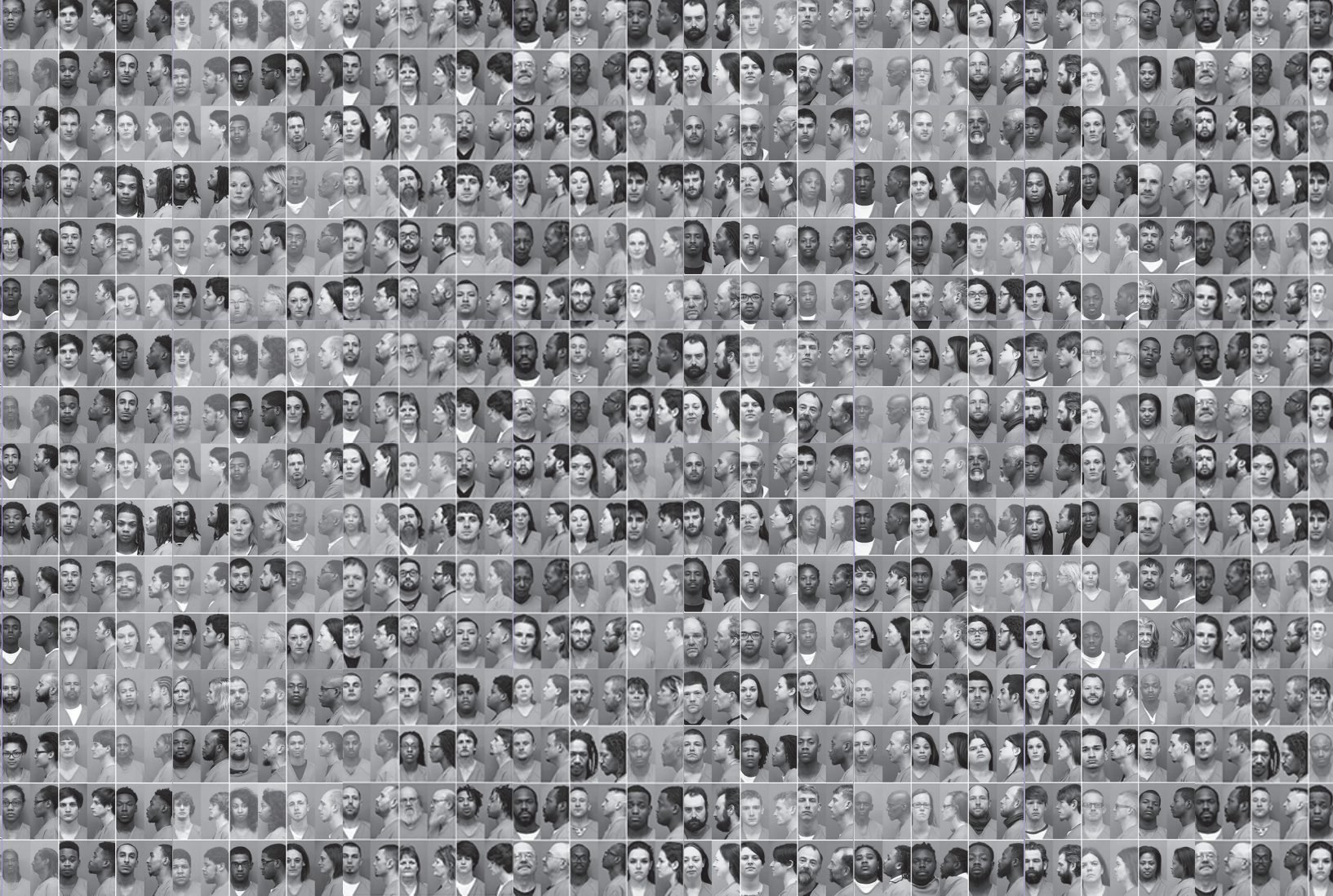




digital punishment's tangled web

by sarah esther lageson

Americans love crime. The criminal justice system is fetishized in popular culture and news media. We watch the news and scour the Internet to assess our own moral compass, take cues from others' digressions, and bear witness to justice and punishment. Historically, we learned about crime through news media and fiction. The Internet has dramatically changed this landscape: for the first time, mug shots and jailhouse rosters are available with a click.



