

No. 14-1670

**In The
UNITED STATES COURT OF APPEALS
For the Sixth Circuit**

DETROIT FREE PRESS, INC,
Plaintiff-Appellee,

v.

UNITED STATES DEPARTMENT OF JUSTICE,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of
Michigan

**BRIEF OF *AMICI CURIAE* THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS AND 36 MEDIA
ORGANIZATIONS IN SUPPORT OF APPELLEE SEEKING
AFFIRMATION**

Bruce D. Brown
Counsel of Record
Katie Townsend
Adam A. Marshall
The Reporters Committee for
Freedom of the Press
1156 15th St. NW, Suite 1250
Washington, D.C. 20005
Tel: (202) 795-9300
bbrown@rcfp.org

All *amici* listed on the next page.

LIST OF AMICI CURIAE

1. American Society of News Editors
2. The Associated Press
3. Association of Alternative Newsmedia
4. The Association of American Publishers, Inc.
5. Bloomberg L.P.
6. Cable News Network, Inc.
7. California Newspaper Publishers Association
8. Cox Media Group, Inc.
9. Dow Jones & Company, Inc.
10. The E.W. Scripps Company
11. First Amendment Coalition
12. First Look Media
13. Forbes Media LLC
14. Hearst Corporation
15. The McClatchy Company
16. MediaNews Group, Inc.
17. National Newspaper Association
18. The National Press Club
19. National Press Photographers Association
20. National Public Radio, Inc.
21. New England First Amendment Coalition
22. New England Newspaper and Press Association, Inc.
23. New England Society of Newspaper Editors
24. The New York Times Company
25. News Corp
26. Newspaper Association of America
27. North Jersey Media Group Inc.
28. Online News Association
29. Radio Television Digital News Association
30. The Reporters Committee for Freedom of the Press
31. The Seattle Times Company
32. Society of Professional Journalists
33. Stephens Media LLC
34. Time Inc.
35. Tribune Publishing Company
36. Tully Center for Free Speech
37. The Washington Post

TABLE OF CONTENTS

LIST OF AMICI CURIAE	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
IDENTITY AND INTEREST OF <i>AMICI CURIAE</i>	x
AUTHORSHIP STATEMENT	x
CORPORATE DISCLOSURE STATEMENT	x
AUTHORITY TO FILE <i>AMICUS</i> BRIEF	x
SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. There is no personal privacy interest in a mugshot that allows the government to withhold it under Exemption 7(C).	3
A. Mugshots have been historically open to the public.....	4
B. The Constitution, the laws of the vast majority of States, and the common law make clear that there is no personal privacy interest in mugshots.	5
1. There is no constitutional right of privacy in mugshots of persons who have been arrested and charged with crimes.	6
2. The public has a right of access or presumptive right of access to mugshots in almost every state.	7
3. The common law does not provide for a privacy interest in mugshots.	8
C. The Department of Justice frequently publishes mugshots and other photographs of arrestees.	10

II.	The public interest in overseeing the administration of justice far outweighs any purported privacy interest implicated by mugshots. .11
A.	The release of mugshots helps inform the public what the government is doing, or not doing, with respect to arrestees12
B.	The release of mugshots informs the public as to the current and historic activities of its law enforcement15
CONCLUSION.....19	
CERTIFICATE OF COMPLIANCE20	
Certificate of Service21	
Appendix A.....22	
Appendix B22	
Appendix C27	
Appendix D.....28	
Appendix E42	
Appendix F44	
Appendix G.....46	
Appendix H.....58	
Appendix I63	

TABLE OF AUTHORITIES

Cases

<i>Dep’t of Justice v. Reporters Comm. for Freedom of the Press</i> , 489 U.S. 749 (1989)	5, 7, 12
<i>Detroit Free Press v. Dep’t of Justice</i> , 73 F.3D 93 (6th Cir. 1996)	passim
<i>Detroit Free Press, Inc. v. Oakland Cnty. Sheriff</i> , 418 N.W.2d 124 (Mich. Ct. App. 1987)	25
<i>EPA v. Mink</i> , 410 U.S. 73 (1973)	3
<i>Frith v. Associated Press</i> , 176 F. Supp. 671 (D.S.C. 1959)	8, 9
<i>Hemeyer v. KRCG-TV</i> , 6 S.W.3d 880 (Mo. 1999)	25
<i>Kapellas v. Kofman</i> , 459 P.2d 912 (Cal. 1969)	15
<i>Karantsalis v. United States Dep’t Of Justice</i> , 635 F.3d 497 (11th Cir. 2011)	16
<i>Milner v. Dep’t of the Navy</i> , 562 U.S. 562, ___, 131 S.Ct. 1259, 1265 (2011)	3
<i>Nat’l Archives & Records Admin. v. Favish</i> , 541 U.S. 157 (2004)	14
<i>Paul v. Davis</i> , 424 U.S. 693 (1976)	6, 7
<i>Planned Parenthood of Westchester, Inc. v. Town Bd. of Greenburgh</i> , 587 N.Y.S.2d 461 (Sup. Ct. 1992)	26
<i>Prall v. N.Y.C. Dept. of Corr.</i> , 971 N.Y.S.2d 821 (Sup. Ct. 2013)	26
<i>Richmond Newspapers, Inc. v. Virginia</i> , 448 U.S. 555 (1980)	15
<i>State ex rel. Borzych v. Paluszcyk</i> , 201 Wis. 2d 523 (Ct. App. 1996)	27

Statutes

5 ILCS 140/2.15	24
5 U.S.C. § 552	3
65 Pa. Cons. Stat. § 67.701	26

Ala Code § 36-12-40.....	24
Alaska Stat. § 50.25.110	24
Ariz. Rev. Stat. Ann. § 39-121.....	24
Ark. Code. Ann. § 25-19-105	24
Colo. Rev. Stat. §§ 24-72-303(1), 27-72-302(4) & (7);	24
Conn. Gen. Stat. § 1-210.....	24
Del. Code. Ann. § 10003	24
Fla. Stat. § 119.011(1).....	24
Ga. Code Ann. § 50-18-72(a)(4).....	24
Haw. Rev. Stat. § 92F-11(b)	24
Idaho Code Ann. § 9-338.....	24
Ind. Code Ann. § 5-14-3-3	25
Iowa Code § 22.7(9).....	25
Ky. Rev. Stat. Ann. § 61.872	25
La. Rev. Stat. Ann. § 44:3.....	25
MD. Code Ann. State Gov't §§ 10-611 – 630	25
Me. Rev. Stat. tit. 1, § 408-A	25
Mich. Comp. Laws § 15.233.....	25
Mo. Rev. Stat. § 610.011	25
N.D. Cent. Code § 44-04-18.7(2)(i).....	26
N.H. Rev. Stat. Ann. § 91-A:4.....	25
N.M. Stat. Ann. § 29-10-7	25
N.Y. Pub. Off. § 87	26

Neb. Rev. Stat. Ann. §29-3521(1)	25
Nev. Rev. Stat. 179A.100(7)(l)	25
Ohio Rev. Code Ann. § 149.43	26
Okla. Stat. tit. 51, § 24A.8	26
Or. Rev. Stat. § 192.420	26
S.C. Code Ann. § 30-4-30	26
Tenn. Code Ann. § 10-7-503	26
Tex. Gov't Code § 552.021	26
Utah Code Ann. § 63G-2-201	26
Va. Code Ann. § 2.2-3706(A)(1)(b)	26
Vt. Stat. Ann. Tit. 1, § 317(c)(5)(B)	26
W. Va. Code § 29B-1-3	26
Wis. Stat. § 19.35	27
Wyo. Stat. Ann. §§ 16-4-203, 7-19-106(m)(ii)	27
<u>State Attorney General Opinions</u>	
1990 Va. Op. Att'y Gen. 46	26
Ala. Op. Att'y Gen. No. 2004-108	24
Cal. Op. Att'y Gen 03-205	8
Fla. Op. Att'y Gen. 94-90	24
Haw. OIP Lt. 94-12	24
Kan. Op. Att'y Gen. 87-25	8
La. Op. Att'y Gen. 94-338	25

Md. Op. Att’y Gen. 92-26 (2004)	25
NM Op. Att’y Gen. 94-02	25
Okla. Op. Att’y Gen. 2012-22	26
Tx. Op. Att’y Gen. OR2001-5580	26

Other Authorities

Dan Frosh, <i>Mistaken Identity Cases at Heart of Denver Lawsuit Over Wrongful Arrests</i> , THE NEW YORK TIMES (Feb. 16, 2012)	13
David Ray Papke, FRAMING THE CRIMINAL (1987)	5
Federal Bureau of Investigation's YouTube Channel	10
<i>FOIA Guide for Law Enforcement</i> , Illinois Attorney General	24
<i>In re: The Evansville Courier Company/Henderson County Detention Center, Open Records Decision 05-ORD-094</i> (May 17, 2005)	25
Jonathan Finn, CAPTURING THE CRIMINAL IMAGE: FROM MUG SHOT TO SURVEILLANCE SOCIETY (2009)	5
<i>KSL-TV v. Juab County Sheriff’s Office</i> , State Records Committee Appeal 1998-01	26
Lary McDermott, <i>Where are photos of church fire suspects?</i> , The (Springfield Mass.) Republican, Jan. 25, 2009	16, 17
Laura Ly, <i>Lone female fugitive on US Marshals Most-Wanted list captured</i> , CNN (Aug. 14, 2014)	16
<i>Local Terrorist Suspect Arrested</i> , WLWT5 (Jan. 15, 2015)	15
<i>Lou Gelfand, Noriega’s mug shot was a photograph worth printing</i> , Star Tribune, Jan. 21, 1990	10
Murder for Hire, ATF.GOV	19

Nancy Laflin, <i>Cops: Fair worker got in 2 fights while in custody</i> , KOAT7 (Oct. 8, 2014)	14
Office of the State Court Administrator, <i>State Statutes Governing Access to Court Records</i> , Colorado Judicial Branch (Aug. 2008)	24
Raynal Pellicer, <i>MUG SHOTS: AN ARCHIVE OF THE FAMOUS, INFAMOUS, AND MOST WANTED</i> (2008).....	17
Restatement (Second) of Torts § 652D.....	9
Royale Da, <i>MDC: State fair worker assaulted by inmate prior to mugshot</i> , KOAT (Sep. 18, 2014)	14
Sarah Boslaugh, <i>Mug Shots</i> , in <i>THE SOCIAL HISTORY OF CRIME AND PUNISHMENT IN AMERICA: AN ENCYCLOPEDIA</i> (Wilbur R. Miller, ed., 2012).....	4
Stephanie Chen, <i>Officer, you’ve got the wrong person</i> , CNN (Feb. 15, 2010).....	13
<i>Suspect calls 911 to report strangling in Avondale</i> , WKRC (Jan. 15, 2015).....	16
THE ATTORNEY GENERAL’S GUIDE TO OPEN GOVERNMENT IN RHODE ISLAND, (6th ed. 2012)	8
<i>The Hunt for Roger “The Terrible” Touhy and His Gang</i> , FBI.GOV (Dec. 24, 2012).....	18
Tim Elfrink, <i>Miami New Times writer fights for freedom of the press</i> , MIAMI NEW TIMES (Jan. 12, 2012).....	16
Topher Sanders, <i>Name mix-up in sexual battery case sends wrong Clay County teen to jail for 35 days</i> , THE FLORIDA TIMES-UNION (Feb. 24, 2014)	13
U.S. Drug Enforcement Admin., <i>DEA History Book</i> (2003).....	11
<i>U.S. Marshals Capture Lone Female Fugitive on 15 Most Wanted List</i> , JUSTICE.GOV (Aug. 13, 2014).....	16
Website of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.....	11
Website of the Federal Bureau of Investigations.....	10

IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are The Reporters Committee for Freedom of the Press and 36 media organizations. The identity and interest of *amici curiae* are more fully set forth in Appendix G.

AUTHORSHIP STATEMENT

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *amici* declare:

1. no party's counsel authored the brief in whole or in part;
2. no party or party's counsel contributed money intended to fund preparing or submitting the brief; and
3. no person, other than *amici*, their members or their counsel, contributed money intended to fund preparing or submitting the brief.

CORPORATE DISCLOSURE STATEMENT

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock. The corporate disclosure statement for each media organization joining this brief is set forth in full in Appendix H.

AUTHORITY TO FILE *AMICUS* BRIEF

Pursuant to Federal Rule of Appellate Procedure 29(a), all parties in this case have consented to the filing of this *amicus* brief on behalf of Plaintiff-Appellee.

SUMMARY OF ARGUMENT

This case concerns the release of booking photographs, or “mugshots,” of persons who have been arrested, were indicted on bribery and drug conspiracy charges, and have appeared in open court. Almost 20 years ago, this Court correctly decided that no privacy rights are implicated by the release of such photographs that would allow the government to withhold them under Exemption 7(C) of the Freedom of Information Act (the “FOIA” or “FOIA”). *See Detroit Free Press v. Dep’t of Justice*, 73 F.3d 93 (6th Cir. 1996) (“*Detroit Free Press I*”). That ruling provided crucial access to booking photographs taken by the U.S. Marshals Service for members of the news media and the public.

Amici urge this Court to uphold the decision of the district court in this case not only on the basis of *stare decisis*, but because the rule articulated in *Detroit Free Press I* is consistent with historical and modern understandings of privacy in regard to persons within the criminal justice system. Since their inception, mugshots have been open to public inspection. Neither constitutional nor common law recognizes a privacy interest in photographs of persons who have been arrested and indicted, and appeared in open court. Moreover, despite the government’s purported concern for the privacy of arrestees, the Department of Justice and its various components frequently publish mugshots and other photographs of

arrestees, undercutting the proffered rationale for withholding such information from the public.

Even if the public availability of booking photographs somehow implicated privacy interests, their significant contribution to public understanding of government activity would still require disclosure pursuant to the FOIA. For example, the release of mugshots can help the public ensure that law enforcement personnel have captured the correct suspect. They can also alert the public to either abusive law enforcement officers, or clear them of suspicion of impropriety. Additionally, the public benefits from being informed of the workings of the criminal justice process as a whole. This is particularly relevant to journalists and members of the news media, who play an essential role in ensuring that the public remains up-to-date, and rely on mugshots to help them do so. A photograph enhances journalists' ability to tell the public about what the government is doing when it comes to law enforcement. It is a representation of both the identity of the arrestee and a memorialization of the actions of the state undertaken with regard to that person, namely, their arrest. This increase in public knowledge regarding the workings of their government far outweighs any purported privacy interest that may exist in mugshots of persons whose identities are already public knowledge. Therefore, such photographs must be released pursuant to the FOIA.

