

Current Criminal Law

SALLY RAMAGE®

www.sallyramage.net

Contents -

Volume 10, Issue 4, March 2018

***BOOK REVIEW-THE BAIL BOOK
CAMBRIDGE UNIVERSITY PRESS (2018) pgs 2-10**

***E-Commerce cartels**

Pgs 11-13

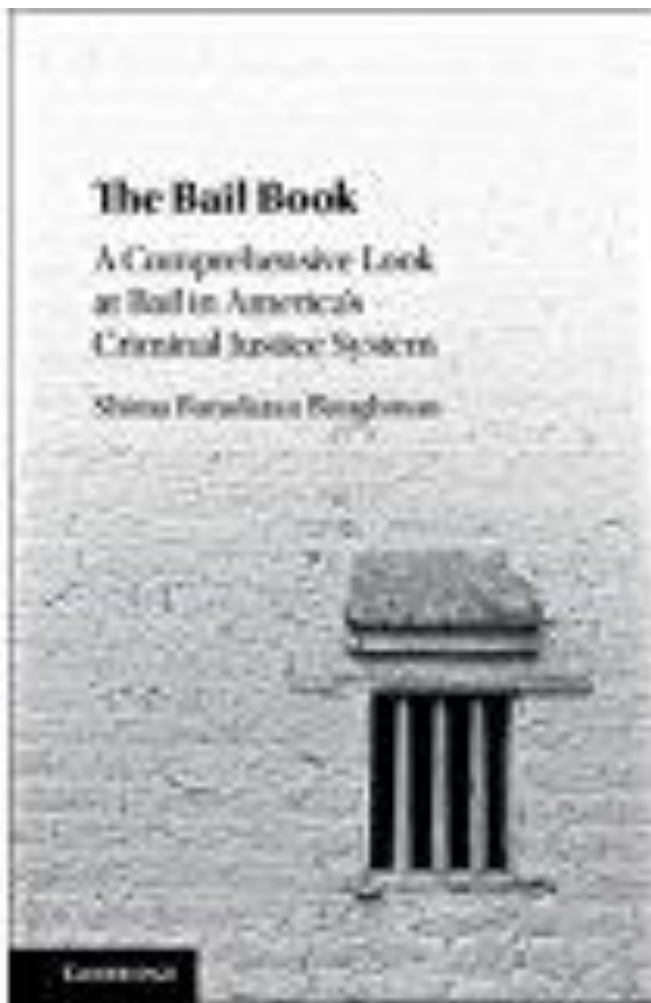
***MATTHEW FALDER-SEX PERVERT: JAILED FOR 32 YEARS**

Pgs 14 to 25

**The bail book
(A comprehensive look at bail in America's Criminal Justice System)**

**Shima Baradaran Baughman
Cambridge University Press (2018)
ISBN 978-1-107-13136-1**

Book review by Sally Ramage



Source: Google-Book cover

This book review began several weeks ago. It has been a largely pleasant read, mainly because law books rarely every use statistics or numerical comparisons, and from an accountancy background, I was happy to see it

in this book by Shima Baradaran Baughman, a professor of law at the University of Utah.



Source: Google- Ms Shima Baradaran Baughman, Law Professor, Utah University.

Introduction

I myself am a comparative criminal lawyer and so I welcomed a book that ‘looked at’ prisons and bail systems comparatively, as this author did by discussing the United States federal bail system and US states of

Columbia, Kentucky, New York, Mississippi, Wisconsin, Illinois, Oregon, Texas, Arizona, Colorado, alongside those of the United Kingdom (still part of the European Union), Canada, Russia, the European Union, Brazil, Chile, China, Gambia, Guatemala, Haiti, Iceland, Mexico, Sierra Leone, Tanzania, Thailand, Tunisia, Uruguay, Venezuela and Zimbabwe.

A full and comprehensive comparative examination would have taken a group of scholars to tackle and may one day take place. As it is, we enjoyed a conversational type browse through different states; different countries' bail regulations in place and has whetted the appetite to examine more closely some of the issues raised in this book. But then it can be argued that glancing around at other countries' criminal justice systems has made this work interesting.

