DIGNITARY DISCLOSURES: THE CASE FOR PRESUMED PUBLIC ACCESS TO CARCERAL FOOTAGE IN §1983 LITIGATION

Courtney Douglas*

---

* J.D. Candidate, University of Virginia School of Law, expected 2025; Editor-in-Chief, Virginia Law Review. The author dedicates this Essay to all incarcerated people who have suffered constitutional harms that, though documented on film, remain shrouded in secrecy. The author thanks Professor Rachel Bayefsky, whose guidance and wisdom made this Essay possible. The author also thanks Cameron Beach, Maya Elizabeth McCollum, Andrew White, Sarah Ortlip-Sommers, Amy Vanderveer, Jacob Cohen, Anthony Valdez, Gary Hendrickson, the members of the 2024 Dignity Law Seminar, and the Virginia Journal of Social Policy and the Law editors — especially Marie Ceske, Madison Zardiackas, Brad Bennett, and Natalie Little — for their comments and support. Finally, the author thanks Taylor K. Douglas for everything.

DIGNITARY DISCLOSURES: THE CASE FOR PRESUMED PUBLIC ACCESS TO CARCERAL FOOTAGE IN §1983 LITIGATION

Courtney Douglas

American common law promises the public a presumptive right of access to judicial records. This fundamental method of securing public access to court documents enhances transparency, accountability, journalistic power, and public confidence in the judicial system — including in the context of civil rights claims brought by incarcerated people. Yet courts have treated with skepticism efforts to unseal surveillance footage documenting alleged constitutional rights violations of inmates, often defaulting to governmental concerns about privacy and prison security without affording the disclosure interests at stake sufficient consideration. This is the case despite the unique insight that carceral footage can provide into how governments treat incarcerated people and the strong democratic interests in holding powerful state actors to account to deter future misconduct.

Scholars have discussed the direct and inverse relationship between dignity and transparency in the context of prisons and jails. They have also documented dignitary considerations at play in common law right of access balancing. Building upon that work, this Essay is the first to explore the unique role that carceral footage can play in vindicating dignitary interests through the common law right of access — and how the phenomenon of courts' denial of transparency rights with respect to this footage stymies public oversight, accountability, and social change. Drawing on carceral footage access issues illuminated in twenty cases decided in state and federal courts between 2020 and 2024, this Essay argues that courts assessing common law access rights should consider dignitary interests in their calculus. Dignity, as an analytical device, can help courts account for the full scale of transparency interests, see through specious arguments that help officials shroud inmate abuse in enduring secrecy, and reconcile competing transparency-privacy concerns through responsible redaction practices.

INTRODUCTION

In Nashville, death row inmate Henry Hodge's right forearm turned purple during the ten days that he was forcibly medicated and tied down on a bed he couldn't help but soil.[1] Body-cam footage documents his

[1] Hodges Footage, Part 2, *Nashville Banner*, at 03:13, 02:44, 2:07; 3:04,https://player.vimeo.com/video/802104941?h=2e2286e8df; *Graphic Videos Show Prison Staff Physically Restraining Death-Row Inmate*, REPS. COMM. FOR FREEDOM OF THE PRESS (Feb. 28, 2023), https://www.rcfp.org/hodges-prison-videos-released/; Travis Loller, *Graphic Videos Show Inmate's Pain As Officers*

screams, his agony, his refusal of the sedatives administered to him moments after his explicit protest.[2] A county jail surveillance camera in Colorado captured guards beating and tackling Ryan Partridge, a naked inmate in solitary confinement, who had not been medicated for his schizophrenia.[3] This documented incident contributed to what amounted to a $2.5 million settlement between Partridge and Boulder County in "a case that highlighted jail treatment of the mentally ill."[4] Surveillance cameras inside Los Angeles jails showed employees kneeling on a Black man's neck and repeatedly punching other inmates, despite reforms promised through a lawsuit the county had recently settled.[5] In Knoxville, Lorenzoe Wilson, who claimed that prison officials at the Morgan County Correctional Complex punched, kicked, and tased him without provocation, asked the court to unseal video footage documenting the incident. "It would be a big deal on the news," he wrote to the judge presiding over his case. "If the footage gets out it[']s gonna be far more serious than what it is so far."[6]

"Our jail is a very dangerous place," an investigative journalist said when he published surveillance footage showing attacks on inmates at another Tennessee facility.[7] "People need to realize what is happening."[8]

The video footage documenting the alleged and adjudicated harms that Mr. Hodge, Mr. Partridge, Mr. Wilson, and the unnamed California inmates have experienced share a unifying trait: the public has a right to access them. U.S. common law promises the public a presumptive right

---

Strap Him Down, ASSOCIATED PRESS (Feb. 21, 2023, 2:13 PM), https://apnews.com/article/tennessee-nashville-health-prisons-60db26bf07bb9757ff4c903a9a658024.

[2] *Id.*

[3] *RAW: Surveillance Video Shows Boulder County Jail Employees Struggle with Inmates*, 9NEWS (Aug. 9, 2023, 4:01 PM), https://www.9news.com/video/news/local/boulder-county-jail-surveillance-video-alleged-excessive-force/73-65799f1e-248f-4047-a402-fca0b941f3c9.

[4] Rich Sallinger, *Former Inmate Reaches $2.5 Million Settlement with Boulder County over Jail Treatment*, CBS NEWS (Aug. 9, 2023, 3:11 PM), https://www.cbsnews.com/colorado/news/former-inmate-ryan-partridge-2-5-million-settlement-boulder-county-jail-treatment/.

[5] Keri Blakinger & Maria L. La Ganga, *Unsealed Surveillance Videos Show Violence Against Inmates Inside L.A. County Jails,* L.A. TIMES (Nov. 10, 2023, 3:04 PM), https://www.latimes.com/california/story/2023-11-10/unsealed-surveillance-videos-culture-of-violence-inside-l-a-county-jails.

[6] Letter from Lorenzoe Wilson to Judge Charles E. Atchley, Jr. Opposing Defendant's Motion to File Doc. 83 Under Seal, Wilson v. Robinson, No. 3:22-cv-00158, 2023 WL 6466383 (E.D. Tenn. Oct. 9, 2023), ECF No. 498.

[7] Chris Young, *Shelby County Jail Surveillance Videos Show Violent Confrontations Between Inmates*, Correctional Officers**,** REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS (March 8, 2024), https://www.rcfp.org/hester-shelby-county-jail-videos/.

[8] *Id.*

of access to a wide range of court records.[9] In theory, parties seeking to seal records may rebut that presumption only by "showing that countervailing interests heavily outweigh the public interests in access."[10] This fundamental method of securing public access to judicial documents enhances transparency, accountability, journalistic power, and public confidence in the judicial system[11] — especially in the context of civil rights claims brought by incarcerated people and those harmed by law enforcement.[12] Yet a meaningful number of courts have treated with skepticism efforts to unseal surveillance footage documenting alleged

---

[9] *See, e.g.*, Nixon v. Warner Communications, 435 U.S. 589, 597 (1978) (internal citations omitted); Doe v. Pub. Citizen, 749 F.3d 246, 266 (4th Cir. 2014) (internal quotation marks and citation omitted) (explaining that the common law right of access applies "to all judicial documents and records").

[10] *Id.* at 598; *see also* Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (internal citations omitted) (requiring a showing of "compelling reasons…that outweigh the general history of access and the public policies favoring disclosure" to rebut the records access presumption).

[11] Although this Essay focuses on the dignitary interests in play for the various stakeholders involved in the litigation — the parties, affected third parties, media intervenors, and members of the public that the media intervenors represent through their news institutions — this issue bears on the dignitary interests of the judiciary, as well. *See* Johnson-Barker v. Wexford, No. 21-cv-01234, U.S. Dist. LEXIS (C.D. Ill., Mar. 8, 2023), at *2 ("Public scrutiny serves to promote respect for the rule of law, provide a check on the activities of judges and litigants, and foster more accurate fact-finding"). The product of effective media lawyering by *The New York Times*, this order unsealed surveillance footage revealing the brutal treatment suffered by Markus Johnson, an inmate in Illinois, on the eve of his death. Glenn Thrush, *When Prison and Mental Illness Amount to a Death Sentence*, N.Y. TIMES (May 5, 2024), https://www.nytimes.com/2024/05/05/us/politics/prison-mental-health-care.html.

