

CRIMINAL JUSTICE

Introduction

The U.S. criminal justice system is typically thought of as divided into three parts: law enforcement (the police and other agencies/entities), the courts and legal system, and corrections (including prisons and probation). This short paper mainly deals with the implementation of new technologies in law enforcement and in the legal system. New technologies are often created and used by law enforcement and other aspects of the criminal justice system, to apprehend criminals or perhaps to exonerate the wrongly accused. However, this paper also discusses attempts by the criminal justice system to react to problems posed by new technologies: search and seizure in the modern era, online privacy in the age of social media. Whether enacting or reacting to new technologies, the criminal justice system grapples with technological questions that often do not have easy answers.

Background

To craft effective technological policy in the criminal justice system, Jennifer Doleac of the Brookings Institution recommends that entities set clear objectives for new technology before trying it, asking key questions such as: Do we want to reduce violent crime? Decrease mass incarceration? Protect police officers? Doleac also advises constituents to insist on rigorous evaluations of policy, urging authorities to implement new tools in a way that permits both testing and an evaluation of opportunity costs associated with new technology. [1] In all the realms listed below, elements of evaluation are present – whether it is testing of new technologies to apprehend criminals by police departments, pressure by activists to employ new technologies to rectify the wrongs of old technologies and exonerate the innocent, or the litigation of what is just and unjust in the application of technology. Through trial (no pun intended) and error, new technologies could prove beneficial in the realm of criminal justice.

Examples

Online Privacy Laws

Society changes rapidly as internet technology becomes more embedded in citizens' daily lives, but federal legislation has not evolved at a similar pace. A lack of regulation and uncertainty persist in the use of personal data by private companies, a fact exemplified by a recent lawsuit claiming Facebook violated an Illinois state privacy law by using facial recognition technology on their uploaded photographs without their consent. Facebook argued that the law referenced does not grant consumers the ability to sue companies (private right of action) based solely on the fact that a company violated the law; instead, consumers have to indicate that Facebook caused additional harm, and proponents argue that surrendering personal data is the price consumers must pay to access Facebook's services. This lawsuit, still ongoing, illustrates the struggle consumers face if personal data is misused, and the lack of legal power consumers have without a private right of action. [2]

This is similarly reflected by the ongoing fallout from the Cambridge Analytica scandal. This voter-profiling company, harvested the personal data of millions of Facebook users without their knowledge or permission, bringing Facebook's practices to the Federal Trade Commission's attention.

Use of Technology by Law Enforcement

The Fourth Amendment of the United States protects against search and seizure without probable cause. Ciphering the rights endowed by this amendment, initially passed in 1789, can be complicated by rapidly evolving technologies and surveillance techniques by tech companies. Search warrants traditionally had physical implications: entering a home, going through papers on a desk. Is it a violation of rights to remotely sift through text messages? At the moment, there are limitations on what the government can access and use from users' social media accounts, which were secured by the lawsuit involving search warrants for the disrupted Facebook page and personal Facebook accounts of Lacey MacAuley and Legba Carrefour. The warrant required Facebook to disclose the entire contents of the accounts for 90 days, including private



messages, friend lists, and other private information. The ACLU filed motion to quash warrants as over-broad under the Fourth Amendment due to invasion of privacy and “chilling” of First Amendment-protected political speech. Ultimately, the ACLU prevailed, though the topic is not likely to disappear from legal discourse. [3]

One of the main ways law enforcement interfaces with technology is the collection, processing, and use of forensic evidence. Forensic evidence is used to connect potential suspects to a crime and is often used as testimony in court. Drugs and fingerprints are the most common types of forensic evidence, and firearms, blood, bloodstains, and semen are the next most common. Forensic evidence is typically used in a majority of murder and drug prosecution cases, and it can help eliminate suspects. Technological advancements in forensic evidence processing are promising for the justice system: as techniques improve, former inmates have been able to appeal successfully or show they were wrongly accused, often because new evidence does not prove beyond a reasonable doubt that they committed the crime. The Innocence Project is at the forefront of leveraging these advances. This organization, founded by two law professors, seeks to “exonerate the wrongly convicted through DNA testing and reform the criminal justice system to prevent future injustices.” [4]

Human Trafficking

In 2013, Florida ranked third nationally in the amount of calls received by the National Human Trafficking Resource Center. [5] To address this, former governor Rick Scott signed House Bill 989 and 7141 to prosecute human traffickers and provide support for victims. [6] Florida has also teamed up with technology companies to provide valuable resources to law enforcement in the effort to fight trafficking.