I have studied the growth of what I call *digital punishment* by interviewing those who run criminal history and mugshot websites, by analyzing the content they produce, and by interviewing those working to clear their own criminal records through legal means even against the reality of an endless digital trail. Producers of these media (including bloggers, website publishers, and private background check companies) often have public safety-minded intentions, but online repositories of mugshots and arrest records haunt those whose criminal histories lurk online, even when charges are dismissed.

There are consequences to these practices. Websites can spread incorrect and dismissed records. While criminal history data changes rapidly at the jurisdictional level, we don't have a good system in place to ensure corresponding updates are made online. Unregulated criminal history and crime reporting websites thus constitute a new form of punishment culminating in a searchable online history that its subjects often don't know exists, until they face real-world consequences because of these records. The very existence of

an online mugshot or booking report communicates powerful signals of guilt by attaching a criminal label to millions of arrestees, with a host of social and psychological consequences.

public records

Digital crime reports are unique in their scope, breadth, availability, and permanence. Websites can post arrest records, full names, and booking photos before someone is charged

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with or convicted of a crime, and those records remain online indefinitely. Such sites appeal to consumers by providing access to real-time crime information, allowing them to feel they take an active role in crime prevention without directly interacting with the criminal justice system.

In the past, criminal records were on paper, stored in

courthouses. To obtain someone's record, you had to physically ask for it, make a copy if you were allowed, and try to interpret what it all meant. Today, millions of digital criminal records are archived indefinitely and accessed anywhere there's an Internet connection. Online, these reports appear on Facebook Crime Watch pages, Twitter feeds, and on local newspaper websites. Once published, they are easily shared and re-posted—leaving a digital trail that is nearly impossible to remedy.

Accessible, digital records have emerged from and within several important contexts. The first is the dramatic expansion of the criminal justice system, which has coincided with a push toward the open access of newly digitized and easy-to-transfer governmental data. Another context is the growing tendency to use criminal records in a variety of new settings as a way

result from any interaction with the justice system.

The look of many crime-related websites also makes it difficult for casual readers to distinguish between official governmental databases and private companies that offer background check services. The advent of citizen journalism on crime might also be unclear to online newsreaders. And while many reputable journalists report on crime online, bloggers and website publishers work without editors and fact checkers, sometimes just copying and pasting bulk data onto profit-seeking websites, as in the expansive mug shot industry.

For the well-meaning crime reporter, there are troves of data. This means editorial decisions must be made carefully and data sources scrutinized to a new degree. Quite simply, this public information is terrible data. It's been documented

time and again by prominent criminologists at SUNY-Albany, the National Consumer Law Center, and the National Employment Law Project. Part of the issue is that there are no licensing requirements for criminal background agencies. Anyone with a computer and access to records can start a business, and the total number of companies is unknown. Unlike credit

reporting agencies, there is no central system for registration for background checking companies. This means a consumer can't regularly order his or her own report to review for errors. Data are generally outdated and incorrect. The most common issues involve mismatching identities, divulging expunged or sealed records, and omitting case dispositions.

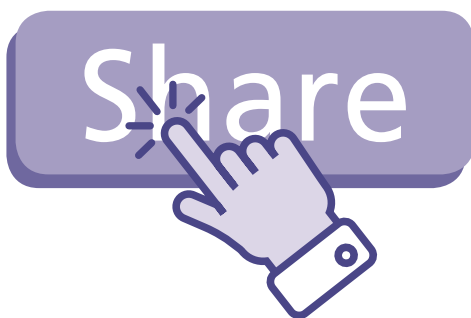
The problem isn't limited to the private sector or independently run websites. According to a 2013 National Employment Law Project study, about half of the FBI's criminal history records are incomplete and fail to include information on the final disposition of an arrest. While some states are working to regulate these industries, state-level interventions do not address websites with servers located in different jurisdictions or overseas.