The author's work concludes that:

***bail impacts mostly the poor;**

***in the US, pre-trial detention has increased by 72% over 30 years and many of these charged with '*minor property crimes, drug offences and other non-violent acts*' (at page 4);**

***besides arrest, bail is the most important criminal justice decision made today (see page 5);**

***jail conditions nationally in federal United States, ‘are dreadful, unequivocally worse than prison conditions, and individuals denied bail go directly to jail’ (see page 6);**

*** ‘poor jail conditions contribute greatly to a defendant’s incentive to plead guilty to get out of jail’ (see page 6);**

*** ‘defendants often lack access to any lawyer during this key pre-trial period’ (see page 7).**

The Bail book

There are eleven chapters and two appendices and as is the modern way, endnotes, rather than footnotes. The chapters in this bail book are titled:

- 1. History of bail in America.**
- 2. Bail as a Constitutional right.**
- 3. The Bail process.**
- 4. Bail and prediction of crime.**
- 5. Individual and societal costs of pre-trial detention.**
- 6. Race and bail in the criminal justice system.**
- 7. Bail and 6th Amendment right to counsel and jury trial.**
- 8. Pre-trial detention and terrorism on post 9/11 America.**
- 9. International bail.**
- 10. Money bail.**

11. Optimal bail: using constitutional and empirical tools to reform America's bail system.

Each of the above chapter titles is befitting of a book in its own right.

I was unhappy to see no table of cases, statutes, conventions etc and this embeds in my mind the conversational flavour of the book, especially as the author is a professor of law. Shima does, however, at the start of the introductory chapter, provide the reader with an explanation of the word *bail* in her introduction. She states that: '*Bail is the temporary release of a person awaiting trial for a crime.*'

Human Rights Instruments

Of course we know that there are 9 core international human rights instruments, with committees of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns whereas the Optional Protocol to the Convention against Torture establishes a committee of experts. These are :-International Convention on the Elimination of All Forms of Racial Discrimination- 1966; International Covenant on Civil and Political Rights-1966; International Covenant on Economic, Social and Cultural Rights-1966; Convention on the Elimination of All Forms of Discrimination against Women-1979; Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment-1984; Convention on the Rights of the Child-1989; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families-1990; International Convention for the Protection of All Persons from Enforced Disappearance-2006; Convention on the Rights of Persons with Disabilities-2006; Optional Protocol to the International Covenant on Civil and Political Rights¹-1966; Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty-1989; Optional Protocol to the Convention on the Elimination of Discrimination against Women-1999; and the Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict-2000; Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography-2000; Optional Protocol to the Convention on the Rights of the Child on a communications procedure-2014; the Optional Protocol against Torture and other Cruel, Inhuman or degrading Treatment or Punishment-2002and the Optional Protocol to the Convention on the Rights of Persons with Disabilities-2006.

Review conclusion

Should another edition of this book be written, the reviewer pleads for the usual table of cases, statutes, etc, so that we can see at a glance, where arguments arose and progressed, etc. This is an important criminal law issue. Below, I have constructed the cases, tables, etc, for the reader of this review, as it assists to see at a glance the arguments taken.

Statutes & Conventions

European Convention on Human Rights 1950.

International Covenant of Civil and Political Rights 1976.

Release and detention pending Judicial Proceedings, U.S. Code 18 (2011).

U.S . Habeas Corpus Act 1679..

U.S. Northwest Ordinance 1787

U.S Judiciary Act 1789.

Federal Rules of Criminal Procedure 1944.

U.S Bail Reform Act 1966.

U.S Bail Reform Act 1984.

U.S.Speedy Trial Act.

U.S. Patriot Act 2001.

U.S. Case-law

Al Bahlul v U.S. 767,F.3d 1,31 (D.C.Cir 2014).

Alexander v Broward City Sherriff's Office, 6 So 3d 707 (Fla Dist. Ct.App.2007).

Bell v Cone, 535 U.S. 685 (2002).

Bell v Wolfish, 441, U.S. 520 (1979).

Brewer v Williams, 430, U.S. 387, 398-9 (1977).