[12] *See, e.g.*, Emily Cochrane et al., Memphis Releases New Footage From Night of Tyre Nichols's Fatal Beating, N.Y. Times, Jan. 30, 2024, https://www.nytimes.com/2024/01/30/us/tyre-nichols-footage-police-memphis.html; Chris Young, *Veil of secrecy finally lifted from Pennsylvania murder-for-hire case*, REPS. COMM. FOR FREEDOM OF THE PRESS, October 24, 2023, https://www.rcfp.org/lam-murder-for-hire-transparency/; Domenico Montanaro & Nina Totenberg, *Supreme Court Orders Documents Unsealed in Death Penalty Case*, NAT'L PUB. RADIO, (June 24, 2019, 11:30 AM), https://www.npr.org/2019/06/24/735405078/supreme-court-orders-documents-unsealed-in-death-penalty-case; *see also* Courtney Douglas & Sarah Matthews, *Redacted briefs before Supreme Court violate First Amendment*, REPS COMM. FOR FREEDOM OF THE PRESS, (June 7, 2019), https://www.rcfp.org/court-redactions-violate-first-amendment/ (explaining a successful effort to ask the U.S. Supreme Court to unseal records related to an execution stay application through the First Amendment and common law rights of access); Ceoli Jacoby, *Prison contractor paid $200,000 to settle wrongful death lawsuit, newly unsealed records show*, REPS. COMM. FOR FREEDOM OF THE PRESS, (Aug. 12, 2022), https://www.rcfp.org/primecare-settlement-unsealing/.

constitutional rights violations of incarcerated people, often defaulting to vague governmental concerns about privacy and prison security without affording the disclosure interests at stake sufficient consideration.[13] This phenomenon persists despite the unique insight that carceral footage[14] can provide into how governments treat incarcerated people and the strong democratic interest in holding powerful state actors to account to safeguard against misconduct.[15]

Scholars have addressed the direct and inverse relationship between dignity and transparency in the context of prisons and jails.[16] They have also documented dignitary considerations at play in common law right of access balancing.[17] Building upon that work, this Essay is the first to explore the unique role that carceral footage can play in vindicating dignitary interests through the common law right of access — and how courts' repeated denial of transparency rights with respect to this footage stymies the public oversight, accountability, and social change that can flow from the public release of films documenting alleged official

---

[13] Brewster v. Mills, No. 20-cv-03254, 2022 WL 976973, at *9 (N.D. Cal. Mar. 31, 2022) ("[T]he public's interest in disclosure of these documents is minimal"); *see also* Napier v. Cnty. of Washtenaw, No. 11-cv-13057, 2013 WL 1395870, at *11 (E.D. Mich. Apr. 5, 2013) ("The Court agrees with Defendants that it serves no purpose or public service to provide photographs of the inside of the jail to the public. And as Defendants argue[,] maintaining internal security is of the utmost concern in a jail or prison setting") (internal citations and quotations removed).

[14] This Essay terms the inclusive phrase "carceral footage" to refer to any video recording made within a jail, prison, or other detention facility, recorded as part of a surveillance system — for example, a cell block video — or recorded through an official's body-worn camera. This Essay exclusively analyzes footage that is filmed by the government, rather than by incarcerated bystanders.

[15] Blakinger & La Ganga, *supra* note 5.

[16] Andrea Armstrong, *No Prisoner Left Behind? Enhancing Public Transparency of Penal Institutions*, 25 STAN. L. & POL'Y REV. 435, 442, 467 (2014) ("The experience of being incarcerated…seems at odds with a basic commitment to human dignity…[m]ost correctional facilities are surrounded by more than physical walls; they are walled off from external monitoring and public scrutiny to a degree inconsistent with the responsibility of public institutions") (internal quotations marks omitted); *see also* Anette Storgaard, Prison Leave in Denmark: How a Tradition of Combining Rehabilitation with Discipline Developed into Putting Access to Justice at Risk, 26 EUR. J. CRIM. POL'Y & RSCH. 213, 227–28 (2020); Shannon M. Silva & Ceema Samimi, *Social Work and Prison Labor: A Restorative Model*, 63 J. SOC. WORK 153, 155–58 (2018); Michael Tonry, *Equality and Human Dignity: The Missing Ingredients in American Sentencing*, 45 CRIME & JUST. 459, 471 (2016).

[17] David N. Farren, *Common Law Right of Access to Judicial Records—A Criminal Defendant's Right to a Fair Trial*, 1981 ARIZ. L.J. 843, 851 (1981).

misconduct.[18] Drawing on cases between 2020 and 2024 adjudicating motions to seal or unseal carceral footage documenting alleged §1983 violations,[19] this Essay argues that courts assessing common law access rights ought to consider dignitary interests in their calculus. Dignity, this Essay will argue, can serve as a tool that can help courts discern parties' justifications favoring disclosure or secrecy in common law right of access adjudication involving carceral footage. In these cases, dignitary values can also help courts take into full account the public and private interests at stake beyond what parties are able to argue.[20]

Part I will introduce the common law right of access in the prison records context and provide an account of the doctrinal, adjudicative, and political barriers to unsealing carceral footage. It also lays the groundwork for the rightful role of dignity in common law right of access adjudication, at the interest balancing stage. Part II will assess the dignitary interests in play for those who have a stake in carceral footage sealing adjudication: the plaintiff, prison officials, other incarcerated people featured in the footage, the broader community of incarcerated people, the carceral institution, the press, and the public. Part III will make the case that responsible redaction practices — made possible through modern, practical, and cost-effective technology — can alleviate legitimate concerns favoring nondisclosure, such as security and privacy. Part IV will argue that courts should adopt a six-part analysis for carceral footage sealing adjudication. This analysis begins with a presumption of openness, accounts for each stakeholder's dignitary interests, and factors in the availability of modern redaction technology to protect countervailing state interests. This analysis will ultimately strengthen the common law right of access vis-à-vis carceral footage. Part V will address concerns and counterarguments. Part VI will conclude.

PART I: THE COMMON LAW RIGHT OF ACCESS AND CARCERAL FOOTAGE

A longstanding doctrine that originated in English common law,[21] the American common law right of access provides a "strong presumption in

---

[18] *See, e.g.*, Darnella Frazier: The 2021 Pulitzer Prize Winner in Special Citations and Awards, THE PULITZER PRIZES, https://www.pulitzer.org/winners/darnella-frazier ("For courageously recording the murder of George Floyd, a video that spurred protests against police brutality around the world, highlighting the crucial role of citizens in journalists' quest for truth and justice.").

[19] *See* Appendix (on file with the author).

[20] *See infra* note 33 and accompanying text.

[21] Ronald D. May, *Public Access to Civil Court Records: A Common Law Approach*, 39 VAND. L. REV. 1465, 1467 (1986) ("The right to inspect and copy judicial records is an ancient doctrine under English common law.").

favor" of public access to all judicial records in federal and state courts.[22] The term "judicial records" includes opinions, orders, pleadings, and motions; it also includes discovery.[23] This right of access seeks to promote transparency, oversight, and fairness in the administration of justice, though it can be outweighed by values that gesture toward secrecy, such as privacy and security interests.[24]

The common law access right bears a resemblance to its doctrinal twin, the First Amendment right of access. Yet the rights are distinct in two important ways. First, the First Amendment right of access applies to a narrower scope of documents,[25] including documents filed in connection with summary judgment motions and documents filed in connection with criminal plea and sentencing hearings.[26] Depending on the procedural posture, carceral footage might not always qualify for the First Amendment access right. Secondly, the First Amendment right of access involves a heightened scrutiny framework instead of public interest balancing.[27] This makes the common law right of access far better poised to consider dignitary interests. For these reasons, this Essay focuses on the common law access right, even though the two rights are often raised together by transparency proponents in litigation.[28]

When incarcerated or formerly incarcerated plaintiffs file civil rights lawsuits under 42 U.S.C. §1983 against prison or jail officials who have allegedly violated their constitutional rights, their clearest evidence of harm is often surveillance or body-cam footage documenting the incident in question.[29] When this carceral footage is submitted to the trial court as

---

[22] *See, e.g.*, Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1179 (6th Cir. 1983); *Hagestad v. Tragesser,* 49 F.3d 1430, 1434 (9th Cir. 1995).

[23] The term "judicial records" is defined very broadly. *See* United States v. Amodeo*,* 44 F.3d 141, 145 (2d Cir. 1995) (holding that material qualifies as a judicial record if it is "relevant to the performance of the judicial function and useful in the judicial process"). However, the term is constrained to the extent that it does require the documents to serve some sort of Article III function; mere exchanges between the two litigating parties at the very early stages of discovery do not count. Robles v. City of New York, No. 19-cv-6581, 2020 WL 1494166, at *4 n.6 (S.D.N.Y. Mar. 27, 2020).

[24] *See, e.g.*, Kearney v. Bayside State Prison Admin., No. 17-cv-06269, 2023 WL 2207392, at *1 (D.N.J. Feb. 23, 2023) (holding that the public release of carceral footage would implicate security concerns that "outweigh the public interest in disclosure").

[25] Stone v. Univ. of Md. Med. Sys. Corp., 855 F.2d 178, 180 (4th Cir. 1988).

[26] Rushford v. The New Yorker Magazine, Inc.*,* 846 F.2d 249, 253 (4th Cir. 1988); In re Washington Post Co., 807 F.2d 383, 390 (4th Cir. 1986).

[27] *See, e.g.*, Newman v. Graddick, 696 F.2d 796, 802 (11th Cir. 1983).

[28] Thank you to Raj Vasisht for encouraging this clarification.

[29] Howard M. Wasserman, *Orwell's Vision: Video and the Future of Civil Rights Enforcement*, 68 MD. L. REV. 600, 611 ("Recording evidence is

part of discovery, it thus becomes a "judicial record" subject to the common law right of access.

Yet many litigants' efforts to unseal carceral footage — or to prevent defendant carceral institutions from filing the footage under seal pursuant to Federal Rule of Civil Procedure 26(c) — have been unsuccessful. In the context of carceral footage, numerous factors can inhibit the common law's promise of public access to judicial records from living up to its full potential. First, courts sometimes accept governmental claims of "security" or "privacy" at face value, even when officials have not specifically articulated how the disclosure of the carceral footage will adversely affect those interests.[30] Second, some courts fail to sufficiently consider the public interests favoring disclosure.[31] Third, some courts have been mistakenly satisfied with a perceived compromise that permits plaintiffs to view carceral footage for litigation purposes without having the power to possess or distribute it.[32] Finally, many *pro se* plaintiffs often fail to raise the issue of the public right of access when seeking this footage because they may not know it exists; in these cases, some courts flout the right of access presumption wholesale.[33]

---

beneficial to civil rights enforcement and to the ability of the public to call government to account for its officers' misconduct.").

[30] *See, e.g.*, Brown v. Flowers, 974 F.3d 1178, 1188 (10th Cir. 2020) (invoking security concerns to deny the release of carceral footage without elaborating on the substance of those concerns); Howard v. Cox, No. 217-cv-01002, 2021 WL 4487603, at *13 (D. Nev. Sept. 30, 2021) (same).