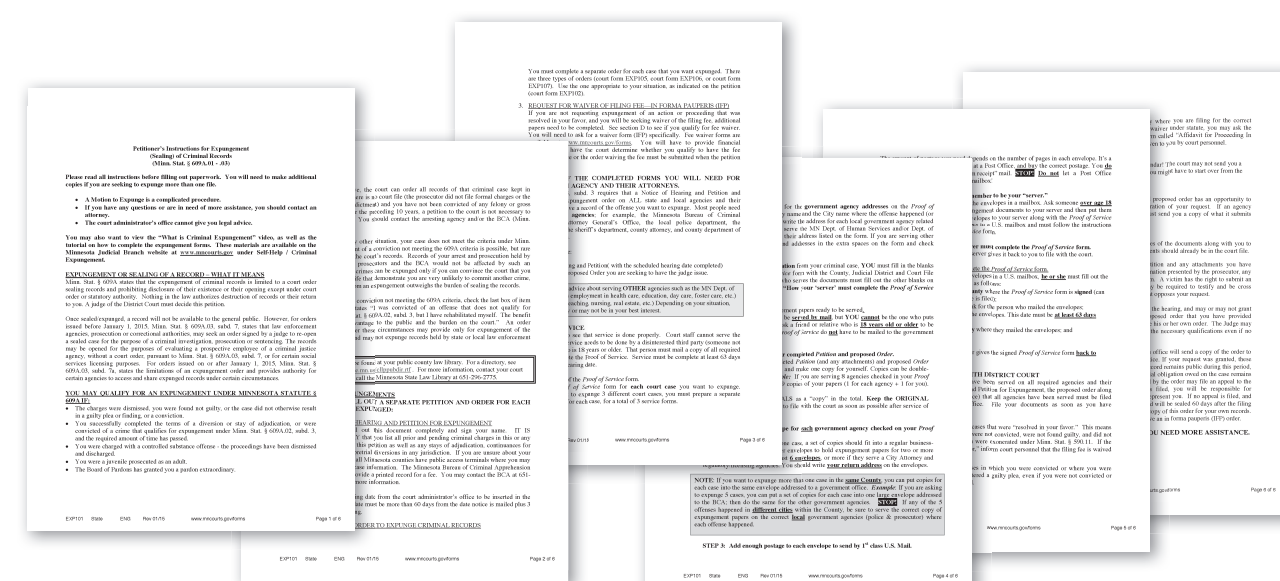
It's important consider the kinds of crimes that appear in Google searches. Most arrests are for low-level and non-violent crimes. Of the 11.3 million arrests in 2013, only 4% were for violent crimes. The highest number of arrests that year were for drug abuse violations, theft, and driving under the influence. These rather typical encounters with police and other criminal justice actors constitute the bulk of criminal justice operations and mostly result in non-carceral sanctions, such as probation, parole, alternative programs or sentences, fines, or community service. Many arrests for non-felonious crimes—as many as half, depending on the location—are eventually dismissed. Increasingly, convictions are suspended after a period of time set by a judge, such as in a stay of adjudication (in which a case is dismissed after probation conditions are met), and the official record is supposedly cleared. Persistent online records undermine this judicial strategy, creating a long-lasting and unregulated

It is one thing to say that the whole system needs an overhaul, but wouldn't we all be curious if we saw our child's babysitter had a criminal record, just a few clicks away?

to assess morality and character. Potential employers, possible landlords—one Google search, and your job or housing might be jeopardized.

Criminal justice agencies maintain and work to update their own online databases, but these publicly available data have often already leaked onto unregulated, unofficial websites. A routine, informal Internet search might reveal a criminal history posted on a neighborhood crime watch blog or a background check company might reveal part of a criminal record, keeping the rest tantalizingly hidden behind a paywall. Again, your coworker, first date, or the parents of your kid's new friend at school can all stumble on this information, as a simple arrest—one that might not even lead to charges—appears online, accompanied by a booking photo. This photo and arrest record might be re-posted to a Facebook page, a community blog, on a newspaper police blotter. These data are also purchased in bulk by private companies, whose sites are often paid top results in a Google search. We need to expand our definition of a "criminal record" to include all the different forms of documentation that





Those hoping to remove or correct digital information face a wall of paperwork.

extralegal form of punishment.

Criminological studies show that past criminal behavior quickly loses its power to predict future offending. A landmark 2006 study by Megan Kurlychek, Robert Brame, and Shawn Bushway estimated that, after six or seven years, the risk of reoffense approaches the risk of *new* offenders among people with no criminal record. Though widely available and broadly used, the predictive value of crime reports for public safety is questionable, at best.

consequences

To understand the lingering effects of digital punishment, I spent several years doing fieldwork at criminal record expungement clinics. After interviewing dozens of people, it became clear that having your mug shot appear in online databases, social media, and blogs carries a broad set of consequences that span the social, psychological, and practical elements of life.

Expungement clinics are a unique research site because petitioners are people with low-level records trying to seal their records from public view. Many expungement seekers came to the clinic after their record “popped up” online. This language was used repeatedly—nearly a third of respondents used the phrase specifically—and helped me see what a surprise the digital trail was to so many people.

