

REVIEW ESSAY

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# Secrecy, Archives, and the Archivist: A Review Essay (Sort Of)

Richard J. Cox

## **Presidential Secrecy and the Law**

By Robert M. Pallitto and William G. Weaver. Baltimore: Johns Hopkins University Press, 2007. xii, 261 pp. Soft cover \$25. ISBN-13 978-0-8018-8583-9.

## **Nation of Secrets: The Threat to Democracy and the American Way of Life**

By Ted Gup. New York: Doubleday, 2007. 323 pp. Hard cover \$24.95. ISBN 978-0-385-51475-0.

## **The Collapse of Fortress Bush: The Crisis of Authority in American Government**

By Alasdair Roberts. New York: New York University Press, 2008. xii, 266 pp. Hard cover \$29.95. ISBN-13 978-0-8147-7606-3.

## **The Bush-Cheney Administration's Assault on Open Government**

By Bruce P. Montgomery. Westport, Conn.: Praeger, 2008. xii, 215 pp. Hard cover \$49.95. ISBN 978-0-275-99904-9.

## **Subverting Open Government: White House Materials and Executive Branch Politics**

By Bruce P. Montgomery. Lanham, Md.: Scarecrow Press, 2006. viii, 227 pp. Soft cover \$32. ISBN 0-8108-5178-4.

## **Introduction**

The issue of government secrecy is not a new concern for archivists. Nearly four decades ago, historian Howard Zinn broached this topic at the height of the controversy about the Vietnam War, cautioning archivists that they could

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not merely ignore the social and political consequences of their work or how aspects of recordkeeping reflect power and control. Zinn, in his customary frank fashion, made two recommendations for archivists, “that they engage in a campaign to open all government documents to the public” and “that they take the trouble to compile a whole new world of documentary material, about the lives, desires, needs, of ordinary people.”<sup>1</sup> That was a long time ago, and a lot has changed. At the time Zinn wrote this assessment, government archivists were more agitated about the replevin of stray government archives in private citizens’ or dealers’ hands.<sup>2</sup> But even in discussions of replevin, there emerged affirmations of the public’s ownership of public records, such as when Julian Boyd concluded his analysis of the efforts by the federal government to reclaim the journals of William Clark (of Lewis and Clark explorer fame) discovered in an attic in 1953 by reaffirming the public ownership of government records.<sup>3</sup>

Fast forward three decades to the SAA presidential address of Tim Ericson, and we see how the matter of government secrecy has become more critical in American archival issues.<sup>4</sup> Ericson carefully documented the growing secrecy and then asked where were the archivists and what were they thinking? Ericson argued strenuously that archivists need to educate themselves about this issue, pushing the SAA to join with other professional associations and allies (such as the American Civil Liberties Union, National Security Archive, and OMB Watch) to become a more effective watchdog over what the federal government was doing with its information and the degree of access it was allowing the public and researchers. Ericson’s address, as it turns out, was not the first to make such a call from within the archival community for cooperative advocacy on behalf of truly open and accountable government, but it is unique in that it came at a time when the federal government seemed to be becoming more closed and less accountable to its citizenry and researchers.

This review essay considers five recent books on aspects of government secrecy in the United States, written by external observers and critics of American government and from within the ranks of archivists. In *Presidential Secrecy and the Law*, political scientists Robert M. Pallitto and William G. Weaver co-author a research study on presidential secrecy and its legalities and illegalities.

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<sup>1</sup> Howard Zinn, “Secrecy, Archives, and the Public Interest,” *Midwestern Archivist* 2, no. 2 (1977): 14–26 (quotation, p. 25).

<sup>2</sup> William S. Price, Jr., “N.C. v. B.C. West, Jr.,” *American Archivist* 41 (January 1978): 21–24 and Thornton W. Mitchell, “Another View of the West Case,” *Georgia Archive* 9, no. 2 (Fall 1991): 19–30.

<sup>3</sup> Julian P. Boyd, “‘These Precious Monuments of . . . Our History,’” *American Archivist* 22 (April 1959): 180.

<sup>4</sup> Timothy L. Ericson, “Building Our Own ‘Iron Curtain’: The Emergence of Secrecy in American Government,” *American Archivist* 68 (Spring/Summer 2005): 18–52.

Investigative reporter Ted Gup in *Nation of Secrets: The Threat to Democracy and the American Way of Life* sounds the alarm to the public about the increasing toll secrecy in government operations is taking on the country. In *The Collapse of Fortress Bush: The Crisis of Authority in American Government*, lawyer and public policy expert Alasdair Roberts analyzes the U.S government's response to the events of 9/11, largely focusing on issues of government accountability and access. And archivist Bruce Montgomery gives us a succinct, powerful analysis of the "Bush-Cheney" administration and the demise of open government in *Subverting Open Government: White House Materials and Executive Branch Politics* and *The Bush-Cheney Administration's Assault on Open Government*, two books with ample commentary on the implications of government secrecy for archival work and archivists' mission. This is just a sampling of the growing number of books being published on the issue of government secrecy with implications for archives and records management; considered together they include some compelling lessons and warnings for archivists, both in and out of government.

