

Florida State University Libraries

Undergraduate Research

Honors Ethical Issues and Life Choices (PHI2630)

2013

Ethics of Mug Shot Publishing

Adam Greenstein



Adam Greenstein

Ethics of Mug Shot Publishing

Keywords: crime, criminal, mug shot, ethics, justice, publishing, society

Abstract

Mug shot publishing is a growing industry that involves releasing and publishing mug shots online or in print. Releasing images of suspects who are not convicted of crimes raises many moral concerns. Often these images become popular online, sometimes going viral. Many of the individuals in the most popular images appear sick, injured, disfigured or mentally ill. Allowing these images to be published and spread in a sensationalized manner creates a societal injustice by trivializing the criminal justice system and the individuals who are part of it. In addition, the fact that many of the individuals in these images have not been convicted of any crimes undermines how society perceives criminals and criminal activity. Previously there has been little discussion about the ethical implications of this topic, which has allowed this industry to spread with little resistance from the public. As this industry grows and becomes more popular, it is important that society is made more aware about the consequences of such industry.

Ethics of Mug Shot Publishing

Mug shot publishing has recently become a growing industry in the United States. Essentially, mug shot publishing involves taking mug shots released by police departments and publishing them either online or in print (Geller, 2013). Often these publications take on a sensationalized tone—mocking and poking fun at the arrestees. Although publishing usually occurs online, it can also be seen in printed tabloids sporting creative titles such as “‘Cellmates,’ ‘Jailbirds,’ ‘Just Busted,’ ‘Jail House Rocs,’ and ‘The Slammer’” (“Mug Shot Tabloids,” 2011). Some websites such as *The Smoking Gun* even have sections dedicated to mug shots that are considered funny or unflattering (Pacheco, 2010). By spending just a few minutes on these websites one can see that the most popular mug shots often depict seemingly sick, disfigured, injured or mentally ill individuals. These people have no say about the use of these photographs that they were required to take directly after the emotional and possibly physical trauma often inflicted by an arrest. To better understand the vast implications one must call into question the purpose of a justice system and likewise, society’s attitudes towards it. In addition, one must question society’s attitudes towards criminals and those accused of committing crimes. One can argue that a functioning justice system is important for a well-working society and in order to maintain a functioning justice system, society must view it as an effective system with the sole purpose of serving justice to those who deserve it. Because of the many moral implications involved, releasing, publishing, and viewing mug shots is morally impermissible and has no place in a functioning justice system because it not only undermines the system but it also degrades society as a whole and the individuals who appear in the mug shots.

Sensationalism of the Justice System

Few can deny that modern American society has a craving for sensationalism. Often the criminal justice system becomes the focus of this craving, which is documented in many high profile cases such as the murder trials involving O.J. Simpson, Casey Anthony and George Zimmerman (Matthews, 2013). These trials were broadcasted in their entirety for the sole purpose of entertaining the public; however, this practice has proven harmful to the justice system as a whole. Broadcasting trials on television actually facilitates unfair trials by actively changing the behavior of those in the courtroom including the judges, lawyers, and even the juries (Abrams, 1995). They may feel compelled to act a certain way or make a certain decision based on public opinion as opposed to their own beliefs. In addition, the sensationalism makes jury selection quite difficult because the heightened publicity spreads information about the upcoming trial, thereby minimizing those who have not been exposed to the trial and who have not developed their own preconceived opinions (Abrams, 1995). These behaviors often give the defendant a less than fair trial, inevitably undermining the integrity of the entire system.

Luckily most of the individuals accused of crimes will not have their trials broadcasted on television; this is usually reserved for high profile cases. Nevertheless, it is possible that sensationalism may indirectly affect all trials by changing the attitude society has towards the criminal justice system (Matthews, 2013). A similar phenomenon happens when police departments release mug shots. It turns the system of serving justice into a form of entertainment that society begins to crave and makes the purpose of releasing mug shots useless in the first place. Originally mug shots were released to increase transparency and allow viewing access for certain members of the public, such as lawyers and investigators. Releasing mug shots into the public domain saves a police department resources by not restricting access to the images,

thereby freeing valuable man-hours that would otherwise be dedicated to fulfilling public record requests for unreleased mug shots (“Jail Websites Publish Inmates’ Arrest Info”, 2004).

