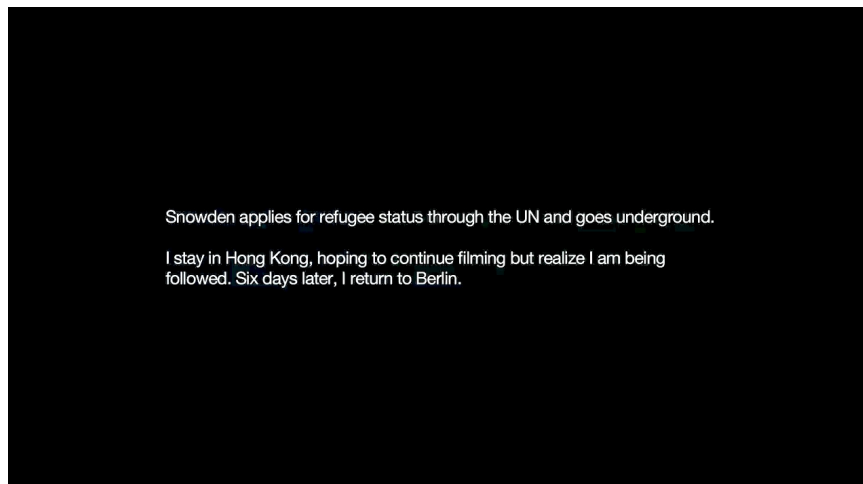


Figure 39. A missing scene of surveillance retold via intertitle in *Citizenfour*

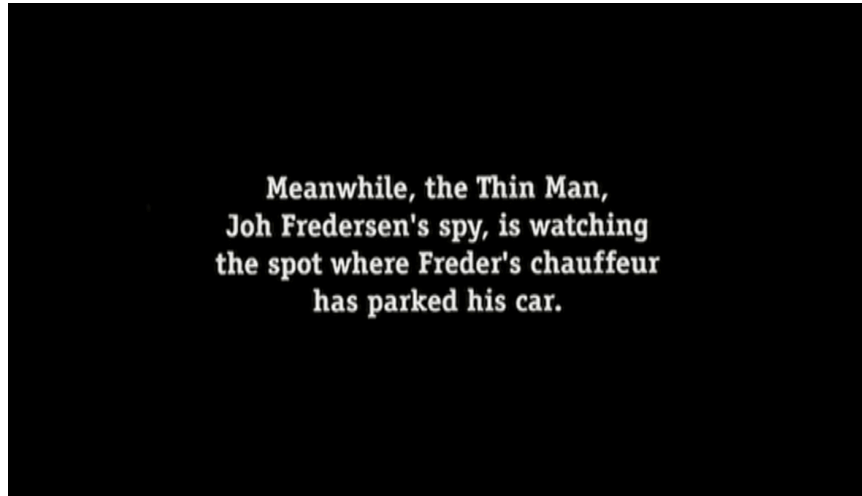


Figure 40. A missing scene of surveillance retold via intertitle in *Metropolis*

The encrypted conversations between Snowden and Poitras repurpose the same stark visual scheme. Here again, the prospect of surveillance prevents archiving events as they unfold, but also encourages creative solutions that acknowledge this interference. In one onscreen exchange, Poitras asks, “If I could get you a camera, would you be able to film?” to which Snowden responds, “Not now. My hosts are very vulnerable people. I can’t really speak out loud here. . . . I don’t want to get anybody’s door kicked in.” Furthermore, the reenactment of digital messages stylizes the transformation of an indecipherable jumble of characters into comprehensible (but never semiotically evident) communications. As Lisa Parks has observed, “Using encryption as both tool and icon, Poitras implicitly suggests that the expository potentials of documentary cinema are increasingly bound up with the carefully coordinated labor of scrambling and descrambling, encrypting and unencrypting.”⁹⁵ Thus, through this digital technique, Poitras textually foregrounded one tactic she employed to protect her own safety, her sources, and the film. Accompanying the first appearance of encryption, the haunting soundtrack of Nine Inch Nails’ droning instrumental “02 Ghosts I” also sonically evokes the fraught environment in which such messages were exchanged.

