Duke Law Podcast | New research finds 'Police agencies on Facebook overreport on Black suspects'

ELANA FOGEL: Hello. I'm Elana Fogel, a clinical professor of law at Duke Law and the inaugural director of the school's new Criminal Defense Clinic. And I'm your host for this episode of the Duke Law Podcast. [MUSIC PLAYING]

Social media posting is one of the newest approaches being leveraged by law enforcement. Many police and sheriffs' departments across the country have Facebook pages where they can alert the public to wanted suspects in their area, missing children, or other matters they seek to publicize. But while sharing or seeking information about ongoing emergencies is a potential use of law enforcement social media, new research has discovered a trend in these posts that could be doing more harm than good by perpetuating the stereotype of Black criminality.

A 2022 paper from Duke Law Professor Ben Grunwald and co-authors John Rappaport, a Professor at Chicago Law, and Julian Nyarko, a Stanford Law Professor, found that law enforcement agencies across the US are overreporting on Black suspects in their Facebook posts 25 percentage points relative to local arrest rates. It's a trend, the data shows, that crosses crime types and regions and also tracks along an area's political and racial makeup.

What are their potential implications of these findings? How could they impact ongoing efforts to improve racial equity in America's criminal justice system, reform policing, and exonerate the wrongfully convicted? There's a lot to unpack here, and I am glad I have two of my esteemed colleagues from Duke Law here to help me.

First, Professor Ben Grunwald. He's one of the paper's co-authors and an expert on criminal law, criminal procedure and empirical methods here at Duke Law. Professor Grunwald, welcome to the podcast.

BEN GRUNWALD: Thanks so much for having me.

ELANA FOGEL: Also joining me is Duke Law Professor Jim Coleman. He's the director of both the Wrongful Convictions Clinic and the Center for Criminal Justice and Professional Responsibility. Professor Coleman is a leading authority on wrongful convictions and death penalty reform. Professor Coleman, it's wonderful to have you here.

JAMES COLEMAN: Thank you. I'm happy to be here.

ELANA FOGEL: So, Professor Grunwald, going to start with you. Your research is based on examining nearly 14,000 Facebook pages maintained by police departments and sheriffs' offices across the country over a 10-year period from 2010 to 2019. Can you tell me more about how you conducted the study and your key findings?

BEN GRUNWALD: Sure. So in the 1990s, there were a series of studies documenting how some local traditional news outlets, like newspapers and TV stations, how they were disproportionately overreporting on crime committed by people of color and especially Black people. Now, more recent studies suggest this is less of a problem today, but I don't think we should celebrate that too quickly because a lot of other things have changed since then, too.
Traditional media outlets just aren’t as important as they used to be. And most Americans also get news elsewhere from social media like Facebook. And as we find in the study, as we just said, 14,000 law enforcement agencies in the country have Facebook pages, which give them the opportunity to deliver information directly to the public, unfiltered by any news outlet or gatekeeper.

So these pages often post about crime, which shouldn’t be a surprise. But with some frequency, when they post about crime, they also describe the race of the suspect. Now, during the last decade, about 6,000 agencies have published at least one post that describes a crime and also describes the race or ethnicity of the suspect or the OSD.

So in this article, we’re basically trying to measure whether and how much police agencies on Facebook overreport on crime that they suspect was committed by a person who’s Black. Now, to do that, we identified all the police agency pages on Facebook, downloaded about seven million of their posts from 2010 to 2019, and then we used machine learning algorithms to identify posts that include both the description of a crime and the description of a suspect's race.

And then we compared the racial composition of agencies posts against the racial composition of their arrest data. And with all that data, we estimated the extent to which users are exposed to overreporting of Black suspects.

And our results suggest that Facebook users are exposed to posts that overrepresent Black suspects by 25 percentage points relative to local arrest rates. Given that the average proportion of Black arrestees is 18%, that's a really big difference. That's a relative overrepresentation of 140%. So we're talking about really large differences of disproportionate representation here.

ELANA FOGEL: Let's dig into the context a little bit there. I mentioned in the introduction, what I refer to as the stereotype of Black criminality. Professor Coleman, for the benefit of the listeners, can you explain a little bit what that means?

