

# Criminal Law News

SALLY RAMAGE®

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# A British defence asset lost in Gareth Williams' murder

Sally Ramage

## The mathematician

Gareth Williams aged only 31, hailed from Anglesey, North Wales and began studying mathematics part-time at University of Wales, Bangor, while still at Ysgol Uwchradd Bodedern School. He graduated with a first-class degree at age 17, began a post-graduate maths degree at St Catharine's College, Cambridge, but left it to take up employment with GCHQ. His hobby was cycling. His was a moderate upbringing in a stable and modest family setting in rural Anglesey. His stability is further illustrated by his steadfast employment at GCHQ for over ten years.

## GCHQ among Britain's intelligence agencies

Among Britain's three intelligence agencies is MI6 or the Secret Intelligence Service which deals with acquiring intelligence abroad, operating from British embassies abroad. Then there is M15 or the Security Service-responsible for security inside the United Kingdom, consisting of surveillance operations mounted on unfolding terrorist plots. GCHQ is the third intelligence agency of the UK, listening-technologically and through interception of communications. GCHQ can intercept VOIP (Voice Over Internet Protocol) used by terrorists and foreign agents to try to circumvent routine eavesdropping on **telephone lines** and mobile networks.

## Inquest and first post-mortem

The inquest was held in London on 31 August 2010 and was adjourned until 9 September 2010. The coroner said:

*'I have a resume here which says to me that on Monday August 23 police were called to check on the welfare of Gareth Williams at his home address as he had not been seen at work. A post-mortem was carried out at that time. We will call that the first post mortem; it was performed by Dr Ben Swift on Wednesday August 25. This failed to establish the cause of death and so further tests are being carried out.'*

This is confirmed by Detective Chief Inspector Jacqueline Sebire, who is leading the investigation into the death. At this first inquest Dr Knapman asked Chief Inspector Sebire:

*'As far as the Met is concerned, is there anything that you wish to appeal for help with?'*

DCI Sebire replied:

*'This remains an unexplained death. We would appeal for any witnesses who saw Mr Williams in any circumstances after August 11 onwards until the 23 when he was discovered.'*

The American intelligence authorities, especially, are anxious to know if there has been any breach of global security as a result of the murder. Even the basic fact that he was murdered has yet to be officially confirmed, with a post mortem failing to discover the cause of death, despite reports he had been stabbed and found dumped in a sports bag in his bath. Police will only describe it as a 'suspicious and unexplained death' and tests are under way to establish how the 30-year-old mathematician from Anglesey died.

## Murder of Gareth Williams

Gareth Williams, an employee of GCHQ, had been seconded to MI6 for one year to the end of August 2010. On 23 August 2010, he was found dead in suspicious

circumstances at his flat in Alderney Street, Pimlico. His body was found in a sports holdall in the bath. He had been the unsung hero of his nation.

### **Similar murder**

British intelligence agent Jonathan Moyle, a 28-year-old editor of the magazine *'Defence Helicopter World'* was murdered in a hotel bedroom in Chile in 1990 and his body was found hanging (by a padded noose) inside a hotel wardrobe in the Chilean capital, Santiago. Jonathan Moyle had been investigating a company which was modifying helicopters, possibly to carry nuclear weapons, to sell to the Iraq and was at a defence conference in Chile when he was found dead in the hotel. Despite vicious rumours of homosexual acts, and the Chilean authorities belief that this was a suicide case, Jonathan Moyle's father discovered that his son had probably been drugged, suffocated, injected with a lethal substance and then strung up in the wardrobe – and a British coroner returned a verdict of unlawful killing eight years later in 1999. The investigation into Jonathan Moyle's death was closed in 1993 but was reopened by the Santiago Court of Appeal in 2009 following representations from a lawyer representing the family. A book and a film have been produced subsequent to Moyle's killing (See the film *Valkyrie*, released in January 2009 and the books *'Excavating for truth: A review of Investigative reporting: a study in technique'* by David Spark (Focal Press, London, 2000) and *'The Valkyrie Operation'* by Wensley Clarkson (Blake Publishing, London, 1998)).

### **Secrecy**

In Gareth Williams death, the level of secrecy will hamper reporting of any trial if any arrests are made. Disclosure of the precise circumstances of Mr Williams' death might compromise national security. What is certainly at issue is the failure of the intelligence agency in keeping Gareth Williams safe by failing to protect the life of its invaluable code-breaker.