### Shifting Interests in Government Archives

Along the way, archivists have heard from a growing number of voices about the persistent challenge of government (and other forms of) secrecy. Athan Theoharis, in the early 1980s, described both the "unparalleled insights into the activities of American dissidents"<sup>5</sup> offered by the FBI investigative case files and the challenges posed by the FBI's efforts to create and conceal shadow recordkeeping systems, the possible destruction of many of these records, and the cumbersome difficulties posed by Freedom of Information Act (FOIA) procedures. These problems not only weakened the possibility of certain kinds of historical research, but undermined government accountability. Historian Joan Hoff-Wilson warned that professional associations, including those representing archivists, need to develop codes of professional conduct that go beyond moral platitudes and deal with legal issues concerning the increasing tendency of government and other records creators to hide their archival resources.<sup>6</sup> Sigmund Diamond described his long career of using the Freedom of Information Act to get access to public records and his checkered success in getting private institutions to open up records, concluding that "archivists, as custodians of the records of our times, have an ethical obligation to support the most possible public access to public records."<sup>7</sup>

<sup>5</sup> Athan G. Theoharis, "The FBI and the FOIA: Problems of Access and Destruction," *Midwestern Archivist* 5, no. 2 (1981): 61.

<sup>6</sup> Joan Hoff-Wilson, "Access to Restricted Collections: The Responsibility of Professional Historical Organizations," *American Archivist* 46 (Fall 1983): 441-47.

<sup>7</sup> Sigmund Diamond, "Archival Adventure along the Freedom of Information Trail: What Archival Records Reveal about the FBI and the Universities in the McCarthy Period," *American Archivist* 12, no. 1 (1987): 41.

Archivists also began to probe the nature of access to government records. Some prepared historical studies providing part of the background for current government records laws.<sup>8</sup> Other archivists, involved in acquiring the personal papers of elected federal officials (sometimes embroiled in scandal or controversy), sought to develop approaches that would enable them to secure the papers, even if risking negative publicity.<sup>9</sup> Elena S. Danielson, in an essay describing controversial cases about access to personal papers and government records, acknowledged that "Providing fair access to archives may appear to be a fundamentally simple operation, until one examines specific cases."<sup>10</sup>

The growing challenges of administering government records, on all levels of government, began to generate a number of case studies about the difficulties of providing access. From within the National Archives emerged balanced accounts of trying to deal effectively with federal records and information systems that had become complex, partly due to their connection with spying on American citizens, notably the FBI field case files.<sup>11</sup> The issue of how best to manage and preserve presidential papers, as records owned by the government for its citizens, continued to stimulate a number of investigations, including some testy explorations into matters concerning the National Archives and its relationship to the executive office.<sup>12</sup> Examinations of the efforts to repatriate official

<sup>8</sup> Dwayne Cox, "Title Company v. County Recorder: A Case Study in Open Records Litigation, 1874–1918," *American Archivist* 67 (Spring/Summer 2004): 46–57 and "The Rise of Confidentiality: State Courts on Access to Public Records During the Mid-Twentieth Century," *American Archivist* 68 (Fall/Winter 2005): 312–32 charted the increasing acceptance of the right to access public records, leading to, by the 1960s, a balance of the right to know with that of confidentiality.

<sup>9</sup> Pam Hackhart-Dean, "A Hint of Scandal: Problems in Acquiring the Papers of U.S. Senator Herman E. Talmadge—A Case Study," *Provenance* 13 (1995): 80. In fact, sometimes archivists have worked to avoid controversy; see, for example, Karen M. Lamoree, "Documenting the Difficult or Collecting the Controversial," *Archival Issues* 20, no. 2 (1995): 149–53. Others have expressed very different perspectives, such as Julie Herrada in her description of the decision by the University of Michigan to acquire the personal papers of Ted Kaczynski (the Unabomber): "A little controversy about our collections is better than whitewashing social history"; Herrada, "Letters to the Unabomber: A Case Study and Some Reflections," *Archival Issues* 28, no. 1 (2003–2004): 45. See also, Frank Boles, " 'Just a Bunch of Bigots': A Case Study in the Acquisition of Controversial Material," *Archival Issues* 19, no. 1 (1994): 53–66, chronicling the public reception of Central Michigan University's decision to purchase records of the Ku Klux Klan.

<sup>10</sup> Elena S. Danielson, "The Ethics of Access," *American Archivist* 52 (Winter 1989): 53. The Lowenheim case is well documented in Herman Kahn, "The Long-Range Implications for Historians and Archivists of the Charges Against the Franklin D. Roosevelt Library," *American Archivist* 34 (July 1971): 265–75 and Richard Polenberg, "The Roosevelt Library Case: A Review Article," *American Archivist* 34 (July 1971): 277–84. At that time archivists seemed more fearful of historians' displeasure than issues such as government secrecy and accountability.

<sup>11</sup> James Gregory Bradsher, "Researchers, Archivists, and the Access Challenge of the FBI Records in the National Archives," *Midwestern Archivist* 11, no. 2 (1986): 95–110 and Susan D. Steinwall, "Appraisal and the FBI Files Case: For Whom Do Archivists Retain Records?," *American Archivist* 49 (Winter 1986): 52–63.