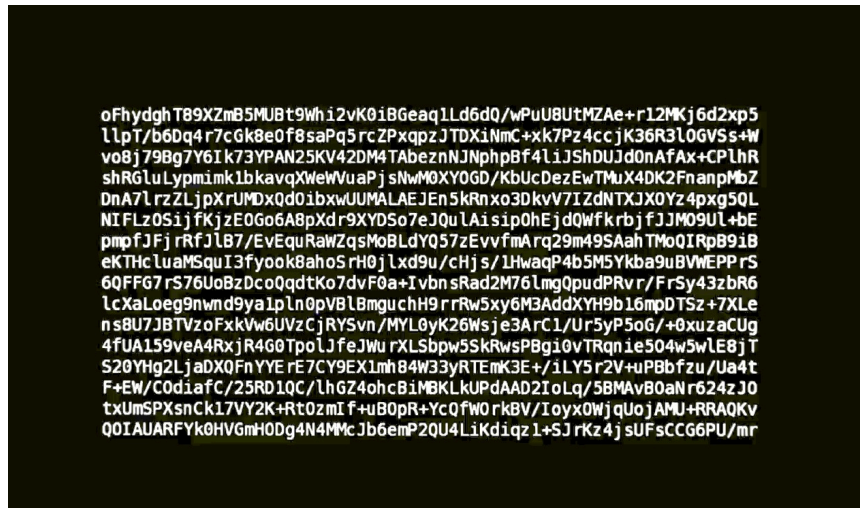


Figure 41. An encrypted communication in *Citizenfour*

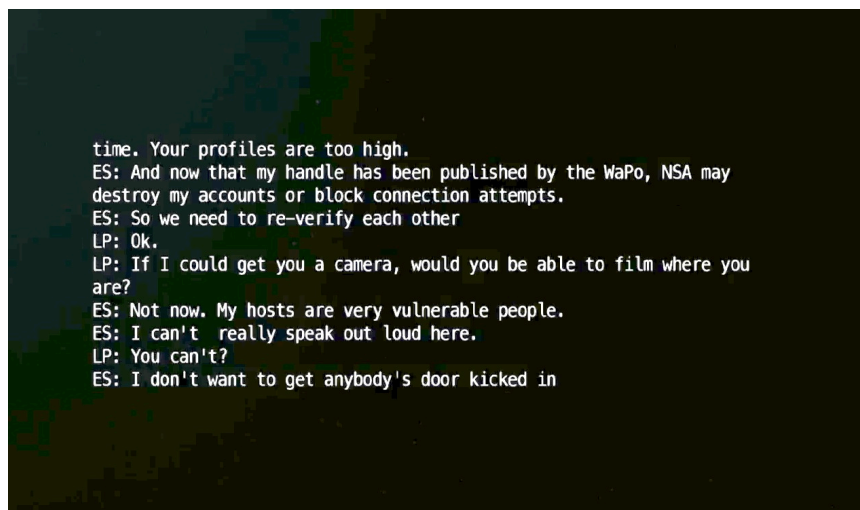


Figure 42. A decrypted communication in *Citizenfour*

The white-on-black design of the intertitles and messages invert the characteristic FOIA aesthetic of black rectangles on white sheets. Instead of re-inscribing the suppressive negations of state secrecy then, these elements superimpose new glimmers of information onto the dark screen. In this sense, they are additive, rather than reductive, to the archive of public knowledge. Comparable to the medium of the transparency in *November 20, 2004* and

the black *Astro Noise* slipcover inscribed with silver text, this inversion allows Poitras to reflexively elucidate her conditions of production and the vital issue of mass surveillance.

The censibility of an inverted FOIA aesthetic also appears in a scene showing Snowden and his partner Lindsay Mills together at an undisclosed Russian site. In her signature *cinéma vérité* style, Poitras recorded the relocated couple from outside of their new house. She and Bonnefoy had traveled to Moscow to show a near-final draft to Snowden before its premiere, and asked permission to record the couple. As Poitras noted, “I wanted to show that they were together, but [in a way] that was respectful of privacy.”⁹⁶ She was hoping to avoid replicating the intense media and government scrutiny that Mills received in Hawaii after Snowden first revealed his identity.⁹⁷ In the film, the long shot of the couple performing domestic chores and having a conversation we cannot hear acknowledges the couple’s need to remain at a distance. It also admits both the documentarian and documentary viewers’ inherent statuses as scopophilic, epistophilic outsiders. As the *mise-en-scène* captures the dark night sky in the bulk of the shot, the electric lights inside still clearly display Snowden and Mills. Their kitchen windows also frame the duo in two adjacent rectangles, which evokes pages with inverted redactions. This compromise of access echoes Snowden’s earlier insistence in the film that he wants to be as transparent as possible. Yet, like Poitras’ redacted versions of the film, this shot concedes that transparency has its limits. It is ultimately conditional on the structuring presence of secrecy and is contingent on the need to remain secure.



Figure 43. An inverted FOIA aesthetic on display

Conclusion

This chapter considered the stakes of risky productions through the case studies of two independent media interventions. In particular, it examined how the pressures of state surveillance have affected the documentation of state surveillance, and the risks that government targeting poses to critical documentarians and documents. It also investigated the counteractive tactics that filmmakers deployed to respond to an array of dangers, including the request and remediation of FOIA documents.

I employed the disclosures about Emile de Antonio and Laura Poitras to reconstruct partial production histories of their documentary work. This method metahistorically explored the epistemological affordances and limitations of FBI and CBP records to draw attention to the issues of dissident filmmaking amid state scrutiny. The juxtaposition of files showed many continuities between these examples, but also indicated the chillingly elevated dangers that highly advanced, near-ubiquitous digital surveillance currently poses. It also considered some of the ways that these directors have refuted the false claims and incomplete accounts of government files and sought to trouble these versions of official history.