Donna, an African-American woman in her 50s told me, “When it pops up like that, it gives people the impression that you have this criminal record, and they don’t know even what it’s about. When they go on there, it doesn’t tell them the whole truth.” Another respondent, Daryl, an African-American man in his 40s, said, “I have looked myself up out of curiosity—my name anyway—and try to see what pops up. And it’s not a pretty sight.” Still, Daryl says the Google search “tells me that as long as I don’t try for high-level jobs, that I should

be okay. I should fly under the radar.”

Sandra, a White mother, was able to obtain housing with her low-level drug record, “But it’s not in a great neighborhood, not great landlord.” She wanted her records expunged so she could try for a better situation. And Tammy, a White woman in her 50s who was unemployed, had not actively searched for a job because she feared a potential employer would use a private background check company and find dismissed charges. Her fears were not irrational, of course: once these reports appear, they are easily sold and resold across online enterprises. Tammy recalled, “I applied for two jobs over Christmas, and then they said they ‘We’re gonna do a criminal background check,’ and that means they hire a company to look up your record. Then they find it, and then it’s permanently in databases, even if you get it expunged later.... It will go around the Internet. It could go anywhere.”

Jaci, another expungement seeker, had a couple of drug offenses and had recently been arrested again, though the charges were dropped. Her online records were keeping her

Potential employers, possible landlords—one Google search, and your job or housing might be jeopardized

from volunteering and made her uncomfortable around people who might have seen her arrests online: “They seen me on this thing called ‘Mug shots,’ and I actually seen myself, and its pretty embarrassing. I got probably like five Facebook messages. They were like, ‘Dude, you’re on Mug shots.’ I went and looked it up and seen myself. I was really pretty sure it has to do with like, online access, people exposing other people. Criminals....”

She continued, “I would like to volunteer at my daughter’s



Some for-profit services promise to clear your good name—for a price.

school, but I am not allowed to because of the background check. They give you a list of what you're not supposed to have on your background. So I'm like, 'Well, I can't do that.' And it's kinda hard telling that to your daughter. 'I can't volunteer today.' She knows I'm working a lot, so I just let her think that's why. I haven't talked to other parents. I kinda keep my background to myself, because I don't want people to know or to get into a conversation like, 'Oh, what happened?'"

Like those whose personal photos are shared on the Internet without their consent, people who appear on websites are responsible for getting their incorrect information removed or

responsible for passing on the wrong data.... [But] there is just no legal recourse."

William felt defeated before even trying to contact a single website: "I haven't bothered. It's too much. It's too frustrating."

Online criminal records create a difficult landscape. Technology has expanded accessibility to records, and while this shift brings important opportunities to law enforcement investigations and local-level crime reporting, it exponentially increases the opportunity for erroneous, incorrect, outdated, and non-conviction records to exert their power.

My research has shown that, beyond economic effects, even

minor justice system contact also shapes relationships with family members, work, and social institutions. This ultimately leads to what sociologists Alice Goffman and Sarah Brayne refer to as "system avoidance" of medical, financial, labor market, and educational institutions. That is, people gradually avoid interacting with these institutions, and this has obvious social and individual consequences.

This isn't a small issue. Nearly 1 in 4 adults (an estimated 65 million people) in the U.S. has some kind of criminal record.

the public's right to know

Yet, there are Constitutional rights to freedom of speech and legal rights to obtain and disseminate governmental data, such as criminal records. To get at the other side of digital punishment, I interviewed crime website publishers.

I was amazed by the dedication the interviewees showed in their demand for open access to government information, as both a way to inform the public about criminals *and* as a way to keep an eye on the police and prosecutors by tracking who is getting arrested and charged in our communities, where, and for what.

One citizen journalist from rural North Carolina told me he

In Europe, the courts have awarded the "right to be forgotten" on the Internet to those who have been exonerated or found not guilty.

corrected. Proposed federal legislation would change this, but it hasn't passed yet. My interviews, meanwhile, revealed the near-impossibility of contacting website publishers to request these changes and a lack of official avenue to make these requests. At the expungement clinic, Roger seemed wary that anything could help him get a Google search clear of his history: "We are here today to try to clear our record. Let's just imagine that I am successful. There is like 3,000 services out there."