<sup>12</sup> H. G. Jones, "Presidential Libraries: Is There a Case for a National Presidential Library?," *American Archivist* 38 (July 1975): 325–28; "The Records of Public Officials: Final Report of the Forty-Eighth American Assembly," *American Archivist* 38 (July 1975): 329–36; David Bearman, "The Implications of *Armstrong v. Executive Office of the President* for the Archival Management of Electronic Records," *American Archivist* 56 (Fall 1993): 674–89.

government records or to straighten out the control of archival materials of former colonial powers also provided interesting insights into access issues to these records and our notion of archival principles.<sup>13</sup> The Mississippi State Sovereignty Commission files, a state agency existing from 1956 to 1973 and charged with surveilling individuals suspected of being involved in the civil rights movement, created difficult problems of access versus personal privacy for the state archives.<sup>14</sup> This bore eerie similarities to the circumstances surrounding the East German Stasi (secret police) files, presenting similar challenges to balancing personal privacy with concerns of state history and accountability. Elena S. Danielson, in considering the latter records, argued that archivists must fight for the preservation and access to such records.<sup>15</sup> And, indeed, a number of other case studies confirmed such challenges, notably in former parts of the U.S.S.R.<sup>16</sup>

American archivists also began to document cases where federal agencies sought to interfere with access to papers and other records held in nongovernment repositories. Harold Miller documented the case in which the FBI subpoenaed and got access to the papers of Carl and Anne Braden in a suit the FBI was involved in, even though Anne Braden, one of the donors, objected to such use. Miller lamented the precedent that might discourage potential donors from giving their personal papers and worried that the Society of American Archivists declined to become involved in support of the repository.<sup>17</sup> There were also case studies about the control of and access to federal records held by universities, such as one involving Lawrence Berkeley Laboratory.<sup>18</sup> Undoubtedly, we will see more case studies in the future, and it is a good thing given the complexities of such access matters.

Government secrecy and the manipulation of records by government officials have moved such matters to the forefront of archival concerns. Michael Isikoff recounted in October 2007 the difficulties Sally Bedell Smith had in

<sup>13</sup> Marie Elwood, "The Discovery and Repatriation of the Lord Dalhousie Collection," *Archivaria* 24 (Summer 1987): 108–16; Jeannette Allis Bastian, "A Question of Custody: The Colonial Archives of the United States Virgin Islands," *American Archivist* 64 (Spring/Summer 2001): 96–114.

<sup>14</sup> Lisa K. Speer, "Mississippi's 'Spy Files': The State Sovereignty Commission Records Controversy, 1977–1999," *Provenance* 17 (1999): 101–17.

<sup>15</sup> Elena S. Danielson, "Privacy Rights and the Rights of Political Victims: Implications of the German Experience," *American Archivist* 67 (Fall/Winter 2004): 170–93.

<sup>16</sup> William G. Rosenberg, "Politics in the (Russian) Archives: The 'Objectivity Question', Trust, and the Limitations of Law," *American Archivist* 64 (Spring/Summer 2001): 79. See also George Bolotenko, "Frost on the Walls in Winter: Russian and Ukrainian Archives since the Great Dislocation (1991–1999)," *American Archivist* 66 (Fall/Winter 2003): 271–302. For another case study, see Joel A. Blanco-Riveria, "The Forbidden Files: Creation and Use of Surveillance Files Against the Independence Movement in Puerto Rico," *American Archivist* 68 (Fall/Winter 2005): 297–311.

<sup>17</sup> Harold L. Miller, "Will Access Restrictions Hold Up in Court: The FBI's Attempt to Use the Braden Papers at the State Historical Society of Wisconsin," *American Archivist* 52 (Spring 1989): 180–90.

<sup>18</sup> Loretta L. Hefner, "Lawrence Berkeley Laboratory Records: Who Should Collect and Maintain Them?," *American Archivist* 59 (Winter 1996): 62–87.

researching her book about Hillary Clinton at the William J. Clinton Presidential Library, reporting that very little of the material held at this library had been opened. Isikoff indicated that, through FOIA, *Newsweek* obtained documents revealing that “Clinton has given the [National] Archives private instructions to tightly control the disclosure of chunks of his archive.”<sup>19</sup>

Government secrecy is not a new issue (although it has probably been exaggerated by greater media scrutiny in our digital era). Cornelia Vismann, in her study of the concept of files in Western culture, documents how by the mid-seventeenth century, “Language had become a sanctuary for political action. Words are more easily ordered than territories, and they are more obedient than mercenaries.”<sup>20</sup> As government grew in scope and produced more records, the need to manage and sometimes control access to these documents also changed. For example, a Prussian edict in 1776 mandated that affairs could only be made public from the archives when they had “no adverse effect on state and government.”<sup>21</sup> From that point on, the classic tension between government officials and the public set in—namely the controversy over government transparency, including records and archives. As Vismann summarizes this classic battle, “The state compiles records, society demands their disclosure.”<sup>22</sup> As democratic regimes evolved, such tensions grew more evident as public debate about government secrecy became a source of both political intrigue and discussion about the nature and purpose of the state in society. Indeed, American patriots leveled this grievance against the king in the Declaration of Independence, institutionalizing it in the Constitution a decade later.

### **New Scrutiny on Government Secrecy: Who Is the Most Secret of All?**

It is easy to misread the efforts of former president George W. Bush regarding secrecy and national security as being unique to him, partly because he so aggressively argued for needing it to wage a war on terror. Robert M. Pallitto and William G. Weaver demonstrate a long history predating what “W,” Cheney, Ashcroft, Gonzales, and Rove did in keeping their activities behind closed doors. Pallitto and Weaver firmly document that the Bush administration was the most secret of the presidencies, but they also document that no one in this administration invented the idea. They show that after 9/11, opportunities appeared to

<sup>19</sup> Michael Isikoff, “Papers? I Don’t See Any Papers,” *Newsweek*, 29 October 2007, 37–38.