In addition, this chapter juxtaposed the complementary methodologies of production and textual analysis. Through this conjunction, I argued that *Underground and Citizenfour* both creatively foreground the indelible impacts of censorship and governmental intimidation through the use of sensibilities. This includes marking the text visually with a FOIA or inverted FOIA aesthetic, but also communicating the affects and embodiments of risk through other sensory perceptions like touch and sound. Furthermore, relating the records' formal properties to the threatening logistical and technological conditions in which they were created more fully registers the impacts on the histories they archive. Through this approach then, we gain one way to make new sense of the unsightly legacies of national security.

¹ “Oscar and Pulitzer Award-Winning Journalist Laura Poitras Sues U.S. Government To Uncover Records After Years of Airport Detentions and Searches,” *Electronic Frontier Foundation*, July 13, 2015, <https://www.eff.org/press/releases/oscar-and-pulitzer-award-winning-journalist-laura-poitras-sues-us-government-uncover-0>.

² Laura Poitras, ed., *Astro Noise: A Survival Guide for Living Under Total Surveillance* (New Haven, CT and London: Yale University Press, 2016), 192.

³ Lisa Parks, “Cover Your Webcam: Unencrypting Laura Poitras’s *Citizenfour*,” *Film Quarterly* 68.3 (2015): 15.

⁴ C.J. Chivers, ““Restrepo” Director and a Photographer are Killed in Libya,” *New York Times*, Apr. 20, 2011, <http://www.nytimes.com/2011/04/21/world/africa/21photographers.html>.

⁵ Peter Biskind and Marc N. Weiss, “The Weather Underground, Take One” in Peter Biskind, *Gods and Monsters: Thirty Years of Writing on Film and Culture From One of America’s Most Incisive Writers* (New York: Nation Books, 2004), 154-155.

⁶ Emile de Antonio, letter to Quinlan J. Shea, Jr., Sept. 1, 1979, Box 92, Folder 6, Wisconsin Center for Film and Theater Research, Madison, Wisconsin.

⁷ Record Disclosure Cover Sheet, *Federal Bureau of Investigation*, Mar. 3, 1983, Box 92, Folder 6, Wisconsin Center for Film and Theater Research.

⁸ Emile de Antonio, letter to James K. Hall, March 1983, Box 92, Folder 6, Wisconsin Center for Film and Theater Research.

⁹ Originally, *Mr. Hoover and I* had the even more suggestive title of *A Middle-Aged Radical As Seen Through the Eyes of His Government*. For more on de Antonio's incipient conceptions of this film, see Emile de Antonio, "Emile de Antonio: An Interview," interview with Alan Rosenthal, *Film Quarterly* 32.1 (1978): 4-17.

¹⁰ "Emile de Antonio's *Underground* (1976)," *Whitney Museum of American Art*, 2016, <http://whitney.org/Events/UndergroundScreening>.

¹¹ Notice of subpoena to F. Jerome Sweet, Federal Bureau of Investigation, Box 92, Folder 6, Wisconsin Center for Film and Theater Research; FBI surveillance logs, 1975, Box 92, Folder 6, Wisconsin Center for Film and Theater Research.

¹² FBI surveillance logs, 1975, Box 92, Folder 6, Wisconsin Center for Film and Theater Research.

¹³ The disclosed photocopies of these articles can be found in Box 92, Folder 6, Wisconsin Center for Film and Theater Research. This corpus includes Thomas Waugh, "*Underground: Weatherpeople at Home*," *Jump Cut* 12/13 (1976): 11-13.

¹⁴ Jonathan Kahana, "Exposing the Underground," DVD notes for *Emile de Antonio: Films of the Radical Saint*, 2008.

¹⁵ Emile de Antonio and Mary Lampson, "Mallards and Trombones by Lake Mendota: An interview with Emile de Antonio and Mary Lampson (1976)," interview with Gage, Jim, and Rebecca in *Emile de Antonio: A Reader*, edited by Douglas Kellner and Dan Streible (Minneapolis: University of Minnesota Press, 2000), 284.

¹⁶ *Ibid.*, 283.

¹⁷ Memorandum to the Attorney General, *Federal Bureau of Investigation*, n.d. Box 92, Folder 6, Wisconsin Center for Film and Theater Research.

¹⁸ *Ibid.*

¹⁹ Surveillance logs, *Federal Bureau of Investigation*, 1975, Box 92, Folder 6, Wisconsin Center for Film and Theater Research, 4.

²⁰ *Ibid.*

²¹ *Ibid.*, 1.

²² Memorandum, *Federal Bureau of Investigation*, May 15, 1975, Box 92, Folder 6, Wisconsin Center for Film and Theater Research.

²³ Surveillance logs, 2.

²⁴ Randolph Lewis, *Emile de Antonio: Radical Filmmaker in Cold War America* (Madison, WI: University of Wisconsin Press, 2000), 196.

²⁵ Biskind, 164.

²⁶ *Ibid.*, 171.

