Dialogue | Introduction: Surveillance as Evidence

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Surveillance takes myriad forms and is conducted for a variety of purposes. However, the evidentiary potential of surveillance—as “an outward sign” or “something that furnishes proof” (*Merriam-Webster* n.d.) of what it captures—is a crucially important aspect of what surveillance is and what it does. Indeed, the value of surveillance products has been tied to their capacity to produce evidence (Edmond and San Roque 2013: 252). Surveillance technologies are advertised based on their ability to “Capture what really happened!” and evaluated by reference to which “technology provides the best evidence possible” (Evans 2015: 224). Not all surveillance is visual, but the meaning-making potential of visual artifacts of surveillance has proven especially powerful in furnishing proof. Visual, especially video, evidence has been seen as making other forms of evidence “obsolete”—that is, “by implication, anything not recorded on video is ‘lesser’ evidence, perhaps not even evidence at all” (Evans 2015: 223–224).

This visual “proof” has also been seen as more objective and less prone to bias in interpretation than other forms of evidence. For example, in *Scott v. Harris* (2007 550 US 372), a majority of Justices on the Supreme Court of the United States found that dashboard-camera video of a high-speed car chase could only be interpreted in one way, reversing a lower court’s alternative interpretation of the same video and ignoring a dissenting opinion by one of its own Justices. In another recent US case, a Federal appellate court found that, “to record what there is the right for the eye to see or the ear to hear corroborates or lays aside subjective impressions for objective facts.... Hence to record is to see and hear more accurately” (*Fields v. Philadelphia*, 2017 862 F.3d 353, 359). However, studies have consistently shown that visual evidence is prone to biased interpretation, with extracted meaning often dependent on things like the camera’s perspective, placement, or field of view (Kahan, Hoffman, and Braman 2009; Taylor and Lee 2019; Smith, Davis, and Roberts 2019; Kalle and Hammock 2019; Birck 2018; Boivin et al. 2017).

For this Dialogue, we asked contributors to explicitly consider the nature and range of data, recordings, and information obtained by surveillance practices, the use and interpretation of these records as evidence, narratives surrounding their use as evidence, and the purposes for which these records are being collected and analyzed. We hope this focus on surveillance as evidence will invite discussion about contexts in which this is taking place (what comes of surveillance and how that output is being used and interpreted). These contributions are also offered to critique ways in which this information is relied on, or interpreted, as (objective) evidence, especially since the products of surveillance are open to interpretation and, in legal contexts, are “increasingly being mediated for the fact-finder via ‘experts,’ proffering an opinion about the meaning of some surveillance image, artefact or trace” (Edmond and San Roque 2013: 252).

This Dialogue encompasses four contributions. First, Kelly Gates focuses on surveillance as record-keeping, as opposed to live monitoring, within the context of media (video and digital multimedia) forensics. Gates makes an important point that records only become evidence when they are relied on and critiques claims that evidence can be presented “interpretation-free.” Gates examines the role of media forensics in the legal

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system and within human rights advocacy and documentary (or forensic) journalism. Within journalism, visual records are combined and edited in a process of “surveillant narration” (Levin 2002). According to Gates: “Here, surveillant narration is used to tell a story about real events, rather than the more artful form of realist fiction that Levin and other cinema studies scholars examine. This use of surveillant narration in journalism suggests a slippage between forensic and journalistic forms, forensic aesthetics and televisual news.... [and] is a significant formal innovation in that long-standing category confusion between realism and reality that is at the heart of modern sense-making.”

Second, Mary Angela Bock expands on the notion that individuals ought to have a right to privacy (or to be “left alone”) by arguing that they should also have a fundamental human right to visibility—“to be heard and *seen* as part of a mutually responsible, ethical media system.” Bock develops this argument by building on Habermas’s notion of the democratic public sphere, a state of affairs where citizens have their voices “heard, considered, and valued.” She draws from examples of civil rights marches and protests designed as spectacle and the relationships between civil rights leaders and journalists to publish and disseminate images of these protests. According to Bock, “images are most powerful when combined with the moral weight of testimony, that is, when the image serves as evidence.” But, to exercise a right to visibility, one must also have access to appropriate technology with the right affordances, skills to use the technology, and ethical literacy. That is, Bock argues, they must have the capability to participate in the public sphere. In conclusion, she states, “what matters most is how humans *use* cameras, what they *say* with images, and how they *use* visual evidence to account for their lives.”

Third, Christina Spiesel builds on her prior work with Neal Feigenson (Feigenson and Spiesel 2009) arguing that “naive realism clouds our understanding of advanced technology itself and.... it also infects the technologists who are building artificial intelligence tools.” Naive realism, according to Spiesel, is the mistaken belief that pictures speak for themselves—that they “are their subject matters”—and are not a product of mediation. Much like when we view the World Wide Web on a screen, we do not see the technological infrastructure behind the image, we see only the constructed image. Spiesel examines the importance of visual information to human life and decision making and the problems associated with digitizing and retrieving visual information online. Besides being relevant to human interpretation of information, naive realism also applies to machines: algorithms, machine learning, and artificial intelligence. When (visual) data points about individuals are captured by, or input into, machines (through processes of surveillance or capitalizing on self-disclosure), Spiesel argues, we grant the owners of those machines outsized power.

Fourth, Sandra Ristovska makes a compelling case for the importance of visual information policy as an area of study within surveillance studies (and other fields). She examines the growth of visual surveillance and the increasing importance of visual information for law. In particular, Ristovska argues that such growth poses a vital problem for “law’s claim to truth-based judgment,” even as evidence law ostensibly treats visual evidence as demonstrative (needing testimony to anchor its meaning) despite the fact that images often play a more substantive role in furnishing proof. She uses the *Scott v. Harris* (2007, 550 US 372) decision as an example of how courts fail to take images seriously and charts the divide between doctrine and practice—or the use of visual images as demonstrative versus substantive evidence. The law’s shortcomings, Ristovska argues, and “the impact of visual meaning making on the pursuit of justice thus necessitates rigorous thinking about the nature and function of visual information in law and policy more broadly.”

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