[31] *See, e.g.*, Chrisman v. Bd. of Cnty. Commissioners of Oklahoma Cnty., No. 17-cv-1309, 2020 WL 12948695, at *1 (W.D. Okla. Oct. 9, 2020) (holding that security concerns overcome the common law right without discussing the public interests in disclosure undergirding the right).

[32] *See, e.g.*, Lindell v. Boughton, No. 18-cv-895, 2020 WL 6118468, at *4 (W.D. Wis. Oct. 16, 2020) ("Before [trial], officials…must provide [Plaintiff] the opportunity to review all of the video clips produced two more times before trial. [Plaintiff] should have the ability to speed up, slow down, and zoom in on the footage.").

[33] *See, e.g.*, *id*. at *3. In *Lindell,* Judge Crocker fails to consider the Common Law Right of Access, and rejects Plaintiff's claim of a First Amendment access right, mistakenly reasoning that Plaintiff's right has not been infringed because the ruling does not "curb[] Lindell's speech." *Id*. Because Lindell did not have access to counsel, no advocate was present to help the judge understand that the common law and First Amendment confer not only speech protections, but also access protections. *See also* Leggon v. Wiley, No. 20-cv-5539, 2021 WL 4268699, at *3 (N.D. Fla. Aug. 18, 2021) (noting that carceral footage was filed under seal). The common law right of access issue was not raised in either the Defense's motion to seal or the Court's order granting that motion two days later. *See* Defendants' Motion to File Under Seal, Leggon v. Wiley, No. 20-cv-5539, 2021 WL 4268699 (N.D. Fla. June 14, 2021), ECF No. 46; Order, Leggon v. Wiley, No. 20-cv-5539, 2021 WL 4268699 (N.D. Fla. June 16, 2021), ECF No. 48.

In response to these institutional shortcomings, this Essay—drawing on carceral footage access issues illuminated in twenty cases decided in state and federal courts between 2020 and 2024[34]—seeks to use dignitary interests to bolster the common law right of access. Dignity, as an analytic device, can provide courts with a full account of the transparency, privacy, and security interests in play for each stakeholder in carceral footage disclosure adjudication. Particularly in the §1983 litigation context, dignitary interests are appropriate considerations in common law access right balancing. After all, §1983 litigation seeks remedies as answers to alleged dignitary violations of plaintiffs by defendant government officials.[35] These remedies can come in the direct form of damages and injunctions; dignitary violations can also be answered through public accountability made possible through unsealed judicial records. The inclusion of dignitary interests in balancing can also clarify which factors weighing in favor of secrecy actually advance legitimate privacy and security concerns, and which arguments are mere pretexts for keeping evidence of government misconduct in the dark. The next Part of this Essay will assess these various—and sometimes conflicting—interests at stake.

PART II: DIGNITARY INTERESTS IN CARCERAL FOOTAGE DISCLOSURE ADJUDICATION

A. Dignitary Interests of the Plaintiff

Plaintiffs hold multiple dignitary interests favoring disclosure of carceral footage depicting alleged §1983 violations. First, plaintiffs have an interest in maintaining the ability to share, to the fullest extent possible, the story of their harm. Sounding in an autonomy-oriented conception of

---

[34] *See* Appendix (on file with the author). The author sought the broadest array of carceral footage access cases — adjudicated between January 2020 and May 2024 — that she could find through mainstream legal databases and search engines. Yet, as one judge wrote in 2018, "case law concerning the protection of jail security footage is surprisingly scant." Harris v. Livingston County, No. 14-CV-6260, 2018 WL 6566613, at *2 (W.D.N.Y. Dec. 13, 2018). The cases in this Essay are used merely illustratively—and this author makes no claims about empirical trends in this litigation. Because these sealing and unsealing issues often arise on non-dispositive motions and orders, which are not all searchable or available in conventional legal databases, or which are buried into dockets that are not updated, many carceral footage access cases are, presumably, not yet accounted for. Overcoming this research hurdle is necessary for future scholarly projects to provide a complete, empirically accurate view of this issue.

[35] Jean C. Love, *Damages: A Remedy for the Violation of Constitutional Rights*, 67 CAL. L. REV. 1242, 1244 (1979) (constitutional rights, which Section 1983 exists to enforce, "protect intangible, dignitary interests").

dignity,[36] this account is focused on plaintiffs' ability to act. It posits that plaintiffs should be able to do what they wish with some of the starkest evidence of their abuse.[37] This applies where plaintiffs — such as Lorenzoe Wilson — wish to release carceral footage publicly as a way to achieve legal redress[38] and seek public recognition of their harm.[39] This dignitary interest is also relevant in the context of litigation preparation. In many cases where courts kept carceral footage under seal, plaintiffs have experienced intermittent access to the video evidence when they are not able to possess it themselves.[40] This disrupts litigation preparation on their side, exacerbating the power imbalance between under-resourced *pro se* litigants and well-lawyered corrections departments, and undermining plaintiffs' opportunities to show harm.[41]

Additionally, plaintiffs have a pro-transparency dignitary interest in the societal recognition of the harm they have experienced. This idea of dignitary recognition is a value that sounds in equality.[42] Unlike the plaintiff's dignitary interest in making autonomous choices about what to do with the carceral footage, this value focuses on plaintiff's equal stature in the realm of judicial redress, with an eye toward what they stand to gain from their decision to release the footage publicly.[43] When officers began to advance on Lorenzoe Wilson in Knoxville, for example, he ducked out of his cell — which he found dangerous, because "no one can see the

---

[36] Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 EUROPEAN J. OF INT'L. L. No. 4, 655, 659-60 (crediting Immanuel Kant as generating the conception of "dignity as autonomy: that is, the idea that to treat people with dignity is to treat them as autonomous individuals able to choose their destiny") (citing Kant, 'Metaphysics of Morals', Section 38 of the *Doctrine of Virtue*, (Ak. 6:462)).

[37] Wasserman, *supra* note 29.

[38] *See, e.g.*, Letter from Lorenzoe Wilson to Judge Charles E. Atchley, Jr., *supra* note 6.

[39] *Id*.

[40] *See Lindell v. Boughton*, No. 18-cv-00895, 2020 WL 6118468, at *2 (W.D. Wis. Oct. 16, 2020) (addressing Plaintiff's allegation that the defense failed to show Plaintiff the complete set of body-worn camera footage documenting his alleged attack).

[41] *Id*.

[42] Charles Taylor, "The Politics of Recognition," IN MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION 27 (Amy Gutmann, ed. 1994) ("Democracy has ushered in a politics of equal recognition, which has taken various forms over the years"). Further, "[n]onrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being." *Id*. at 25.

[43] The idea of "equal dignity" comes to the forefront in U.S. Supreme Court cases centered on the rights of women, queer people, and other minorities. *See, e.g.*, *Obergefell v. Hodges*, 576 U.S. 644, 660 (2015) ("[A]s society began to understand that women have their own equal dignity, the law of coverture was abandoned"); *Id*. at 681 (Noting that gay and lesbian people seeking to marry their partners "ask for equal dignity in the eyes of the law").

assault"— and deliberately fell on the ground, so that the beating he allegedly experienced at the hands of the prison guards could be captured by the surveillance camera he knew was in the hallway.[44] Even amidst his alleged abuse, Wilson knew that he wanted the world to be able to witness his attack, so that others might care about it enough to help him seek redress.[45] This recognition has intrinsic importance — the journalistic decision to write about these incidents, to deem them newsworthy, is a normative statement that these injustices matter.[46] Accompanied by resulting public outrage, public recognition in the form of journalism or activism can also theoretically lead to enhanced opportunities to seek redress for their harm. This interest cuts in favor of transparency, too. Public anger at the revelation of injustice can lead to action, which can include the facilitation of connections and resources that make high-quality legal representation possible.[47] For example, Cherie Mason, who was incarcerated for manslaughter after she experienced a stillbirth while she struggled with addiction, was given a new legal team and was scheduled to be released from prison five years ahead of schedule after The Marshall Project reported on the aggressive, inhumane decision to prosecute her case.[48] Additionally, law firms that operate on a contingency-fee basis, resource-constrained nonprofit organizations, and lawyers with limited pro bono dockets may be more inclined to agree to take on a case when they have access to film evidence that instills confidence in the possibility of success. Because incarcerated plaintiffs litigating for the vindication of their constitutional rights are often

---

[44] Complaint for Violation of Civil Rights, *Wilson v. Robinson*, No. 3:22-cv-00158 (E.D. Tenn. May 2, 2022), at 4.

[45] Letter from Lorenzoe Wilson to Judge Charles E. Atchley, Jr., *supra* note 6.

[46] *See, e.g.*, Glenn Thrush, *When Prison and Mental Illness Amount to a Death Sentence*, N.Y. TIMES (May 5, 2024), https://www.nytimes.com/2024/05/05/us/politics/prison-mental-health-care.html (drawing on carceral footage to tell the story of an incarcerated person who struggled with his mental health and, despite serious and known medical issues, was left to die in solitary confinement). This investigation was the product of a year's worth of reporting and appeared on Page A1 of the *Times* on May 6, 2024. *Id*.

[47] Audre Lorde, *The Uses of Anger*, 9 WOMEN'S STUDIES QUARTERLY No. 3, 8 (Fall 1981) ("[A]nger expressed and translated into action in the service of our vision and our future is a liberating and strengthening act of clarification, for it is in the painful process of this translation that we identify who are our allies with whom we have grave differences, and who are our genuine enemies").