²⁷ "Complaint for Injunctive Relief," July 13, 2015, in *Poitras v. Dep't of Homeland Sec.* 2017 U.S. Dist. LEXIS 187307 (D.D.C. March 31, 2017), archived at *Electronic Frontier Foundation*, 2, <https://www.eff.org/document/poitras-foia-complaint>.

²⁸ *Ibid.*, 6.

²⁹ Ibid.

³⁰ Ibid., 2.

³¹ Ibid., 6.

³² Jay Sanders, "Introduction," *Astro Noise: A Survival Guide for Living Under Total Surveillance*, 25.

³³ Laura Poitras, "Artist's Pages," *Whitney Biennial 2012*, 227-228.

³⁴ Incident Report, *U.S. Customs and Border Protection*, Feb. 12, 2008 in Laura Poitras, "Artist's Pages," *Whitney Biennial 2012*, edited by Elisabeth Sussman and Jay Sanders (New Haven, CT: Yale University Press, 2012), 224.

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⁴⁴ Ibid., 90.

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⁶⁸ Ibid.

⁶⁹ “Groups Sue Over Suspicionless Laptop Search Policy at the Border.”

⁷⁰ Greenwald.

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⁷² *Ibid.*, 87.

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⁸¹ David Felix Sutcliffe, personal interview, Mar. 2016 and Johanna Hamilton, personal interview, Dec. 2017.

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⁸⁸ Chon Noriega, “Talking Heads, Body Politic: The Plural Self of Chicano Experimental Video” in *Resolutions: Contemporary Video Practices*, edited by Michael Renov and Erika Suderberg (Minneapolis, MN: University of Minnesota Press, 1996), 211.

⁸⁹ Bill Nichols, *Representing Reality: Issues and Concepts in Documentary* (Bloomington, IN: Indiana University Press, 1991), 89-90.

⁹⁰ Packer.

⁹¹ Ibid.

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⁹³ Laura Poitras, “Laura Poitras Takes Us Behind the Scenes on “Citizenfour,” Now on HBO,” interview with Anne Thompson, *IndieWire*, Feb. 24, 2015, <http://www.indiewire.com/2015/02/oscar-winner-laura-poitras-takes-us-behind-the-scenes-on-citizenfour-now-on-hbo-188681/>.

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⁹⁵ Parks, 15.

⁹⁶ Laura Poitras, “From Inside the Snowden Saga: How Laura Poitras Covertly Shot Her New Film, *Citizenfour*,” interview with Matt Patches, *Vanity Fair*, Oct. 23, 2014, <http://www.vanityfair.com/hollywood/2014/10/laura-poitras-citizen-four>.

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Conclusion
**Challenging Limits: The Precarious Futures of
Documentary Media and FOIA**

While this dissertation has explored the significant ways that FOIA has shaped the contours of public discourse and political interventions to date, it remains unclear how its operations will shift in the years to come. As a mechanism of partial, sometimes strategic transparency, FOIA's mediating effects are always contingent on fluctuating contexts of disclosure and the agendas of changing administrations. Even among experts, there is no consensus about its future directions. Nate Jones, Director of the National Security Archive's Freedom of Information Act Project, believed that FOIA would remain largely unchanged, but also described it as a "colossus under assault."¹ JPat Brown, Executive Editor of the FOIA advocacy organization MuckRock, said that the multitude of factors that affected the process made it impossible to determine its imminent trajectory. Brown expressed concern that a movement toward open data, in which the government would proactively post (only) the information it wanted to release, could weaken or even replace the current system of public requests. In the shorter term, he assessed that the Trump administration is "never going to be pro-FOIA, but they won't be trying to smother it with a weaker version, which is what we were looking at the other way. . . . It's less 'slow creeping death' and more 'dodge the huge hammer falling.'"² Beyond the timeframe of the current presidency, he could only assert that FOIA is "not directly in danger, insofar as anything is, but things shift so fast and there are so many moving parts."³

As of now, there are indications of worrisome predicaments on the horizon. For instance, in FY 2017, FOIA lawsuits rose 26% from the prior year and 70% from five years ago.⁴ This has resulted in a backlog of over 900 cases waiting to be heard.⁵ During that

period, the government also ended up spending a record-setting \$40.3 million on litigation costs to FOIA.⁶ These developments resonate with the sentiment of some independent documentarians, who stated that bringing a lawsuit was the only viable way of having their complicated requests carried out (see Chapter 3). With the Department of Defense categorizing 40% of its requests in FY 2017 as “complex,” the prospect of bringing a suit will likely weigh on the minds of many requesters.⁷ Yet, as greater numbers are compelled to pursue this avenue, the resulting congestion of the courts will only dampen the efficacy of judicial relief. The growing reliance on litigation further suggests that the current responses to large or sensitive requests are inadequate.

