VIDEO'S DAY IN COURT

Advancing Equitable Legal Usage of Visual Technologies and AI

Visual Evidence Lab
UNIVERSITY OF COLORADO **BOULDER**

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INTRODUCTION AND BACKGROUND

The global proliferation of video has helped shed light on important civil rights and human rights issues.[1] From cell phones to police body cameras, video also regularly appears as evidence in court. Yet courts in the United States (both state and federal) lack clear and consistent guidelines on how video should be stored, presented, and used as evidence.[2] The lack of unified guidance means that video evidence is treated in highly varied ways that can lead to uneven and potentially unfair renderings of justice. The rise of artificial intelligence (AI) and deepfakes has amplified the challenges with video evidence, sowing doubts about the reliability and integrity of any image, even when authentic.

The newly founded Visual Evidence Lab at the University of Colorado (CU) Boulder gathered experts from across academia, law, media forensics, journalism, and human rights practice in April 2025 to discuss the challenges and propose ways of improving legal processes regarding the use of video and AI tools as evidence.[3] With a view toward maximizing the evidentiary benefits of video, the full-day convening centered on three overarching issues: video access, video interpretation, and AI.

Workshop Participants. Photo by Jack Moody.

Video Access	What are the implications of the lack of consistent, accessible storage of evidentiary videos? How might we design a database to support access to such materials and to facilitate research?
Video Interpretation	What standardized interventions (e.g., jury instructions, expert witnesses, legal training, technology-based solutions) could be developed and employed to help mitigate biases in the perception and interpretation of video as evidence in court?
AI and Courts	What legal issues do AI and deepfakes pose? How can courts establish the reliability and integrity of video evidence in the wake of AI?

This inaugural report provides an overview of the existing challenges and identifies areas where research and legal reforms are needed to support a more just and equitable use of video and AI technologies in court. Aimed at judges, policymakers, and scholars studying the intersection of law, media, and technology, this report argues that systematic guidance and applications for treating video as evidence in the age of AI will help ensure that courts recognize and uphold civil rights and human rights.

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SCOPING THE PROBLEM

The Bureau of Justice Assistance at the US Department of Justice estimated that about 80 percent of criminal cases included video evidence as of 2016.[4] Despite this prevalence, US courts lack unified guidance regarding evidentiary video, a problem that is likely to worsen in the wake of AI. In the absence of archival standards for video and easily accessible court records, there is insufficient systematic research and transparency about how courts use video as evidence at trial as well as about how and to what ends individuals and communities may be affected differently in the process.

VIDEO ACCESS

Transparency is commonly seen as essential to an independent judiciary and to maintaining public trust, but the public cannot easily access judicial records.[5] Federal judicial records are available on the Public Access to Court Electronic Records (PACER) service for $0.10 per page. State court record systems vary by state or even county, and some court records may not be online at all. The problem is even worse with evidentiary video. Unlike textual filings, evidentiary videos are not integrated into PACER and are often handled through fragmented agency systems that lack standard interfaces and cross-platform compatibility.[6]

In fact, the US legal system does not have a readily available database of any multimedia exhibits, including the video evidence used in state and federal trials.

The challenges posed by existing record management practices and the resources needed to access evidentiary videos are among the key factors that limit the ability of scholars, journalists, and citizens to evaluate more fully the impact and effects of video evidence in the judicial process.

RECORD MANAGEMENT: Archival standards in accordance with professional record management practices for evidentiary video are lacking, so there are inconsistencies in how, if at all, different courts store these materials.[7] Evidentiary video is managed in disparate systems across jurisdictions, such as law enforcement servers, court databases, cloud services, and physical storage facilities. It is stored in various formats (e.g., digital formats as well as older physical media like VHS tapes and DVDs) and introduced without standardized protocols for storing, cataloging, and archiving. This fragmented record keeping complicates retrieval, impeding empirical and systematic research on the legal usage of video and thus a broader understanding of how justice is administered.

RESOURCES: Retrieving video evidence requires a level of investigative skills. It is both a costly and time-consuming endeavor that includes requests for footage directly from courts, national archives, and lawyers. In the case of day-in-the-life videos,[8] they may sometimes be accessible only by consulting the videographer who made them. Researchers, journalists, and human rights organizations seeking to examine how video functions in legal settings thus need to spend significant time and pay required fees to access evidentiary footage. In some cases, the footage may not even be available.