[48] Lawrence Bartley & Donald Washington, Jr., *Drug Addiction and the Paths to Prison*, THE MARSHALL PROJECT (March 2, 2023, 12:00 PM), https://www.themarshallproject.org/2023/03/02/pregnancy-loss-miscarriage-addiction-prison; *Impact Report*, THE MARSHALL PROJECT (Fall 2023), https://d63kb4t2ifcex.cloudfront.net/upload/assets/fall-2023-impact-report.pdf.

indigent, and because affordable, high-quality representation often proves elusive for these plaintiffs, public access to the carceral footage can help level the playing field, advancing plaintiffs' equal access to the possibility of legal redress.

Yet plaintiffs also hold privacy-related dignitary interests favoring nondisclosure. Some carceral footage shows plaintiffs without clothing,[49] badly beaten,[50] or violently injured in some other manner[51] — all positions that may be shameful[52] for these individuals to have on public display.[53] Even if other interests favor the public disclosure of the footage, and even if plaintiffs have done nothing wrong, the plaintiffs may not want their families, friends, and community members to be able to see them in a degraded, abused state.[54] As Virginia Law Professor Danielle K. Citron explains, "Unwanted exposure of our naked bodies makes us acutely aware that other see us *as objects* that can be violated, rather than as human beings deserving respect."[55] Professor Citron's idea can extend beyond nudity and also reach the exposure of bodily injury. This interest — dignity through the lens of plaintiffs' privacy — counsels against disclosure.

B. Dignitary Interests of Third-Party Incarcerated Bystanders in the Footage

Third-party incarcerated bystanders who are featured in the carceral footage have a dignitary interest in privacy, which weighs against disclosure. Although they may not be nude or harmed to the point of experiencing the form of shame described in Part II(A), as the plaintiffs themselves may be, third-party bystanders may seek to avoid footage of

---

[49] *See, e.g.*, *Easterly v. Thomas*, No. 320-cv-00065, 2021 WL 4447633, at *9 (E.D. Tenn. Sept. 28, 2021) (Plaintiff, naked, was allegedly pepper-sprayed, physically attacked, and tased).

[50] *See, e.g.*, *Ortiz v. City & Cnty. of San Francisco*, No. 18-cv-07727, 2020 WL 2793615, at *2 (N.D. Cal. May 29, 2020) (Plaintiff asserted that he was subjected to a violent strip, was beaten, was thrown over a concrete slab, and was denied his medication).

[51] *Id*.

[52] This version of shame is not so much "shame in others knowing something undesirable about us, but rather shame in knowing that we are being seen as objects, or as less than human." DANIELLE KEATS CITRON, THE FIGHT FOR PRIVACY: PROTECTING DIGNITY, IDENTITY, AND LOVE IN THE DIGITAL AGE 114 (W.W. Norton & Company, 2022). This account of shame aligns more closely with the notion of "pure shame" articulated by Jean-Paul Sartre. JEAN-PAUL SARTRE, BEING AND NOTHINGNESS: A PHENOMENOLOGICAL ESSAY ON ONTOLOGY 288 (Hazel E. Barnes trans.) (1956).

[53] This is why responsible redaction practices can play such an important role in protecting privacy interests while advancing transparency interests. *See infra* Part III.

[54] Citron, *The Fight for Privacy*, *supra* note 52 (emphasis added).

[55] *Id*.

themselves depicted in a prison uniform, or in a carceral context. Professor Citron discusses how victims of intimate privacy violations "are reduced to" the details of their sexual activities.[56] In a far less explicit way—both because the state of one's incarceration is a matter of public record, and that, for third-party bystanders, intimate images are hopefully not featured in the footage—incarcerated people who do not consent to the dissemination of the films may similarly object that the distribution of those films and images may make them "reduced to" their carceral status, especially to family members or friends who otherwise might not view them in that light.[57] Yet third-party bystanders, like other members of the incarcerated community, stand to benefit from transparency in other ways. Their treatment in future confrontations with prison officials, for example, might be improved by the public release of the plaintiff's carceral footage.[58] The next subsection more thoroughly explores this interest.

C. Dignitary Interests of the Incarcerated Community

Other incarcerated individuals whose lives are controlled by the same government officials, who are imprisoned at the same facility, or who are imprisoned at facilities with similar policies governing the treatment of inmates stand to benefit from the release of carceral footage documenting Plaintiff's alleged §1983 violations. These people are, to varying degrees, situated similarly to the plaintiff, as they are vulnerable to future abuse and can benefit from the institutional accountability that may flow from transparency.[59] These individuals have an autonomy-rooted dignitary interest in their bodily integrity.[60] Like the plaintiff themselves, these individuals also have a dignitary interest in the societal and judicial recognition of the harm that the plaintiff has suffered.[61] Courts may lend more credibility to incarcerated people who unfortunately have reason to file their own §1983 lawsuits for similar abuses perpetrated by similar

---

[56] *Id*. at 115.

[57] *Id*.

[58] *See, e.g.,* Bob Egelko, *Court Orders California Prisons to Install Cameras, Outfit Guards with Body Cameras to Deter Abuse*, S.F. CHRONICLE, (Feb. 6, 2023, 5:33 PM), https://www.sfchronicle.com/politics/article/court-orders-california-prisons-to-install-17760659.php (describing efforts to deter future abuse of incarcerated people through accountability mechanisms like body-worn cameras and surveillance systems).

[59] *Id*.

[60] *See* McCrudden, *supra* note 36; *see also* Kenneth S. Abraham & Edward White, *The Puzzle of Dignitary Torts*, 104 CORNELL L. REV. 317, 354 (2019), ("'It is my body' is a sufficient answer to the question why others may not touch you without your consent").

[61] *See generally* Taylor, *supra* note 42.

government actors if there is an established pattern of constitutional violations.[62]

D. Dignitary Interests of the Carceral Institution

Adjudication of carceral footage access litigation must account for numerous dignitary interests related to prisons and jails that often oppose unsealing. First, the carceral institution — the jail, prison, or other correctional facility who is the defendant, or who employs the defendant, in the §1983 claim — has a dignitary interest in accountability. This understanding of dignity sounds in institutional legitimacy values related to the facility's societal "role,"[63] especially because prisons and jails are governmental entities funded by taxpayer dollars and are subject to political reform. Although accountability, often in the form of investigative journalism, can reveal embarrassing truths about the institution,[64] which at first blush appears to *undermine* institutional dignity, these disclosures can lead to reform that bolsters an institution's credibility in the long run. Public oversight, an essential component of public trust, advances an institution's stature in the long run.[65] Because carceral footage documenting alleged §1983 violations can reveal injustices within prisons and jails, and because the exposure of those injustices can put pressure on those institutions to better respect Constitutional values and to treat those in their custody with humanity, this dignitary interest, perhaps counterintuitively, weighs in favor of transparency.[66]

The carceral facility also has a dignitary interest in security. This dignitary value is autonomy-oriented on an institutional, rather than individual, scale: the facility has an interest in maintaining their operations without disruption.[67] Prisons and jails seeking to shield carceral footage from public scrutiny often underscore security concerns favoring of non-

---

[62] *See, e.g.*, Jan Ransom & Ainara Tiefenthäler, *New York City Set to Pay a Record $28 Million to Settle Rikers Island Suit*, N.Y. TIMES, (April 6, 2024), https://www.nytimes.com/2024/04/06/nyregion/nyc-rikers-negligence-lawsuit.html (describing the pattern of mental health struggles and suicide attempts among inmates that preceded Plaintiff Nicholas Feliciano's suicide attempt that was the basis for his family's lawsuit, and that played a role in the settlement.).

[63] Judith Resnik & Julie Chi-hye Suk, *Adding Insult to Injury: Questioning the Role of Dignity in Conceptions of Sovereignty*, 55 STAN. L. REV. 1921, 1927 (2003) (describing institutional dignity as "role-dignity, by which we mean that respect is accorded to an entity to produce something of value to persons or groups") (emphasis omitted).

[64] *See, e.g.*, Blakinger & La Ganga, *supra* note 5.

[65] Justice Louis Brandeis, *What Publicity Can Do,* HARPER'S WEEKLY, Dec. 20, 1913, at 10 ("Sunlight is said to be the best of disinfectants").

[66] *See supra* Egelko, note 58.

[67] *See* McCrudden, *supra* note 36.

disclosure.[68] When judges and opposing counsel require these defendants to provide a specific account of their security concerns, the carceral facilities tend to claim that surveillance footage will reveal the interior structure of the prison, which could betray internal layout design and blind spots,[69] revealing which areas of the facility are subject to surveillance scrutiny and which are not. To be sure, though, it is not actually clear that new information about blind spots can be discovered through the disclosure of surveillance footage. One litigant objected to this assumption, claiming that because the surveillance cameras themselves are not hidden, any inmate attentive to the presence of the surveillance system "knows where they are and knows where the blind spots are." [70]

Finally, the carceral institution may have dignitary interests in protecting the privacy of their employees, depending on what they have promised their employees. For example, it is sometimes important for the public to be able to identify a prison official who has allegedly violated the law; in these cases, redaction would be inappropriate. On the other hand, some prison employees are guaranteed identity privacy at the outset of their employment.[71] These individuals would have a heightened reliance interest in confidentiality, particularly if they are not a defendant in the litigation. If the employee has a legitimate privacy expectation in the course of their work, and if the Plaintiff and public have no special interest in knowing that person's specific identity, then the dignitary privacy of prison employees would counsel against the disclosure of the carceral footage.

---

[68] *See, e.g.*, *Brewster v. Mills*, No. 20-cv-03254, 2022 WL 976973, at *28 (N.D. Cal. Mar. 31, 2022) (fully sealing carceral footage because of security concerns); *El-Massri v. Marmora*, No. 3:18-cv-1249, 2022 WL 6170681, at *3 n.3 (D. Conn. Oct. 7, 2022) (same); *Alexander v. Bucks Cnty.*, No. 21-cv-4633, 2023 WL 5208506, at *3 (E.D. Pa. Aug. 14, 2023) (same).