Another troubling symptom is the rates at which officers release records. In FY 2016, agencies and department collectively issued full grants to 23.1% of requests, partial grants or denials to 36.8%, and full denials based on exemptions to 5.7% of requests.⁸ However, these statistics efface that partial disclosures of sensitive documents may redact the very information that would reveal details of state abuses. Some requesters have even received completely redacted records, which still qualifies as a fulfilled disclosure. A 2015 report also found that almost one in three appeals of redacted or withheld documents that year led to the decision being reversed to some degree, which marked the highest rate in five years.⁹ Reflecting on these trends, Jones observed, “There is a staggering amount of information requested under FOIA that agencies should have released but didn’t.”¹⁰ The preponderance of such classified logistics unnecessarily aggravates the redaction of publics and jeopardizes the emergence of impactful interventions.

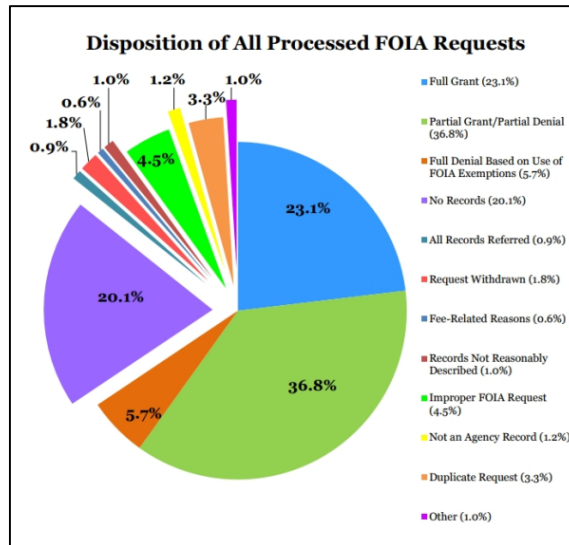


Figure 44. The breakdown of FOIA responses in FY 2016¹¹

A further worrying development is the internal treatment and reputation of FOIA labor. One example is Lawrence Bartlett, a top official working on refugee admissions at the State Department, who was conspicuously reassigned to its FOIA office in January 2018. Current and former officials from the department, which notoriously has one of the least functional FOIA offices, were not only alarmed that this reassignment signaled the Trump administration’s dismantling of refugee protections. Concurrently, they admitted that they referred to the office as “Siberia,” a nickname that evokes the Soviet punishment of ‘icing out’ political enemies by sentencing them to a gulag to perform grueling, back-breaking labor.¹² One unnamed official added, “The FOIA office was always the punch line of a joke around here, as in: ‘They’ll send me to the FOIA office.’”¹³ Thus, some employees view the vital tasks of a FOIA officer as menial and subsidiary, and see the position as retribution for doing politically unfavorable work or stepping out of line.

In addition, looming technical issues around access and preservation belie the subsidiary status that FOIA archivists give to moving image records. As formats like videotapes age, their contents are increasingly at risk of loss. Some archivists have referred to

this problem as the “magnetic media crisis” and warned that such materials typically only have a 20- to 30-year lifespan.¹⁴ Deficient environmental conditions and frequent replaying can degrade or ruin such media even sooner. The discontinued manufacture of formats like VHS and Umatic is also reducing the number of machines that are compatible to view and reproduce these formats’ contents.¹⁵ For agencies that require declassification-approved machines, there may be no such equipment available. Thus, if these records are not processed and digitized in time, they will become little more than husks. As John Durham Peters has written, “[S]tashes of obsolete records suggest a kind of dereliction matched only by the corpse. They are our life-blood and memory distilled into external form. . . . Audiovisual and digital hardware are the memento mori for postmodern humans, reminders of what was and is no more.”¹⁶ Adding to the logistical difficulties, the rush toward digitizing deteriorating analog materials arrives as archivists are already struggling to keep up with the exponential growth of born-digital media files and formats. Simultaneously, the rapid transformations in digital media practices are accelerating the obsolescence of more and more digital formats.

However, at the root of all of these enduring administrative and technical vulnerabilities is a lack of political will among officials, exactly because of FOIA’s threatening capacity to reveal damaging information and create scandals. Tellingly, the states with the most vigorous transparency laws are neither Republican nor Democratic strongholds, but the ones in which legislative control shifts back and forth. Likewise, when the same political party controls multiple branches of the federal government, there is much less motivation for Congress to bolster freedom of information resources. Brown noted, “[W]hen it was assumed that Clinton was going to win, you saw under Paul Ryan that funding FOIA was huge on the Republicans’ agenda. ‘Well, let’s at least get the stuff that

makes people look bad.’ That’s the major motivation. And unless you have strong, consistent opposition [and] there’s a constant power struggle, no one is going to put any money into it.”¹⁷ Hence, the politicization of the process leaves it constantly vulnerable to institutional disregard, which, in turn, weakens its utility and degrades its reputation as an effective mechanism. Paradoxically then, its high-profile achievements can precipitate and exacerbate its high-profile failures.