Calhoun v U.S. 133, S.Ct.1136 (2013).

Carlson et al v Landon, 342 U.S. 524 (1952),

Coffin v U.S., 156 U.S. 452 (1895).

Duncan v Louisiana, 391 U.S. 145 (1968).

ex parte Milburn, 34 U.S. 704 (1835).

Gallen v County of Los Angeles, 477 F 3d 652 (9th Cir 2007).

Gavino v McMahon, 499 F 2d 1191 (2d Cir 1974).

Gerstein v Pugh, 420 U.S. 103 (1975).

Gideon v Wainwright, 372 U.S. 335,344 (1963)

Hudson v Parker, 156 U.S. 277, 285 (1895).

Hunt v Roth, 648 F.2d 1148 (8th Cir 1981).

Miranda v Arizona, 384 U.S.436, 473 (1966).

Narducci v State, 952 So, 2d 622 (Fla.Dist.Ct.App. 2007).

Rothgery v Gillespie County, Texas, 554 U.S. (2008).

Schall v Martin, 467 U.S.253 (1984).

Stack et al v Boyle, 342 U.S.,1 (1951).

U.S. v Accetturo, 783 F2d 382, 388 (3rd Cir 1986).

U.S. v Barber, 140 U.S. 164, 167 (1891).

U.S. v Cisneros 328 F, 3d 610 (10th Cir.2003).

U.S. ex rel. Potash v Dist. Dir. Of Immigration and Naturalisation at Port of New York, 169 F.2d. 747 (1948).

U.S. v Jessup, 757 F2d 378 (1st Cir 1985).

U.S. v King, 849 F 2d 485 (11th Cir 1988).

U.S. v Mellendez-Carrion, 790 F2d 984,988, 103 (2nd Cir 1986).

U.S. v Polouizzi, 697 F Supp, 2d 381 (E.D. N.Y. 2010).

U.S. v Salerno, 481 U.S. 739 (1987).

U.S. v Scott, 450 F 3d. 863 (9th Cir 2006).

U.S. ex rel Heikkinen v Gordon, 19- F 2d 16 (8th Cir 1961).

U.S.v Ojeda Rios, 846 F 2d 167 (2nd Cir 1988).

US v Salerno, 481 U.S. 739 (1986)

ENDS

E-commerce cartels

It has not been surprising that crime including fraud and cartel offences have been spotted. The digital economy is now well-established and regulators have seen more anti-competitive behaviour on the Internet. Travel agencies in Lithuania were found to be in a cartel. The European Court of Justice (ECJ) confirmed that price fixing was done using automated means using an e-commerce platform. ETURAS was the name of online travel booking business which used an online travel booking system which sent an electronic message proposing that each agency grant discounts capped at say 3%. The ECJ ruled that a travel agency which understood the measure communicated and did not distance itself from it would be presumed to participate in a cartel, unless it could demonstrate that it objected to the communication or systematically set prices disregarding the rule.

Another such online case was that of Internet retailer named TROD LIMITED, which had agreed with one of its competitors, GB POSTERS, to

sell their products at the same price using Amazon, the giant online retailer. They used an automated re-pricing software, which the parties configured to give effect to their price agreement. TROD LIMITED was fined a total of £163,371 by the UK national competition authority, and GB POSTERS received immunity for whistle-blowing the cartel.

Competition Authority noted two principles underlying the treatment of algorithmic pricing:

- (1) illegal pricing offline is likely to remain illegal online; and**
- (2) algorithms are under a company's control, and so the company is liable for its actions.**

Between 2012 and 2015 the European Commission supervised the simultaneous actions of several national competition authorities which brought proceedings against hotel booking platforms for imposing parity clauses on their hotel contractors.

Germany's national competition authority prohibited certain MFN clauses. The French, Italian, Swedish, Irish and UK national competition authorities accepted commitments. France and Austria legislated to prohibit online travel agents' price parity clauses.

In June 2015 the European Commission opened a formal antitrust investigation into some of Amazon's e-books distribution agreements with publishers. The investigation focused on MFN clauses which allegedly

granted Amazon the right to be informed of more favourable or alternative terms offered to its competitors, and/or the right to terms and conditions at least as good as those offered to its competitors. The European Commission took the view that these clauses make it more difficult for other e-book platforms to compete with Amazon.