The lack of consistent record management practices for evidentiary video and the resources required to obtain such materials amount to an infrastructure that undermines the principle of judicial transparency. Without a reasonably comprehensive, searchable database of evidentiary videos (and multimedia exhibits more broadly), **these visual materials cannot become a proper part of common-law jurisprudence either because lawyers and judges are not able to refer in any reasoned fashion to decisions of other courts regarding comparable videos.**

VIDEO INTERPRETATION

The widespread logic of naïve realism—the popular assumption that photographic and videographic images can provide objective, indisputably accurate access to reality—has long been belied by research across psychology, cognitive science, media and communication studies, and law.[9] Research consistently shows that how people watch and interpret imagery like video is driven by cognitive, technological, and social factors. **Some of these factors may particularly disadvantage people of color [10] within a legal system that is already shaped by racial and ethnic disparities.** [11]

Video Interpretation

- Cognitive Factors
- Technological Factors
- Social Factors

COGNITIVE FACTORS: Decades of psychology research demonstrate that perception can be selective, biased, and shaped by motivated reasoning, to name just a few variables. When asked to focus on a specific item or event in a video, selective attention may cause viewers to miss both broader changes and finer details in the footage they are viewing.[12] Perceptual biases may arise from the viewer's spatial and temporal relation to the depicted scene.[13] The viewer's wishes and preferences can lead to motivated reasoning: When perceptual ambiguity arises, viewers may be more likely to interpret visuals in a manner that affirms their wishes and preferences, without being consciously aware that they are doing so.[14]

TECHNOLOGICAL FACTORS: Features of the technology and the medium of video shape interpretation. Playback speed, for example, can skew jurors' judgments of intent. Slow motion makes the depicted action seem more deliberate.[15] Camera angle and field of view matter as well. Jurors viewing body-camera footage interpret the depicted officer's action differently than if they see the same incident from a dashboard camera.[16] Furthermore, the perspective of body cameras may worsen racial biases in interpretations of video depictions of police use of force.[17] The camera perspective from which a criminal confession is recorded can influence assessment of the confession's voluntariness and the suspect's guilt.[18]

SOCIAL FACTORS: Visual communication research has long established that interpretation involves not only what the eyes physically see but the experiences and ideas that a viewer brings to an image.[19] In other words, contrary to the epistemological assumptions of naïve realism, what a video says "depends on to whom it is speaking." [20] The race and ethnicity both of the viewer and of those depicted in a video is just one example of the social factors influencing visual interpretation.[21] The prosecution and defense opening statements describing video evidence can also affect how jurors perceive and interpret that evidence, while attitudes toward police can significantly affect responsibility judgments, inferential judgments, and emotional responses.[22]

Despite the multiple factors shaping interpretation and decision-making, judges, lawyers, and jurors are largely unaware of the various influences on how they construe what they see in a video.[23]

The legal system's unregulated approach to video evidence risks discrepant, and even erroneous, interpretations.

AI AND COURTS

The rise of AI provides an additional layer of complexity to discussions about video evidence. AI-generated video can be misleadingly persuasive.[24] Often it can be hard to distinguish with much confidence whether a video is authentic or not.[25] An authentic video can be falsely dismissed as fake.[26] **AI is thus creating urgent concerns about the reliability and integrity of evidentiary video and its impact on court proceedings.**[27] The main concerns currently center on three areas: the difficulty with detecting and verifying AI-created media, the uncertainty about what kind of technological enhancement is permissible in court, and the fear that challenging authentic footage as deepfakes may become more prevalent.

Detection and Verification

Technological Enhancement

Deepfake Defense

DETECTION AND VERIFICATION: AI-created media like deepfakes may challenge people's ability to distinguish meaningfully between authentic and fabricated videos that look realistic. Deepfakes may thus be making it more difficult for courts to verify video evidence, which calls into question the efficacy of traditional methods of establishing authenticity.[28] In May 2025, the US Judicial Conference's Advisory Committee on Evidence Rules decided that an amendment to Federal Rule 901, which governs the authentication of evidence in court, was not necessary because so few deepfakes had been offered as evidence to date. As a precaution, though, the Committee left the door open for future consideration of the proposed draft amendment 901(c) addressing deepfakes.[29] Meanwhile, technologies and methods for detecting deepfakes are proliferating,[30] with human rights experts urging developers of provenance technologies and watermarking solutions to consider the potential harms that such authentication measures can cause to activists, whistleblowers, witnesses, and others whose lives could be endangered if their identities are disclosed.[31]

The central challenge is how to establish robust authentication standards that can withstand scrutiny, without simultaneously creating verification systems that compromise people's right to confront evidence or endanger the human rights of media creators and witnesses.

TECHNOLOGICAL ENHANCEMENT: Courts have long relied on technologically enhanced visual media, such as enlarged imagery and interactive 3D models.[32] Such materials have been admitted into evidence under flexible rules on authentication that pose a low bar to getting the material before a jury.[33] Today, AI tools are increasingly used both to modify a video's resolution, brightness, contrast, sharpness, and other features as well as to analyze and present footage in new and persuasive ways (e.g., analyze and synchronize multiple videos of the same event from different sources). Yet there is a lack of shared understanding about what kind of technological enhancement of visual information is reliable and permissible in court.