ARGUMENT

I. There is no personal privacy interest in a mugshot that allows the government to withhold it under Exemption 7(C).

The Freedom of Information Act is “broadly conceived. It seeks to permit access to official information long shielded unnecessarily from public view and attempts to create a judicially enforceable public right to secure such information from possibly unwilling official hands.” *EPA v. Mink*, 410 U.S. 73, 80 (1973). FOIA contains several exemptions that permit the government, in its discretion, to withhold certain types of records. *See* 5 U.S.C. §§ 552(b)(1)-(9). However, the Supreme Court has “often noted ‘the Act’s goal of broad disclosure’ and insisted that the exemptions be ‘given a narrow compass.’” *Milner v. Dep’t of the Navy*, 562 U.S. 562 (2011) (citations omitted). Exemption 7(C) allows the government to withhold “records or information compiled for law enforcement purposes, *but only* to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C) (emphasis added). In order to be withheld, the record (1) must be compiled for law enforcement purposes, (2) must be reasonably expected to constitute an invasion of personal privacy, and (3) must create an intrusion that is “unwarranted,” considering the balance of privacy and public interest. *See Detroit Free Press I*, 73 F.3d at 96. For purposes of this appeal, *amici* do not contest that the records in question in this case were compiled

for law enforcement purposes, and therefore focus on the two remaining prongs of the test.

In *Detroit Free Press I*, this Court correctly determined that no privacy rights are implicated by releasing a mugshot of a person who is subject to an ongoing criminal proceeding, whose name has already been divulged, and who has appeared in open court. 73 F.3d at 9–10. That holding not only controls the outcome of this case, but is firmly supported by the history of booking photographs in the United States, the Constitution, the practices of the states, and the common law. None of these sources of law recognize a privacy interest in mugshots that would allow the government to withhold them, and they must therefore be released pursuant to the FOIA.

A. Mugshots have been historically open to the public.

The practice of taking photographs of arrestees became widespread in law enforcement agencies in the United States by the end of the nineteenth century, not long after the development of modern photography. See Sarah Boslaugh, *Mug Shots*, in *THE SOCIAL HISTORY OF CRIME AND PUNISHMENT IN AMERICA: AN ENCYCLOPEDIA* 1143, 1143 (Wilbur R. Miller, ed., 2012). Thomas Byrnes, who joined the New York City Police Department in 1863, pioneered the practice of compiling books of criminals' photographs in order to aid in identifications. *Id.* These compilations soon became so voluminous that they became difficult for the

police to utilize. Byrnes addressed this problem “by producing his album for public distribution. Rather than limiting the album to the police, Byrnes enlisted the public in the practice of policing.” Jonathan Finn, CAPTURING THE CRIMINAL IMAGE: FROM MUG SHOT TO SURVEILLANCE SOCIETY 10 (2009). Thus, the public was invited to view them in a cooperative effort with law enforcement. *See, e.g.,* David Ray Papke, FRAMING THE CRIMINAL 138 (1987) (illustration of individuals examining displays of mug shots from OUR POLICE PROTECTORS (1885) (reproduced in Appendix A). While other means of identification have developed since then, mugshots remain in use by law enforcement for identification throughout the United States at both the federal and state level. Their history shows that from the very beginning, mugshots have been open to the public for their inspection as part of the activities of law enforcement.

B. The Constitution, the laws of the vast majority of States, and the common law make clear that there is no personal privacy interest in mugshots.

Exemption 7(C) does not expressly define “personal privacy.” Accordingly, courts have looked to other areas of the law to determine what it encompasses. In 1989, the Supreme Court made clear that the Constitution, the practices of the states, and the common law are all instructive in this regard. *See Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 762-67 & n. 13-15. (1989) (“*Reporters Committee*”). In a case where the records in question are

photographs of individuals who have been arrested, have been charged, and have appeared in open court, none of these sources of law create a personal privacy interest that would allow the government to withhold the photographs.

1. There is no constitutional right of privacy in mugshots of persons who have been arrested and charged with crimes.

The Supreme Court has made clear that no constitutional privacy interest is violated when the government distributes mugshots of persons who have been charged with a crime. *See Paul v. Davis*, 424 U.S. 693, 712 (1976). In *Davis*, the mugshot of Edward Davis, who had been previously arrested for shoplifting, was distributed to the public by the Louisville police along with photographs of other “active” shoplifters. *Id.* at 695–96. Like the photographs at issue in this case, at the time the poster was distributed to the public Davis had been “charged with shoplifting but his guilt or innocence of that offense had never been resolved.” *Id.* at 696. The Supreme Court held that Davis’s constitutional right to privacy was not violated by the distribution. *Id.* at 713.

The Court in *Davis* drew an important contrast between the private and public spheres, holding that the latter is not protected. Of course, matters “relating to marriage, procreation, contraception, family relationships, and child rearing and education” may be protected by the Constitution. *Id.* But Davis’s case was based on “a claim that the State may not publicize a record of an official act such as an arrest . . .”, *id.*, which the Court firmly rejected. “None of our substantive privacy

decisions hold this or anything like this, and we decline to enlarge them in this manner.” *Id.*

The Court’s common-sense division between matters relating to decisions made within the context of an individual’s personal life and those that relate to official acts in *Davis* belies the notion that there is any constitutional privacy right implicated by distributing mugshots. Far from invading an individual’s autonomy with regards to intimate familial decisions, the photographs in this case concern persons who have already been arrested, been indicted, and appeared in open court, where any member of the public has the right to attend and see them. There is no constitutional privacy interest triggered by the dissemination of such photographs that the Government can argue allows them to be withheld under the FOIA.

2. The public has a right of access or presumptive right of access to mugshots in almost every state.

In determining the privacy interests encompassed by Exemption 7(C), the practices of states are an especially important indicator. *See Reporters Committee*, 489 U.S. at 767. A thorough survey of state laws undertaken by *amici* demonstrates that, in the vast majority of states, there is no privacy interest in mugshots that would allow them to be withheld from the public. To the contrary, booking photographs are available or presumptively available to the public under the open records laws of at least 40 states. *See Appendix B.*

Even in states where mugshots are not presumptively available under open government laws, it is usually for law enforcement, and not privacy reasons.¹ *See, e.g.,* Cal. Op. Att’y Gen 03-205, *available at* <http://bit.ly/1KAuu2Y> (“[i]mportantly, furnishing a mug shot to a member of the general public, including the news media, would not violate the arrested person’s constitutional right of privacy.”); Kan. Op. Att’y Gen. 87-25, *available at* <http://bit.ly/1y3QiAq>; THE ATTORNEY GENERAL’S GUIDE TO OPEN GOVERNMENT IN RHODE ISLAND, (6th ed. 2012), *available at* <http://1.usa.gov/14qyFhk>. In short, hardly any states recognize a privacy interest in mugshots that would prohibit their disclosure to the public.

3. The common law does not provide for a privacy interest in mugshots.

It is well settled under the common law that the disclosure of truthful information regarding an accused person within the criminal justice system is not actionable as a privacy tort. In *Frith v. Associated Press*, a federal district court rejected an arrestee’s claim that their right of privacy was violated when the Associated Press distributed mugshots it had received from South Carolina law enforcement officials. 176 F. Supp. 671 (D.S.C. 1959). The court recognized the distinction that would later be discussed by the Supreme Court in *Davis*, holding that “[b]y the issuance of a warrant and the arrest of the plaintiffs, they became

¹ Notably the government has not argued in this case that disclosure of booking photographs would impede its law enforcement activities.

figures of public interest. As such the publication of their pictures was not an unwarranted invasion of their privacy.” *Id.* at 676.

The Restatement of Torts also states the principle that persons within the criminal justice system have no cognizable privacy interest with regards to their prosecution by the government. “Those who commit crime or are accused of it may not only not seek publicity but may make every possible effort to avoid it, but they are nevertheless persons of public interest, concerning whom the public is entitled to be informed.” Restatement (Second) of Torts § 652D, Comment f. For example,

A is tried for murder and acquitted. During and immediately after the trial B Newspaper publishes daily reports of it, together with pictures and descriptions of A and accounts of his past history and daily life prior to the trial. *This not an invasion of A's privacy.*

Id. § 652D, illustration 13 (emphasis added).

The rule articulated in *Detroit Free Press I*, which controls the release of records in this case, is squarely in line with the common law rights of privacy. It applies only to mugshots of persons who are “already indicted, who had already made court appearances after their arrests, and whose names had already been made public in connection with an ongoing criminal prosecution” 73 F.3d at 98. There is nothing private about these facts. These are people who have been charged with a crime and whose identities are known to the public, which has a right to be informed of the facts of their arrest.

C. The Department of Justice frequently publishes mugshots and other photographs of arrestees.

Although the Department of Justice contends that the government should not be required to release mugshots under the FOIA because of the arrestee's purported privacy interests, *see* Appellant's Opening Br. at 16–31, the actions of various components of the DOJ paint a very different picture. Indeed, booking photographs are frequently published by the government for a wide variety of reasons unrelated to the need to capture a fugitive from justice. For example, some DOJ employees simply release mugshots on their own initiative. *See* Lou Gelfand, *Noriega's mug shot was a photograph worth printing*, Star Tribune, Jan. 21, 1990, at A23, *available at* 1990 WLNR 3517578 (“Diane Cossin of the U.S. attorney's office in Miami . . . said prisoner photos are not part of the public record in the federal district of southern Florida, but she said her office routinely makes them available.”). Among other examples:

- The Federal Bureau of Investigation's website contains numerous mugshots, including, among others those of Ted Kaczynski (<http://1.usa.gov/1BXu54k>), Patty Hearst (<http://1.usa.gov/1tBf2c1>), and Al Capone (<http://1.usa.gov/1C5ULAk>). It also has press releases with photographs of arrestees (<http://1.usa.gov/149NjZv>). The FBI's YouTube channel also has a video with a lengthy discussion of Kaczynski's mugshot that was uploaded on May 1, 2013 (<http://bit.ly/1u7iDEO>).

- The website of the Bureau of Alcohol, Tobacco, Firearms, and Explosives prominently displays mugshots in its online exhibits. *See, e.g., Criminal Investigations: Explosives and Bombings*, atf.gov, <http://1.usa.gov/1vobHfP> (last accessed Dec. 2, 2014) (showing mugshots of Eric Rudolph, Marcus Toney, Lisa Toney, and four additional defendants).
- The Drug Enforcement Administration's 30th Anniversary history book, published in 2003, contains mugshots of drug kingpin Carlos Lehder and former Panamanian President Manuel Noriega. U.S. Drug Enforcement Admin., *DEA History Book 67-71* (2003), *available at* <http://bit.ly/152uSaj>.

If the Department of Justice truly believes mugshots implicate legitimate privacy interests that authorize their withholding under the FOIA, it is not clear why its components have routinely chosen to publish them. Unless the DOJ's position is that it routinely violates the privacy rights of persons who have been in the custody of the United States government, its practices serve as an admission that no privacy interests are implicated by the release of such photographs.

II. The public interest in overseeing the administration of justice far outweighs any purported privacy interest implicated by mugshots.

Even assuming, *arguendo*, that there is some personal privacy interest in mugshots, it is strongly outweighed by the public interest served by their disclosure. *See Detroit Free Press I*, 73 F.3d at 97–98. Under Exemption 7(C),

any personal privacy interest in a record must be weighed against the “core purpose” of the FOIA: “contribut[ing] significantly to public understanding of the operations or activities of the government.” *Reporters Committee*, 489 U.S. at 775. In addition to the benefits of releasing mugshots to the public that this Court has previously identified, *see Detroit Free Press I*, 73 F.3d at 93, *amici* also wish to highlight the interest of the public in being informed of the workings of the criminal justice process as a whole. This interest is particularly relevant to journalists and members of the news media, who play an essential role in ensuring that the public is made aware of the activities of the government. The importance of such information far outweighs any privacy interest that may exist in booking photographs, and therefore they must be disclosed.

A. The release of mugshots helps inform the public what the government is doing, or not doing, with respect to arrestees

In *Detroit Free Press I*, the court stated that the release of mugshots under FOIA could help the public determine whether the government was detaining the wrong person, and could shed light on the circumstances of an arrest. *See Detroit Free Press I*, 73 F.3d at 93. These are both situations in which a booking photograph would help the public understand what their government is doing.

Releasing booking photographs of suspects can help the public ensure that law enforcement authorities have captured the correct person. Cases of mistaken arrest are, unfortunately, relatively frequent in the United States. *See Stephanie*

Chen, *Officer, you've got the wrong person*, CNN (Feb. 15, 2010), <http://cnn.it/158upD1> (collecting stories of mistaken identity arrests from around the country); Dan Frosh, *Mistaken Identity Cases at Heart of Denver Lawsuit Over Wrongful Arrests*, THE NEW YORK TIMES (Feb. 16, 2012), <http://nyti.ms/1B73B3Q> (describing a lawsuit by the ACLU against Denver over more than 600 cases of mistaken arrests over a ten year period). In one case, an innocent high school student with the same name as a suspect was arrested and jailed for over a month. Topher Sanders, *Name mix-up in sexual battery case sends wrong Clay County teen to jail for 35 days*, THE FLORIDA TIMES-UNION (Feb. 24, 2014), <http://bit.ly/1E4LWYT>. The investigating officer thought that the arrestee was the suspect, but “failed to show [the victim] his photo to confirm he had the right person . . .” *Id.* After the student’s mother raised doubts with the police, they conducted a photo-line up with the victim that confirmed he was not the suspect and led to his release. *Id.* If law enforcement routinely released booking photographs to the public, it would help ensure that such cases of mistaken identity by the government are corrected by the public.

Allowing access to mugshots can also alert the public to either abusive law enforcement officers, or clear them of suspicion of impropriety. For example, if an inmate appears in court after being arrested with bruises and cuts on his face and alleges that the guard beat him up, that could constitute “evidence that would

warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.” *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2004). The release of the inmate’s booking photograph could show either that he was arrested with the injuries and therefore they were not the result of the guards, or that the injuries were not present when he was arrested, and therefore something happened while he was being held in the custody of the government. Either way, the public learns something about the actions of its government.

It is even possible that a booking photograph can show that the government is not providing enough security for persons in its custody. For example, in New Mexico, the release of a mugshot that showed an arrestee with a bloody face prompted the media to inquire into the circumstances of his arrest. *See Royale Da, MDC: State fair worker assaulted by inmate prior to mugshot*, KOAT (Sep. 18, 2014), <http://bit.ly/1DIDml3>. The police ultimately stated that the arrestee was assaulted by an inmate within the police station, and that when they book inmates into the facility they do not separate them from one another. *See Nancy Laflin, Cops: Fair worker got in 2 fights while in custody*, KOAT7 (Oct. 8, 2014), <http://bit.ly/1x6MFUL>. Thus, the public, if it wished, could raise questions about whether the police were taking proper measures with regards to security at police stations, which is certainly a form of government activity.