### **Opinions of experts**

Despite the holdall which held Gareth Williams body being padlocked, the police have not begun a murder enquiry, but still call his death suspicious. Unless he was Houdini, he could not have killed himself and also padlocked the holdall. Unless he had a close friend who assisted him to commit suicide, he could not have been found like this and all the evidence about Gareth William' life illustrates steadfastness, continuity, and predictability. Yet, all the criminologists who were asked for their opinions said that his death is unlikely to be employment-related. Sir Paul Lever Former chair of Joint Intelligence Committee, said:

*'If you want to dispel a suggestion that something is work-related, you inevitably imply it's to do with the person's non-work life... ergo their private life, so you end up perhaps implying things that may distress his family. I would be very surprised if his employers were deliberately setting out to smear him.'*

David Wilson, who is Professor of Criminology at the University of Central England, said:

*'In the vast majority of murders you don't look for a Hollywood motive, you look for the most banal motive – the most banal motives are love, rage, and jealousy... I'm absolutely convinced with virtually every serious crime I've been involved with that there's a great deal of misinformation... when one talks to press officers of any government agency they have a line that they try to feed.'*

Prof Anthony Glees, Director of the Centre for Security and Intelligence Studies, University of Birmingham, said:

*'I don't think he would have been murdered because of what he knew but because of his private life. If his private life brought him into contact with someone who went on to kill him, he was a risk-taker... If you do risky things, you may not be blackmailed but you may still be a security risk'*

*because your risk-taking may bring you into contact with people who might try to exploit this trait to get secrets out of you.'*

Roger Graef, broadcaster and criminologist, said:

*'The one thing we won't know is the truth. This is in the category of iconic crimes, when you don't ever expect to be told the real thing, and there are just too many reasons to keep it secret... None of it adds up: if he was such a hot shot at code breaking then presumably he'd have been protected... We are very unlikely to ever know what happened.'*

Prof Martin Innes, director of the universities' Police Science Institute at Cardiff University, said:

*'If they've stuck him in a bag ready to be moved, if that was what happened, then that suggests someone a bit more intent on what it is they're trying to do... If the individual concerned is out there and dismembering the body, there's something else going on. But until we know that it's pretty difficult to say anything useful.'*

## Conclusion

# Local authorities in England, Wales and Northern Ireland will reduce restrictions on foster carers

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### The new government aims for common sense

In a letter to all local authorities, Children's Minister Tim Loughton, in August 2010, called on all local authorities to make it easier for foster carers to make decisions for the children in their care, and free them from over-zealous restrictions and bureaucracy. He said that arrangements on issues like haircuts, sleepovers and family holidays should, where possible, be agreed in advance with local authorities to avoid the delays and obstacles which many children and foster carers are facing. Good practice guidelines for the assessment and treatment of children who have experienced maltreatment and disruption in their attachment relationships are fairly simple: secure a decent placement; ensure that a thorough mental health assessment is conducted that considers common disorders; take an evidence-based treatment approach to the problems identified; and engage with and support education as much as possible. This permits a stage-like approach, in which acute problems are addressed straightaway, with a view to stabilise placements. Most of these plans can be begun very quickly, some on the same day, and can be carried forward to any further placement. They do not require proven placement stability and can be applied whatever else is going on during care proceedings. This service approach works because it is quick and flexible, focusing on what the evidence and best practice indicates as needing to be done for children who have been maltreated and who may have attachment difficulties; ie. stable placement; educational engagement; identify any disorders by assessment, and treatment.

### New toolkit for Fostering Network

The development of a new toolkit from the Fostering Network is planned. Foster carers look after fostered children in their own homes, as part of their own families, and must be trusted, encouraged and supported to make everyday decisions on their behalf.

### Glitches in the system- over-zealous police interference

One example among many is illustrated in the BBC's 'Panorama' programme on 1 September 2010 which reported on the experience of Victoria and Jake Ward who were investigated by police and social services when they were unable to explain a serious injury to their three-month old son, William. The Wards were arrested and questioned by police on suspicion of grievous bodily harm and child cruelty towards William. It took two years to clear their name and a further three years to speak

openly about what had happened to them.