Meanwhile, the US Sherman Act makes cartels and collusive activity illegal in the United States.

In all jurisdictions with anti-trust laws, the detection and punishment of cartels remains a top priority. It is therefore surprising to find EU and US cartels operating today.

The Antitrust Division continues actively to seek jail sentences for individuals involved in international cartels, having long believed that individual imprisonment has a greater deterrent effect than fines alone.

Cartel members have informed the Antitrust Division that some international cartels choose not to expand their activity to the US because of the risk of imprisonment. A decade ago, the US Antitrust Division obtained criminal sentences for 21 individuals totalling 17,235 days' imprisonment, more than triple the total days' imprisonment obtained the previous year.

Matthew Alexander Falder: sex pervert in jail for 32 years
BY
SALLY RAMAGE



Sex deviant Matthew Falder

HH Justice Parker, QC, newly appointed district judge with 30 years of legal practice, sat at Birmingham Crown Court, handed down the 32-year

prison sentence to Matthew Alexander Falder during an hour-long explanation of the sentence, to avoid any doubts. The 137 serious offences, which Matthew Alexander Falder was convicted of and sentenced for, are mostly serious criminal offences. The astonishing multitude of computer evidence in court during the trial shocked even hardened lawyers. Matthew Alexander Falder had committed these crimes without pause in one ten year period until he was 28 years old, when police arrested him. Falder was charged, tried and convicted of over 140 criminal offences and pleaded guilty to these 137 charges. At the sentencing stage of the case, HH Judge Parker, QC, set out in painstakingly careful detail these 137 convictions which include 4 offences carrying a maximum of a life sentence; 14 offences which carry a maximum sentence of 14 years and 55 offences which carry a maximum prison sentence of 10 years.

The double life of a Cambridge University doctoral graduate

Falder's was not a diligent and arduous struggle out of poverty, but rather, he enjoyed a childhood of upper middle-class wealth. He hailed from desirable Cheshire in England, where his father's business was an inherited profitable one in paint retail. Matthew Falder had lived a comfortable life in his parents' £600,000 mansion in Cheshire. His life of 'computer porn chief of sexual and evil perversion' contrasted with the outer appearance of

‘respectable senior lecturer with a steady girlfriend’. Such life is of the kind that criminologists class as deviant,ⁱ yet failing to predict the concomitant rise in crime among the powerful-a problem of imperfect application rather than theoretical defect’.ⁱⁱ

This case has been reported worldwide, because the perpetrator, having enjoyed expensive public school education, followed by studies at Cambridge University and then a lucrative, prestigious senior lectureship of geophysics at Birmingham University, West Midlands, was leading a duplicitous criminal life as a sophisticated online sex predator, blackmailing pervert, voyeur and paedophile.

This is a textbook case of someone who had set out to deliberately hard-wire himself and his computer systems to a secret, secondary life of child porn, sexual depravity, sexual blackmailing, fraud and voyeurism, on a long-term basis, becoming more adept at evasion with time. Matthew Falder was ‘operating under layers of heavy encryption... was a key member of a global child sex ring on ...the dark web, accessible only through special gateways that mask user identities and hide the location of their computers’, *The Sunday Times* reported on February 18, 2018.

Double encryption and over 50 aliases used

Not only was Matthew Falder's behaviour depraved, but it illustrated his lack of conscience, ethics, or societal norms. He was so confident in his own computer abilities that he thought he would never be caught, especially because he also used over 50 aliases to commit these heinous crimes against human beings, including very young children. For his crimes, the punishment in many countries is the death sentence, but like the convicted Dutch murderer Vincent Tabak (see *R v Vincent Tabak* [2011] Unreported; Case number T20117031. See www.criminal-lawyer.org.uk), Matthew Falder is academically bright; very sociable; and has deep and excellent computer skills, with his perversity hidden behind a normal and decent appearance, complete with girlfriend and well-paid job.