B. The release of mugshots informs the public as to the current and historic activities of its law enforcement

A publicly accountable criminal justice system is a fundamental tenet of our nation's system of governance, and the press's ability to report on the criminal justice system is essential to ensuring that accountability. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (noting that press access and publication of trials contributes "to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system . . ."); *Kapellas v. Kofman*, 459 P.2d 912, 924 (Cal. 1969) (noting that "[n]ewspapers have traditionally reported arrests or other incidents involving suspected criminal activity, and courts have universally concluded that such events are newsworthy matters of which the public has the right to be informed."). Because the public is not able to be present at all stages of the criminal justice process, it is imperative that the press have access to information that allows them to inform the public about what has transpired.

Reporters rely on booking photographs to help inform the public about what the government is doing. It is a representation of both the identity of the arrestee and a memorialization of the actions of the state undertaken with regards to that person, namely, their arrest. Local and national TV stations routinely air mugshots of arrestees on the news to inform the public about the actions of the government. *See, e.g., Local Terrorist Suspect Arrested*, WLWT5 (Jan. 15, 2015),

<http://bit.ly/1IDLIdP>; *Suspect calls 911 to report strangling in Avondale*, WKRC (Jan. 15, 2015), <http://bit.ly/152qAjl>. A photograph is an important component that enables reporters to do their job. When reporter Theo Karantsalis (the plaintiff in *Karantsalis v. United States Dep't Of Justice*, 635 F.3d 497 (11th Cir. 2011)) was asked why he was seeking mugshots from the U.S. Marshals Service, he responded, simply: "I need this information to be able to tell stories." Tim Elfrink, *Miami New Times writer fights for freedom of the press*, MIAMI NEW TIMES (Jan. 12, 2012), <http://bit.ly/1F4PjDq>.

When the public reads about an arrest, they "expect to see a photo of those charged" Lary McDermott, *Where are photos of church fire suspects?*, The (Springfield Mass.) Republican, Jan. 25, 2009, at C7, available at 2009 WLNR 1572643. The government is all too aware of this, as seen in press releases issued by the U.S. Marshals service. *See, e.g., U.S. Marshals Capture Lone Female Fugitive on 15 Most Wanted List*, JUSTICE.GOV (Aug. 13, 2014), <http://1.usa.gov/1xupRSG> (press release regarding the capture of Janet Killough Barreto that includes her picture) (reproduced in part in Appendix C); *See also* Laura Ly, *Lone female fugitive on US Marshals Most-Wanted list captured*, CNN (Aug. 14, 2014), <http://www.cnn.com/2014/08/14/justice/lone-female-fugitive/> (showing same photograph). For the news media and government alike, pictures help tell the public what has transpired and who it has affected.

The inclusion of an arrestee's photograph is so tied up with reporting on the government's activities that its absence can lead to public confusion. Just hours after Barack Obama was sworn in as president in 2009, three white men were arrested and charged with setting fire to a church that hosted a predominantly African-American congregation. *See* McDermott, *Where are photos of church fire suspects?*. Because the case was being investigated by federal authorities, the booking photographs of the suspects were not released. The readers of the newspaper questioned why this should be the case, especially given that other stories reporting on local crimes, specifically those where black persons were the suspects, included mugshots. *Id.* The paper ended up publishing an editorial explaining that the absence of the photos of the white arrestees was not due to racism, but to the simple fact that the federal government had decided to withhold them. *Id.*

In addition to breaking news stories, there is also an important historical interest in booking photographs. Many mugshots have come to represent crucial moments in American history. *See* Raynal Pellicer, *MUG SHOTS: AN ARCHIVE OF THE FAMOUS, INFAMOUS, AND MOST WANTED* (2008) (containing booking photographs of, among others, Emma Goldman, Charles Ponzi, Al Capone, John Dillinger, Bruno Hauptmann, Hermann Goering, Julius and Ethel Rosenberg, Rosa Parks, Martin Luther King, Jr., Malcolm X, Janis Joplin, Jane Fonda, Lee Harvey

Oswald, Sirhan Sirhan, members of The Weathermen, John Gotti, O.J. Simpson, Perry Smith, and Richard Hickock) (reproduced in Appendix D). These pictures are not important because of a voyeuristic interest regarding the person they portray, but because they tell a larger story about what the government is doing with regards to that person and the situation that precipitated their arrest. The booking photograph of civil rights icon Rosa Parks (reproduced in Appendix D) serves as a window into the discriminatory actions of the government at the time it was taken. It sends a powerful message about the nature of the laws that precipitated Ms. Parks' civil disobedience, in addition to serving as a record of the fact that she was arrested by the government for refusing to obey those laws.

The government has recognized the important historical aspect of mugshots in its own online exhibits, where they are prominently displayed as examples of triumphs of law enforcement throughout the past century. *See, e.g., The Hunt for Roger "The Terrible" Touhy and His Gang*, FBI.GOV (Dec. 24, 2012), <http://1.usa.gov/1wOp89s> (reproduced in part in Appendix E). In the FBI's article on the capture of Roger Touhy and his gang after many months on the run, their booking photographs are prominently featured with the caption "Roger Touhy, Edward Darlak, and Basil Banghart were captured on December 29, 1942." *Id.* The photographs tell the public not about the criminals, but rather about the actions

of the government—how the FBI agents tracked the gang down and finally brought them to justice.

Mug shots also appear prominently in more recent stories of the government’s successful apprehension of criminals, such as the arrest of Dr. Carl Drury, who asked a federal agent to locate a hitman to kill his wife in 2001. *See Murder for Hire*, ATF.GOV, <http://1.usa.gov/1xtKLAX> (last accessed Jan. 5, 2015) (reproduced in Appendix F). The reason for the inclusion of these photographs is clear: they tell the viewing public about the activities of the government, and the photograph is the memorialization of the culminating arrest. As they give valuable information about the accomplishments of government activities, booking photographs, whether historical or contemporary, must be released to the public.

CONCLUSION

For the reasons stated above, this Court should uphold the decision of the District Court.

Respectfully submitted,

/s/ Bruce D. Brown

BRUCE D. BROWN

Counsel of Record

Katie Townsend

Adam Marshall

The Reporters Committee for

Freedom of the Press

1156 15th S. NW, Suite 1250

Washington, D.C. 20005

Phone: 202-795-9301

CERTIFICATE OF COMPLIANCE

I, Bruce D. Brown, do hereby certify: (1) Brief of *Amici Curiae* complies with the type-volume limitation Fed. R. App. P. 32(a)(7)(B) because it contains 4,497 words, according to the word count of Microsoft Office Word 2010; (2) Brief of *Amici Curiae* complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14-point Times New Roman; and (3) Brief of *Amici Curiae* has been scanned for viruses and is virus free.

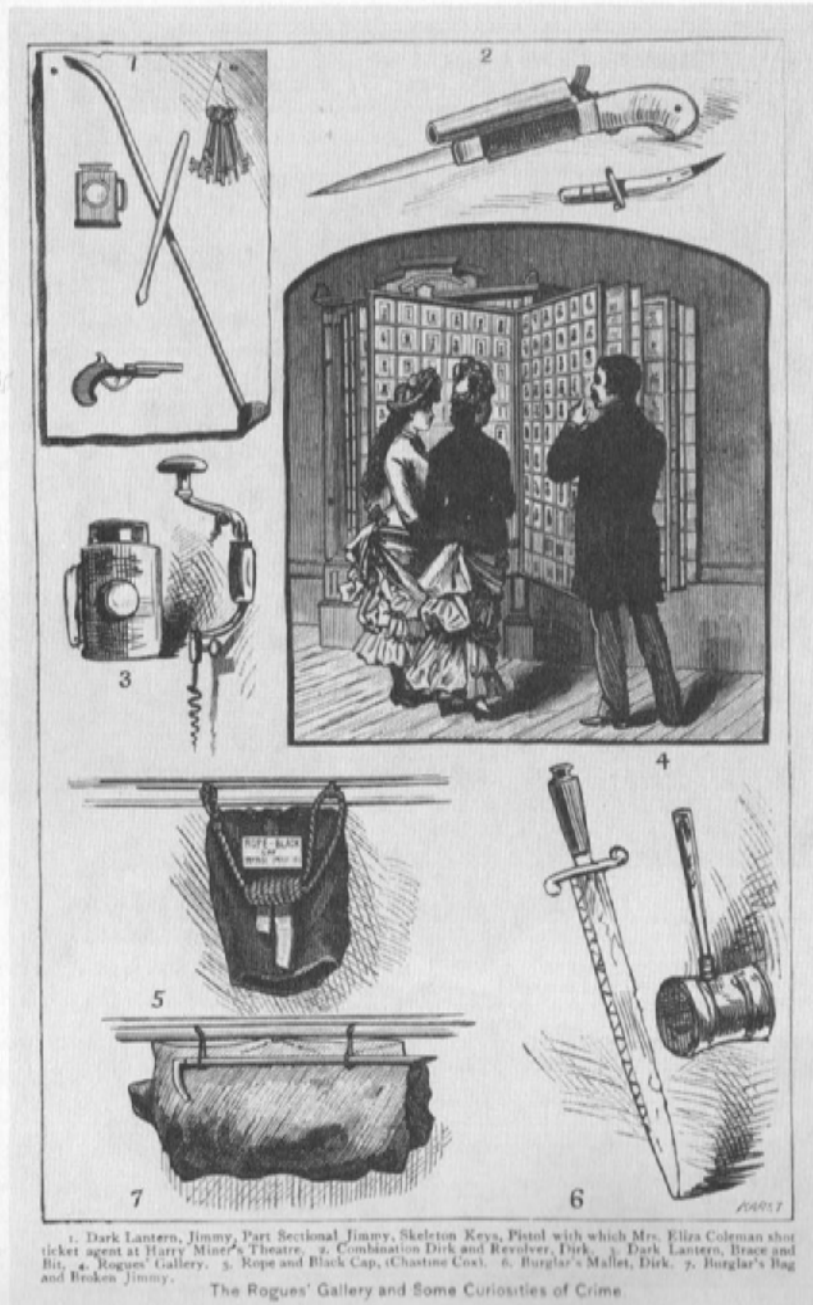
/s/ Bruce D. Brown

CERTIFICATE OF SERVICE

I, Bruce D. Brown, do hereby certify that I have filed the foregoing Brief of *Amici Curiae* electronically with the Court's CM/ECF system with a resulting electronic notice to all counsel of record on January 16, 2015.

/s/ Bruce D. Brown

APPENDIX A²



Illus. 10. Composite drawing of the New York Police Department's rogues' gallery and collection of criminal memorabilia from *Our Police Protectors* (1885).

² From David Ray Papke, *FRAMING THE CRIMINAL* 138 (1987)

APPENDIX B

State Laws, Cases, and Legal Guidance Regarding Public Access to Booking Photographs

Alabama: Ala Code § 36-12-40, Ala. Op. Att’y Gen. No. 2004-108³

Alaska: Alaska Stat. § 50.25.110

Arizona: Ariz. Rev. Stat. Ann. § 39-121

Arkansas: Ark. Code. Ann. § 25-19-105

Colorado: Colo. Rev. Stat. §§ 24-72-303(1), 27-72-302(4) & (7); Office of the State Court Administrator, *State Statutes Governing Access to Court Records*, Colorado Judicial Branch (Aug. 2008)⁴

Connecticut: Conn. Gen. Stat. § 1-210

Delaware: Del. Code. Ann. § 10003

Florida: Fla. Stat. § 119.011(1); Fla. Op. Att’y Gen. 94-90⁵

Georgia: Ga. Code Ann. § 50-18-72(a)(4)

Hawaii: Haw. Rev. Stat. § 92F-11(b); Haw. OIP Lt. 94-12⁶

Idaho: Idaho Code Ann. § 9-338;

Illinois: 5 ILCS 140/2.15; *FOIA Guide for Law Enforcement*, Illinois Attorney General,

³ Available at <http://www.ago.state.al.us/opinions/pdf/2004-108.pdf>.

⁴ Available at http://www.courts.state.co.us/userfiles/File/Media/accessguide_08-08_FINAL.doc.

⁵ Available at <http://www.myfloridalegal.com/ago.nsf/Opinions/83A1D5004064269D852562210063168E>.

⁶ Available at <http://files.hawaii.gov/oip/opinionletters/opinion%2094-12.PDF>.

https://foia.ilattorneygeneral.net/pdf/FOIA_Guide_for_Law_Enforcement3-13-11.pdf (last accessed Dec. 1, 2014)

Indiana: Ind. Code Ann. § 5-14-3-3

Iowa: Iowa Code § 22.7(9)

Kentucky: Ky. Rev. Stat. Ann. § 61.872; *In re: The Evansville Courier Company/Henderson County Detention Center*, Open Records Decision 05-ORD-094 (May 17, 2005)⁷

Louisiana: La. Rev. Stat. Ann. § 44:3 (except for photos of convicted sex offenders, *see* La. Op. Att’y Gen. 94-338⁸)

Maine: Me. Rev. Stat. tit. 1, § 408-A

Maryland: MD. Code Ann. State Gov’t §§ 10-611 – 630; Md. Op. Att’y Gen. 92-26 (2004)⁹

Michigan: Mich. Comp. Laws § 15.233; *Detroit Free Press, Inc. v. Oakland Cnty. Sheriff*, 418 N.W.2d 124 (Mich. Ct. App. 1987);

Minnesota: Minn. Stat. § 13.82(26)

Missouri: Mo. Rev. Stat. § 610.011; *Hemeyer v. KRCG-TV*, 6 S.W.3d 880 (Mo. 1999)

Nebraska: Neb. Rev. Stat. Ann. §29-3521(1)

Nevada: Nev. Rev. Stat. 179A.100(7)(l) (requiring records of criminal history to be disseminated to reporters);

New Hampshire, N.H. Rev. Stat. Ann. § 91-A:4;

New Mexico, N.M. Stat. Ann. § 29-10-7, NM Op. Att’y Gen. 94-02¹⁰;

⁷ Available at <http://ag.ky.gov/civil/orom/2005/05ord094.doc>.

⁸ Available at <http://www.ag.state.la.us/Shared/ViewDoc.aspx?Type=4&Doc=14271>.

⁹ Available at <http://www.oag.state.md.us/Opinions/2007/92oag26.pdf>.