In 2024, a Washington State judge barred an AI-enhanced video, applying the Frye standard for admissibility of expert testimony based on new or novel science.[34] Yet in a case in Florida a year earlier, an AI-enhanced recording played a key role in a criminal retrial and conviction.[35] Neither the Frye nor Daubert standards for expert testimony were raised at that trial. Some legal experts have thus warned that inconsistent, piecemeal approaches to the admissibility of AI-enhanced evidence may exacerbate inequalities in access to justice, undermining the right to present a defense.[36]

In June 2025, the US Judicial Conference's Standing Committee on Rules of Practice and Procedure proposed a new Rule 707 for "Machine-Generated Evidence," which would apply the Daubert standard of reliability for both AI-enhanced and AI-generated evidence.[37]

Open for public comments until February 16, 2026, the proposed rule has garnered mixed opinions,[38] with some critics questioning how an expert can establish the reliability of an AI model if/when the model cannot be adequately explained (e.g., generative AI is always, to some extent, a black box).[39]

DEEPFAKE DEFENSE: At a time when generative AI is democratizing fraud,[40] litigants may claim that an authentic video is a deepfake. For example, in a 2023 lawsuit brought by the family of a man who died when his Tesla vehicle crashed while using the self-driving feature, the company's defense counsel attempted (unsuccessfully) to dismiss an evidentiary video by claiming it was a deepfake.[41] As courts may confront more accusations of fakery against real evidence, juries may come to expect more proof that the evidence is real, resulting in more expensive and more time-consuming trials. Known as the "reverse CSI effect," this development could challenge the principle of equal access to justice by overburdening less-resourced parties.[42] In the process, **juries may accord little or no weight to authentic videos that have already been admitted into evidence.**

The concerns about authentication, the evolving technologies for enhancing visual evidence, and the emergence of a deepfake defense all point to the overarching question of how to maintain evidentiary integrity in the face of AI.

> ***New technological developments coupled with established perceptual errors involved in the interpretation of visual information, if left unaddressed, may weaken the principle of equal and fair justice.***

WAYS FORWARD

Interdisciplinary research informed by legal practice can help pave the way for legal reforms that ensure equitable and responsible use of technologies like video and AI. To address the challenges with access, interpretation, and AI, this report outlines four priorities.

DECENTRALIZED FEDERATED DATABASE FOR EVIDENTIARY VIDEO

Courts would benefit from a coordinated effort to develop **consistent standards for labeling, storing, securing, and archiving video evidence** (along with any other multimedia exhibits). From a technical standpoint, a long-term infrastructure for evidentiary video could be based on a system that combines a **data federation strategy**, which integrates video data from disparate storage systems, with **a decentralized architecture** that enables distributed ownership and use of that data. Such a system would allow each independent host of the data to deny or accept applications for access based on agreed-upon frameworks. For example, a trauma-informed approach that protects the dignity and rights of individuals caught on video in sensitive cases, such as sexual and gender-based violence, mental health, and police shootings, could guide the ethical framework for storing and accessing evidentiary videos.[43]

TRAINING FOR JUDGES

Relating the risks and rewards of video evidence to the justice process will require visual legal education. **Visual evidence training can empower judges in their role as evidentiary gatekeepers to be better informed decision-makers regarding video evidence** (e.g., how to probe and ask relevant questions of the underlying content and its authenticity). To develop and implement effective training, research is needed to determine:

What **experts** are best equipped to conduct such training (e.g., technical experts like video analysts and/or subject experts like media and communication scholars, psychologists, and cognitive scientists)

What the **curriculum** will include—and why

How the **training** can be incorporated at the state and federal level

JURY INSTRUCTIONS

Following the example of courts that have required jury instructions for eyewitness testimony,[44] **research-based guidance should be developed to help jurors better evaluate video evidence in civil and criminal trials.** Existing instruction-based interventions for both eyewitness testimony and video evidence have yielded mixed results.[45] The process for developing effective jury instructions for video evidence should thus be twofold. First, scholars and legal experts can develop a rubric for the appraisal of video evidence that is fair, balanced, and considerate of the factors shaping visual interpretation, the possibility of alternative readings, and the influence of the viewing context, while not compromising the jurors' impartiality. Experimental research could then test what problems instructions could be effective in mitigating—and how. Procedural questions should not be overlooked. For example, research on how jurors should be instructed to review the material during their private deliberation—and why—could lead to the development of best practices and consistency within and across jurisdictions.

SAFEGUARDS FOR AI-GENERATED AND AI-ENHANCED EVIDENCE

Systematic research into the prevalence of challenges to deepfakes in courts will help in developing appropriate safeguards for AI-generated evidence. With some legal experts warning that raising the bar for authenticating video evidence could do more harm than good,[46] keeping abreast of the prevalence and scope of the deepfake problem can guide the development of authentication requirements and future consideration of the proposed Rule 901(c).