JAMES COLEMAN: Well, Black criminality is an enduring view of African-Americans as a race of people who are prone to criminality. It's used to justify how communities of color are policed, how social policies are developed, and how the criminal justice system functions to put Black people in prison, not just as a function of criminal law, but as a social policy to get them off the streets and ostensibly to protect law-abiding white citizens.

ELANA FOGEL: Against that backdrop, Professor Grunwald, I want to talk about some of the trends that you observed doing your research. In particular, are certain types of crimes most associated with Black suspects in these law enforcement posts? We're talking about violent crime or relatively minor offenses? And a second question is, what kind of correlation did you find between these posts and the political party affiliation and racial demographics in the different geographic regions you studied?

BEN GRUNWALD: One thing that's really striking about our results is how consistent and uniform they are across crime types. I mean, among the eight serious crimes most reliably tracked, we found high levels of overreporting or overexposure for all of them except auto theft. So that includes violent offenses, like homicide and aggravated assault, and property offenses, too, like burglary.

And not only did we look across crime types, but we also studied how this varies across different parts of the country. So I wish I could show you the map in the paper, but it presents a pretty stark picture. We found that agencies are overreporting on Black suspects virtually everywhere in the United States.
And that's not to say, though, that the amount of overreporting was the same everywhere. We found, for example, that overexposure to posts about Black suspects was higher in counties with more Republican voters and more non-Black residents.

ELANA FOGEL: Now that we've got a little bit of a feel for what we're discussing here, I have a question that I'd like both of your perspective on. Why should we be concerned about how this type of information is being presented on social media?

JAMES COLEMAN: Well, I think we should be concerned because to the extent that this introduces misinformation into the community, it undermines our attempt to deal with serious social problems. If people think that the problem is that Black people are moving into their community or that Black people are a threat to them physically, then that will be the focus rather than an attempt to try to actually identify the source of the problems.

ELANA FOGEL: Yeah, I'm hearing both that it amplifies existing stereotypes and those problems while also diminishing abilities to actually address crime and the issues that the law enforcement are ostensibly seeking to address in making these posts. Professor Grunwald, what's your perspective?

BEN GRUNWALD: Yeah, I think Professor Coleman got it exactly right. I mean, most people learn about crime from the media, not from their own personal experiences. And a huge fraction of Americans are getting their news from Facebook. So it's a really big problem that police are using Facebook in a way that reinforces the stereotypes about race and crime.

And the costs are big. They include re-entrenching or magnifying existing racial stigmatization and marginalization. And all of that can turn into reinforcing support for punitive criminal justice policies that have been around for decades and that have no empirical support at all.

ELANA FOGEL: Yeah, I want to stick on that question about policy and law and how this interacts with those decisions. Professor Coleman, we know that public perception influences which new policies and laws are enacted, which lawmakers are elected to office, and what equality and justice look like. What are your thoughts on how this type of overreporting can impact the laws affecting wrongful conviction exonerations and death penalty reform?

And in this question, I think it's worth mentioning that, as of 2022, Black people represent 53% of the 3,200 exonerations in the National Registry of Exonerations and 41% of people on death row, and that number tops 50% here in North Carolina.

JAMES COLEMAN: Well, I think there are a number of factors that lead to wrongful convictions--erroneous eyewitness identifications, false confessions, police and prosecutorial misconduct, jailhouse snitches. But all of these are factors that are influenced by misinformation about race and about Black criminality. And all of these factors are influenced by misinformation about race and about the Black community.

I'll give you an example of a situation in one of our cases in Winston-Salem. The primary suspect in a brutal assault on a white manager of a store at a shopping center was a white man who had stalked her in the past. But there was a report of a Black man seen running away from the area.

And the police sent out a press release saying that they were looking for a Black man in connection with the assault. They never corrected the press release to indicate, in fact, that the primary suspect was a white man.
As a result, my client, who is a Black man, was picked up and the police built the case against him. And I think that it was very much influenced by the notion that he fit the profile of the person they thought would commit such a crime.

ELANA FOGEL: That's a really powerful demonstration, and I want to stick with your experience in the wrongful conviction exoneration space a little bit. In your experience, generally, how significant is a person's race? And how does that play into your work to exonerate, especially non-white clients who you believe have been wrongfully convicted?