Roger actually works in technology and was better positioned than most to figure out how to contact the publisher of a website that persistently posted his dismissed arrest data. After many emails, he received a response: "A blank letter stating, 'We grabbed data from a public source and we are not responsible for data that we grabbed.'" Roger shook his head and laughed ruefully. "So, if you are grabbing the rotten data and then you are sharing with other people then yes, you are

ran his crime update Facebook page, “To make citizens aware of the crimes going on and to ask for help to keep an eye out for these criminals. Citizens are the most valuable resource for the police in the war against crime.”

Sheila ran a website that tracked sex offense cases as they worked their way through the system. She learned how to build a website after witnessing her stepdaughter’s experience with the justice system as a survivor of abuse. She told me, “Because the national registry only lists those who have been convicted and served their time, I felt there was an obvious need to create an alert system that filled the gap between arrest and conviction.”

Finally, a crime blogger named Bob told me his blog is, “for people who want to revitalize the neighborhood versus the forces of crime and chaos.”

The Internet is a powerful tool for protecting citizens from government, as newsrooms contract, it provides a way to obtain hyper-local news about issues that directly impact livability and public safety in a community.

new forms of criminal punishment

In the end, though, online records raise questions of when criminal punishment should, or truly does, end. The permanent, public criminal record flies in the face of Constitutional guarantees to due process and the presumption of innocence.

I don’t, however, think the situation is hopeless. First, we should better differentiate journalists and citizens who report on crime and deserve full First Amendment protection from those who obtain crime data en masse, re-posting it without editorial oversight or curatorial responsibility.

We should also question allowing the sale of criminal records to private vendors that approach overburdened county sheriff’s offices to offer their data management services or simply buy messy governmental data and repackage it without scrutiny, selling it to businesses and consumers. Federal oversight or licensing of background check companies and the creation of a process to remedy outdated or incorrect records—like the credit reporting industry—might be a step forward.

It would also be prudent to reconsider public distribution of arrest records and their use in noncriminal justice settings. Arrests are indicative of a discretionary point of contact with a police officer or prosecutor, but they are generally not helpful in identifying a dangerous or violent criminal. In Europe, the courts have awarded the “right to be forgotten” on Google search results to those who have been exonerated or found not guilty.

Online records are changing what we know about desistance from crime and recidivism, particularly the effects of labeling and stigma. Researchers must develop ways to measure the “effects” of these informal records across one’s life, such as how their ready availability might change one’s ability to be a

good parent, create new relationships and friendships, volunteer in a community or church, or participate in other civic activities.

It’s obvious this is a big and messy system, which undermines our ability to paint a clear picture of what should be done. And it’s difficult to differentiate between journalists, citizen-journalists, website publishers, and open data advocates when these roles overlap. Really considering online criminal records

People who appear on mug shot and crime tracking websites are responsible for getting incorrect information removed or corrected.

and their many uses asks us to differentiate between public and private data and public and private agencies at a time when partnerships between the two are increasingly complex and codependent. And it asks us to say “No, thanks” to information that is cheap, available, and overestimated in its value for improving public safety. It is one thing to say that the whole system needs an overhaul, but wouldn’t we all be curious if we saw our child’s babysitter had a criminal record, just a few clicks away?

There may be a shift toward regulation and governmental control of criminal justice data. Without it, it will be difficult to fix this leaky faucet. In the meantime, the deluge of online records should make us consider the social good of crime data if it’s not *good* data.

recommended resources

David Garland. 2001. *The Culture of Control*. Chicago: University of Chicago Press. An elegant theoretical look at the connection between crime and culture, especially in how crime is depicted in media accounts.

Chris Greer, ed. 2010. *Crime and Media: A Reader*. New York: Routledge. Provides rich history and context for the relationship between crime and media.

Sarah Lageson. 2014. “The Enduring Effects of Online Mug Shots.” *The Society Pages*. thesocietypages.org/roundtables/mugshots/. Sociologists share perspectives on the culture, politics, and effects of online mug shots.

Gary W. Potter and Victor E. Kappeler, eds. 2006. *Constructing Crime: Perspectives on Making News and Social Problems*, 2nd ed. Long Grove, IL: Waveland Press, Inc. An edited volume, this book describes how publicizing crime through the news media feeds into public fear and stricter laws by developing crime as a social problem.

David Segal. 2013. “Mugged by a Mug Shot Online.” *The New York Times*, October 5. A high-profile article on the harmful effects of mug shots for employment, housing, and relationships with several profiles of individuals impacted by their online trail.

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