<sup>20</sup> Cornelia Vismann, *Files: Law and Media Technology*, trans. Geoffrey Winthrop-Young (Stanford, Calif.: Stanford University Press, 2008), 103.

<sup>21</sup> Vismann, *Files*, 113.

<sup>22</sup> Vismann, *Files*, 147.

create a presidency “inconsistent with constitutional provisions and the functioning of our democracy.”<sup>23</sup> Or, seen from another angle, “The second war with Iraq is arguably the only combat action in United States history justified solely on information unavailable to the public and Congress.”<sup>24</sup> Presidential secrecy was out of hand; the authors report that when they sought out policy documents governing the definition and application of the notion of state secrets, they could locate no one who knew of such policies. What such issues mean for archivists working for government agencies or for archivists campaigning for the acquisition and opening of government records and information systems is debatable.

The point of their study is to investigate the judiciary’s role in presidential secrecy, and they conclude that while congressional oversight was weak, the judiciary opted to ignore or defer to the president when he claimed the right of secrecy or increased national security. The courts usually sided with the executive office when it embarked on new wiretapping adventures, and they looked the other way when the president took steps contrary to both “political accountability and legal scrutiny.”<sup>25</sup> The courts were unconcerned when the Freedom of Information Act was skirted, records overclassified, executive orders issued hiding more and more information, and national security—a “notoriously vague term”<sup>26</sup>—invoked repeatedly. Pallitto and Weaver conclude that while there are legitimate reasons for reacting to “crisis conditions” involving restrictions on civil liberties, this is very different from a “jurisprudence forged in secret, permanently unavailable to congressional oversight, and for practical purposes not subject even to Supreme Court review.” That the latter has occurred, Pallitto and Weaver describe as “astounding.”<sup>27</sup>

Much in this study relates to the work of archivists and records managers, and this is particularly important since government records professionals and the National Archives have been central to the development of this professional community over the past century. One particularly compelling chapter, “The Classified President,” reviews the evolving nature of the classification of records and secrecy challenges. Considered with the legacy of the Iran-Contra email case, Executive Order 13233 and its additional restriction of presidential records, the increasing power of the attorney general’s office, the ramifications of the Patriot Act, and the extraordinary instances of President Bush using “signing statements” when enacting new legislation, this book is a depressing

<sup>23</sup> Pallitto and Weaver, *Presidential Secrecy and the Law*, 8.

<sup>24</sup> Pallitto and Weaver, *Presidential Secrecy and the Law*, 5.

<sup>25</sup> Pallitto and Weaver, *Presidential Secrecy and the Law*, 3.

<sup>26</sup> Pallitto and Weaver, *Presidential Secrecy and the Law*, 69.

<sup>27</sup> Pallitto and Weaver, *Presidential Secrecy and the Law*, 191–92.

read for any archivist committed to open access to records and democratic accountability. Archivists have special reason to be concerned over their role and mission. The authors describe the Information Security Oversight Office (ISOO), frequently cited by people in the profession in the context of the recent NARA reclassification scandal as a hopeful sign that the National Archives will be more vigilant about such matters in the future, as being “understaffed and overcommitted” and as having no real authority.<sup>28</sup> Such statements reveal how those outside of the archival community tend to see this government archives.

### **It Ain't Just Government**

Roughly coincident with Pallitto and Weaver's study, investigative reporter Ted Gup's book, *Nation of Secrets: The Threat to Democracy and the American Way of Life*, appeared. Gup commences his book by tracking all the news stories appearing in one day related to secrecy in government, corporations, universities, the media, and even cultural organizations—building a case for how pervasive secrecy has become in our society. Gup seeks to reveal the causes and consequences of such secrecy in American life, and the result is a most depressing read. While it is easy to toss the book into the growing stack decrying increasing secrecy (and the loss of personal privacy), this reporter's book is well researched and focused on topics of interest to records professionals.

Gup portrays secrecy as a toxin contaminating other aspects of society and counteracting even good laws and policies. As Pallitto and Weaver home in on the judiciary's role in the development of secret government, Gup ranges over other institutions, including the courts. The books complement each other; both offer many insights to and comments about records and archives, providing historical perspective and analysis of contemporary events. Both conclude that secrecy in government, or any organization, is not new to American culture, while suggesting that the half-decade since 9/11 has given rise to a secrecy far more extensive and deep-grained than any other in our history. Gup notes that in the events since 9/11, the “only thing that has been rationed in this strange undeclared war is information,”<sup>29</sup> with government ringing up huge costs to maintain its clandestine activities (far higher than the financial costs associated with essential archiving tasks and responsibilities).

Gup also examines the increasing quantities of classified records and information, the weakening of FOIA, the growth of executive authority in the federal government, the weakening of judicial review, President Bush's excessive use of signing statements in the enacting of new laws, wiretapping of private

<sup>28</sup> Pallitto and Weaver, *Presidential Secrecy and the Law*, 37.