Given the interdependence of the media processes I have discussed throughout the preceding chapters, any future shortcomings in FOIA and government records access will also have serious implications for actors like journalists, documentarians, scholars, and advocacy organizations. In March 2018, the Freedom of the Press Foundation introduced @FOIAFeed to showcase the prominence of reportage that used FOIA and other public access laws to gather their source material. The bot follows “over a dozen major news organizations” and posts links to and excerpts of the articles it identifies on Twitter.¹⁸ Announcing the launching of the bot, Parker Higgins wrote, “There’s no doubt that the FOIA process is cumbersome, and in some ways, badly broken. But investigative journalism that digs into primary source documents obtained through public records laws is interesting and substantial work.”¹⁹ In the first five weeks that @FOIAFeed was active, it had already highlighted nearly two hundred stories. Among the topics that the coverage has recently addressed include the conflict of interest created by federal agencies and Republican groups spending millions of dollars at Trump-owned businesses, former Environmental Protection Agency (EPA) Administrator Scott Pruitt using four different government email accounts in office among other violations, and federal law enforcement agencies and local police forces using a tool called GrayKey to bypass iPhone encryption.²⁰ Thus, the affirmed vitality of

FOIA as a source also becomes a harbinger of the kinds of reports that might otherwise not come to light under degraded conditions.

Connected to the work of investigative journalism, the realization of some independent documentary projects is tied to the evolving affordances and shortcomings of FOIA. As I highlighted in Chapters 3 and 4, FOIA has proven to be an invaluable, but unpredictable mechanism of accessing vital information for filmmakers during and after the production process. The retrieval of government documents has materially and discursively impacted the films the documentarians created. In cases like de Antonio and Poitras, it has even revealed the risks of government targeting that making dissident films provoked. Though I cannot be certain, my research so far has also suggested that documentarians have been increasingly turning to FOIA in the last two decades. This growth makes sense as it becomes a more established method, with documentarians sharing their experiences in the industry and drawing attention to especially noteworthy records in their films. However, if practitioners working on national security continue to routinely face obstructions like unreasonable delays and denials and are required to legal action, the reverse effect may take hold. The use of FOIA as a production method could decline, and more challenging investigative projects will have to adopt different approaches or risk never being made.

Thus, FOIA as a mediating process is also constantly being mediated by those who interact with it. Michael Ravnitzky compared the survival of the legislation to the play *Peter Pan*, in which the audience's clapping revives the near-dead fairy character Tinker Bell. He noted that FOIA will only continue to exist in a meaningful form if groups like reporters and documentarians, who are in a favorable fee category, rely on it. However, if they give up on this method, "because the common thought now is it takes too long and it's too difficult, . . .

it's not going to be preserved."²¹ As such, the precarious futures of non-fiction moving images and FOIA are indissociable, with the effectiveness and visibility of these media reinforcing the viability of the other. Moreover, when practitioners highlight FOIA methods in their work and reflexively acknowledge the significance of its role, it can galvanize others to adopt this technique toward their own pursuits. Simultaneously though, when a damaging record permeates the sieve of FOIA and ripples into journalistic coverage or documentary films, agencies and departments may go to added lengths to adjust their policies and restrict the release of other detrimental records. This is especially true of national security agencies, which have gained the most leeway to obstruct and dismiss otherwise responsive requests.

Given the extraordinary stakes of these connected dynamics, it is imperative for humanities fields like media studies to devote greater scholarly attention to understanding and contextualizing these interactions. In concert with the research taking place in social scientific disciplines, the critical frameworks and methodologies of media studies can add crucial layers to explaining how official and unofficial records negotiate epistemological conditions. As I have argued, this approach can draw out the historical, political, and even artistic valences of official records, while also troubling their authority and status as an external, objective truth. For one, tracing the many processual states that governmental media undergo refutes the still-prevailing sense that they can ever be definitive, self-evident evidence or that the interpretations and receptions of such records are stable or unilateral. Along related lines, rather than simply valorizing disclosure and critiquing rejection and redaction, we should then frame the bureaucratic system as a more complex assemblage of responses that both shapes and is shaped by a multitude of social forces. Identifying the interplay of such contributing political, legal, and technical factors reveals how supposedly

individual releases and individual decisions by officers or agencies fit into a much broader system of publicization and information control. To accomplish this, scholars must work to break down the competing or complementary sets of strategies of public image maintenance that I have termed transparency optics, and critically interrogate the logics of when and why officers release certain documents.

A humanities-informed framework also necessitates developing a more intricate and attuned conception of FOIA censorship. Along with problematizing transparency, we should be careful not to reduce this process of review and restriction to a question of individual acts of suppressing or removing state information. Building on the rich tradition of historicizing and analyzing censorship in media studies, this level of mediation should be framed within the interplay of a larger regulatory system and understood alongside broader social factors as well.²² Concurrently, censored documents can help index the tenor of an administration's openness (or at least their carefully cultivated impression of openness), indicate which kinds of records remain hidden and for how long, and set precedents for future restrictions or judicial intervention. As Anjali Nath noted in the case of detainee torture files, "reading with redaction" can also "interrup[t] the seamlessness of a text, compelling the reader to ponder the unspeakable, unrecordable traumas."²³ In addition, as I discussed in Chapter 4, requesters have the power to reappropriate manifestations of censorship toward their own objectives. For instance, journalists and FOIA advocates often post fully redacted pages or what they consider unfair or even ridiculous responses to their requests on social media to protest these maneuvers.²⁴ Documentarians such as Poitras and Boundaoui and artists such as Margia Kramer and Arnold Mesches have also created works that defiantly flaunt the presence of official lacunae. By employing a range of censibilities to creatively resituate what could

otherwise be perceived as mere gaps in knowledge, they showcase one potent way to rethink the operations and practices of censorship.