[69] *See, e.g.*, *Pegram v. Williamson*, No. 1:18-cv-828, 2022 WL 541495, at *28 (M.D.N.C. Feb. 23, 2022); *Kearney v. Bayside State Prison Admin.*, No. 17-cv-06269, 2023 WL 2207392, at *6 (D.N.J. Feb. 23, 2023) ("Here, a less restrictive alternative to the relief sought [full sealing of the carceral footage] is not available because there is no way to alter the videos to prevent sensitive information from being visible, particularly the physical locations of the cameras themselves, as well as blind spots from the footage that are revealed by the video").

[70] Kindle v. Crites, 22-cv-2763, 2024 WL 943435, at *5 (D. Md. Mar. 5, 2024).

[71] Included in this category are prison employees who participate in administering executions. Chiara Eisner, *Carrying Out Executions Took a Secret Toll on Workers—Then Changed Their Politics*, NAT'L PUB. RADIO (Nov. 16, 2022), https://www.npr.org/2022/11/16/1136796857/death-penalty-executions-prison ("There are legal restrictions to revealing the identities of many of the workers while they're employed, and a culture of secrecy tends to keep them quiet long after they leave their posts.").

A carceral institution may claim that it has an interest in safeguarding its reputation as a secure environment. Carceral institutions often seek to shroud records in secrecy through vague claims of "security" or "privacy" concerns,[72] when the invocation of those dignitary values are in fact a pretext for reputational face-saving amidst video evidence of horrible mistreatment of incarcerated people.[73] Courts must go to great lengths to reconcile serious security and privacy interests of the facility—core institutional dignitary interests—against the core public dignitary interests favoring transparency.[74] Yet counterfeit, reputation-oriented justifications for nondisclosure are not dignitary in form, as they do not advance the missions of carceral institutions: to imprison individuals in a secure environment, and to respect the Constitutional rights of those they incarcerate.[75] This is so because the dignitary issue here belongs to an institution, rather than a person. Therefore, under Judith Resnik and Julie Chi-hye Suk's conception of "role-dignity," respect is accorded to a nonhuman entity "solely in reference to what other goods it produces," as opposed to "something that inheres in personhood."[76] Dignitary concerns of these facilities, therefore, must relate to the substance of their

---

[72] *See, e.g.*, Chrisman v. Bd. of Cnty. Commissioners of Oklahoma Cnty., No. 17-cv1309, 2020 WL 12948695, at *2 (W.D. Okla. Oct. 9, 2020) (citing vague "security" and medical privacy concerns to withhold video evidence of Plaintiff's son allegedly being battered, suffocated, and pepper sprayed in his final moments). *See also* Order, Chrisman, No. 17-cv1309 (Sept. 28, 2020) (explaining the facts of the alleged attack).

[73] *See, e.g.*, Objection to Flowers' Motion to File Documents Under Seal, Brown v. Flowers, No. 19-cv-7011, at *3 (10th Cir. 2019) (objecting to the Defendant-Appellant's attempt to file under seal video evidence of Plaintiff-Appellee's sexual assault that she said she experienced while incarcerated) ("Appellant's motion is a naked attempt to shield unprotectable records from the public in an effort to conceal the nature of . . . governmental affairs"). Despite the strong transparency interests at stake, which the Tenth Circuit did not acknowledge, the court simply accepted the government's abstract security and privacy arguments, sealing the footage and requiring Plaintiff's lawyer to remove the footage from a publicly-accessible Dropbox account. Brown v. Flowers, 974 F.3d 1178, 1188 (10th Cir. 2020).

[74] *See supra* Part I.

[75] For example, the Virginia Department of corrections lists their core values as "safety," "integrity, "accountability," "respect," "learning," and "service." *About Us,* VIRGINIA DEPARTMENT OF CORRECTIONS, https://vadoc.virginia.gov/about/ (last visited April 28, 2024). California's Department of Corrections includes "accountability," "respect," and "trust" on their list of core values. *Vision, Mission, Values, and Goals*, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, https://www.cdcr.ca.gov/about-cdcr/vision-mission-values/ (last visited April 28, 2024). Montana's Corrections Department promises to conduct its work "with the utmost compassion." *About Us*, MONTANA DEPARTMENT OF CORRECTIONS, https://cor.mt.gov/About/ (last visited April 28, 2024).

[76] *See* Resnik & Chi-hye Suk, *supra* note 63, at 1927.

operations. Appearance-oriented considerations are irrelevant. Digging into the facts to ask whether the security and privacy interests at stake are legitimate and related to the institution's public service mission—whether they are fundamentally dignitary—helps courts ensure that illegitimate values are not being weaponized to minimize the public's right of access and to shroud evidence of misconduct in secrecy, to the benefit of abusive carceral facilities.[77] State claims of security[78] or privacy concerns favoring nondisclosure should be met with consistent skepticism.[79] By refusing to accept these claims at face value, courts can ensure that they are affording weight only to serious and sound interests.[80]

E. Dignitary Interests of the Press and Public

The public, and the press as a representative of the public, have a transparency interest in understanding how public institutions operate, how governmental officials treat those in their custody, and how public money is used. This transparency interest takes on a two-dimensional, autonomy-oriented conception of dignity.[81] First, the press has an interest

---

[77] This Essay offers a reliable, predictable six-step method that courts could use to pursue this goal. *See infra* Part IV(B). Professor Danielle Citron has argued that if privacy is not "autonomy-enhancing" or "equality-reinforcing," it is just "seclusion or secrets"; in these cases, "privacy understood the wrong way is . . . not about privacy." Dean Risa Goluboff & Professor Danielle Citron, COMMON LAW, Season 4, Ep. 14: Anita Allen, Transcript at 12, https://www.law.virginia.edu/sites/default/files/transcripts/CommonLaw_S4_Ep13_AnitaAllen_Transcript.pdf. *See also* NEIL RICHARDS, WHY PRIVACY MATTERS 72 (2022) ("Privacy is [not] about hiding dark secrets"). Thank you to Tolu Ojuola for this reading suggestion.

[78] Indeed, some courts have argued that transparency can advance security interests by subjecting potentially-unwise policy decisions to scrutiny. *See*, *e.g.*, United States v. New York Times, 328 F.Supp 324, 331 (S.D.N.Y. June 15, 1971) ("[S]ecurity…is not at the ramparts alone. Security also lies in the value of our free institutions. A cantankerous press, an obstinate press, a ubiquitous press must be suffered by those in authority in order to preserve the even greater values of freedom of expression and the right of the people to know").

[79] *See, e.g.*, Turner v. Roderick, No. 1:22-cv-0787-LKG, 2023 WL 3454769, at *4 (D. Md. May 15, 2023) ("A vague reference to 'security concerns' without any explanation as to why there are security concerns is not enough to justify the sealing of an exhibit, nor does it outweigh the right of access to public documents"); Taylor v. Keener, No. 2:22-cv-00092, 2024 WL 931090, at *2 (E.D. Tenn. Mar. 4, 2024) (holding that "general statements" that do not "allege or demonstrate" that the carceral institution "will suffer an injury if the video footage is not sealed," without more, cannot justify nondisclosure).

[80] *See* Johnson-Barker v. Wexford Health Sources, No. 1:21-cv-01234 (C.D. Ill. Mar. 8, 2023), at *3 (order granting release of an exhibit) ("([T]he Court is mindful of security concerns that arise in many different forms in prisons. Those concerns highlight why each case must be addressed on its own facts").

[81] *See* McCrudden, *supra* note 36.

in media freedom. Journalists' power to access the public documents necessary to engage in the "uninhibited, robust, and wide-open"[82] discourse on matters of public importance is an intrinsic good.[83] Second, press autonomy is a conduit to the autonomy of the body politic, because voters rely on news reports to form their views before they go to the polls.[84] Indeed, speech freedom philosopher Alexander Meiklejohn once wrote that a core function of press freedom "is to give to every voting member of the body politic the fullest possible participation in the understanding of those problems with which the citizens of a self-governing society must deal."[85] Because the public's right to know how the carceral institutions working on behalf of the public treat the individuals in their custody is inextricably intertwined with the right of citizens to self-govern, access to government records of public importance is a dignitary issue that strongly favors disclosure.

PART III: MEDIATING THE TRANSPARENCY-PRIVACY CONFLICT THROUGH REDACTION

When courts weigh transparency interests against countervailing interests favoring nondisclosure, they often fail to consider the possibility of redaction, through which parties may reconcile these competing goals. Redaction — the process of obscuring material in a record such that it cannot be perceived — is often associated with blacked-out text in written public records.[86] Yet redaction can play a role in audio recordings and video film, too, through visual blurring and sound alteration techniques. This Part makes the case for the practical and economic viability of redaction in the context of carceral footage. The availability of responsible redaction[87] techniques can serve to strengthen the common law right of

---

[82] New York Times v. Sullivan, 376 U.S. 254, 270 (1964).

[83] ASHLEY MESSENGER, A PRACTICAL GUIDE TO MEDIA LAW 15 (arguing that the concept of expressive freedom and self-fulfillment is an essential normative underpinning of American press freedom protections).

[84] *See* THOMAS I. EMERSON, SYSTEMS OF FREEDOM OF EXPRESSION 17 (1970).

[85] ALEXANDER MEIKLEJOHN, FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT 88-89 (1948). *See also* Robert H. Bork, *Neutral Principles and Some First Amendment Problems*, 47 INDIANA L.J. 1 (1971).

[86] The Oxford English Dictionary, for example, defines "redaction" as the "act of censoring a document by removing or blacking out certain words or passages prior to publication or release." *Redaction*, OXFORD ENGLISH DICTIONARY, https://www.oed.com/dictionary/redaction_n?tab=meaning_and_use#26345484 (last visited April 25, 2024).