Various employees, from law enforcement to flight attendants to bus drivers, are now trained to spot human trafficking victims and assist appropriately. [7] [8] In Pasco County, deputies use intercept bots to track searches for underage sex. The system tracks clicks on ads known to be soliciting underage sex and then communicates with the predator by exchanging phone numbers and even scheduling meet-ups, which allow for apprehension of the predator by law enforcement. This new use of technology enables officers to allocate resources more efficiently. [9]

In Orlando, the police department has received push-back on their pilot program with Amazon’s *Rekognition*, a real-time facial recognition software. In June 2018, the ACLU of Florida immediately submitted a demand to the City of Orlando to shut down the software, deeming it an invasive abuse of privacy. However, as of October 2018, the software is still in use; only officers who have volunteered are tracked on the *Rekognition* software. While this remains a controversial program, the hope to use this or other AI programs to track victims could contribute to Florida’s goal of becoming a zero-tolerance state for human trafficking. [10] [11]

References

- [1] Jennifer Doleac, “Can Technology fix the criminal justice system?” Brookings Op-Ed, 2015. <https://www.brookings.edu/opinions/can-technology-fix-the-criminal-justice-system/>
- [2] Nathan Wessler, “People Should Be Allowed to Sue Facebook If It Violates Law on Face Recognition Privacy,” ACLU, 2018. <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/people-should-be-allowed-sue-facebook-if-it>
- [3] ACLU Report, “In the Matter of the Search of Information Associated with Facebook Accounts Disruptj20,” Filed with DC Superior Court in 2017. <https://www.acludc.org/en/cases/matter-search-information-associated-facebook-accounts-disruptj20-etc>
- [4] Innocence Project Website. innocenceproject.org
- [5] Gina Jordan, “Florida Ranks Third in Human Trafficking But Can’t Prosecute Many Cases,” WLRN, 2013. <http://www.wlrn.org/post/florida-ranks-third-human-trafficking-cant-prosecute-many-cases>
- [6] “Gov. Scott Signs Legislation to Increase Prosecution of Human Trafficking Criminals and Provide Better Services to Survivors,” <https://www.flgov.com/gov-scott-signs-legislation-to-increase-prosecution-of-human-trafficking-criminals-and-provide-better-services-to-survivors-2/>
- [7] Justine Surrency, “Iowa Leading The Way In Fighting Human Trafficking With School Bus Drivers,” WhoTv, 2019. <https://whotv.com/2019/01/16/iowa-leading-the-way-in-fighting-human-trafficking-with-school-bus-drivers/>



[8] Kalhan Rosenblatt, "Flight Attendants Trained to Spot Human Trafficking," NBC, 2017.
<https://www.nbcnews.com/storyline/airplane-mode/flight-attendants-train-spot-human-trafficking-n716181>,

[9] Corey Davis, "Pasco sheriff using new technology to battle sex trafficking," WFLA, 2018.
<https://www.wfla.com/news/local-news/pasco-sheriff-using-new-technology-to-battle-sex-trafficking/1291484033>,

[10] Bill Chappell, "Orlando Police End Test of Amazon's Real-Time Facial 'Rekognition' System," NPR, 2018.
<https://www.npr.org/2018/06/26/623545591/orlando-police-end-test-of-amazons-real-time-facial-rekognition-system>

[11] Jason Kelly, "Orlando begins 2nd phase of Amazon facial recognition program," WFTV, 2018.
<https://www.wftv.com/news/local/orlando-begins-2nd-phase-of-amazon-facial-recognition-program/855688340>