New York, N.Y. Pub. Off. § 87 *Planned Parenthood of Westchester, Inc. v. Town Bd. of Greenburgh*, 587 N.Y.S.2d 461 (Sup. Ct. 1992), *but see Prall v. N.Y.C. Dept. of Corr.*, 971 N.Y.S.2d 821 (Sup. Ct. 2013) (holding that booking photographs can be withheld in some cases);

North Dakota, N.D. Cent. Code § 44-04-18.7(2)(i);

Ohio, Ohio Rev. Code Ann. § 149.43;

Oklahoma, Okla. Stat. tit. 51, § 24A.8, Okla. Op. Att’y Gen. 2012-22¹¹;

Oregon, Or. Rev. Stat. § 192.420;

Pennsylvania, 65 Pa. Cons. Stat. § 67.701;

South Carolina, S.C. Code Ann. § 30-4-30;

Tennessee, Tenn. Code Ann. § 10-7-503;

Texas, Tex. Gov’t Code § 552.021, Tx. Op. Att’y Gen. OR2001-5580¹²;

Utah, Utah Code Ann. § 63G-2-201, *KSL-TV v. Juab County Sheriff’s Office*, State Records Committee Appeal 1998-01¹³;

Vermont, Vt. Stat. Ann. Tit. 1, § 317(c)(5)(B);

Virginia, Va. Code Ann. § 2.2-3706(A)(1)(b), 1990 Va. Op. Att’y Gen. 46;

West Virginia, W. Va. Code § 29B-1-3;

¹⁰ Available at <http://public-records.nmag.gov/opinions/94-02.pdf?attredirects=0&d=1>.

¹¹ Available at <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=468511>.

¹² Available at <https://www.texasattorneygeneral.gov/opinions/openrecords/49cornyn/orl/2001/htm/or200105580.htm>.

¹³ Available at <http://archives.utah.gov/src/srcappeal-1998-01.html>.

Wisconsin, Wis. Stat. § 19.35, *State ex rel. Borzych v. Paluszcyk*, 201 Wis. 2d 523 (Ct. App. 1996);

Wyoming, Wyo. Stat. Ann. §§ 16-4-203, 7-19-106(m)(ii).

APPENDIX C¹⁴

U.S. Marshals Service

Justice. Integrity. Service.

U.S. Department of Justice



For Immediate Release

August 13, 2014

Contact:

Jamaal Thompson, Deputy U.S. Marshal
Northern District of Mississippi (662) 513-2304;
USMS Office of Public Affairs (202) 307-9065

U.S. Marshals Capture Lone Female Fugitive on 15 Most Wanted List *Fugitive's five-year run ends at popular shopping mall in Portland, OR*

Washington – The lone female fugitive on the U.S. Marshals 15 Most Wanted list was placed in handcuffs by Deputy U.S. Marshals on Tuesday after they closed in on her at a Portland, Oregon shopping mall, ending her five-year run from the law.



Janet Killough Barreto, 43, who was wanted in Mississippi by the Union County Sheriff's Department for failure to appear on original charges of manslaughter of a child, three counts of child abuse, six counts of child neglect and tampering with a witness, was apprehended along with her husband, Ramon Barreto, who was also wanted for the same offenses, at approximately 5:15 p.m. PST at the Jantzen Beach Center where they were taken into custody. Initially, the Barretos refused to identify themselves when they were approached. However, after both were handcuffed, deputies were able to positively identify Ramon on the spot by verifying his fingerprints digitally. Janet continued being uncooperative. Her identity was verified after she was transported and fingerprinted at the local jail.

"Janet Barreto is a malicious individual. Through her alleged crimes, Barreto demonstrated a blatant disregard and lack of respect for life other than her own," said U.S. Marshals Service Director Stacia Hylton. "I am greatly appreciative of the extraordinary efforts made by our dedicated men and women in apprehending one of our most wanted fugitives."

The fugitive investigation for Barreto gained significant momentum when a concerned citizen called the U.S. Marshals Gulf Coast Regional Fugitive Task Force in Oxford, Mississippi, Monday, with information placing Barreto in Oregon or Washington State. The caller also alerted Marshals that Barreto possibly had an infant with her. In less than 24 hours, a collateral lead about Barreto's possible location was transmitted to the U.S. Marshals-led Pacific Northwest Violent Offender Task Force in Washington State, which ultimately led to her capture. An infant found with the Barretos during their arrest was placed with child protective services.

"Barreto's arrest is a testament to the outstanding investigative work of our task forces, which combine the efforts of our deputies and our state and local partners," said U.S. Marshal for the Northern District of Mississippi Dennis Erby. "The force multiplying ability of our task forces played a key role in bringing her to justice."

Union County Sheriff Jimmy Edwards said, "On behalf of the Union County Sheriff's Department, I would like to thank the United States Marshals Service and the public for their help in capturing Janet and Ramon Barreto. The crimes they are alleged to have committed are nothing short of horrendous and despicable, and now it is time to let justice be served."

Barreto and her husband are being held in the Multnomah County Detention Center in Portland awaiting extradition.

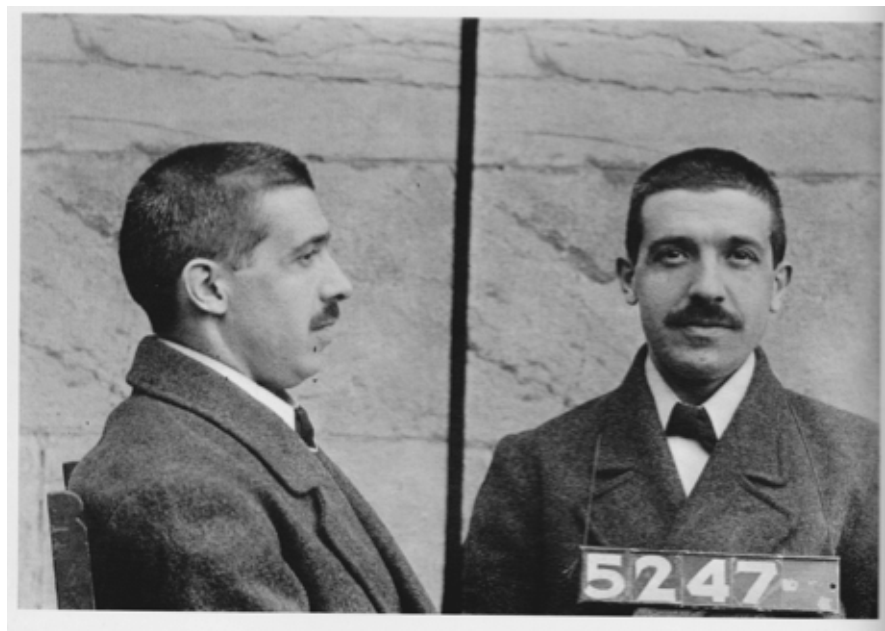
From 2005 to 2006, the Barretos were suspected of traveling to Guatemala on multiple occasions to purchase children from a local adoption agency. Upon returning to the United States, the children were

¹⁴ *U.S. Marshals Capture Lone Female Fugitive on 15 Most Wanted List*, jusice.gov (Aug. 13, 2014), <http://1.usa.gov/1xupRSG>.