While this dissertation has focused on the intersections of FOIA and documentary film, there remain many rich areas of inquiry that were beyond my purview here. One evident topic that merits more updated and in-depth analysis is the connections between FOIA disclosures and journalism. In addition to my emphasis on national security and surveillance, other studies might ask how FOIA mediates public knowledge of other government domains such as environmental regulation or health policy. Likewise, while I have centered on FOIA's applications to moving images, other formats like still images and audio files have also received too little official and academic consideration. For instance, autopsy photos, photos of flag-draped coffins of U.S. soldiers returning from the Iraq War, and 911 calls have all been controversial subjects of FOIA requests, and have participated in



Figure 45. A partially redacted photo of killed-in-action U.S. soldiers at the center of a FOIA lawsuit²⁵

their own medium-specific economies of public knowledge production and suppression. At the same time, these formats instantiate particular ethical and legal quandaries and enable certain affective capacities. Forms of paper-based records like maps, contracts, and letters also all have their own generic conventions and epistemological potentialities that warrant specialized attention. Moreover, because this dissertation has almost exclusively addressed FOIA in the U.S. federal context, critical interrogations of state-level practices and of the hundred-plus public records laws passed around the world are vital. Building on the foundation of scholars like Alasdair Roberts, analyzing how distinct national political, legal, and technical contexts mediate documentary records and public knowledge formations can provide generative bases for comparative studies. With Western scholars like me predominantly centering on Western models like the United States and United Kingdom, more emphasis on non-Western instantiations of freedom of information laws is especially of interest.

Furthermore, a humanities-grounded analysis of FOIA invites fuller contemplations of the possibilities beyond the mechanisms of the liberal democratic system. Though my case studies largely remained within the institutional system and by extension, the Enlightenment-steeped ideals of rationalist thinking and informed public debate, there are many competing forces that trouble these assumptions of universality. Less culturally legitimized acts like hacking, leaking, and piracy and marginalized actors who seek methods of mobilizing social reform beyond the bureaucratic also exert meaningful pressures on the future viability of FOIA. They help reveal the fictions of an inclusive public sphere and of democratic accountability. By not adhering to the permissible policies of the liberal state, they forcibly remap the boundaries of transparency and access. Given these stakes, such ongoing

confrontations with the official also merit more elaborated consideration that largely fell outside of my scope.

Ultimately, by concluding with an acknowledgment of its own ineluctable gaps, I am appreciating that this contribution to public research is only one strand in a much larger fabric of ideas. However, the reliance on collaborative exchange also leaves each individual element vulnerable to tears and attrition in the system. At this precarious historical juncture, when formidable institutional forces are simultaneously threatening the futures of fact-based argumentation and sustainable scholarly labor, there is serious cause for concern. If the conditions of producing and circulating knowledge continue to erode, the partialities and lacunae will proliferate and the ability to mobilize against state violence will diminish. Counteracting such a dark future requires a renewed commitment to supporting hard-fought truths and vigilantly expanding the critical apertures of disclosures.

¹ Nate Jones, personal interview, Apr. 2018 and Nate Jones, “FOIA: A Colossus Under Assault,” *Unredacted: The National Security Archive Blog*, Mar. 7, 2018, <https://unredacted.com/2018/03/07/foia-a-colossus-under-assault/>.

² JPat Brown, personal interview, Mar. 2018.

³ *Ibid.*

⁴ FOIA Project staff, “FOIA Lawsuits Surge in Trump Administration’s First Year,” *FOIA Project*, Jan. 16, 2018, <http://foiaproject.org/2018/01/16/lawsuits-trump-first-year/>.

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⁶ Allan Blutstein, “FOIA News: Gov’t litigation costs exceeded \$40 million in FY 2017,” *FOIA Advisor*, Mar. 3, 2018, <https://www.foiaadvisor.com/home/2018/3/3/foia-news-federal-litigation-costs-exceed-40-million-in-fy-2017>.

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¹¹ Office of Information Policy.

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¹⁶ John Durham Peters, “Obsolescence in the Digital Era,” *Cosmologics*, Jan. 18, 2016, <http://cosmologicsmagazine.com/john-durham-peters-obsolescence-in-the-digital-era/>.

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¹⁸ Parker Higgins, “Introducing @FOIAFeed, a Twitter bot that finds and shares Freedom of Information Act journalism,” *Freedom of the Press Foundation*, Mar. 29, 2018, <https://freedom.press/news/introducing-foiafeed-twitter-bot-finds-and-shares-freedom-information-act-journalism/>.