Investigation and detection: FBI, NCA and GCHQ

Falder was arrested after several years of extensive British police investigation, GCHQ input, and in coordination with work from the US Federal Bureau of Investigation ("FBI"). Matthew Falder was totally unaware of the police investigations.

Academic research on sex offenders

Krafft- Ebing, academic researcher into human sexuality and sexual deviancy and perversion, asserted that pathology was connected to sexual mental degenerative conditions. (See Zilney, L.J. and L.A. (2009) *Perverts and predators*, Plymouth: Rowman & Littlefield). Krafft-Ebing's postulations were controversial and it was he who introduced the concept of sexual perversion. His scholarship was followed by others scholars: Havelock Ellis, Albert Moll, Iwan Bloch, Michael Foucault, Alfred Kinsey, Wardell Pomeroy, Karl Hanson, and Moulden & Marshall. Hanson studied sexual violence of the kind which Matthew Falder displayed. Moulden & Marshall published their paper in the *Psychology, Crime and Law Journal* in 2005. Hanson's paper was titled 'Empathy deficits of sex offenders' published in the journal *Sexual Abuse: A Journal of Research and Treatment*.

Matthew Falder was no little introvert in a closet with his sordid acts, as popular news items often portray pornographers to be.

Salient notes in this first UK conviction of sex offences via computing technology

1. This is the first UK conviction of ‘hurtcore’ on the Internet using file-sharing. (See Ramage, S. (2005) ‘Protection of music against piracy’, (pgs 1-16) *IP Frontline*, at www.ipfrontline.com/

Which, at pg 6 of this article, file-sharing was discussed as follows:

‘Because it is so easy to copy, upload, download and send as an email digitised content, it has led to the term commonly known as peer-to-peer file sharing and several business models have been developed over many years to enable file sharing. The 2001 US case Metro-Goldwyn-Mayer v Grokster, The 2001 US case Metro-Goldwyn-Mayer v Grokster 545 US 913 (2005) is a case that had been closely watched by the business world and which decision was given only today, 27th June 2005.

The case hangs on whether file sharing is legal or illegal although that will not enlighten lawyers as to who is liable, the person who downloads the file, the person who uploads the file in order for it to be shared. The Court ruled today for the music companies. This, together with the US Supreme Court ruling that cable television operators did not have to allow rivals to offer high-speed Internet access over their systems puts performers rights firmly in place for the long-term future.

2. There were 46 identified victims but only three were of UK jurisdiction.

3. These three persons were all seriously harmed psychologically, symptoms including attempted

suicide. They gave evidence at trial.

4. The defendant, *Matthew Alexander Falder*, is a young post-doctoral university lecturer and

researcher in geophysics.

5. The defendant was arrested in June 2017 at his living quarters. He was tried that same year after

almost 150 charges against him, He was convicted of 137 charges in 2017 and the sentencing

hearing was set for 19 February 2018.

6. On arrest, his room was searched and police found many pictures and videos of extreme pornography. He had been under surveillance for several years after a complaint made by a 16-year-old English girl who put her video online to advertise –on www.gumtree.com- for any baby-sitting work available locally. Defendant dropped his guard and let her see his face, but after harassing her for several weeks, she made a police complaint. Normally, on the deep-web, group members in this abusive Internet group, use the *file-sharing* phenomenon to

share, not music, but ‘hurtcore’, always wear the newly designed masks which hide their faces but allow them to speak. The author has personal knowledge of these new masks because *Google had approached a certain design department to invent such a thing. One assumed it was for conference calls and to protect confidentiality. This is a recent cutting edge design item, which illustrates how expert and knowledgeable the defendant was. However there is well-established and widely available voice recognition software in the commercial world.*

7. When police searched Matthew Falder’s place, they found ‘two devices with large amounts of indecent images, including a video showing the rape of a newborn baby and a "paedophile manual" instructing other paedophiles how to carry out child sex abuse and not be detected by police’ according to a report in the *Guardian*.

8. Matthew A. Falder gained obscene videos and photos from 46 persons via the Internet in order to accumulate his own obscene files, possibly for payment and/or to swap with other perverts.