<sup>29</sup> Gup, *Nation of Secrets*, 17.



citizens, the establishment of secret prison camps, and the hyperbole about the potential of our enemies possessing weapons of mass destruction. By now, the story is a familiar one. The result of all these kinds of activities is, according to Gup, the marginalization of both citizens and consumers. Secrecy has made the information society the surveillance society or the security age. Gup reinforces his arguments with a series of brief case studies humanizing the impact of secrecy on individuals just like us, demonstrating how secrecy became a bureaucratic tool for building status, securing power and authority, and protecting government officials. How should archivists work in this era of surveillance and secrecy? Can they achieve the kind of balance so many have argued for in the past, or must they more clearly side with those arguing for an open society?

*Nation of Secrets* has a number of archival twists. Gup considers the idea that somehow history (the future) will ultimately judge and hold accountable political and other leaders in our time through eventual access to their records, with a caveat that “even history is being purged. Dusty old records are being removed from the U.S. Archives and presidential libraries. Other records are being withheld or simply disappearing. The corrective head of history with its distant day of reckoning is itself now manacled by secrecy.”<sup>30</sup> Clearly, archivists and records managers now face new challenges, although one must consider just what role these records professionals have played in contributing to this purge.

Gup makes a number of references to archivists and their activities. He considers the NARA reclassification program and examines some of the more irrational instances of government secrecy, often involving the closure of much older records of questionable importance. He travels to the Library of Congress Manuscripts Department and requests a list of everything not allowed to be seen, discovering 104 personal collections with national security restrictions. Gup also recounts how Harvard University has placed lengthy restrictions on its official records and makes a number of troubling comments about that institution’s secrecy and the role of archivists, pointing out that the culture of secrecy is now so pervasive that even those on the frontlines of preserving and making accessible historical records seem negatively affected.<sup>31</sup> The author makes archivists reflect on what their role might be in contributing to secrecy or why they ought to re-examine personal perspectives and professional practices.

### **Maybe It Depends on Your Perspective**

The recent books by Roberts and Montgomery provide very different interpretations of what went on in the George W. Bush White House since the

<sup>30</sup> Gup, *Nation of Secrets*, 20.

<sup>31</sup> Gup, *Nation of Secrets*, 205–6.

events of 11 September 2001. Roberts focuses on a crisis of authority, while Montgomery stresses a deliberate agenda of secrecy and an erosion of accountability. Both books offer food for thought for records professionals, with Montgomery, the archivist, not surprisingly offering more about records and information management issues.

Reading Roberts's *The Collapse of Fortress Bush* requires some understanding of the author's notion of government and how it can or ought to operate openly (and this necessitates the reading of his earlier comparative study of government secrecy). In his earlier book, Roberts tracks the evolving transparency of Western democracies where it seemed that the "world was on the cusp of an unprecedented era of openness."<sup>32</sup> This new transparency was tied to the remarkable advances in information technology and a new global society, and Roberts sees the Bush administration's efforts to be less open as the result of "executive anxiety about the capacity to govern effectively in this new environment."<sup>33</sup> Advocating transparency, Roberts presents a balanced view of the difficulties involved in governing in an open environment. While reviewing all the efforts by the Bush administration to regain control over government information and records and the media and the criticism these efforts generated (and comparing this to other nations such as Australia, Canada, and the United Kingdom), Roberts concludes that keeping good records, maintaining practical information systems, and enabling access to the evidence and information in these systems all constitute a major challenge for modern government. He argues that the United States, even with all of the public outrage over increasing government secrecy, has "perhaps the most comprehensive set of transparency rules in the world, a vigorous and free media, and an educated and enfranchised population."<sup>34</sup> In other words, Roberts hedges his bets, seeing needs for government to operate in secret with a varying set of effective counterbalances to excessive secrecy. This may be reassuring for some archivists who weary of the criticisms about excessive secrecy in American government and the warnings about their role in such secrecy.

Roberts continues the story in his new book, focusing on government authority, and specifically why the government reacted to 9/11 as it did. Considering the scale of its expenditures on defense, Roberts still contends that the "9/11 crisis was notable for the extent to which it did *not* repeat many earlier excesses—such as treason and sedition trials, denaturalization proceedings, internments, blacklists, and programs to disrupt domestic protest movements."<sup>35</sup> He sees the Bush

<sup>32</sup> Alasdair Roberts, *Blacked Out: Government Secrecy in the Information Age* (Cambridge: Cambridge University Press, 2006), 15.

<sup>33</sup> Roberts, *Blacked Out*, 19.

<sup>34</sup> Roberts, *Blacked Out*, 238.

<sup>35</sup> Roberts, *Collapse of Fortress Bush*, 18.

administration as both exercising constraint and wrestling with its military capabilities, reflecting a “peculiar system of governance: in one sense deliberately crippled, to protect political and economic freedoms; in another, overmuscled, as a result of a prolonged contest between superpowers.”<sup>36</sup> Roberts paints a portrait of an American tragedy, arguing that the Bush administration lacked coherent and legitimate policies in nearly every area. Certainly it had nothing we can describe as an archives or records policy.

Although we have read countless screeds about the Bush administration’s disregard for truth, openness, and the American citizenry, Roberts depicts an administration twisted in its own rhetoric. The Bush administration “did not plan,” and it could not get various federal agencies to work together effectively.<sup>37</sup> He likens the Bush story to a “moral tale about the difficulties of asserting control within contemporary U.S. government.”<sup>38</sup> Embedded deep in this moral tale is how records and information were administered. Roberts indicates that one of the factors in the 9/11 crisis was the government tendency to overuse the classification of information for blatantly political ends. However, another important part of the story involves information technology: “The revolution in information and communications technology has undercut presidential authority as well. Digitization has made it easier to leak information, increased the volume of incriminating information (such as email) that is available for leaking and increased the impact of leaks by allowing the instantaneous dissemination of leaked information.”<sup>39</sup> This is another way of depicting the major change in how people and government create, store, and access information, begging the question of how the digital era might transform archival agencies.