[87] This Essay terms "responsible redaction" as blacking-out or blurring practices that safeguard individuals and institutions against serious, dignitary privacy and security concerns, *see supra* Part II, while otherwise making unobscured footage available to the viewer to the greatest degree possible.

access by mitigating concerns that prevent keep certain records under seal wholesale.

A. Redaction Is a Practical and Cost-Effective Option

Proponents of government secrecy and others skeptical of redaction argue that redaction is an ineffective and prohibitively expensive process.[88] Courts may overestimate how much redaction would be necessary to safeguard serious security and privacy interests.[89] Additionally, courts unfamiliar with contemporary redaction technologies may not understand that redaction is a practical way to mitigate privacy and security concerns while vindicating transparency interests.[90] Contemporary software can effectively blur out faces of individuals in footage, even when those individuals' faces move around throughout the film. For example, this was the case for the videos released after the *Los Angeles Times* intervened in the *Rosas v. Luna* class action matter.[91] Although manual redaction of video footage was previously time-intensive and expensive—manual, frame-by-frame redaction of one hour of video could require up to 10 hours of work—technological developments have now introduced software capable of automatically

---

[88] *See, e.g.*, Bryan Polcyn, *Wisconsin bodycam video cost could increase with new legislation*, FOX6 NEWS MILWAUKEE (Feb. 9, 2024, 5:51 PM), https://www.fox6now.com/news/wisconsin-body-camera-video-cost (discussing the high cost of video redaction and claiming that "the costs could add up quickly"); *see also* Herbert B. Dixon, Jr., *Embarrassing Redaction Failures*, 58 JUDGES' J., No. 2, at 37 (2019). Courts fall prey to this misconception, too. During an oral argument in a public records access statutory matter last year, a trial judge asked National Public Radio's lawyer whether redaction would render a file "meaningless," and whether NPR would be willing to pay for the costs of voice redaction of short audio files if the cost of redaction was $15 million. *See* Transcript of Hearing at 39, 41.5-6, National Public Radio et. al. v. Virginia Department of Corrections, No. 23-cv-00386 (Charlottesville Circuit Court, Aug. 3, 2023).

[89] *See, e.g.,* Kearney v. Bayside State Prison Admin., No. 17-cv-06269, 2023 WL 2207392, at *2 (D.N.J. Feb. 23, 2023) ("The placement, behaviors, equipment, and response time of the officers cannot be redacted from the videos and to try to do so would effectively seal the exhibits entirely").

[90] *See, e.g.,* Transcript of Hearing at 39, 41.5-6, National Public Radio et. al. v. Virginia Department of Corrections, No. 23-cv-00386 (Charlottesville Circuit Court, Aug. 3, 2023).

[91] Blakinger & La Ganga, *supra* note 5. A note for the reader: because the Defendant's party name changed midway through the litigation, some filings referenced in this paper use the caption *Rosas v. Baca* — but both captions refer to the same case.

redacting identifying features of selected individuals.[92] This software is already being used by government agencies such as police departments.[93]

Redaction technologies are cost-effective, too. For example, Reduct, a secure redaction platform that can blur faces, mute audio, and remove any transcript from the file's metadata, offers subscriptions for redacting a limited number of files, beginning at only $40 per month.[94] Blurred redaction is also a standard feature in Adobe Premiere Pro,[95] which costs only $22.99 per month as of April 2024.[96] Veritone Redact, a high-end redaction software technology that features automatic detection, and that has numerous contracts with law enforcement agencies, charges its clientele a rate based on "media hours," or the length of the footage, with a maximum charge of $110 per media hour.[97] Even if Veritone's price tag outpaces those of Reduct and Adobe, it falls far short of the cost-prohibitive portrait some have painted when discussing redaction practices—particularly when critics constrain their imaginations to the realm of manual redaction.[98]

---

[92] *Utility Develops Redaction Technology for Police Video*, POLICE MAGAZINE (Sept. 14, 2015), https://www.policemag.com/technology/news/15332991/utility-develops-redaction-technology-for-police-video.

[93] *See, e.g.*, Mike Morper, *My Technology Can . . . Automate Digital Evidence Redaction*, POLICE MAGAZINE (Mar. 2, 2022), https://www.policemag.com/technology/article/15309082/my-technology-can-automate-digital-evidence-redaction.

[94] *Plans and Pricing*, REDUCT, https://reduct.video/pricing (last visited April 25, 2024).

[95] *How to Blur a Video: Key Concepts for Creating Blur in Post-Production*, ADOBE, https://www.adobe.com/creativecloud/video/discover/how-to-blur-a-video.html (last visited April 25, 2024).

[96] *Plans and Pricing for Creative Cloud Apps and More*, ADOBE, https://www.adobe.com/creativecloud/plans.html?filter=video-audio&plan=individual (last visited April 25, 2024).

[97] Interview with Veritone Representative (April 25, 2024) [hereinafter Interview with Veritone Representative] (meeting notes on file with the author). The $110 per media hour rate is available to clients seeking redaction technology for five to ten media hours' worth of footage annually. Public-sector clients who regularly redact a significant amount of footage pay substantially less than the $110 per media hour rate, though Veritone declined to disclose those rates. *Id*.

[98] *See supra* note 88. It is worth noting that Veritone's technology is powered by artificial intelligence algorithms; as this technology develops, users and technology reporters should carefully monitor the algorithm's outputs to ensure that they are effective, accurate, and fair. Interview with Veritone Representative.

B. Responsible Redaction Can Mitigate Privacy Concerns

Redaction can effectively mitigate the privacy-oriented dignitary interests that discourage disclosure. By shielding the identities of the plaintiffs, incarcerated third-party bystanders, and even prison employees (to the extent that circumstances warrant that concealment),[99] redaction helps the viewer focus not on the *who,* but on the *what*; on the institution over the individual; on the system over the story. If the public accountability conception of dignity seeks to answer the question of how our public institutions treat those in their custody,[100] it is possible for the public to understand the horrors and injuries of alleged §1983 violations, and to pursue reform, without identifying involved individuals. Because redaction technology can blur out body parts other than the face,[101] plaintiffs who were unclothed in the footage can pursue narrative autonomy, public accountability, redress, and other dignitary benefits without enduring the shame of having their nude body exposed.[102]

The L.A. County carceral footage unsealed by the *Los Angeles Times* illustrates the notion that the vindication of transparency-oriented dignitary interests need not come at the expense of dignitary privacy values. Through this footage, the public can observe unidentified jail officials punching out an anonymous inmate[103] and other guards kneeling on another unknown incarcerated man's neck.[104] Redaction accounts for the privacy interests of all individuals featured in the video, but the conduct is left unobscured, ripe for public understanding, criticism, and reform in service of those who will, in the future, will be at the mercy of Los Angeles county jail officials. It is true that the *Los Angeles Times*, as an intervenor, entered the court with its own set of priorities — namely, with public transparency as its end game. However, the newspaper, through its litigation and through its journalism, also advanced the plaintiffs' dignitary interests in transparency and the possibility of accountability without compromising privacy values.[105]

---

[99] This issue must be adjudicated on a case-by-case basis. *See supra* note 71 and accompanying text.

[100] *See supra* notes 81–85 and accompanying text.

[101] Interview with Veritone Representative (confirming that this is true for Veritone's software and for other technologies).

[102] See *supra* note 52.

[103] Blakinger & La Ganga, *supra* note 5, Video #1, at 0:10.

[104] *Id.*, Video #2, at 0:18.

[105] *See* Rosas v. Baca, No. 2:12-cv-00428, 2023 U.S. Dist. LEXIS 161853, at *13 (C.D. Cal. Sept. 12, 2023) (Order re: Motions to Intervene and Unseal) ("As private citizens, Plaintiffs certainly possess some interest in keeping a watchful eye on public agencies…the interest Plaintiffs seek to protect through this litigation—the right under the Eighth and Fourteenth Amendments to reasonable protection from violence and excessive force—is distinct from Movants' interest in publishing information concerning the workings of government agencies. In some cases, however, a plaintiff's interest may overlap with distinct press interests.") (internal quotation marks omitted).

C. Responsible Redaction Can Mitigate Prison Security Concerns

Courts that decline to release carceral footage in light of specific security concerns worry about exposing the layout and structure of the prison.[106] In some circumstances, publicly available carceral footage could expose surveillance camera blind spots and architectural information that could, hypothetically, make it possible for prisoners to traffic in drugs, escape, or commit other unlawful acts.[107]

To the extent that these security concerns[108] are rationally tied to the actual consequences of disclosure — or, more realistically, to the extent that these security concerns are enough to persuade judges to tip the public interest balancing scales *against* disclosure — it is possible to mitigate those concerns through redaction. Adobe, for example, has a "Blur" function that could redact the broader background details of a shot, focusing on the interaction rather than the comparatively unimportant architectural context of the carceral facility.[109] Veritone's software has similar capabilities.[110] Although no court, to this author's knowledge, has employed background blurring to account for prison complex security concerns, this redaction technique is just as practically feasible, and just as cost-effective, as privacy-protective redaction.

PART IV: PROPOSING A DISCLOSURE PRESUMPTION FOR CARCERAL FOOTAGE DOCUMENTING ALLEGED §1983 VIOLATIONS

Taken together, Parts I, II, and III demonstrate that courts ought to strengthen the common law right of access as it relates to carceral footage documenting alleged §1983 violations. Strengthening this right by creating a presumption of access to these records will help plaintiffs and intervening media actors more fully realize the common law's commitment to judicial transparency and—hand-in-hand with responsible redaction practices—will better vindicate the numerous dignitary interests at stake for all parties involved. Part III argues that strengthening this right is both possible and practical. Building on Part II's discussion of dignitary interests, this Part will first explain why a presumption of access for

---

[106] *See supra* notes 68–70 and accompanying text.