APPENDIX D¹⁵

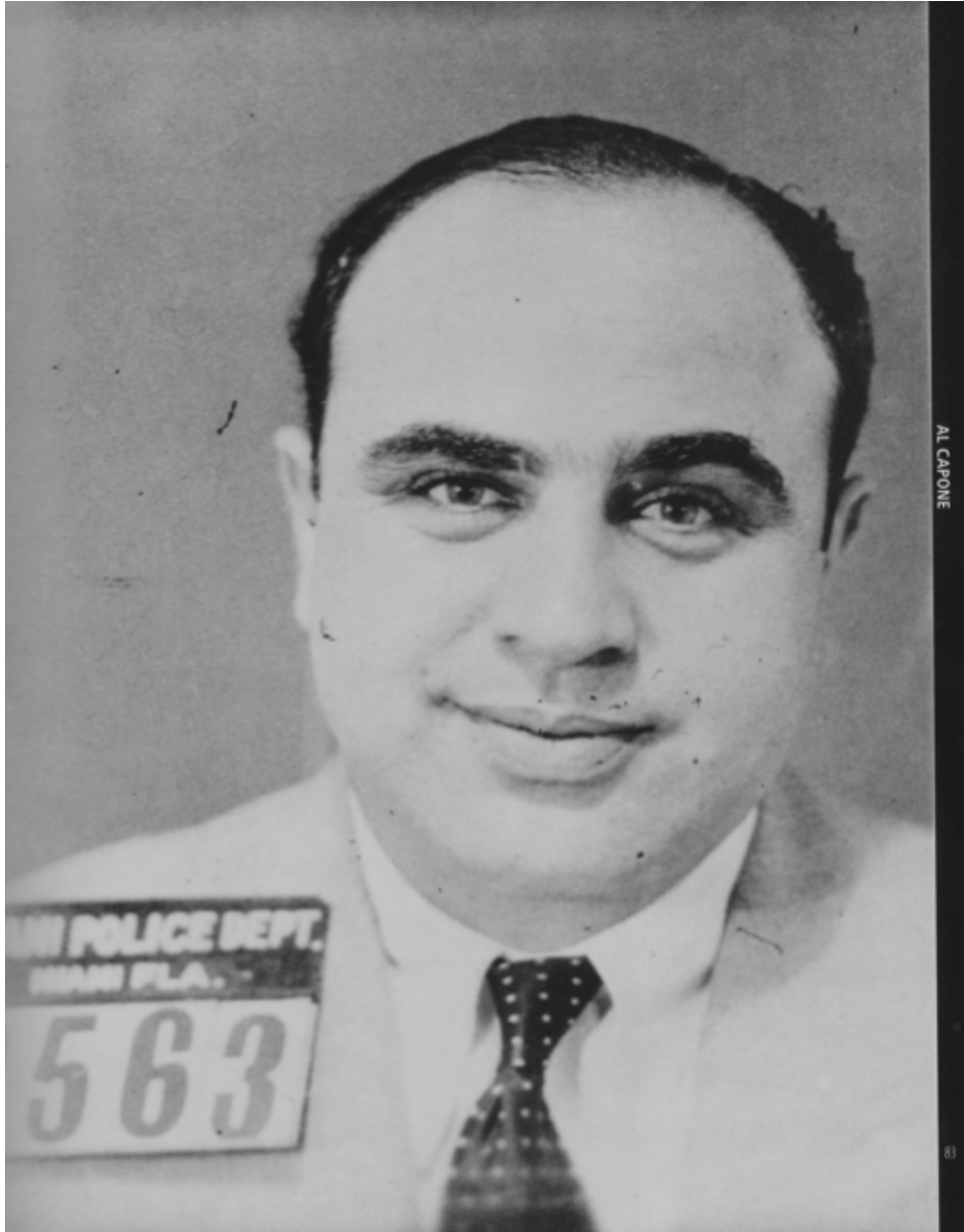


Emma Goldman

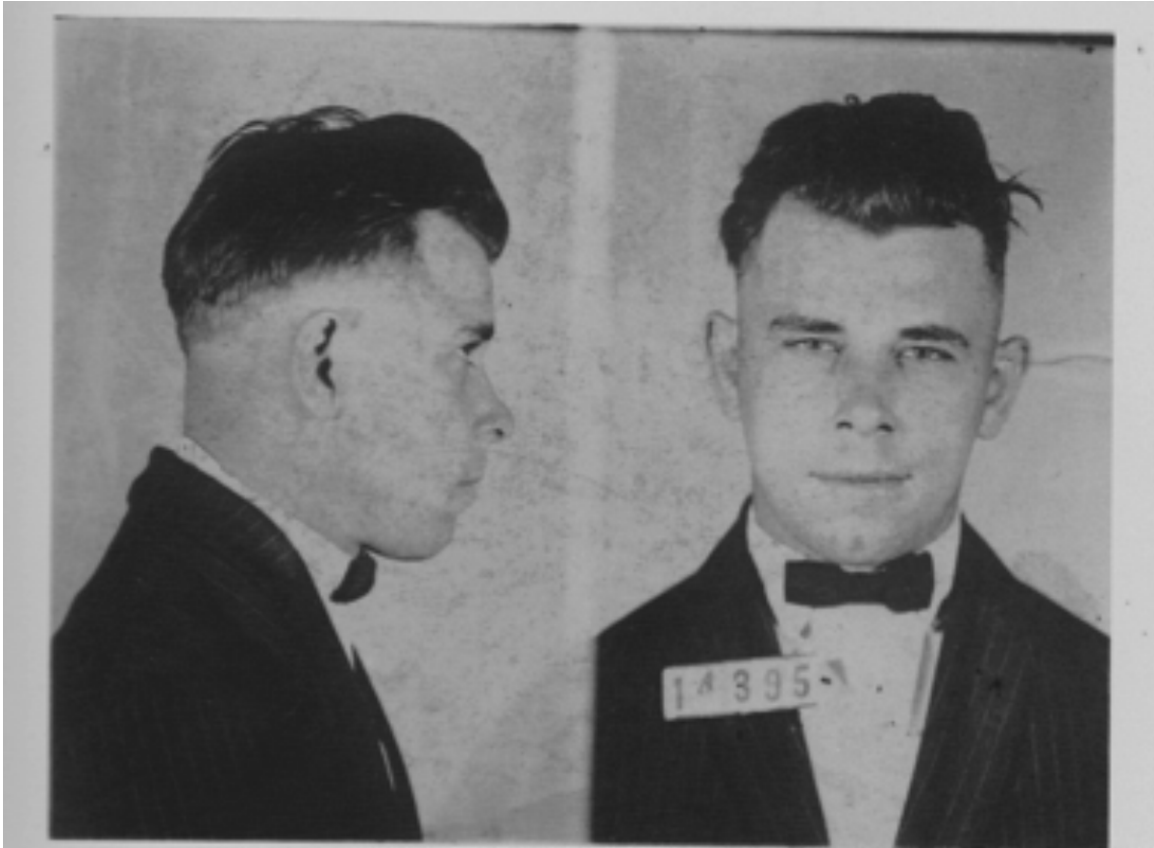


Charles Ponzi

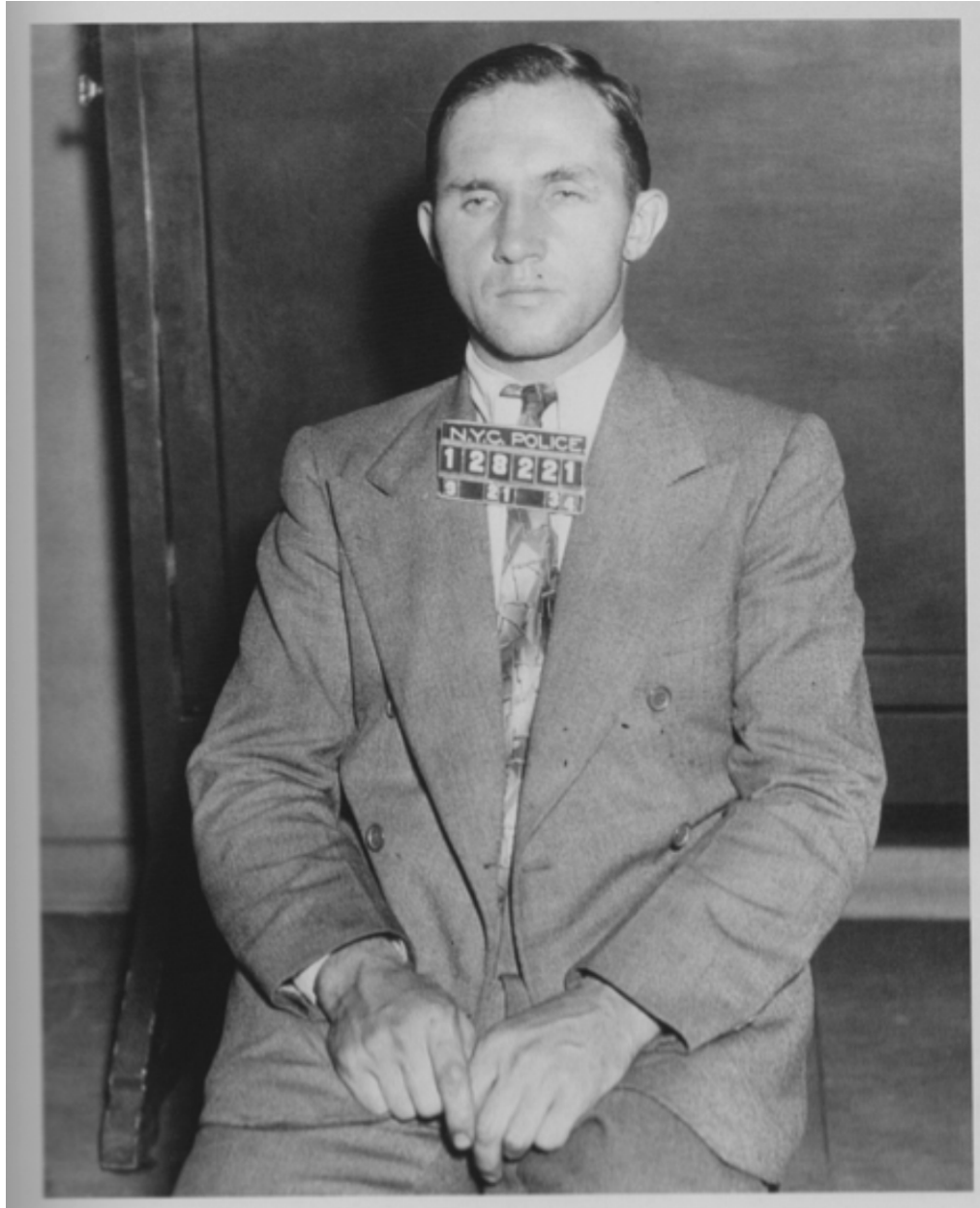
¹⁵ All images are taken from Raynal Pellicer, *MUG SHOTS: AN ARCHIVE OF THE FAMOUS, INFAMOUS, AND MOST WANTED* (2008).



Al Capone



John Dillinger



Bruno Hauptmann



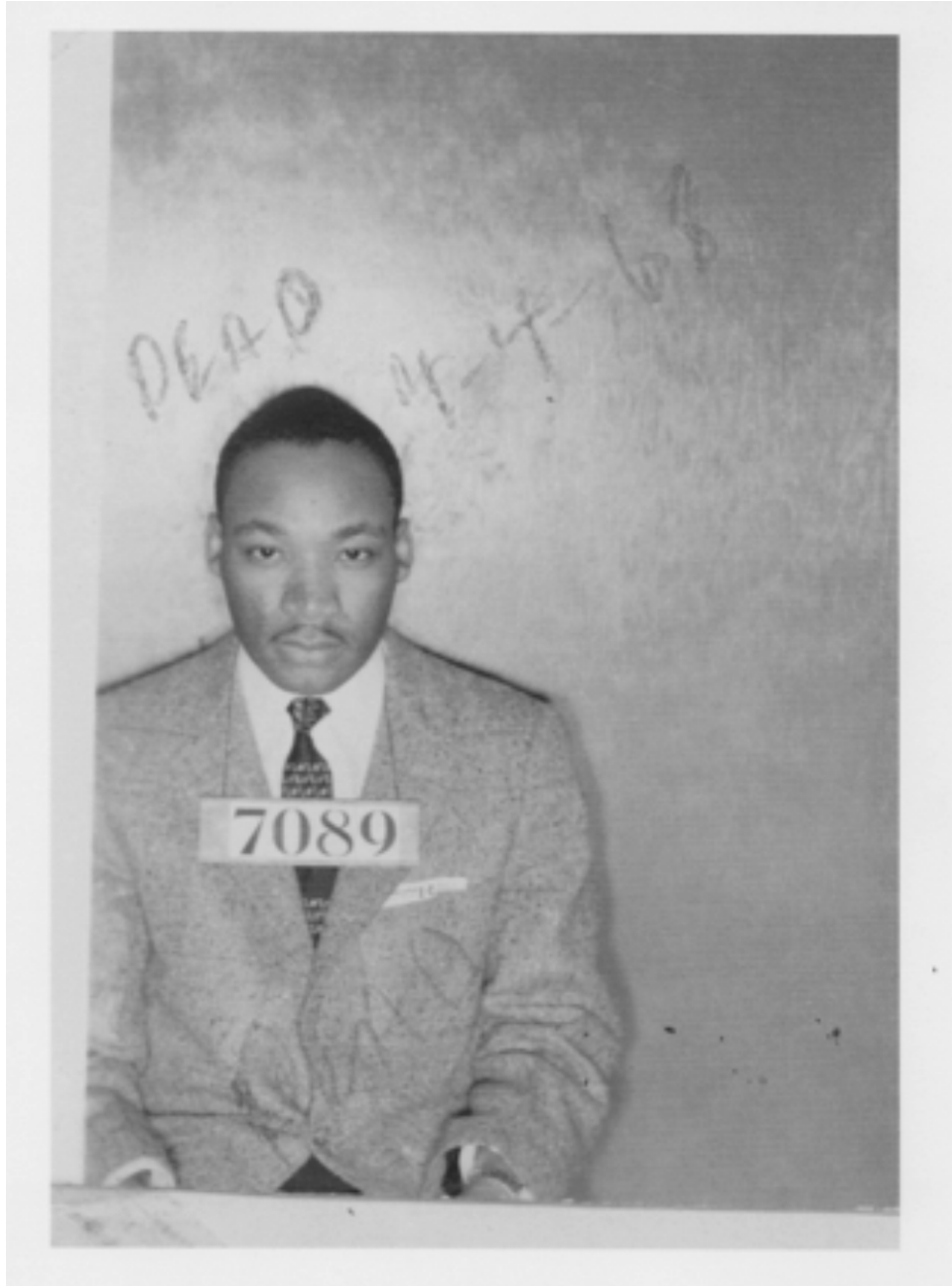
Hermann Goering



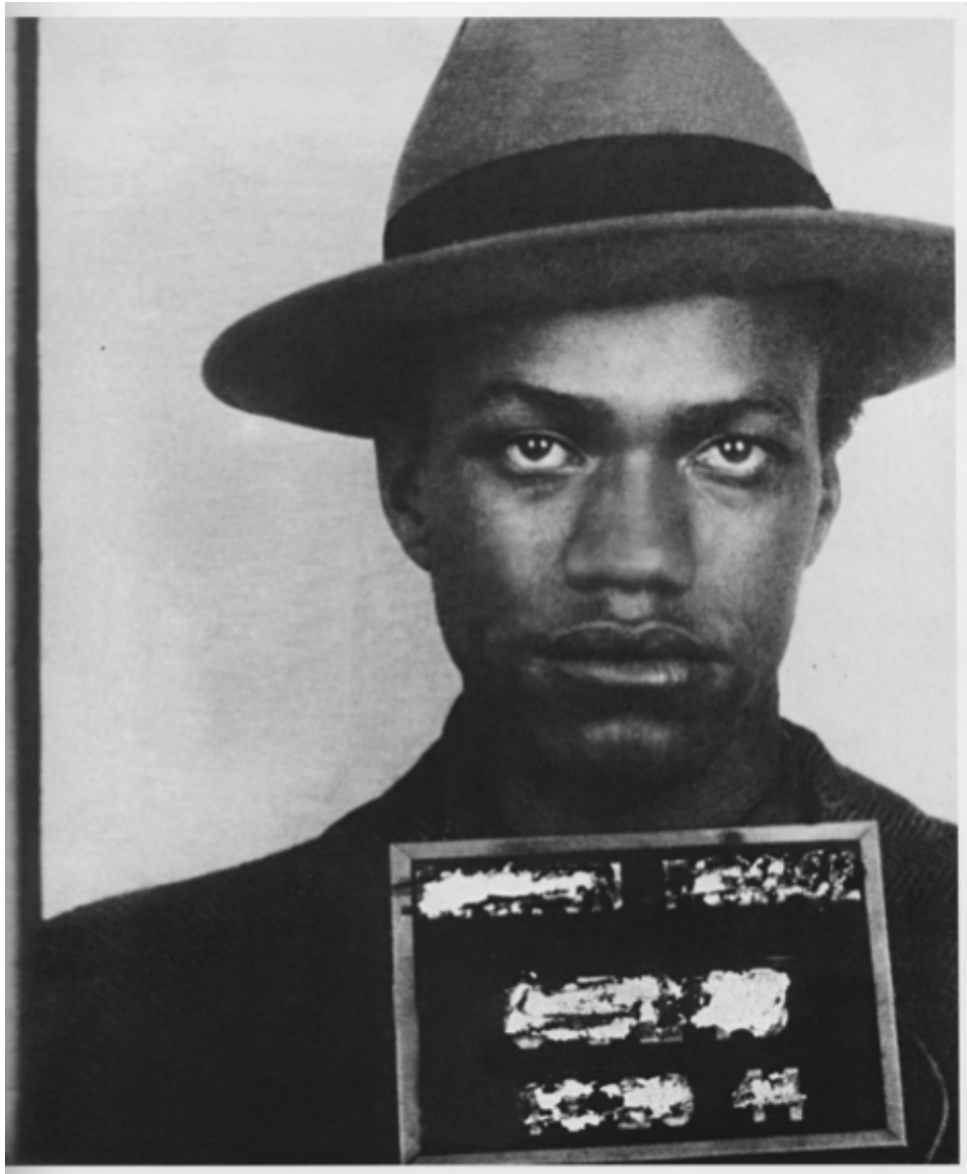
Julius and Ethel Rosenberg



Rosa Parks



Martin Luther King, Jr.