#### **Bruce Montgomery: Government Secrecy from Inside the Profession**

Bruce Montgomery is an experienced archivist who has been writing about government recordkeeping and accountability, human rights and ethical issues, and other matters for many years. One of his most notable, earlier writings on presidential records was a 1993 essay on the twenty-year legal battle over the Nixon White House papers and tapes, providing excellent detail about the nuances of that case and the lack of archival leadership in promoting presidential papers as

<sup>36</sup> Roberts, *Collapse of Fortress Bush*, 23.

<sup>37</sup> Roberts, *Collapse of Fortress Bush*, 132.

<sup>38</sup> Roberts, *Collapse of Fortress Bush*, 139.

<sup>39</sup> Roberts, *Collapse of Fortress Bush*, 167.

public property, for him the most critical archival issue in a republic.<sup>40</sup> Such a perspective—about the imperative for open government and flexible access to most archival materials—also comes across in his writings about Amnesty International and those of other human rights groups.<sup>41</sup>

In *Subverting Open Government*, Montgomery brings together a group of essays on Nixon's battles to control his presidential materials, Henry Kissinger's struggles to restrict access to telephone transcripts created while he was national security advisor, challenges to the Presidential Records Act of 1978 (which declared presidential records to be public), and Vice President Dick Cheney's strenuous activity to keep the documentation related to his Energy Task Force inaccessible to media, public, and Congress. All of these cases are examples of challenges to open government, and, as Montgomery writes, "The open records laws, which were designed to act as a bulwark against excessive secrecy, have served the American public enormously well."<sup>42</sup> Given the topics Montgomery has chosen, it is logical for us to wonder what role archivists should play in defending and implementing such laws.

The core of Montgomery's first book is Nixon's legal wars to lay claim to the presidential papers he lost after his resignation and the passing of the Presidential Recordings and Materials Preservation Act in 1974. If archivists declare FDR to be a great friend for his establishment of presidential libraries, then they also should think more kindly of Richard M. Nixon with his creation of the most documented presidential administration to that point. Montgomery is careful to state that much of what Nixon, his lawyers, and his heirs argued for in controlling his presidential papers was no different than what tradition had allowed earlier presidents to do. This translates into a tremendous battle about executive privilege, and Montgomery helps the reader navigate through the various court battles, legislative acts, executive orders, and policies. The Presidential Records Act (PRA), enacted in 1978 and declaring that all presidential papers after 1981 would be public property, was intended to end the problems associated with the administration, preservation, and access to these records.

The persistent theme of the other cases Montgomery examines is the diminution of control for the public good of the papers of former presidents and their aides. The Kissinger case, also marked by legal wrangling, highlights how appointed officials could operate in secretive fashion and continue to maintain

<sup>40</sup> Bruce P. Montgomery, "Nixon's Legal Legacy: White House Papers and the Constitution," *American Archivist* 56 (Fall 1993): 587. The other Nixon controversy concerns his tax deduction for his prepresidential papers, recounted in Matthew G. Brown, "The First Nixon Papers Controversy: Richard Nixon's 1969 Prepresidential Papers Tax Deduction," *Archival Issues* 26, no. 1 (2001): 9–26.

<sup>41</sup> Bruce P. Montgomery, "Archiving Human Rights: The Records of Amnesty International, USA," *Archivaria* 39 (Spring 1995): 108–31.

<sup>42</sup> Montgomery, *Subverting Open Government*, vii.

that secrecy by controlling their papers. (Kissinger's papers reside in the Library of Congress, wrapped up in restrictions and the personal oversight of Kissinger, although most of the telephone transcripts were released in 2004.) Montgomery's assessment of the continuous challenges to the Presidential Records Act—the PROFS case, the Bush-Wilson agreement giving George H. Bush power to review requests for his materials, George W. Bush's Executive Order 13233 giving the incumbent president the authority to stop the opening of his predecessor's records—reveals a depressing legacy of the power of law to manage presidential materials. We get a glimmering of the archival mission, making what Montgomery has to tell us a kind of Shakespearean archival tragedy.

As an archivist, Montgomery is sensitive to the National Archives' role in these cases. Concerning Nixon and his lawsuits, Montgomery writes that Nixon's efforts to control his papers and legacy meant "he would have to wage an unrelenting guerilla war against the Archives and its employees working to make his presidential tapes and records public."<sup>43</sup> Montgomery chronicles the intense political pressure placed on the National Archives, the public criticism it received for being too timid in its efforts to work with these records, the "complicity of top Archives officials on behalf of Nixon," and the acquiescence of National Archives officials to Nixon's demands that "set a troubling precedent" for future work with presidential materials.<sup>44</sup> These and other problems suggest the limitations of the presidential library system and the lack of authority and ability of the National Archives to play an effective role in the administration of presidential records.

