Data Mistakes and Data Justice

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Wayne A. Logan & Andrew Guthrie Ferguson, *Policing Criminal Justice Data* 101 **Minn. L. Rev.** (forthcoming 2016).

In criminal justice circles, "big data" is the new buzzword: police departments are experimenting with the application of computer algorithms to vast amounts of digitized data to predict the future geographic location of crimes, to identify those people likely to become involved in gun violence, and to assess future criminality for the purpose of setting bond amounts and determining sentences. It turns out, though, that algorithms have problems. They can reflect the biases and choices of the humans who create them. They can also be plain wrong.

Besides algorithms, there is a more basic problem. The data itself can contain countless mistakes, inaccuracies, and discrepancies. While the wrong address, the invalid warrant, and the mistakenly recorded conviction don't sound like particularly new problems (they aren't), they represent an urgent but overlooked issue in our information-dependent world. This data determines how the government distinguishes between the dangerous and the low-risk, those who should be arrested and those who should be left alone. However, as Wayne Logan and Andrew Ferguson point out in their insightful and important article, *Policing Criminal Justice Data*, this "small data" is too often dead wrong. To make matters worse, there is little incentive for government agencies—at any level—to care. Their discussion is a must-read for anyone interested in the increasingly important role of information distribution and control in criminal justice.

Criminal justice information errors have enormous costs in the lives of ordinary people. Consider the problem of an erroneous arrest warrant, wrong perhaps because it is meant for a person whose name is close enough to, but not exactly like, yours. Should that mistake lead the police to arrest you, you may—indeed are likely to–become subject to a search of your person, and perhaps later a strip search in jail and a compulsory DNA sample. A night in an overcrowded and sometimes dangerous jail isn't just a loss of liberty; it's an exposure to some very real harms. The resulting arrest record may also harm your future chances of employment and much else.

Should we care? Absolutely. At the individual level, such mistakes can be not only demeaning but ruinous in a very practical sense. Every mistaken arrest hurts the victim, and misdirects government attention to the wrong places. More abstractly, collecting and generating so much information about its citizens obliges a government to make reasonable efforts to guarantee data accuracy. Without that expectation of good faith, the government risks our trust in it.

The legal remedies for these mistakes are weak. Take, for example, the options of a person who has been the victim of an erroneous arrest, because her name was similar to the one on an outstanding arrest warrant. Police have considerable latitude to make mistaken arrests. In addition, recent U.S. Supreme Court case law has narrowed the scope of the exclusionary rule in cases of "good faith" mistakes. Civil suits against the police are no better, since qualified immunity typically protects them from liability in most cases of informational mistakes. Even where legal avenues are formally available for victims of the government's data errors, few people have the time, resources, or expertise to challenge the black box of most government databases. The federal and state governments have little

incentive to change the situation.

Logan and Ferguson, after having explained this abysmal state of affairs, offer thoughtful solutions that address much-needed institutional changes. The federal government, in particular, can be an important driver of reform since federal money has played such a large role in the growth of state criminal justice databases. Federal resolve to improve data quality might take the form of quality assurance measures, such as mandatory audits. States too can play a critical role in providing individual legal remedies for criminal justice data errors. An underlying theme here is the importance of cultural change: caring about data quality is perhaps even more important than the details of its practical implementation.

We live in an age of the algorithm, but we also live in the age of mass information. Nowhere is the cost of mistaken information more tangible than in criminal justice. As Logan and Ferguson so persuasively show in *Policing Criminal Justice Data*, those data errors are at the core of government trust and accountability.

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