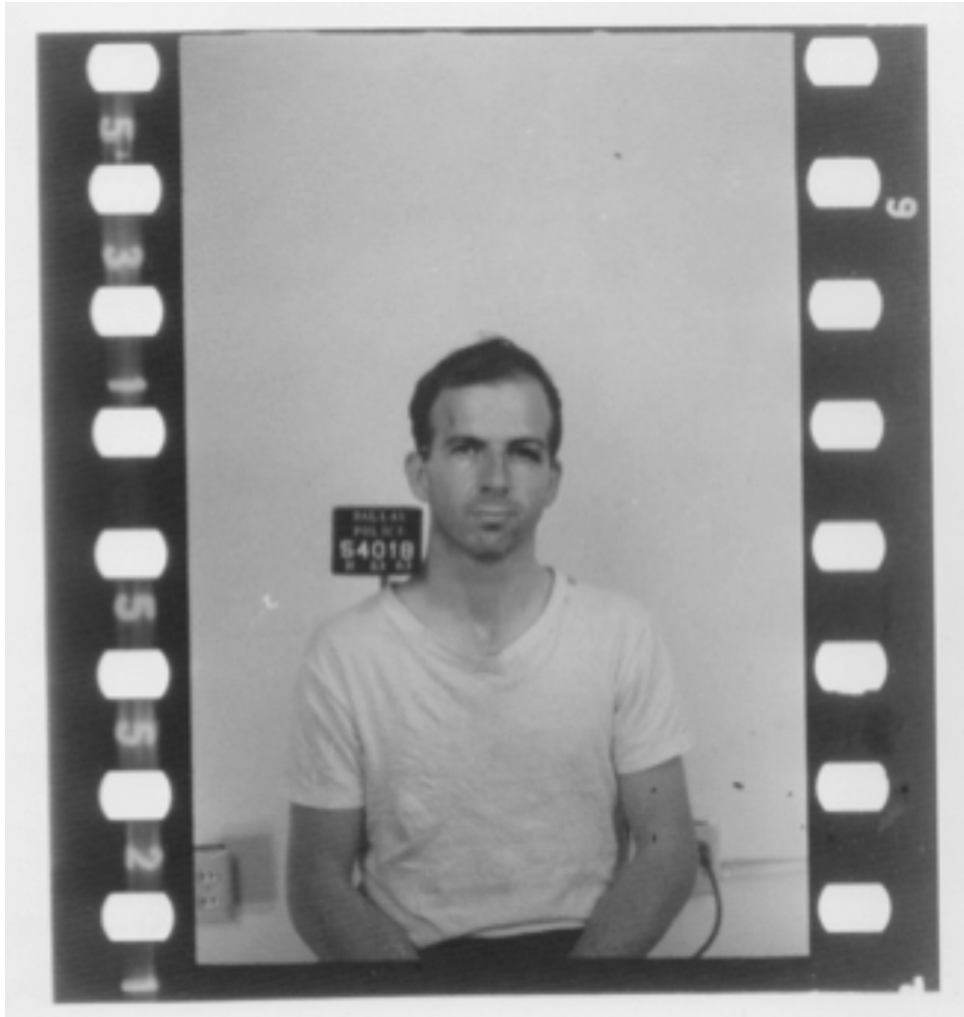
Malcolm X



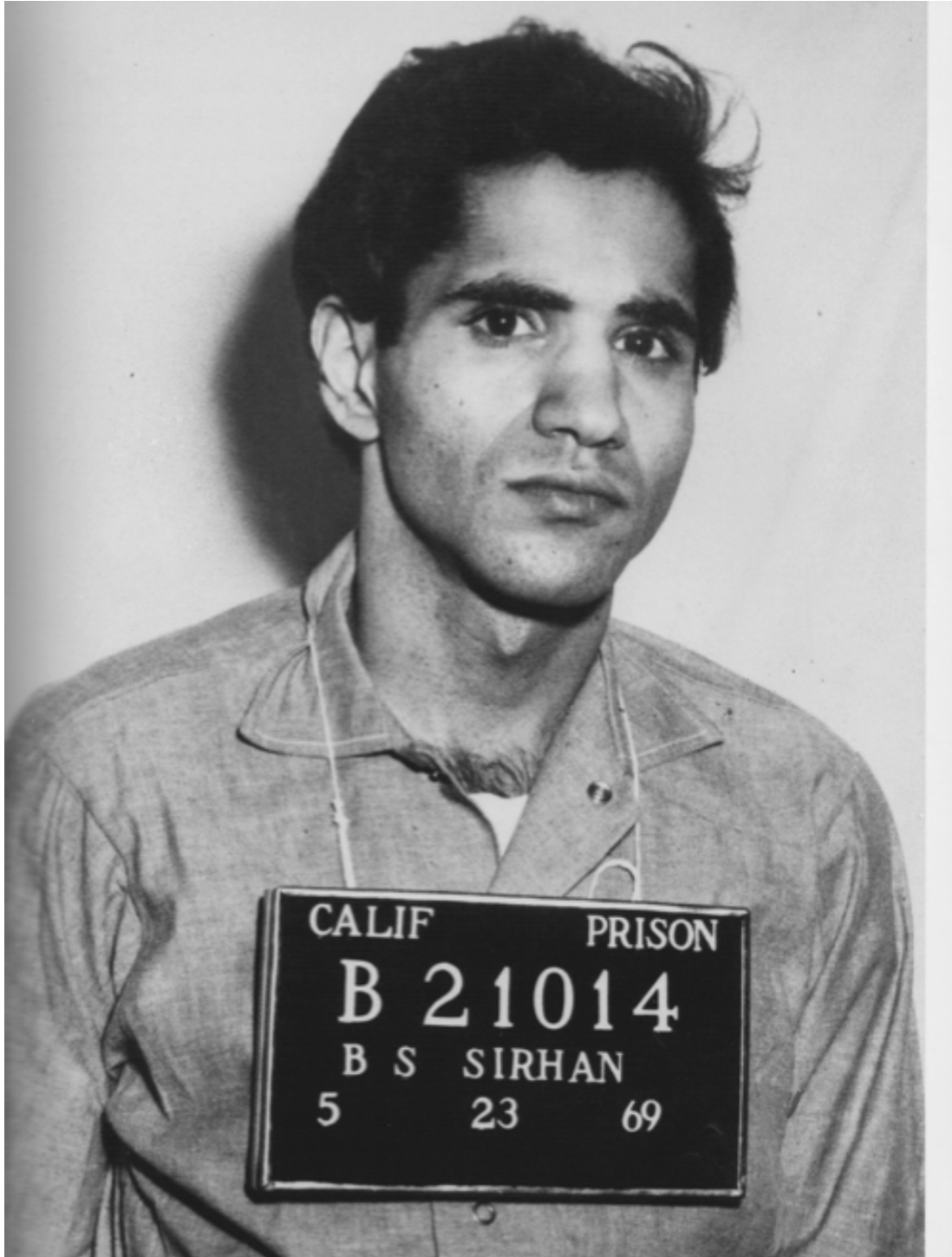
Janis Joplin



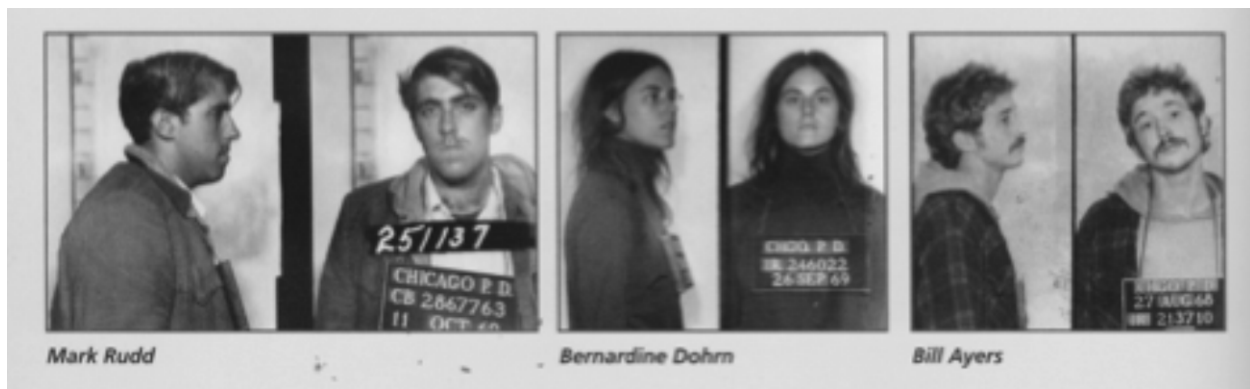
Jane Fonda



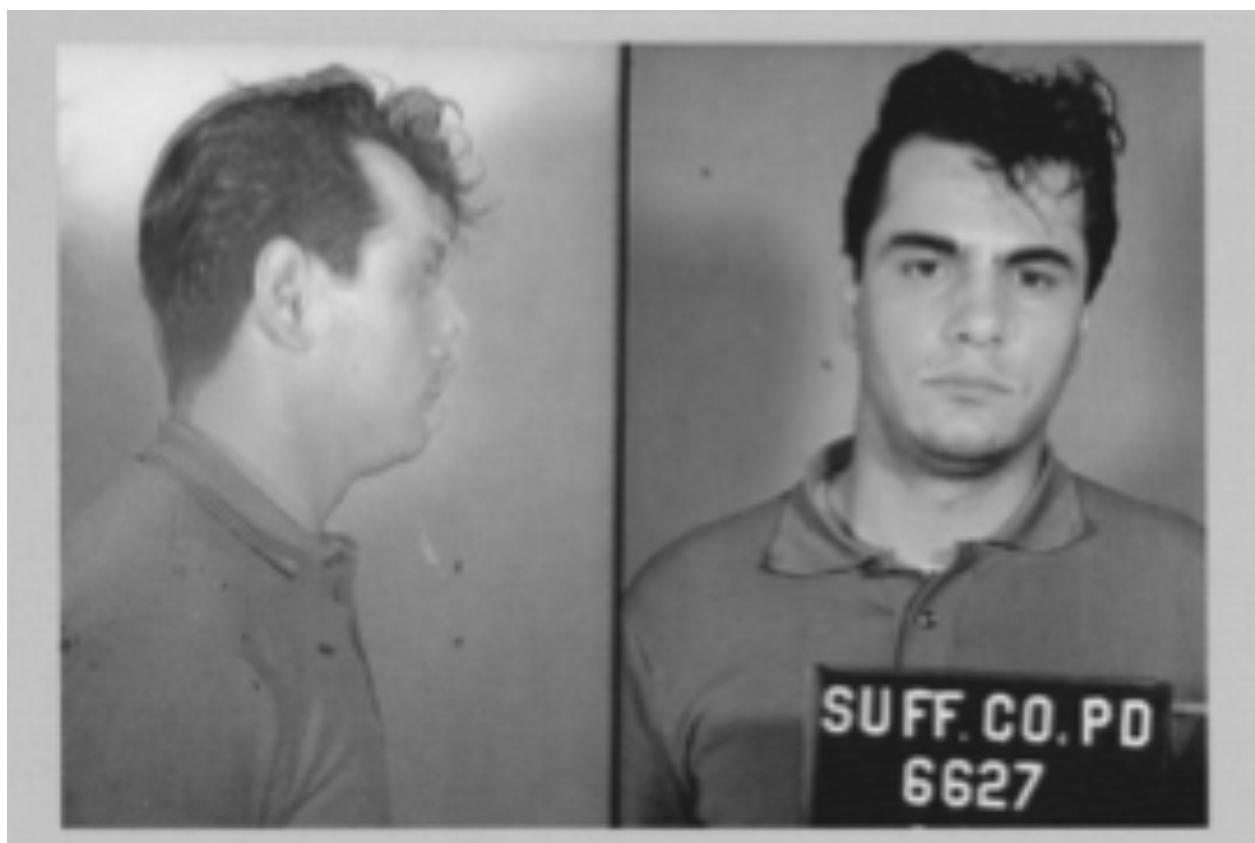
Lee Harvey Oswald



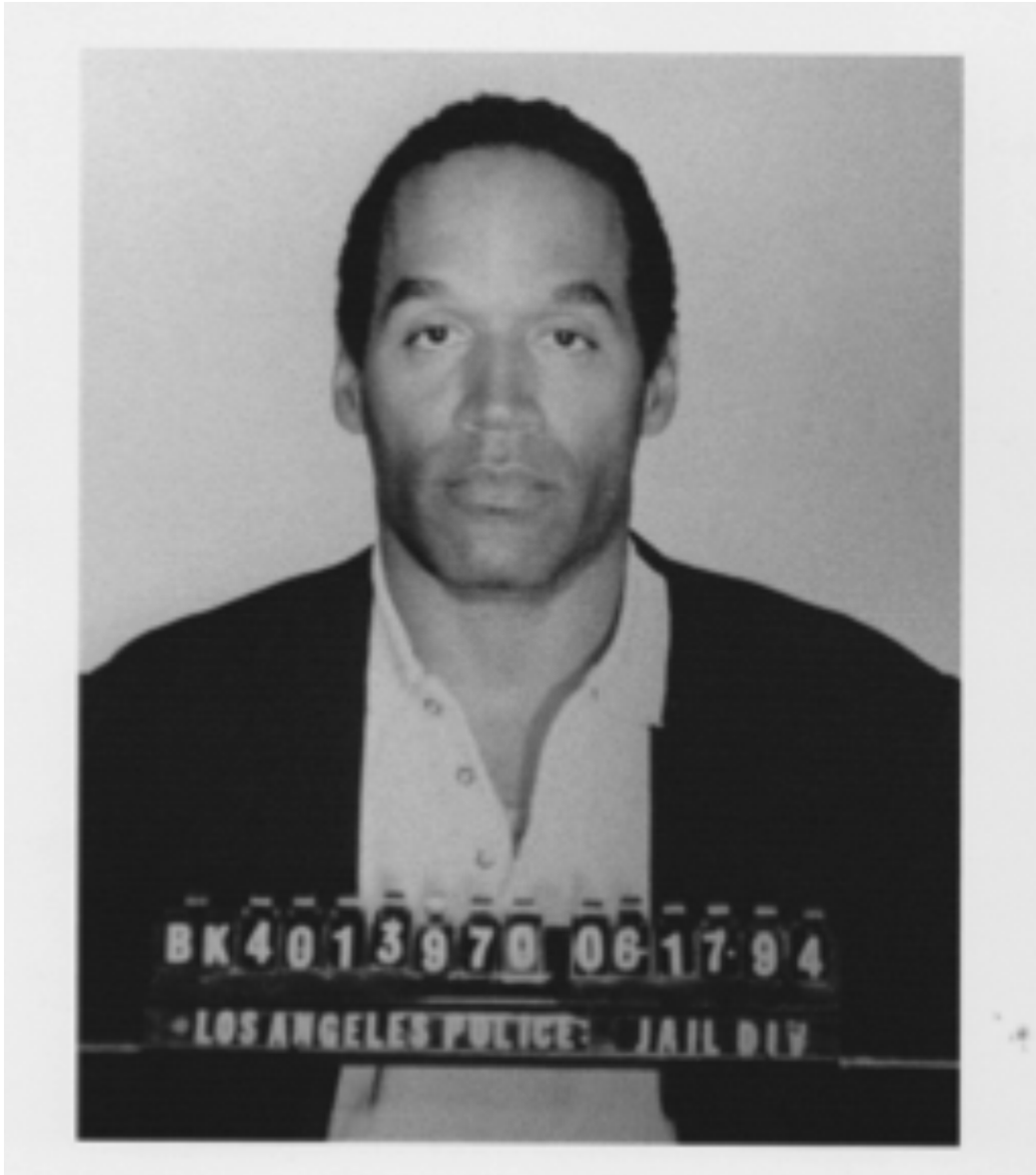
Sirhan Sirhan



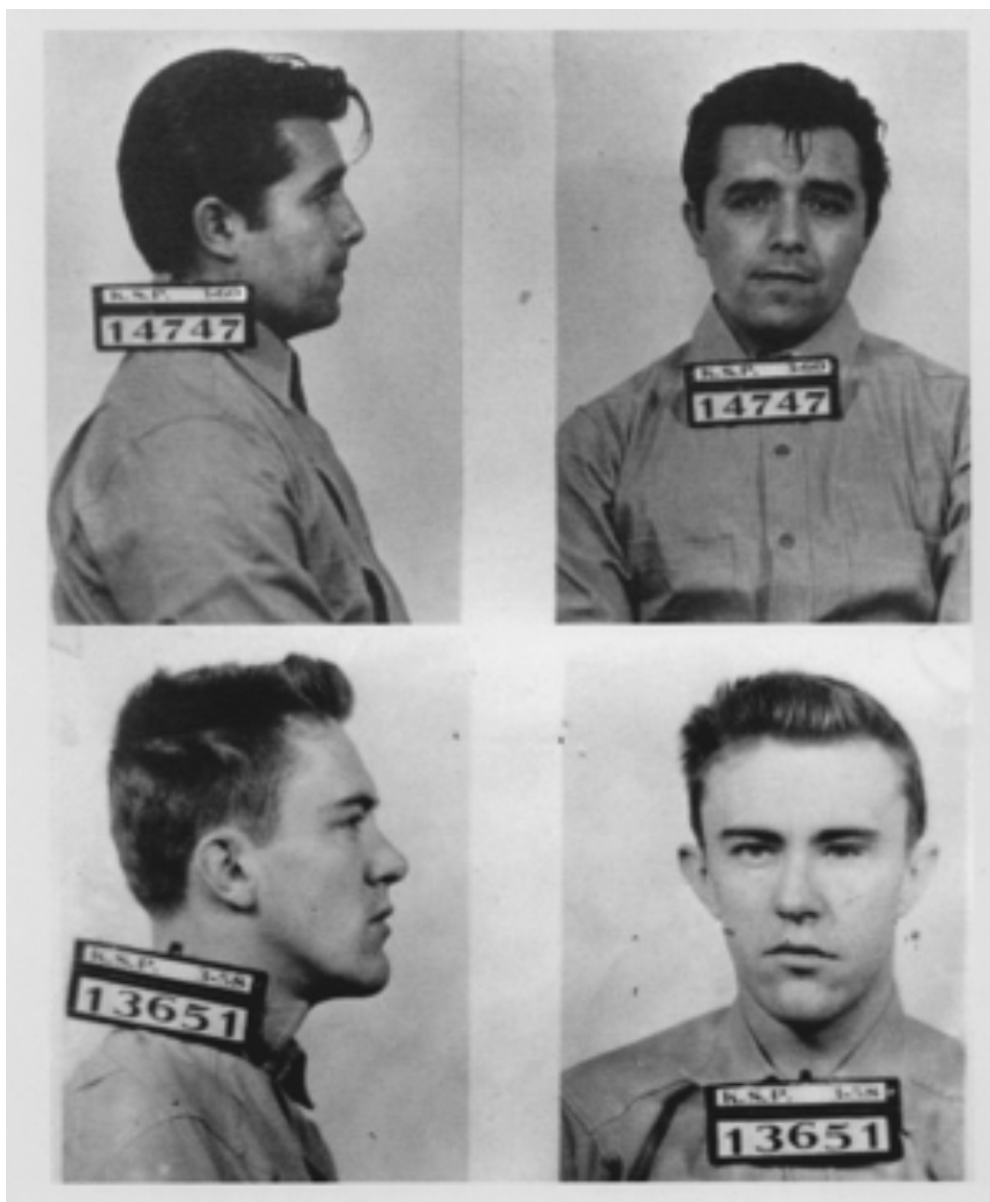
Members of The Weathermen



John Gotti



O.J. Simpson



Perry Smith
Richard Hickock

APPENDIX E¹⁶

THE FBI
FEDERAL BUREAU OF INVESTIGATION

Stories

Home • News • Stories • December • The Hunt for Roger "The Terrible" Touhy and His Gang

Roger "The Terrible" Touhy and other violent criminals escaped from a penitentiary in Illinois in 1942.