¹⁹ *Ibid.*

²⁰ Anita Kumar, “Trump businesses made millions off Republican groups and federal agencies, report says,” *McClatchy DC Bureau*, Apr. 16, 2018, <http://www.mcclatchydc.com/news/politics-government/white-house/article20885534.html>; Nick Visser, “Scott Pruitt Uses Multiple ‘Secret’ Email Accounts, Senators Say,” *Huffington Post*, Apr. 13, 2018, https://www.huffingtonpost.com/entry/scott-pruitt-secret-email-accounts_us_5ad056e1e4b077c89ce72551; Joseph Cox, “Cops Around the Country Can Now Unlock iPhones, Records Show,” *Motherboard*, Apr. 12, 2018, https://motherboard.vice.com/en_us/article/vbxxdd/unlock-iphone-ios11-graykey-grayshift-police.

²¹ Michael Ravnitzky, personal interview, Feb. 2018.

²² See, for example, Lea Jacobs, *The Wages of Sin: Censorship and the Fallen Woman Film, 1928-1942* (Berkeley, Los Angeles, and London: University of California Press, 1995) and Heather Hendershot, *Saturday Morning Censors: Television Regulation Before the V-Chip* (Durham, NC and London: Duke University Press, 1998).

²³ Anjali Nath, “Beyond the Public Eye: On FOIA Documents and the Visual Politics of Redaction,” *Cultural Studies* ↔ *Critical Methodologies* 14.1 (2014): 23.

²⁴ National security reporters Jason Leopold and Emma Best are among the prominent FOIA advocates who have used Twitter to publicize their experiences with FOIA censorship. See, for instance, Jason Leopold (@JasonLeopold), “I’m sure the accomplishments were plentiful!...,” *Twitter*, July 22, 2018, <https://twitter.com/JasonLeopold/status/1021160568969809920> and Emma Best (@NatSecGeek), “Just got a letter from DHS telling me that certain memos don’t exist...,” *Twitter*, July 8, 2018, <https://twitter.com/NatSecGeek/status/1016010699208871936>.

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Filmography

À Propos de Nice (dir. Jean Vigo, 1930)
Better This World (dir. Kelly Duane de la Vega and Katie Galloway, 2011)
Blackfish (dir. Gabriela Cowperthwaite, 2013)
Breathless (dir. Jean-Luc Godard, 1963)
Brother Outsider: The Life of Bayard Rustin (dir. Nancy Kates and Bennett Singer, 2003)
The Camden 28 (dir. Anthony Giacchino, 2007)
Casablanca (dir. Michael Curtiz, 1942)
Citizenfour (dir. Laura Poitras, 2014)
Extraordinary Fidelity (dir. Paul Wimmer, 2010)
The Feeling of Being Watched (dir. Assia Boundaoui, 2018)
Free CeCe! (dir. Jac Gares, 2016)
Freedom of Information Tape 1: Jean Seberg (dir. Margia Kramer, 1980)
Fuck (dir. Steve Anderson, 2005)
Hôtel Terminus: The Life and Times of Klaus Barbie (dir. Marcel Ophuls, 1988)
If A Tree Falls: A Story of the Earth Liberation Front (dir. Marshall Curry, 2011)
The Imposter (dir. Bart Layton, 2012)
In the Year of the Pig (dir. Emile de Antonio, 1968)
Jack Strong (dir. Wladyslaw Pasikowski, 2014)
Keeping Jack Strong (dir. Paul Wimmer, unknown)
Let There Be Light (dir. John Huston, 1946)
Metropolis (dir. Fritz Lang, 1927)
Mr. Hoover and I (dir. Emile de Antonio, 1989)
My Country, My Country (dir. Laura Poitras, 2006)
My Fugitive (dir. Nina Gilden Seavey, in development)
National Bird (dir. Sonia Kennebeck, 2016)
The Newburgh Sting (dir. Kate Davis and David Heilbroner, 2014)
1971 (dir. Johanna Hamilton, 2014)
The Oath (dir. Laura Poitras, 2010)
One Document for Hope (dir. Margaret Rorison, 2016)
The People's Right to Know (Department of Defense, 2001)
Point of Order! (dir. Emile de Antonio, 1964)
Restrepo (dir. Tim Hetherington and Sebastian Junger, 2010)
Shoah (dir. Claude Lanzmann, 1985)
(T)error (dir. Lyric R. Cabral and David Felix Sutcliffe, 2015)
This Was Personal (dir. Paul Wimmer, unknown)
Under Our Skin (dir. Andy Abrahams Wilson, 2008)
Underground (dir. Emile de Antonio, Mary Lampson, and Haskell Wexler, 1976)
Uniquely Nasty: The U.S. Government's War on Gays (dir. Michael Isikoff, 2015)
William Kunstler: Disturbing the Universe (dir. Emily Kunstler and Sarah Kunstler, 2009)