However, this flood of mug shots into the hands of the public has given these images a whole new purpose—to entertain.

Entertainment and Police Corruption

A problematic conflict of interest arises when police departments begin providing mug shots as sources of entertainment in addition to their typical purpose of maintaining law and order. Because policemen have such important and often controversial jobs, it is imperative that certain precautions are taken so their efforts are not diminished. If a police department ventures into the business of entertainment, then they begin to divert their resources away from fair rule of law in favor of this entertainment. Perhaps a police officer might be more inclined to rough up a suspect if he believes it may produce a funnier and more popular mug shot as a result. This may seem extreme; however, it is important to explore how perception changes behavior. If the public craves mug shots depicting roughed up suspects, then society begins to perceive that this is how police are supposed to operate. As this perception spreads, the police may be more inclined to fulfill that role.

This phenomenon is well illustrated in the Stanford Prison Experiment. In this experiment the psychologist Philip Zimbardo set up a mock prison and randomly assigned students to fulfill the roles of either a guard or a prisoner. Zimbardo did not give any direct orders to the guards about how to treat the prisoners, rather he allowed them to decide for themselves how they would operate (Haslam, Reicher 2012). After just six days the abuse inflicted by the guards on the prisoners became so great that the experiment was called off. Zimbardo concluded that the guards altered their behavior to conform to their own perceptions

that brutality is inherent in the role of a prison guard (2012). If society begins to demand funnier or stranger mug shots then the police departments may be more inclined to provide them as a result of this altered perception that this is in fact their job. This may result in an increase in police brutality that would be well tolerated by the public who would believe this is the normal function of the police department. Certainly increased police brutality would be detrimental to the entire justice system, as it would further complicate the already complex system, thereby making it harder to maintain its integrity.

Defining the Criminal

In addition, releasing, publishing and viewing mug shots dilutes society's definition of just what makes an individual a criminal. In order for the punishments levied on criminals to be justified, society must be in clear agreement about just what makes a criminal a criminal. If we are punishing non-criminals in similar ways we punish criminals, we are doing an injustice to society by creating a situation where almost anyone could be treated as a criminal, whether or not they have committed a crime. This is problematic as it reduces incentive for citizens to live a crime-free life when they could be arrested and punished for something that they did not do. Having your mug shot plastered on the Internet or printed for anyone to see is analogous to public shaming, which can be considered a form of punishment. Because everybody's mug shot is released we are in effect punishing everybody, guilty or innocent, without due process. Furthermore, when a mug shot is released, there is little information released along with it other than identifying information and the charge the suspect faces. This can have serious repercussions on both a person's professional and personal life. One can lose their job and inevitably become alienated by friends and family who are unwilling to associate with the suspect and the criminal stigma associated with mug shots. The potential implications of having

your mug shot released may even have a stronger impact depending on the nature of the crime and the individual involved.

Take for instance a realtor we will call George who is charged with assault with a deadly weapon. He is arrested and charged after being mistakenly identified as the culprit by an eyewitness to a fight at a club. This is a very serious accusation that may result in prison time and hefty fines, but also a felony record and, as a result, trouble finding employment. These are all reasonable consequences if George actually committed the crime. But in this situation, the charges against him are quickly dropped after the eyewitness' accusations are discredited. With the charges dropped, George's troubles should now be over; however, this is not likely the case as his mug shot has already been released online.

To further illustrate the implications of this problem assume that there is a woman who is in the market for a condo. She is new to the area and decides to call a real estate agent to help with her search. While looking through a listing, she discovers George who seems nice. She decides to search his name only to discover that one of the top hits is a recent mug shot where he was arrested for the alleged assault. The woman finds this unsettling and decides to call a different agent. George has just lost a potential client because his mug shot was viewed out of context. The woman did not know that the charges had been dropped after the eyewitness was discredited and George was only guilty of being in the wrong place at the wrong time. George's reputation has effectively been ruined by the same system that is there to protect him from similar injustices.