[107] None of the judicial opinions surveyed in this author's research cite examples of any such conduct occurring as a result of disclosed surveillance footage. These concerns, at least as far as this author can tell, seem completely hypothetical and possibly unfounded.

[108] Hypothetically, courts could also be concerned about law enforcement's notepads or laptop text that could contain confidential information. Veritone's software addresses this potential concern, too, through the technology's ability to redact documents that are depicted within video footage. *See* Interview with Veritone Representative (meeting notes on file with the author).

[109] *How to Blur a Video: Key Concepts for Creating Blur in Post-Production*, ADOBE, https://www.adobe.com/creativecloud/video/discover/how-to-blur-a-video.html (last visited April 25, 2024).

[110] Interview with Veritone Representative.

carceral footage is justified. This Part subsequently proposes a six-step analysis that could constitute the presumption. Finally, this Part articulates and addresses counterarguments to the proposed presumption.

A. Justifying the Presumption

A presumption of public access to carceral footage follows naturally from the common law right of access and is consistent with the dignitary values of all who have a stake in the footage. The choice to create a more specified presumption, tempered by available and cost-effective redaction technology, is appropriate for five reasons. First, the proposed presumption of public access to carceral footage would weed out vague and unfounded justifications that keep evidence of government misconduct shrouded in secrecy.[111] Second, the proposed presumption would help *pro se* litigants more easily realize the law's promise of transparency.[112] Third, the proposed presumption would help educate the public about the realities of incarceration, enhancing the electorate's knowledge base on key policy issues.[113] Fourth, the proposed presumption—and the accompanying, specific analytical framework to help courts adjudicate carceral footage access disputes—would promote judicial consistency in adjudication of motions to seal and unseal carceral footage.[114] Fifth, and most importantly, because the proposed presumption would increase access to evidence documenting abuse in prisons, officials would be incentivized to comply with the law when they interact with the incarcerated people in their custody.[115]

B. Mechanics of the Presumption

In practice, how would this presumption *specific to carceral footage* look any different from the common law's generalized presumed right of access to judicial records? This presumption could involve a six-step analysis that would help the court accurately and thoroughly consider each party's interests to determine whether, and in what form, carceral footage should be released to the public.

First, when carceral footage is filed as part of the discovery process, the court should begin with a presumption of openness. This should apply regardless of whether the defendant is moving to seal the footage for "good cause" under FRCP 26(c) or whether the plaintiff or another intervening party, such as a journalist or newspaper, is moving to unseal.

Second, if the defendant challenges that openness, they would be required to state with specificity what security or privacy concern is at

---

[111] *See supra* notes 72–79 and accompanying text.
[112] *See supra* note 42–48 and accompanying text.
[113] *See supra* Part II(E).
[114] *See supra* note 79 and accompanying text.
[115] *See* Egelko, *supra* note 58.

issue, and to state specifically how disclosure would harm the carceral facility, the public, or anyone else. Presently, in practice, courts require defendants to invoke sealing-justifying rationales with varying degrees of specificity.[116] This standard, by contrast, sets a consistent and high bar, requiring specific accounts of both the sealing interest and the potential harm at stake in the event of disclosure.[117]

Third, the defendant would be required to discuss whether redaction could resolve those concerns. If the defendant seeks to seal the carceral footage in full, they must demonstrate why contemporary redaction technology cannot mitigate their sealing interests. This proposed requirement places the burden of the first redaction analysis step on the defendant. This minimizes scenarios where courts ask the plaintiffs to articulate reasons why records *should* be disclosed. In light of the common law's general presumption of access, that burden should rest on the defendant. When courts wrongfully place the burden on the transparency advocate to justify why a document ought to be disclosed, courts seem to be even less acquainted with, or sympathetic to, the public interests in favor of disclosure, and are inclined to ultimately seal the records in question.[118]

Fourth, the transparency proponent — typically the plaintiff or a media intervenor —would have an opportunity to challenge the sealing proponent's concerns. At this stage, the transparency proponent can argue that (1) the sealing proponent's concerns are not actually meritorious; that (2) responsible redaction practices resolve the sealing proponent's concern; or (3) that the sealing proponent's proposed redactions are overbroad.

Fifth, if the posture of the case is such that the defendant seeks to file the carceral footage exhibits under seal and the plaintiff — specifically a *pro se* plaintiff — does not oppose the motion, then the court should *proactively* ask the plaintiff what they think of the motion to file the exhibits under seal, discussing the benefits and drawbacks articulated in

---

[116] For example, the Northern District of California was satisfied that Defendants had articulated a "legitimate" security concern that warranted sealing the records. Brewster v. Mills, No. 20-cv-03254, 2022 WL 976973, at *28 (N.D. Cal. Mar. 31, 2022). By contrast, the Eastern District of Tennessee has emphasized that "only the most compelling reasons can justify non-disclosure of judicial records." Taylor v. Keener, No. 2:22-cv-00092, 2024 WL 931090, at *4 (E.D. Tenn. Mar. 4, 2024).

[117] *See supra* Part IV(A).

[118] *See, e.g.*, Lindell v. Boughton, No. 18-cv-00895, 2020 WL 6118468, at *2 (W.D. Wis. Oct. 16, 2020); Rosas v. Baca, No. 2:12-cv-00428, 2023 U.S. Dist. LEXIS 201937, at *5 (C.D. Cal. Nov. 8, 2023) (Order Granting Motions to Unseal Court Records) (rejecting the idea that the release of carceral footage under the common law access right requires the transparency proponent to state "an important public need justifying access.").

Part II.[119] These questions are especially important in scenarios where the defendant—without opposition or support from the plaintiff—moves to seal footage that raises privacy concerns for the plaintiff. If the plaintiff has not weighed in on the matter, courts will not be able to assess whether they would prefer to exercise their narrative autonomy in favor of their privacy (i.e., they would prefer for the footage not to be released, diminishing the public interests favoring disclosure), or whether they are simply unaware of the potential benefits of disclosure and downsides of secrecy. This silence raises an important ambiguity that a brief judicial inquiry could resolve. To safeguard the dignitary interests of *pro se* plaintiffs who might be unaware of the common law right of access or who otherwise have not been given the resources to litigate the issue, courts ought to proactively raise questions about sealing the carceral footage before granting the defendant's motion.[120]

Sixth, the court must then determine whether to release the footage. Only (1) when records pose specific and compelling concerns justifying sealing and (2) when redaction will not resolve those concerns should the court file the carceral footage under seal. This analytical framework, of course, sets a high bar for courts to justify the complete sealing of carceral footage.

Under this system, what circumstances might still produce that result? First, if the litigant insists that there is no personal value for them in public access to the carceral footage—if they would prefer to exercise their narrative autonomy over the footage in favor of privacy—that could only be outweighed by a very significant communal dignitary interest in transparency. Otherwise, even under this access-friendly regime, courts would likely seal the footage out of respect to the litigant. Second, if the alleged §1983 violation occurs in a very security-sensitive part of the prison — such that it is impossible to capture the events without also capturing contextual information about the carceral facility that would create a substantial and specific security risk if made public — those concerns could warrant full sealing. Full sealing also may be justified for scenarios in which redaction technology proves unreliable—for instance, if smart redaction blurring technology fails to properly follow a face, and an individual with a privacy interests could be identified through stills or other back-end programming.

---

[119] *See, e.g.*, Memorandum Opinion and Order, Easterly v. Thomas, No. 20-cv-00065, 2021 WC 4447633 (E.D. Tenn. Sept. 28, 2021) (Plaintiff, who was nude in the carceral footage, declined to join Defendant's motion to unseal, but did not oppose the motion. The Court seals the footage).

[120] *See, e.g.*, Howard v. Cox, No. 2:17-cv-01002, 2021 WL 4487603, at *2 (D. Nev. Sept. 30, 2021) (sealing footage without any mention to Plaintiff's presumed common law access right).

PART V: COUNTERARGUMENTS TO THE PROPOSED PRESUMPTION

First, skeptics of the proposed presumption may ask why courts should adopt such a specific rule with respect to carceral footage, a narrow category of evidence. *Pro se* litigants, a critic might say, experience all sorts of access-to-justice issues. Imposing a specific, complex requirement for one type of record would not resolve all of the barriers to effective relief that these plaintiffs face. Yet video footage documenting injustice plays a unique role in shaping the public's understanding of our state actors and government institutions. Embedded in the ability to obtain and release carceral footage is the power to provoke righteous outrage, clarify factual truth, and provide unflinching insight into state-sanctioned violence.[121] The potential for justice to flow from the unsealing of carceral footage specifically is sufficient to justify a specific analytical framework for judges facing the question of whether to release it.

Skeptics concerned about administrative costs could argue that a presumption of disclosure and a rigorous six-step analysis will impose expensive complications for litigants and courts at the discovery stage. First, the proposed test is designed to help courts by offering a method that systematically accounts for all competing interests relevant to the sealing and unsealing motions at issue. Indeed, this could *improve* efficiency for courts committed to thoroughly probing the interests at play. Because smart redaction software is relatively new,[122] this test can provide specialized guidance to generalist courts seeking to account for timeless interests, such as privacy and transparency, in the context of cutting-edge technological advances. Yet to the extent that this proposed analysis asks more of courts weighing these questions, courts should not prioritize efficiency interests at the expense of other goals, such as public accountability, the narrative autonomy of litigants, and a full assessment of the state's countervailing concerns. Handing down orders on these motions without scrutinizing security interests and fully accounting for the public interests favoring disclosure does not represent judicial efficiency at its best. To the contrary, that model merely treats the common law access right with short shrift.