Montgomery has continued writing about presidential records and government information over the years, and he has compiled these writings into another powerful essay, *The Bush-Cheney Administration's Assault on Open Government*. Montgomery pulls no punches in his assessment of what has been happening in presidential affairs in the twenty-first century, stating that this "administration has launched the most aggressive campaign in modern times to expand executive authority at the expense of the nation's key open government and accountability laws."<sup>45</sup> He considers, in succession, the Freedom of Information Act, the Presidential Records Act, the work of the Government Accountability Office, the Federal Advisory Committee Act, and the Federal Intelligence Surveillance Act. As one might expect with Montgomery's professional experience, he pays considerable attention to issues of recordkeeping and information management.

In nearly every law or policy Montgomery considers, he includes references to the impact or implications for the administration of government and

<sup>43</sup> Montgomery, *Subverting Open Government*, 24.

<sup>44</sup> Montgomery, *Subverting Open Government*, 28, 31.

<sup>45</sup> Montgomery, *Bush-Cheney Administration's Assault*, vii.

presidential records. He alludes to George W. Bush sending his Texas gubernatorial records to his father's presidential library to keep them closed. He makes multiple references to Vice President Dick Cheney's efforts to keep the Energy Task Force records secret and Executive Order 13233 restricting the opening of a former president's records without the approval of the incumbent. Executive Order 13292, issued on 25 March 2003, gave Cheney the unprecedented authority to classify intelligence, part of an evolving effort to make the vice president's office a co-equal partner with that of the president, all part of the Bush administration's commitment to curtailing a "decades-long erosion of presidential authority."<sup>46</sup> At times, Montgomery admits the motive in both Bush administrations might be unclear (is it in the interest of national security, protecting business allies, or expanding the executive office?), but nearly always these efforts led to more secrecy. What this costs the archival community is not an issue Montgomery considers here, but given the generally low-level roles of the National Archives and archival leadership in dealing with such issues, it is reasonable to guess that it has not had a positive influence on the authority and public image of archives.

Montgomery sees the 1977 Supreme Court ruling about Nixon's claims to his presidential materials as a pivotal case in the battles about presidential privilege and secrecy. He notes, for example, that "it is perhaps one of the great ironies surrounding the troubled history of the [Presidential Records] act that Nixon, whose extreme claims of privilege failed to win back his presidential materials, became the model for later presidential attempts to undercut the law."<sup>47</sup> In other words, thirty years later the battles about presidential records continue, unabated and more muddled than ever. Is this merely a sign of how complicated the work will be for future archivists in our nation? In his chapter on the PRA Montgomery reveals some of the abiding weaknesses of the archival approaches to managing presidential papers. Why the archival community has stood by the presidential library system is complicated, perhaps better explained historically with the system itself.<sup>48</sup>

For Montgomery, Executive Order 13233 seals the fate of presidential libraries, creating a dynastic rule over presidential papers.<sup>49</sup> Even with the archival community and the media speaking out, such decrees stay in effect and embolden the next presidential administration. Indeed, in Montgomery's analysis of other

<sup>46</sup> Montgomery, *Bush-Cheney Administration's Assault*, 4.

<sup>47</sup> Montgomery, *Bush-Cheney Administration's Assault*, 36.

<sup>48</sup> Read the summer 2006 issue of the *Public Historian* entitled "Programs, Policies, and the Public Interest" for the best recent assessment of these institutions. This special issue of the *Public Historian* does not constitute the typical laudatory or uncritical assessment of presidential libraries that we have seen published in different venues through the years.

<sup>49</sup> Montgomery, *Bush-Cheney Administration's Assault*, 48.

key laws regarding information access and secrecy, he recounts weakening oversight, refusal to turn over documents when requested, secret meetings, secret wiretapping when it suits the administration's purpose, detention of citizens and others to defend national security, and the loss of critical emails without recrimination. Admittedly, many of these incidents are destined to become court cases that extend far beyond the end of the Bush administration, with consequences yet to be determined for our nation and its documentary heritage. However, little good is expected for the archival community and its mission, especially as many working archivists contend with challenges, from technology issues to intellectual property quagmires, in their own repositories.

One finds considerable overlap between Montgomery's two volumes (he is working on another on Cheney and vice presidency), but the second book is the extended conclusion to his first one. I always thought that his 2006 book needed a coherent concluding argument about the failure of the Presidential Records Act. I believe that conclusion is found in his second book, and they ought to be read together.

### **It's Hard to Hide**

Archivists would never suggest that contending with the challenges of managing public records and archives in a society where government is growing more secretive is an easy task or a responsibility they relish. That the media is keen to focus on this problem and many investigative reporters and public scholars find it a salable topic make it all the more difficult. It does have benefits, however, as it improves the opportunity for greater public exposure to the work of archivists and other records professionals. Kate Doyle's story about the Guatemalan National Police Files in *Harper's* is one of those rare media occasions.<sup>50</sup> Doyle, a member of the National Security Archives (NSA) staff, recounts the events subsequent to the discovery in May 2005 in Guatemala City of the Guatemalan National Police archives, which document the police's role in the thirty-six-year civil war ending in 1996. Doyle's essay is a stark reminder of the social and political importance of government records.

Doyle makes very clear the importance of such records, for both "human-rights investigators" and the "rest of society."<sup>51</sup> The discovery of these records is a chilling reminder of what repressive regimes do in secret and a reaffirmation of the importance of opening such records to society, made possible in this case with funding assistance from Germany, Holland, Switzerland, and Spain, the work of NSA advisors, and consultation with experienced archivist Trudy

<sup>50</sup> Kate Doyle, "The Atrocity Files: Deciphering the Archives of Guatemala's Dirty War," *Harper's*, December 2007, 52–62.