A Byte Out of History

The Hunt for Roger "The Terrible" Touhy and His Gang

Story Index

By Date

By Subject

- Act Theft
- Civil Rights
- Counterterrorism
- Crimes Against Children
- Criminal Justice Information Services
- Cyber Crimes
- Director/FBI Leadership
- Field Cases
- Foreign Counterintelligence
- General
- History
- Intelligence
- International
- Lab/Operational Technology
- Linguist/Translation Program
- Major Threats/Violent Crime
- Organized Crime/Drugs
- Partnerships
- Public/Community Outreach
- Public Corruption
- Recruiting/Diversity
- Responding to Your Concerns
- Technology
- Training
- White-Collar Crime

12/24/12

The criminal plans were laid, in the early morning hours of December 29, 1942—70 years ago this month—FBI agents surrounded an apartment building on Kenmore Avenue in Chicago filled with a dangerous band of escaped convicts. With searchlights illuminating the building and nearby neighbors evacuated, an agent with a loudspeaker called for the men to surrender. Even Director J. Edgar Hoover was on hand.

At the time, America was at war—fighting in theaters in Europe and the Far East during World War II. The FBI was supporting the effort in many ways, protecting the homeland from espionage and sabotage and supplying valuable intelligence to its partners and to national leaders. One of its other wartime responsibilities was enforcing a newly enhanced Selective Service Act, which subjected all men of certain ages to either enter or register for military service. As it turns out, this law was the legal hook enabling the FBI to hunt down these criminals.

Apartment building on Kenmore Avenue in Chicago.

The prison break had taken place nearly three months earlier, on October 9. A group that included Roger "The Terrible" Touhy, Basil "The Owl" Banghart, Edward Darlak, and several other violent criminals escaped from the Stateville Penitentiary at Joliet, Illinois. They had guns smuggled in, cased the prison from all angles, and executed a well-planned break out.

Stealing a guard's car, they sped away. Hours later, they abandoned the car openly in the middle of a small suburb east of Chicago. It was their signal to the FBI that they didn't want to take the car across state lines and trigger Bureau jurisdiction. But they didn't realize that they would soon run afoul of the Selective Service Act. On October 16, one week after the no longer imprisoned criminals failed to register for the draft, the FBI entered the case.

The FBI had numerous leads to begin its search for Touhy and his gang. The Bureau knew Touhy well, arresting him nine years earlier on suspicion of being involved in the kidnapping of the president of a Minnesota brewing company. While in custody, Illinois courts convicted Touhy of abducting a rival criminal named John "Jake the Barber" Factor. Touhy was sent to prison in 1934.

Roger Touhy, Edward Darlak, and Basil Banghart were captured on December 29, 1942.

Life on the run was not easy, and the gang began to have problems. Two members disobeyed the gang's rules and were nearly beaten to death. The gang moved often and was careful to cover its tracks. The Bureau figured that Touhy and his cohorts would use IDs stolen through pickpockets and muggings and worked with local police to collate these crimes and look for those assuming victims' identities.

It worked, leading to the capture of the first fugitive. More success followed. On December 16, agents observed a known acquaintance of one gang member participating in a suspicious meeting with an unknown contact. Agents tracked the unknown man, which led them to two more gang

members. John died in a shootout with Bureau agents and ultimately in Touhy, Banghart and Darlak

¹⁶ *The Hunt for Roger “The Terrible” Touhy and His Gang*, fbi.gov (Dec. 24, 2012), <http://1.usa.gov/1wOp89s>

CRIMINAL INVESTIGATIONS: Solicitation | Murder For Hire


DOCTOR DRURY

The Crime and Investigation

Temporarily, Dr. Carl Drury asked a known ATF Agent to locate a hit man for him in 2003. Drury and his wife had been having marital and financial difficulties, the understanding had a \$1 million insurance policy on her life. Drury provided an undercover ATF Agent, posing as a hit man, with a firearm, which, ironically, belonged to him, Drury.

The Arrest and Adjudication

Drury provided details of his spouse's daily routine. When he telephoned the undercover Agent with the instruction to "look up," ATF and the Georgia Bureau of Investigation arrested him. Connected at the federal crime, he received 216 months imprisonment and a \$100,000 fine. His appeal to the U.S. Supreme Court was denied.



DOCTOR DRURY
DOCTOR DRURY
DOCTOR DRURY
DOCTOR DRURY


REVEREND CROSSLEY

The Crime and Investigation


Reverend George Crossley, a televangelist and radio host, indulged in a 1996 instrumental affair. The woman's husband complained to the radio station. Concerned about his reputation, Crossley decided to hire a hit man, and provided an undercover ATF Agent with a firearm.

The Arrest and Adjudication

During a meeting with the undercover Agent, Crossley discussed the murder plan. ATF and Seminole County Florida Sheriff's deputies then arrested him for solicitation to commit capital murder. He was sentenced to 54 months imprisonment.



REVEREND CROSSLEY
REVEREND CROSSLEY
REVEREND CROSSLEY
REVEREND CROSSLEY



Crossley guilty of hiring hit man

Alleged murder-for-hire plot put debt blame on targeted wife


JAMES MICKELSON

The Crime and Investigation

Answering trial for pending federal firearms charges, James Mickelson made a tactical decision. He offered \$10,000 for the murder of his wife. ATF considered informants, who would be witnesses to his criminal case. He also had obtained the purchase of a firearm through an intermediary. Mickelson was later electronically recorded admitting his intentions and paying up when he thought one of the murders had been carried out.

The Arrest and Adjudication

After he was arrested by ATF Agents, Mickelson pled guilty to a charge of conspiracy to kill a witness in a federal criminal case. He was sentenced to 132 months imprisonment. Rick Coulter, Mickelson's intermediary, pled guilty to lesser charges and received 12 months imprisonment.



JAMES MICKELSON
JAMES MICKELSON
JAMES MICKELSON
JAMES MICKELSON

UNDERCOVER AGENT: What's the deal with this Doc? The girl he is \$1,000 and a gun.

SUSPECT: She drives a red 97 Mitsubishi. She goes to work at 8:00 AM, not, not, and if you can't do it, she works late each day.

UNDERCOVER AGENT: Are you going to work on something, get out of town, get a job, and not before time happens?

SUSPECT: I can't sleep. I'm sure. We are strongly again.

UNDERCOVER AGENT: So you don't have a problem with how it goes down—mugging?

SUSPECT: Yeah, it just needs to be an accident.


UNDERCOVER AGENT: Have you got the gun?

SUSPECT: I don't even know what caliber it is.

UNDERCOVER AGENT: You want me to get it done tomorrow?

SUSPECT: Well, I was thinking if it's you, if you could make her on the way back, it's be a good, good time.

UNDERCOVER AGENT: Okay.



BELCOURT


Belcourt man charged with hiring hitman to kill witnesses

The Crime and Investigation

During his 2002 incarceration in a federal detention center, Everett Bell solicited for the murder of a federal prosecutor. His goal: to wear off witnesses planning to testify against him. Bell met with an undercover ATF Agent and was recorded declaring his desire to have the prosecutor murdered.

The Arrest and Adjudication

In 2003, Bell was indicted by a federal grand jury on charges of solicitation to commit murder and solicitation of a crime of violence. He pled guilty and was sentenced to 270 months imprisonment.

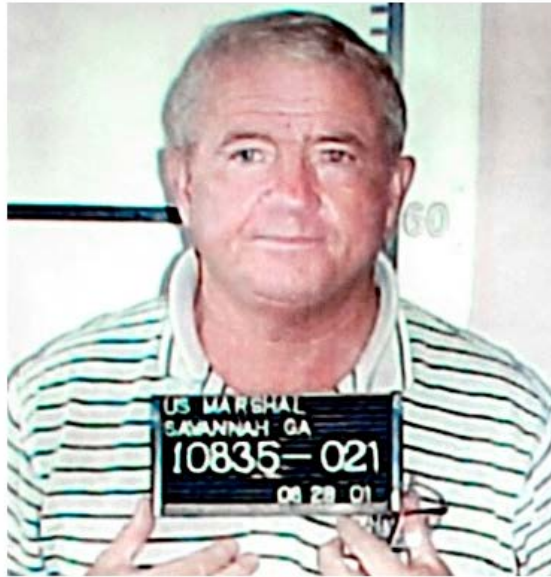


EVERETT BELL
EVERETT BELL
EVERETT BELL
EVERETT BELL

¹⁷ *Murder for Hire*, atf.gov, <http://1.usa.gov/1xtKLAX> (last accessed Jan. 5, 2015)

The Arrest and Adjudication

Drury provided details of his spouse's daily routine. When he telephoned the undercover Agent with the instruction to "finish up," ATF and the Georgia Bureau of Investigation arrested him. Convicted of five federal crimes, he received 204 months imprisonment and a \$100,000 fine. His appeal to the U.S. Supreme Court was denied.



APPENDIX G

IDENTITY AND INTEREST OF *AMICI CURIAE*

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970.

With some 500 members, American Society of News Editors (“ASNE”) is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

The Associated Press (“AP”) is a news cooperative organized under the Not-for-Profit Corporation Law of New York, and owned by its 1,500 U.S. newspaper members. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content providers. The

AP operates from 300 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

Association of Alternative Newsmedia ("AAN") is a not-for-profit trade association for 130 alternative newspapers in North America, including weekly papers like The Village Voice and Washington City Paper. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

The Association of American Publishers, Inc. ("AAP") is the national trade association of the U.S. book publishing industry. AAP's members include most of the major commercial book publishers in the United States, as well as smaller and nonprofit publishers, university presses and scholarly societies. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, postsecondary and professional markets, scholarly journals, computer software and electronic products and services. The Association represents an industry whose very existence depends upon the free exercise of rights guaranteed by the First Amendment.

Bloomberg L.P. operates Bloomberg News, a 24-hour global news service based in New York with more than 2,400 journalists in more than 150 bureaus around the world. Bloomberg supplies real-time business, financial, and legal news

to the more than 319,000 subscribers to the Bloomberg Professional service worldwide and is syndicated to more than 1000 media outlets across more than 60 countries. Bloomberg television is available in more than 340 million homes worldwide and Bloomberg radio is syndicated to 200 radio affiliates nationally. In addition, Bloomberg publishes Bloomberg Businessweek, Bloomberg Markets and Bloomberg Pursuits magazines with a combined circulation of 1.4 million readers and Bloomberg.com and Businessweek.com receive more than 24 million visitors each month. In total, Bloomberg distributes news, information, and commentary to millions of readers and listeners each day, and has published more than one hundred million stories.

Cable News Network, Inc. ("CNN"), a division of Turner Broadcasting System, Inc., a Time Warner Company, is the most trusted source for news and information. Its reach extends to the following: nine cable and satellite television networks; one private place-based network; two radio networks; wireless devices around the world; CNN Digital Network, the No. 1 network of news websites in the United States; CNN Newsource, the world's most extensively syndicated news service; and strategic international partnerships within both television and the digital media.

The California Newspaper Publishers Association ("CNPA") is a nonprofit trade association representing the interests of nearly 850 daily, weekly and student

newspapers throughout California. For over 130 years, CNPA has worked to protect and enhance the freedom of speech guaranteed to all citizens and to the press by the First Amendment of the United States Constitution and Article 1, Section 2 of the California Constitution. CNPA has dedicated its efforts to protect the free flow of information concerning government institutions in order for newspapers to fulfill their constitutional role in our democratic society and to advance the interest of all Californians in the transparency of government operations.

Cox Media Group, Inc. is an integrated broadcasting, publishing, direct marketing and digital media company. Its operations include 15 broadcast television stations, a local cable channel, a leading direct marketing company, 85 radio stations, eight daily newspapers and more than a dozen non-daily print publications and more than 100 digital services.

Dow Jones & Company, Inc., a global provider of news and business information, is the publisher of The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world's largest newsgathering operations, with more than 1,800 journalists in nearly fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk

& Compliance, and Dow Jones VentureSource. Dow Jones is a News Corporation company.

The E.W. Scripps Company is a diverse, 131-year-old media enterprise with interests in television stations, newspapers, local news and information websites and licensing and syndication. The company's portfolio of locally focused media properties includes: 19 TV stations (ten ABC affiliates, three NBC affiliates, one independent and five Spanish-language stations); daily and community newspapers in 13 markets; and the Washington-based Scripps Media Center, home of the Scripps Howard News Service.

First Amendment Coalition is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

First Look Media, Inc. is a new non-profit digital media venture that produces The Intercept, a digital magazine focused on national security reporting. Forbes LLC is the publisher of Forbes and other leading magazines, including Forbes Life and Forbes Asia, as well as an array of investment newsletters and the

leading business website, Forbes.com. Forbes has been covering American and global business since 1917.