Persistence of Mug Shots Online

This raises the question, why was George's mug shot not removed from the Internet if the charge was dropped in the first place? It turns out that there is no system in place that

automatically removes mug shots of innocent individuals. However, many websites that publish mug shots will take them down, but often for a hefty price — enter the dark side of the mug shot publishing industry (“S.C. Jail Stops Posting Mugshots after Complaints on \$400 Removal Fee,” 2012). Many mug shot websites charge upwards of \$400 to remove an image from their site. This is often too little too late, as mug shots will often spread from one site to another, each of whom may charge their own separate removal fee. Entirely removing a mug shot from every single website online will likely cost thousands of dollars in fees (Geller, 2013). In addition, mug shots that are considered to be funny or unflattering by the public have the potential of going viral, which could result in thousands if not millions of views. Once a mug shot goes viral, it is safe to assume that no matter the effort waged, the image can never be removed from the Internet. In fact, the spread of viral images are often exacerbated through the feeble attempts removed them in what has been coined the “Streisand Effect.” The Streisand Effect is named after a famous incident in which the singer Barbara Streisand attempted to have images of her California home removed from a website. Consequently, Streisand only succeeded in generating media buzz that drew attention to the otherwise obscure photos and further propagated their spread over the Internet (Canton, 2005). Because of this effect, mug shots that have become viral sensations will always be accessible to the public, which may seriously harm the person in the image, as it will almost always be viewed out of context and in a negative light.

Mental Illness and Mug Shots

It is important to question who exactly the people are in the mug shots that become so popular. Many of the most popular mug shots depict images of sick, disfigured, injured, or mentally ill individuals. Many laugh and enjoy viewing these images without a second thought. Attempts could be made to justify that laughing at these images is permissible because these

individuals likely committed crimes, thus forfeiting normal protections of a civilized society; however, this justification is unfounded. In 2005 it was estimated by the U.S. Department of Justice that nearly 64 percent of all inmates in the United States have some form of mental illness (James, Glaze 2006). Consequently, the high rate of mental illness in the system can be witnessed in the mug shots that are often considered funny, which can be very problematic. Just because a mentally ill person, who did not choose their condition, has been arrested does not mean society may degrade them by laughing at their unfortunate situation, even if they did commit a crime. Doing so is counter-productive to society because such backwards thinking leads to prejudice and intolerance. Viewing these mug shots is equivalent to the days when the wealthy would venture into mental institution and laugh at the residents whose unfortunate situations they found entertaining. By modern standards, this seems barbaric; nevertheless, it is not unlike the practice of viewing mug shots that so many Americans enjoy today.

Counterarguments

While it may be clear to many that it is wrong to release, publish and view mug shots, there are still many who support it. One argument in favor of releasing mug shots is that doing so serves as deterrence against crime. This argument relies on the belief that the public humiliation inflicted by mug shot publishing is enough to deter would-be criminals. Proponents believe that while there may be some mug shots of innocent individuals released, the benefit of reduced crime outweighs the negative consequences of releasing images of innocent individuals. They additionally believe that if somebody has committed a crime then they have forfeited any protections that they should otherwise receive; thus justifying the use of their image to be used as an effective deterrence.

However, little is really known about what effect releasing mug shots has on crime rates. In fact, there is some evidence to support that the public humiliation inflicted by doing so may actually increase crime and make it harder for individuals to rehabilitate after their sentences are completed (Chinai, 2012). An unflattering and embarrassing mug shot might alienate an individual away from their friends, family, or others who may have been able to offer support and help reform and rehabilitate the criminal. Some theorize that public humiliation also instills a mindset of revenge in the subject of the humiliation, which may drive them to retaliate against society (2012). This drives them to commit more crime. Certainly, this would be counter-productive and because so little is known about the effects of releasing these images, it could be best concluded that releasing mug shots as a deterrence is not likely a justifiable reason to do so. Nevertheless, some may argue that it is permissible to release mug shots but only after the individual is convicted of the crime. However, because of the lack of understanding in this area doing so would be reckless and potentially harmful.

Another potential counterargument could be that mug shots must be released in order for certain individuals, such as lawyers and investigators, to carry out certain tasks. They claim that it is important because police departments do not have the resources to handle mug shots on a case-by-case basis; therefore, releasing every mug shot to the public frees valuable resources that could be put to better uses (“Jail Websites Publish Inmates’ Arrest Info”, 2004). Releasing mug shots increases overall government transparency, which is a very important part of a just government.