<sup>51</sup> Doyle, "The Atrocity Files," 58.

Peterson, whose work Doyle effuses over, especially her rebuilding of the files to see how the government covered its crimes. Experienced archivists will understand readily what Peterson was doing, applying traditional archival principles to what had become a vast puzzle of documents. For the public, however, the article gives a clear view into what archivists do as well as why such records are so important to preserve and administer.

A prominent theme of this essay is why such revealing records survive, when it seems logical that their creators would destroy them to cover their tracks. As Doyle surmises, those involved in states doing evil things “believe that their institutions will survive forever,” creating a “massive paper trail, which cannot be disappeared overnight.”<sup>52</sup> Some supporting the current presidential library system have invoked the same notion, fearful that strict laws will lead to less documentation. When we examine the cases of repressive regimes or even instances where our own government has sought to act in secret beyond the law, tradition, or common sense, we still generally find that the records survive the legal, political, and personality battles. Doyle reaffirms the importance of archives, as an entity that “does more than simply confirm his [the citizen] status as victim; it preserves and restores his history.”<sup>53</sup> This is an affirmation of what any “archives” means to us. The archives sustains us, provides meaning, and gives us a place in posterity. It can’t be secret for this to happen. If it is secret, then the role of the archivist is to recover it and bring it back into the open.

### **Conclusion: Lessons Learned, Lessons Forgotten, Lessons Learned Again**

Archivists have long espoused the notion that government records in democratic regimes should be open and accessible, although their track record in working for and speaking up about such matters has been spotty. John Dirks, in a recent essay, provides this cautionary note:

Archivists must walk a fine line in facilitating the trust of today’s governments and organizations so a meaningful record will be created and preserved, while simultaneously ensuring that those records are eventually open to scrutiny, to the arena of history and memory. The task is not easy and requires commitment, professionalism, and resolve.<sup>54</sup>

This gets more complicated when we step outside of the Western paradigm of archives and recordkeeping, as Anne Gilliland and her colleagues have

<sup>52</sup> Doyle, “The Atrocity Files,” 64.

<sup>53</sup> Doyle, “The Atrocity Files,” 64.

<sup>54</sup> John M. Dirks, “Accountability, History, and Archives: Conflicting Priorities or Synthesized Strands?,” *Archivaria* 57 (Summer 2004): 46.



observed about working with Pacific Rim communities.<sup>55</sup> An increasing number of international conferences are dealing with political implications for government and other archives, with some making substantial contributions to the professional literature.<sup>56</sup>

When we re-read what archivists have had to say about presidential records, federal records classification, national security, and secrecy, we are reminded that they have been wrestling with these and other related issues for a long time and that their resolution still seems elusive. More than thirty years ago, Frank Cook examined the question of the ownership of public officials' personal papers, and, in the case of presidential papers, concluded that there has always been a tension between closure and access, with legitimate claims on both sides, while noting that using the "mantle of 'national security' [to hide government activities] must be resisted. Democratic government requires that everyone—citizen and official—respect the delicate balance between premature disclosure and unjustified restriction."<sup>57</sup>

Cook was writing in the midst of the crisis about the ownership and control of the Nixon presidential materials, a topic Montgomery uses as a benchmark in his work. Cook's reactions to such issues reflect the ambivalence of archivists in these matters. He stresses, quite strongly, that archivists have to travel a middle road between researchers and public officials, although he is reluctant to criticize the means by which archivists have sought to manage such records, contending that the "presidential library system is a glorious achievement of the archival profession."<sup>58</sup> Cook could not foresee the tremendous shifts, stresses, and strains related to dealing with presidential papers, or the increasing discussions about the weaknesses of a system not created by archivists but forced upon them by a president desiring to control his legacy.

A quartet of final observations seems appropriate. First, archivists need to join in the battle over secrecy and accountability in ways they never imagined before. Second, we honestly do not know how history will judge the Bush administration's actions, but it is reasonably certain that archivists need to become more public in their efforts to ensure that government records, on all levels, will be safe, secure, and accessible. Third, there are no good or bad guys in the past decade of challenges to open government; the longer historical view suggests that the temptations to operate in secret are strong, and, when viewed internationally, human

<sup>55</sup> Anne Gilliland, Sue McKemmish, Kelvin White, Yang Lu, and Andrew Lau, "Pluralizing the Archival Paradigm: Can Archival Education in Pacific Rim Communities Address the Challenge?," *American Archivist* 71 (Spring/Summer 2008): 90.

<sup>56</sup> For example, see Margaret Procter, Michael Cook, and Caroline Williams, eds., *Political Pressure and the Archival Record* (Chicago: Society of American Archivists, 2005).

<sup>57</sup> J. Frank Cook, "'Private Papers' of Public Officials," *American Archivist* 38 (July 1975): 318.

<sup>58</sup> Cook, "'Private Papers,'" 313.

nature seems to be to work behind closed doors. And, fourth, archivists need to bind with others, just as Tim Ericson suggested five years ago, to work to keep government archives open and government accountable. For this to happen, we need a stronger National Archives and to work as closely with the National Security Archive as possible; the two ought not to represent polar extremes but, instead, the alliance of all archivists working for greater openness of government records and information.