Once acquainted with a victim, he enticed them to pose nude or do indecent acts; then he ratcheted up his hold on them to produce more images by

blackmailing them that he would send the first pictures to colleagues or family members. So they became compliant to his unnatural requests. His initial learning curve on handling such electronic crimes appeared to be his beginnings with voyeurism by secretly placing CCTV equipment in family toilets and bathrooms; graduating to placing secret CCTV systems in public toilets.

9. Matthew A Falder has been put on the Sex Offenders List. It is possible that in jail he might be prescribed with an antiandrogen medication to treat the symptoms of sexual offending-one being medroxyprogesterone acetate (MPA). the other being cyproterone acetate (CPA).

10. Matthew Falder must spend 32 years in jail, after which he must be electronically tagged and on licence for 7 years. With excellent behaviour, he could be out into society after 16 years (at age 44)but will remain on license for 7 years thereafter.

The crimes of Matthew A. Falder

***Matthew A. Falder abused 46 persons over the Internet.**

***Of these, 43 were from other countries in the world.**

***His instrument of abuse was the Internet, including the ‘darkweb’.**

***He was a group member of several sex abuse Internet groups.**

***Such group members had to *share their own sordid criminal files* among the group.**

****File-sharing* of images of violent physical and sexual abuse amongst a group.**

***Falder was given the abuse level of ‘rapist’ in one of these groups.**

***His victims were forced to self-abuse, eg lick their toilet seat; eat dog food; eat their own faeces and drink their own urine, all remotely recorded on the Internet by Falder.**

***Falder as a group member of virtual sex abusers had incited the rape of a young child on film.**

*** Police told the media that Matthew A. Falder used over 50 aliases on the Internet and a sophisticated encryption system.**

***His sex offender’s life began at age 18. He at first practised voyeurism by setting up cctv in the toilet and bathroom of his parents house in Cheshire.**

***After awhile, he became more accomplished and skilful with the technology.**

***He progressed to placing cctv surreptitiously in public toilets.**

***He then joined groups of sex abusers on the Internet and then accumulated material he could swap to see others’sex abuses,**

***He learnt to use double encryption on his computer systems.**

***When one of the victims who gave evidence at trial at Birmingham Crown Court told the court how Matthew A Falder forced her to lick her toilet seat, as he remotely recorded her, the author was reminded of the convicted serial killer, ex stock-broker, Rurik *Jutting*, who was convicted in 2016 of the murder of two women in his expensive apartment in Hong Kong, and who told the court, and recorded it on his smartphone- how he forced them to lick his toilet before killing them. He had been high on illegal drugs.**

***Matthew Alexander Falder's father owns KMG Paints Ltd, (Cheshire) the UK's largest independent paint manufacturer, recent turnover £18.1 million; profit before tax of 0.91 million.**

Conclusion

We need much more electronic vigilance because the fact is that many other sex offenders are still out there. They never get caught, are never charged, tried, convicted nor imprisoned because most sex offenders (and victims) have relatives unwilling to disclose abusive behaviour for fear of destroying family cohesion.

Printed and published by SALLY RAMAGE ®, Copehale, Coppenhall, Stafford, ST18 9BW, UK. Registered as a Newspaper at the Post Office. International Copyright. All Rights Reserved. No part of this publication may be reproduced in any material form (including photocopying or storing it in any medium by electronic means and whether or not transiently or incidentally to some others use of this publication) without the written permission of the copyright holder except in accordance with the provisions of the Copyright, Design and Patents Act 1988 or under the terms of a licence issued by the Copyright Licensing Agency, Saffron House, 6-10 Kirby Street, London, England EC1N 8TS. Application for the copyright owner's written permission to reproduce any part of this publication should be addressed to the publisher. Warning: the doing of an unauthorised act in relation to a copyright work may result in both a civil claim for damages and criminal prosecution.
Current Criminal Law ISSN 1758-8405..

ⁱ Tepperman, L (2006), *Deviance, crime and control*, Ontario: Oxford University Press.

ⁱⁱⁱ Downes, D. and Rock, P. (2007), 5th edn., *Understanding deviance*, Oxford, UK: Oxford University Press, pg 324.