JAMES COLEMAN: I think our experience is that when the person claiming to be innocent is a person of color, particularly a Black person, race is almost always a factor. It's something that you can identify. You can see the influence that it had on how the person became a suspect, how the case was investigated, how the court responded to it, how prosecutors respond to claims of innocence.

But what we have found, though, is that although race is a factor often, it's not a factor that we can raise. Because if we discuss the impact that race had in our cases, what it does is to change the discussion away from whether our client is innocent to whether the police officer was a racist, or the prosecutor was a racist, or the judge is a racist. And all of a sudden, the people on the State side of the case are taking a defensive posture on the subject of race and we're trying to get them to focus on the facts that would indicate that our client is innocent.

ELANA FOGEL: It sounds like rather than being one of the factors that's considered among all of the reasons why your client might have been wrongfully convicted, it can take over the case and become a different inquiry altogether. Do you find that to be true regardless of the case or are those dynamics amplified or changed at all when the person has previously been convicted of a serious crime like murder?

JAMES COLEMAN: Yes, I think it is generally an issue. But I think that in the more serious cases involving more serious crimes, it becomes a larger factor. And as I said, we have numerous cases where our clients were convicted of first degree murder on evidence that I think if the client had not been Black, prosecutors and the police would have been more skeptical.

ELANA FOGEL: Professor Grunwald, I want to turn back to you. Now that we've developed some of the implications of this research, I'm curious if you have suggestions on how law enforcement agencies could better police, so to speak, their own social media practices. Is there some balance that might allow them to continue to utilize their social media platforms for what they perceive as safety matters or issues they'd like to publicize while avoiding all the harms that we've been discussing here of perpetuating the stereotypes of Black people as disproportionately criminals?

BEN GRUNWALD: Yeah. So one good option would be for agencies simply to adopt internal policies that prohibit revealing information, whether it's through their text or through photos, about the race or the ethnicity of suspects on social media. But maybe a more limited approach might be to prohibit officers managing these accounts from revealing that information except in cases where, say, the police are actively searching for someone who's committed a serious crime and may pose an ongoing danger to the public.

I also think the burden, though, is on Facebook, too, here to nudge agencies in the right direction. Facebook has published its own guide to help police establish and grow their presence on the platform. And so at the very least, I think they should change that guidance to advise agencies against reporting on race.
ELANA FOGEL: As a final question, Professor Grunwald, I'd like to hear about how data is transforming your work in criminal justice, and if this gives you hope now that many things can be quantified making them harder to deny or ignore.

BEN GRUNWALD: That's a great question. I mean, especially in the last five or 10 years, there's just been this explosion of exciting quantitative empirical research on criminal justice. And that can-- I mean, I don't want to overstate it, but that can sometimes make a big difference. Policing is so decentralized in this country. We've got 18,000 law enforcement agencies and almost none of them share the same boss. And so much of the policy action is really at the local level. And so it's really easy for local policymakers to shrug the shoulders and just say, we're different, we don't have that problem here.

And so national studies like this one really help show that, no, this is a problem throughout the entire country, and that many, many agencies-- most agencies or all agencies should be thinking about their social media policies and the kinds of content that they put on those platforms.

And that's just one example. Data has been impactful in lots of other areas, too, in the last 10 years. That includes issues like stop and frisk litigation, hot spots policing, police decertification, money bail, pretrial detention, and a bunch of other areas where this kind of research has helped support and helped motivate policy change pushed forward by advocates on the ground.

ELANA FOGEL: Before we wrap, Professor Grunwald, do you want to let our listeners know where they can find your paper?

BEN GRUNWALD: Yeah, the paper is called "Police Agencies on Facebook Overreport on Black Suspects." And it's available open access at a journal called Proceedings of the National Academy of Sciences. You can find it online.

ELANA FOGEL: Thanks for that. Professors, thank you for this very insightful discussion. It's been wonderful having you both on the Duke Law Podcast. I'm Elana Fogel, clinical professor and director of the Criminal Defense Clinic at Duke Law. Be sure to follow the Duke Law Podcast on Apple Podcasts, Google Podcasts, SoundCloud, Spotify, and YouTube to be automatically updated when new episodes are available. Until next time, go Duke.

[MUSIC PLAYING]