Judges must be prepared to handle cases involving AI-generated and AI-enhanced video evidence. Improving notice and disclosure for AI-enhanced evidence can help safeguard reliability without further exacerbating the inequality of access to justice.[47] Because examining and understanding AI enhancement requires time and financial resources (e.g., hiring an expert), any failure to provide notice and disclosure can be addressed by judicial standing orders.

State bars can play an important role by being attentive to problems arising from the use of AI to create or enhance evidence. One critical intervention is to issue ethics opinions that discuss how the ethics rules apply both to proffering known or suspected AI-generated or AI-enhanced evidence and to accusing evidence of being AI-generated or AI-enhanced.

Developers of provenance technologies should adopt recommendations for both embedding human rights in technical standards[48] and using effective benchmarks for evaluating AI detection tools based on their real-world impact.[49]

CONCLUSION

Video can provide important and powerful evidence in criminal and civil trials. To minimize biases and errors in judgement, the challenges with video access, interpretation, and AI need to be addressed. In this inaugural report, the Visual Evidence Lab has identified four overarching priorities.

The development of a long-term infrastructure for storing and accessing evidentiary videos, research-based training for judges, instructions for jurors, and safeguards for the admission of AI-based evidence will advance the consistent and fair use of video and AI technologies in the pursuit of justice.

ABOUT THE VISUAL EVIDENCE LAB

Founded in 2025, the Visual Evidence Lab at CU Boulder is devoted to transforming how legal professionals and policymakers use visual technologies to pursue equal and fair justice. It is a gathering place for scholars—representing the social sciences, humanities, law, and STEM disciplines—judges, attorneys, forensic experts, media makers, journalists, and human rights practitioners. In their work, they ask questions about and conduct research into how video and AI can be applied in ways that champion consistency and fairness in court. The lab's mission is to advance equitable and responsible technology in the pursuit of justice.

Sandra Ristovska launches the lab at a workshop on April 25, 2025. Photo by Jack Moody.

FOUNDING DIRECTOR

Sandra Ristovska is an associate professor of media studies with a courtesy appointment in law at CU Boulder. An author of the award-winning monograph, *Seeing Human Rights: Video Activism as a Proxy Profession* (The MIT Press, 2021), her research has been funded through grants like the Mellon/ACLS Scholars and Society Fellowship, ACLS Sustaining Community Connections Grant, and a residential fellowship at the Center for Advanced Study in the Behavioral Sciences at Stanford University. Between 2021 and 2023, she was a research fellow at the Scientific Evidence Committee of the American Bar Association's Science and Technology Law Section.

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The report stems from discussions at the Justice by Video workshop on April 25, 2025, at the Institute of Behavioral Science at CU Boulder. The workshop participants are listed below in alphabetical order according to last name:

- Hon. Roxanne Bailin, retired judge and chief judge, Twentieth Judicial District, Colorado, and court consultant with the National Center for State Courts
- Sandra Braman, professor and senior scholar at the Quello Center for Media and Information Policy at Michigan State University
- Sidney D'Mello, professor in the Department of Computer Science and the Institute of Cognitive Science and director of the NSF National AI Institute for Student-AI Teaming at the University of Colorado Boulder
- Mary D. Fan, Jack R. MacDonald Endowed Chair and professor of law at the University of Washington (former federal prosecutor)
- Neal Feigenson, Lynne L. Pantalena Professor of Law at Quinnipiac University
- Yael Granot, assistant professor of psychology at Smith College
- Hon. Paul W. Grimm, retired district judge, US District Court for the District of Maryland, and David F. Levi Professor of the Practice of Law and director of the Bolch Judicial Institute at Duke University
- Jamie Kalven, an Academy Award–nominated documentarian and journalist
- Hon. Roderick T. Kennedy, retired judge and chief judge, New Mexico Court of Appeals, and co-chair of the Scientific Evidence Committee of the American Bar Association's Science and Technology Law Section
- Alexa Koenig, research professor of law and co-faculty director of the Human Rights Center at the University of California at Berkeley

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- Riana Pfefferkorn, policy fellow at the Stanford Institute for Human-Centered AI (former civil litigator and federal law clerk)
- Allissa V. Richardson, associate professor of journalism and communication and director of the Charlotta Bass Journalism and Justice Lab at the University of Southern California
- Basile Simon, director of the Law program at the Starling Lab for Data Integrity at Stanford University and USC and fellow at Stanford Electrical Engineering
- Toby Terpstra, senior visualization analyst at J. S. Held

Riley Krane, content strategy intern, and August Vrielink, communications intern, designed the inaugural report.

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