Both of these arguments could be countered by using cost-benefit analysis. While it may be true that releasing all mug shots to the public increases the amount of resources that are available, it comes at a great cost to the individuals in the photos who may not have been

convicted of their crimes. Because of the sensitive nature of this issue, it should be an utmost priority for police departments to protect those who have not been convicted of crimes even if that means using additional resources. These resources would not be put to waste because they will be actively used to protect privacy and uphold the integrity of the justice system. As far as transparency goes, it is important to identify when transparency begins to become counter-productive to the goals of society. Certainly, the entire government could not be 100 percent transparent. If the United States Department of Defense announces what targets they might be striking in a war prior to the actual strike, then the whole mission would be futile, as the enemies would have advanced notice. Revealing the identity of all of those who are arrested does not add anything to society. Instead it only harms those in the images who have not necessarily been convicted of anything.

Conclusion

It is important that society as a whole begins to identify the seriousness of the problem that is mug shot publishing. To date, there are very few papers that have been published questioning the ethics of this practice. Many are reluctant to talk about this issue because they may feel they would be defending criminals. Nevertheless, it is important to remember that anybody could be wrongly accused of a crime and have his or her mug shot released and be subjected to the public humiliation associated with it. This paper seeks not only to spark an open debate surrounding the morality of this practice, but also to build support that will push for practical solutions to the problem.

Fortunately some who have identified the problem have already taken positive steps towards solving it. For example, Salt Lake County Sherriff Jim Winder has added copyright protection to each of the mug shots his department releases in a successful attempt to prevent

republishing (Reavy, 2013). In addition, some states have decided to enact legislation requiring publishing websites to remove images free of charge if the arrestee is not convicted. These are certainly positive steps in the right direction; however, much more opposition is needed in order to permanently abolish this practice.

Overall, mug shot publishing is morally impermissible, not just because it sensationalizes the criminal justice system, but because it undermines society's definition of what makes a criminal a criminal. Society must recognize the moral implications of viewing these images of sick and mentally ill individuals. It is also important to remember that many of those appearing in mug shots have not been convicted of any crimes; therefore, they should not be subjected to the same public humiliation that convicted criminals inevitably will face. By criticizing this harmful practice we are not attempting to protect the criminals, as some may argue, but rather the innocent, the mentally ill, and the justice system as a whole; after all, these are the true victims of the mug shot publishing industry.

References

- Abrams, F., & Kaminer, W. (1995, Sep 1995). Cameras in the courtroom. *ABA Journal*, 81, 36.
- Canton, D. (2005). *TODAY'S BUSINESS LAW: Attempt to suppress can backfires*. Retrieved October 20, 2013, from <http://web.archive.org/web/20060217032922/http://lfpress.ca/cgi-bin/publish.cgi?p=111404&x=articles&s=shopping>
- Chinai, L. (2012). Picture imperfect: Mug shot disclosures and the freedom of information act. *Seton Hall Circuit Review*, 9(2), 135
- Geller, A. (2013, Jul 7, 2013). Mug shots have become a commodity; websites gather the photos and publish them for all to search, then charge money to take them down. *Los Angeles Times*, pp. A.22.
- Haslam, S., & Reicher, S. D. (2012). Contesting the “Nature” Of Conformity: What Milgram and Zimbardo's Studies Really Show. *Plos Biology*, 10(11), 1-4.
doi:10.1371/journal.pbio.1001426
- Jail web sites publish inmates' arrest info.(2004). *Corrections Forum*, 13(4), 13.
- James, D. J., & Glaze, L. E. (2006). *Mental health problems of prison and jail inmates*. Online: U.S. Department of Justice.
- Matthews, D. (2013, Jul 15, 2013). How the media might have helped George Zimmerman go free (posted 2013-07-15 13:01:20). *The Washington Post*, pp. n/a.

Matthews, D. (2013, Jul 15, 2013). How the media might have helped George Zimmerman go free (posted 2013-07-15 13:01:20). *The Washington Post*, pp. n/a.

Mug shot tabloids serving as "modern-day stocks".(2011). *Corrections Forum*, 20(6), 12-12,14.

Pacheco, W. (2010, May 23, 2010). Mugging for the jail camera: What's so funny about smiling mug shots? *McClatchy - Tribune Business News*, pp. n/a.

Reavy, P. (2013). *No more online mug shots, SL county sheriff says*. Retrieved October 20, 2013, from <http://www.ksl.com/?sid=23691287>

S.C. jail stops posting mugshots after complaints on \$400 removal fee. (2012, Oct/Nov 2012). *Courts Today*, 10, 4-4,6.