Additionally, some may claim that photographs and video footage from inside carceral facilities ought not come into the public domain because historically, they have not belonged to the public.[123] Indeed, in 1978, the Supreme Court rejected the idea that the media has a First Amendment right to access jails,[124] and carceral footage arguably belongs

---

[121] *See generally supra* Part II.

[122] *See supra* Part III.

[123] *See, e.g.*, Defendant's Omnibus Opposition to Non-Parties Los Angeles Times and Witness LA's Motions to Intervene and Unseal Confidential Documents at 12-14, Rosas v. Luna, No. 12-cv-00428, (C.D. Cal. Aug. 21, 2023).

[124] Houchins v. KQED, Inc., 438 U.S. 1, 2 (1978) (holding that press freedom rights do not grant journalists access to carceral facilities, and more

in the category of investigative materials and law enforcement records, which have long been shielded from public view.[125] The common law access right does not apply to judicial records that have been "traditionally been kept secret for important policy reasons."[126] However, these skeptics might be assuaged by the fact that in the common law right of access context, the phrase "traditionally kept secret" is actually a "term of art," which "refers to materials for which there is neither a history of access nor an important public need justifying access."[127] Where the public interests favoring transparency—animated through dignitary interests—bolster the case for disclosure, the precedential force of historical state secrecy ought to falter.

Finally, critics might hesitate to accept the argument that unsealing carceral footage — even carceral footage documenting egregious constitutional rights violations — can ultimately make a difference for the plaintiff. The disclosure of this footage will not, in every case, prompt backlash and change. This is especially true because incarcerated people, who are often denied social media accounts,[128] often do not have platforms through which to share this footage even when they can obtain it. A public reaction, accountability, and change are never guaranteed. For example, although the Eastern District of Tennessee granted Lorenzoe Wilson—convinced the public would care about his suffering if only they could witness it—[129] permission to disseminate the carceral footage documenting his alleged attack,[130] that video does not yet appear in news coverage, on social media, or elsewhere online.[131] Can this presumption

---

broadly pronouncing, "Neither the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control"); *Id*. at 15.

[125] *See* Forbes Media LLC v. United States, 61 F.4th 1072, 1081 (9th Cir. 2023).

[126] Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006).

[127] Rosas v. Baca, No. 12-cv-00428, at *5 (C.D. Cal. Nov. 8, 2023) (Order Granting Motions to Unseal Court Records) (quoting Forbes, 61 F. 4th at 1081).

[128] Jerry Iannelli, *Civil Rights Groups Decry Proposed Federal Prison Social Media Crackdown*, THE APPEAL (April 4, 2024), https://theappeal.org/rights-groups-decry-proposed-federal-prison-social-media-crackdown/ ("Many state prison systems already ban imprisoned people from accessing social media and a handful of states, including Alabama and Iowa, ban third parties from posting on prisoners' behalf.").

[129] Letter from Lorenzoe Wilson to Judge Charles E. Atchley, Jr., Opposing Defendant's Motion to File Doc. 83 Under Seal, Wilson v. Robinson, No. 22-cv-00158, (E.D. Tenn. Oct. 9, 2023).

[130] Wilson v. Robinson, No. 3:22-cv-158, 2023 WL 8934653, at *1, 4 (E.D. Tenn. Dec. 27, 2023).

[131] This author's numerous searches for "Lorenzoe Wilson," plus "Tennessee," "Morgan County Correctional Complex," and/or the named Defendants in the case — "Brandon Robinson," "Brian Gouldy," "Denise

really make a difference in enhancing the public's right to know and vindicating the dignitary interests discussed in Part II if the carceral footage fails to reach the public for reasons unrelated to sealing? Indeed, scarce resources in the twenty-first-century journalism industry[132] make in-depth accountability reporting an elusive proposition for many news outlets and incarcerated people alike.[133] Yet if citizens want to hope for the possibility of vindicating dignitary interests through transparency schemes like the one proposed, courts cannot inhibit this goal just because economic realities do. Donor contributions that seek to strengthen the power of well-established nonprofit reporting outlets like The Marshall Project and ProPublica, which dedicate investigative resources to in-depth criminal injustice reporting work,[134] make a greater difference when the journalists employed by those outlets are granted genuine access to the institutions they hold to account. A robust common law access right satisfies that prerequisite condition.

PART VI: CONCLUSION

This Essay has explored how courts can consider dignitary interests when adjudicating common law right of access and sealing claims involving carceral footage that documents alleged §1983 violations. A full accounting of dignitary interests in these cases, reveals to courts the robust, compelling, and often-ignored public interests favoring disclosure.

Durham," and "Brandi Hudson" — on Google, Facebook, X, and numerous Tennessee online news outlets did not yield the unsealed footage.

[132] The journalism industry has faced an "existential threat" in the twentieth century as circulation and advertising revenue have "plummeted" with the rise of the internet. MARGARET SULLIVAN, GHOSTING THE NEWS: LOCAL JOURNALISM AND THE CRISIS OF AMERICAN DEMOCRACY 14, 16 (2020). These financial resource constraints inhibit investigative reporting that can shed light on a wide array of public interest matters, including alleged state mistreatment of incarcerated people. *See Id*. at 20; *see also* Paul Farhi, *Is American Journalism Headed Toward an "Extinction-Level Event"?*, THE ATLANTIC (Jan. 30, 2024), https://www.theatlantic.com/ideas/archive/2024/01/media-layoffs-la-times/677285/.

[133] Christina Koningisor & Lyrissa Lidsky, *First Amendment Disequilibrium*, 110 VA. L. REV. 1, 6 (2024) ("The power and influence of the institutional press, particularly at state and local levels, has dramatically declined."); On the Media*, Can Journalism Impact Criminal Justice?*, Podcast Transcript, WNYC STUDIOS (Nov. 14, 2014), https://www.wnycstudios.org/podcasts/otm/segments/marshall-project?tab=transcript ("[I]n-depth public service journalism has to be paid for.").

[134] *See Investigations*, THE MARSHALL PROJECT, https://www.themarshallproject.org/records/818-investigations (last updated April 16, 2024, 6:25 A.M.); *Topics: Criminal Justice*, PROPUBLICA, https://www.propublica.org/topics/criminal-justice (last accessed April 27, 2024).

Dignitary interests can also serve as a useful tool to help courts distinguish between legitimate safety and privacy concerns and vague claims about security that are in fact attempts to hide official misconduct. Because modern redaction technologies can largely account for interests disfavoring disclosure, courts' consideration of dignitary interests through Part IV's proposed six-part analysis should strengthen the public's ability to unseal carceral footage documenting alleged §1983 violations. These disclosures vindicate the dignitary interests of plaintiffs who have suffered at the hands of government officials. Enhanced transparency creates a more informed electorate, strengthening the public's ability to make smarter, autonomous choices at the polls. The accountability that flows from transparency ultimately dignifies public institutions by shining a light on misconduct and encouraging reform. Most importantly, the reform that flows from accountability can improve the future treatment of other incarcerated people.

Numerous avenues for future research flow from this conclusion. First, future research should seek to provide an empirical account of public access litigation involving carceral footage. The full scope of this issue is unknown. Answers to the following questions may provide a useful descriptive accounting of this issue to scholars and advocates: How many times have plaintiffs or media intervenors sought this footage? Under what circumstances are litigants successful? How often are carceral institutions able to seal this footage without objection? Which courts are most friendly, and most hostile, to right-of-access arguments regarding this evidence? These will be difficult questions to answer in light of research challenges discussed in Part I.[135] Scholars must devise creative strategies to overcome these challenges to more comprehensively tell the story of carceral footage sealing and disclosure litigation in the United States.

Second, future scholars ought to explore legal and ethical issues related to the use of artificial intelligence algorithms that drive the modern redaction technology discussed in Part III. Given the mass incarceration of Black people in the U.S.,[136] considerations of algorithmic racism[137] should be at the forefront — are these technologies just as effective at safeguarding the identities of people of color as they are of white people? Third, future research ought to consider how the proposed framework might apply to common law right of access analysis involving judicial

---

[135] *See supra* note 34.

[136] Christina Carrega, *Black Americans Are Incarcerated at Nearly Five Times the Rate of Whites, New Report on State Prisons Finds*, CNN (Oct. 13, 2021, 10:43 AM), https://www.cnn.com/2021/10/13/politics/black-latinx-incarcerated-more/index.html.

[137] *See, e.g.*, Rebecca Heilweil, *Why Algorithms Can Be Racist and Sexist*, VOX (Feb. 18, 2020, 12:20 PM), https://www.vox.com/recode/2020/2/18/21121286/algorithms-bias-discrimination-facial-recognition-transparency.

records similar to carceral footage, such as police bodycam videos.[138] Finally, future scholarly projects ought to consider how the right-of-access analysis might differ if the carceral footage is filmed by inmates, rather than by the carceral facility itself.[139] The dignitary and press issues in play may be more complex, as these cases would raise numerous, intricate questions about the newsgathering rights of incarcerated individuals.

[138] Josh Sanburn, *Why Police Departments Don't Always Release Body Cam Footage,* TIME (Aug. 17, 2016, 3:51 PM), https://time.com/4453310/milwaukee-police-sylville-smith-body-cams/.

[139] Despite near-ubiquitous cell phone bans at U.S. prisons and jails, some inmates have created footage documenting prison conditions through contraband phones. Keri Blakinger, *The Many Ingenious Ways People in Prison Use (Forbidden) Cell Phones*, THE MARSHALL PROJECT (Jan. 19, 2023, 6:00 AM), https://www.themarshallproject.org/2023/01/19/cell-phones-in-prisons-tiktok-education.