Hearst Corporation is one of the nation's largest diversified media companies. Its major interests include the following: ownership of 15 daily and 38 weekly newspapers, including the *Houston Chronicle*, *San Francisco Chronicle* and *Albany (N.Y.) Times Union*; nearly 300 magazines around the world, including *Good Housekeeping*, *Cosmopolitan* and *O, The Oprah Magazine*; 29 television stations, which reach a combined 18% of U.S. viewers; ownership in leading cable networks, including Lifetime, A&E and ESPN; business publishing, including a joint venture interest in Fitch Ratings; and Internet businesses, television production, newspaper features distribution and real estate.

The McClatchy Company, through its affiliates, is the third-largest newspaper publisher in the United States with 29 daily newspapers and related websites as well as numerous community newspapers and niche publications. MediaNews Group's more than 800 multi-platform products reach 61 million Americans each month across 18 states.

National Newspaper Association is a 2,400 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Columbia, Missouri.

The National Press Club is the world's leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

The National Press Photographers Association ("NPPA") is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA's approximately 7,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

National Public Radio, Inc. is an award-winning producer and distributor of noncommercial news programming. A privately supported, not-for-profit membership organization, NPR serves a growing audience of more than 26 million listeners each week by providing news programming to 285 member stations that are independently operated, noncommercial public radio stations. In addition, NPR provides original online content and audio streaming of its news programming.

NPR.org offers hourly newscasts, special features and 10 years of archived audio and information.

New England First Amendment Coalition is a non-profit organization working in the six New England states to defend, promote and expand public access to government and the work it does. The coalition is a broad-based organization of people who believe in the power of transparency in a democratic society. Its members include lawyers, journalists, historians and academicians, as well as private citizens and organizations whose core beliefs include the principles of the First Amendment. The coalition aspires to advance and protect the five freedoms of the First Amendment, and the principle of the public's right to know in our region. In collaboration with other like-minded advocacy organizations, NEFAC also seeks to advance understanding of the First Amendment across the nation and freedom of speech and press issues around the world.

New England Newspaper and Press Association, Inc. ("NENPA") is the regional association for newspapers in the six New England States (including Massachusetts). NENPA's corporate office is in Dedham, Massachusetts. Its purpose is to promote the common interests of newspapers published in New England. Consistent with its purposes, NENPA is committed to preserving and ensuring the open and free publication of news and events in an open society.

The New England Society of Newspaper Editors (NESNE) has, since 1955, served as the premier organization comprising editors at newspapers, broadcast stations, and Internet sites throughout the six New England states. NESNE advocates on behalf of its more than 1,000 members to provide training through workshops and seminars, help them grow their audience, present awards to recognize excellence in our industry and lend assistance and with Open Meeting and First Amendment and public records law issues.

The New York Times Company is the publisher of *The New York Times* and *The International Times*, and operates the news website nytimes.com. News Corporation is a global, diversified media and information services company focused on creating and distributing authoritative and engaging content to consumers throughout the world. The company comprises leading businesses across a range of media, including: news and information services, digital real estate services, book publishing, digital education, and sports programming and pay-TV distribution.

Newspaper Association of America (“NAA”) is a nonprofit organization representing the interests of more than 2,000 newspapers in the United States and Canada. NAA members account for nearly 90% of the daily newspaper circulation in the United States and a wide range of non-daily newspapers. The Association focuses on the major issues that affect today’s newspaper industry, including

protecting the ability of the media to provide the public with news and information on matters of public concern.

North Jersey Media Group Inc. (“NJMG”) is an independent, family-owned printing and publishing company, parent of two daily newspapers serving the residents of northern New Jersey: *The Record* (Bergen County), the state’s second-largest newspaper, and the *Herald News* (Passaic County). NJMG also publishes more than 40 community newspapers serving towns across five counties and a family of glossy magazines, including (201) Magazine, Bergen County’s premiere magazine. All of the newspapers contribute breaking news, features, columns and local information to NorthJersey.com. The company also owns and publishes Bergen.com showcasing the people, places and events of Bergen County.

Online News Association (“ONA”) is the world’s largest association of online journalists. ONA’s mission is to inspire innovation and excellence among journalists to better serve the public. ONA’s more than 2,000 members include news writers, producers, designers, editors, bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA hosts the annual Online News Association conference and administers the Online Journalism Awards. ONA is dedicated to advancing the interests of digital journalists and the public generally by encouraging editorial

integrity and independence, journalistic excellence and freedom of expression and access.

Radio Television Digital News Association (“RTDNA”) is the world’s largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper *The Seattle Times*, together with *The Issaquah Press*, *Yakima Herald-Republic*, *Walla Walla Union-Bulletin*, *Sammamish Review* and *Newcastle-News*, all in Washington state.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

Stephens Media LLC is a nationwide newspaper publisher with operations from North Carolina to Hawaii. Its largest newspaper is the *Las Vegas Review-Journal*.

Time Inc. is the largest magazine publisher in the United States. It publishes over 90 titles, including *Time*, *Fortune*, *Sports Illustrated*, *People*, *Entertainment Weekly*, *InStyle* and *Real Simple*. Time Inc. publications reach over 100 million adults, and its websites, which attract more visitors each month than any other publisher, serve close to two billion page views each month.

Tribune Publishing Company is one of the country's leading publishing companies. Tribune Publishing's ten daily publications include the Chicago Tribune, Los Angeles Times, The Baltimore Sun, Sun Sentinel (South Florida), Orlando Sentinel, Hartford Courant, The Morning Call, Daily Press, Capital Gazette, and Carroll County Times. Popular news and information websites, including www.chicagotribune.com and www.latimes.com, complement Tribune Publishing's publishing properties and extend the company's nationwide audience.

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

WP Company LLC (d/b/a The Washington Post) publishes one of the nation's most prominent daily newspapers, as well as a website,

www.washingtonpost.com, that is read by an average of more than 20 million unique visitors per month.

APPENDIX H

Corporate Disclosure Statement of *Amici Curiae*

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

American Society of News Editors is a private, non-stock corporation that has no parent.

The Associated Press is a global news agency organized as a mutual news cooperative under the New York Not-For-Profit Corporation law. It is not publicly traded.

Association of Alternative Newsmedia has no parent corporation and does not issue any stock.

The Association of American Publishers, Inc. is a nonprofit organization that has no parent and issues no stock.

Bloomberg L.P.'s parent corporation is Bloomberg Inc., which is privately held, and no publicly held corporation owns 10% or more of its stock.

Cable News Network, Inc. is a wholly owned subsidiary of Turner Broadcasting System, Inc., which itself is a wholly owned subsidiary of Time Warner Inc., a publicly traded corporation.

California Newspaper Publishers Association is a mutual benefit corporation organized under state law for the purpose of promoting and preserving the newspaper industry in California.

Cox Media Group, Inc. is privately owned, and no publicly held corporation owns 10% or more of its stock.

Dow Jones is a Delaware corporation with its principal place of business in New York. News Corporation, a publicly held company, is the indirect parent corporation of Dow Jones. Ruby Newco, LLC, a subsidiary of News Corporation and a non-publicly held company, is the direct parent of Dow Jones. No publicly held company directly owns 10% or more of the stock of Dow Jones.

The E.W. Scripps Company is a publicly traded company with no parent company. No individual stockholder owns more than 10% of its stock.

First Amendment Coalition is a nonprofit organization with no parent company. It issues no stock and does not own any of the party's or amicus' stock.

First Look Media, Inc. is a non-profit non-stock corporation organized under the laws of Delaware. No publicly-held corporation holds an interest of 10% or more in First Look Media, Inc.

Forbes has no parent corporation and no company owns 10% or more of its stock.

Hearst Corporation is privately held and no publicly held corporation owns 10% or more of Hearst Corporation.

The McClatchy Company is publicly traded on the New York Stock Exchange under the ticker symbol MNI. Contrarius Investment Management Limited owns 10% or more of the common stock of The McClatchy Company.

MediaNews Group, Inc. is a privately held company. No publicly-held company owns ten percent or more of its equity interests.

National Newspaper Association is a non-stock nonprofit Missouri corporation. It has no parent corporation and no subsidiaries.

The National Press Club is a not-for-profit corporation that has no parent company and issues no stock.

National Press Photographers Association is a 501(c)(6) nonprofit organization with no parent company. It issues no stock and does not own any of the party's or amicus' stock.

National Public Radio, Inc. is a privately supported, not-for-profit membership organization that has no parent company and issues no stock.

New England First Amendment Coalition has no parent corporation and no stock.

New England Newspaper and Press Association, Inc. is a non-profit corporation. It has no parent, and no publicly held corporation owns 10% or more of its stock.

The New England Society of Newspaper Editors has no parent corporation and does not issue any stock.

The New York Times Company is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company owns 10% or more of its stock.

News Corporation has no parent company and no publicly held company owns 10% or more of its shares.

Newspaper Association of America is a nonprofit, non-stock corporation organized under the laws of the commonwealth of Virginia. It has no parent company.

North Jersey Media Group Inc. is a privately held company owned solely by Macromedia Incorporated, also a privately held company.

Online News Association is a not-for-profit organization. It has no parent corporation, and no publicly traded corporation owns 10% or more of its stock.

Radio Television Digital News Association is a nonprofit organization that has no parent company and issues no stock.

The Seattle Times Company: The McClatchy Company owns 49.5% of the voting common stock and 70.6% of the nonvoting common stock of The Seattle Times Company.

Society of Professional Journalists is a non-stock corporation with no parent company.

Stephens Media LLC is a privately owned company with no affiliates or subsidiaries that are publicly owned.

Time Inc. is a publicly traded corporation. No publicly held corporation owns 10% or more of its stock.

Tribune Publishing is publicly held. Oaktree Tribune, L.P. owns 10 percent or more of Tribune Publishing Company's stock.

The Tully Center for Free Speech is a subsidiary of Syracuse University.

WP Company LLC d/b/a The Washington Post is a wholly owned subsidiary of Nash Holdings LLC. Nash Holdings LLC is privately held and does not have any outstanding securities in the hands of the public.

APPENDIX I

Of Counsel for *Amici Curiae*

Kevin M. Goldberg
Fletcher, Heald & Hildreth, PLC
1300 N. 17th St., 11th Floor
Arlington, VA 22209
Counsel for American Society of News Editors
Counsel for Association of Alternative Newsmedia

Karen Kaiser
General Counsel
The Associated Press
450 W. 33rd Street
New York, NY 10001

Jonathan Bloom
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Counsel for The Association of American Publishers, Inc.

Randy L. Shapiro
Global Media Counsel
Bloomberg LP
731 Lexington Avenue
New York, NY 10022

David C. Vigilante
Johnita P. Due
Cable News Network, Inc.
1 CNN Center
Atlanta, GA 30303

Jim Ewert
General Counsel
California Newspaper Publishers Association
2000 O Street, Suite 120
Sacramento, California 95811

Lance Lovell
Managing Attorney, Disputes
Cox Media Group, Inc.
6205 Peachtree Dunwoody Road
Atlanta, GA 30328

Mark H. Jackson
Jason P. Conti
Jacob P. Goldstein
Dow Jones & Company, Inc.
1211 Avenue of the Americas
New York, NY 10036
Counsel for Dow Jones & Company, Inc.

David M. Giles
Vice President/
Deputy General Counsel
The E.W. Scripps Company
312 Walnut St., Suite 2800
Cincinnati, OH 45202

Peter Scheer
First Amendment Coalition
534 Fourth St., Suite B
San Rafael, CA 94901

Lynn Oberlander
General Counsel, Media Operations
First Look Media, Inc.
162 Fifth Avenue
8th Floor
New York, New York 10010
(347)-453-8111

MariaRosa Cartolano
General Counsel
Forbes Media LLC
60 Fifth Avenue
New York, NY 10011

Jonathan Donnellan
Kristina Findikyan
Hearst Corporation
Office of General Counsel
300 W. 57th St., 40th Floor
New York, NY 10019

Karole Morgan-Prager
Juan Cornejo
The McClatchy Company
2100 Q Street
Sacramento, CA 95816

David S. Bralow
General Counsel
MediaNews Group
448 Lincoln Highway
Fairless Hills, PA 19030

Tonda F. Rush
Counsel to National Newspaper Association
CNLC, LLC
200 Little Falls Street, Suite 405
Falls Church, VA 22046
(703) 237-9801 (p) (703) 237-9808 (fax)
tonda@nna.org

Charles D. Tobin
Holland & Knight LLP
800 17th Street, NW
Suite 1100
Washington, DC 20006
Counsel for The National Press Club

Mickey H. Osterreicher
1100 M&T Center, 3 Fountain Plaza,
Buffalo, NY 14203
Counsel for National Press Photographers Association

Jonathan Hart
Ashley Messenger
National Public Radio, Inc.
1111 North Capitol St. NE
Washington, D.C. 20002

Robert A. Bertsche (BBO #554333)
Prince Lobel Tye LLP
100 Cambridge Street
Boston, MA 02114
Counsel for the New England First Amendment Coalition
Counsel for New England Newspaper and Press Association, Inc.
Counsel for New England Society of Newspaper Editors

David McCraw
V.P./Assistant General Counsel
The New York Times Company
620 Eighth Avenue
New York, NY 10018

Mark H. Jackson
News Corporation
1211 Avenue of the Americas
New York, NY 10036
Counsel for News Corporation

Kurt Wimmer
Covington & Burling LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
Counsel for the Newspaper Association of America

Jennifer A. Borg
General Counsel
North Jersey Media Group Inc.
1 Garret Mountain Plaza
Woodland Park, NJ 07424

Michael Kovaka
Cooley LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Counsel for Online News Association

Kathleen A. Kirby
Wiley Rein LLP
1776 K St., NW
Washington, DC 20006
Counsel for Radio Television Digital News Association

Bruce D. Brown
Gregg P. Leslie
The Reporters Committee for Freedom of the Press
1101 Wilson Blvd., Suite 1100
Arlington, VA 22209

Bruce W. Sanford
Laurie A. Babinski
Baker & Hostetler LLP
1050 Connecticut Ave., NW
Suite 1100
Washington, DC 20036
Counsel for Society of Professional Journalists

Mark Hinueber
Vice President/General Counsel & Director of Human Resources
Stephens Media LLC
P.O. Box 70
Las Vegas, NV 89125

Andrew Lachow
Vice President and Deputy
General Counsel – Litigation
Time Inc.
1271 Avenue of the Americas
New York, NY 10020

Karen H. Flax
Tribune Publishing Company
435 North Michigan Ave.
Chicago, IL 60611
kflax@tribune.com

Jeff Glasser
Tribune Publishing Company
202 W. 1st Street
Los Angeles, CA 90012
jglasser@latimes.com

John B. Kennedy
James A. McLaughlin
Kalea S. Clark
The Washington Post
1150 15th Street, N.W.
Washington, D.C. 20071