### **Mismatch in experts and solicitors expectation of reports**

It can take a lot of time for clinicians to deal with solicitors, who of course can be under great pressure from the court to deliver quick outcomes. This can lead to strained communication, in which clinicians feel under pressure to go beyond their usual service and solicitors feel disappointment in the clinical assessment.

## **Cybercrime in the United States**

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Cybercrime is a problem in the United States, as in many other places. Recent FBI testimony before Congress explained that revenues from cybercrime in the US have reached an estimated \$1 trillion per year, putting it ahead of drug trafficking. Cybercrime is now one of the world's most lucrative illegal global businesses. Companies which have kept risk management related to cybercrime within the IT department are missing the point. Cybercrime should be treated as something that permeates the entire operation. A major challenge for companies is simply realising that they have been the victim of cybercrime. If cybercriminals attack a company, it should still have the data, provided that systems and processes are in place to detect a breach. The company should have the forensic capabilities to retrieve information about a theft soon after it happens. The only way to stay ahead of the crooks is to have risk managers and IT practitioners thinking about the crimes before they happen. On average, a single cyber breach can cost a large US company \$6.75 million. That adds up, considering According to a recent international poll, 27 countries participating in a survey about cybercrime have claimed that they have experienced financial losses related to cybercrimes during the past year.

Security-software manufacturer McAfee stated that there were 30 million examples of new malicious software released on the Internet in 2009, or about 47,000 new cases of malware each day.

One US bank lost \$9 million in one day from cyber theft at ATM networks located in 27 different cities. Three major oil companies confirmed that they were jointly targeted by an extremely aggressive networking scheme which stole intellectual property and other proprietary data, including a multimillion-dollar research project on oil exploration.

## **BP oil spill 2010**

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BP's Deepwater Horizon rig exploded on 20 April 2010. For the past months, there was a powerful smell of gasoline that filled the air. Residents report a strange metallic taste in the mouth due to the millions of gallons of oil leaked into the ocean, on the coast – and in the air. The Centre for Disease Control and Prevention and the Environmental Protection Agency made this statement in a leaflet they produced: -

*'...These effects should go away when levels go down or when a person leaves the area. The low levels that have been found are not expected to cause long-term harm ... If you smell a 'gas station' like odour ... it may be volatile organic compounds ("VOCs"). The key toxic VOCs in most oils are benzene toluene, ethylbenzene and xylene.'*

The BP oil spill caused plumes of smoke rising out of the sea surface. The flames were invisible but the columns of smoke rose up and floated away: burning water, as in descriptions of the fire on the Cuyahoga River in Cleveland in 1969, when industrial contaminants caught fire. A map of the Gulf shows 4000 oil platforms today and in 1969, there were 27,000 old oil wells in the Gulf. A map of the Louisiana coast shows the channels which the oil and gas industries have cut through the wetlands, creating straight routes through which water can move fast and hard, widening the channels and further eroding the coast.

**Hurricanes caused more oil damage**

In Hurricane Rita, Chevron's deepwater platform, Typhoon, drifted miles from its position. Another platform was carried 66 miles by Katrina. A rig owned by Shell broke free from the Mars platform and dragged a 12-ton anchor that crushed oil pipelines. The hurricane destroyed seven platforms, damaged 24, and created underwater mudslides that dislodged more than a hundred pipelines.

### **The biggest oil spill in American history**

The blow-out was the biggest oil spill in American history and in the wake of the economic collapse of 2008, a new anti-corporate rage has seized the United States, and the BP disaster has focused hatred on the oil companies. President Obama compared the blow-out to the 9/11 terrorist outrage in New York. Certainly, Bin Laden's inherited wealth was also money from oil.

### **The disasters of the oil spill and Katrina**

This major oil disaster is much like Katrina, which brought volunteer helpers to the Gulf and particularly to New Orleans to rebuild, to clean, to cook and to tend. Technological disasters such as toxic spills tend to be more traumatic than natural disasters, because their consequences are hard to measure and hard to recover from.

## **R v Gnango [2010] EWCA Crim 1622**

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The facts of the case are that a passer-by was killed as two men were shooting at each other in a public place. In 2008, Arnel Gnango was convicted at the Old Bailey of the murder of Magda Priewska. There was a 'shoot out' between Gnango and another man ('Bandana Man'). Magda came innocently upon this event and was killed. It was accepted that Bandana Man fired the fatal shot. It appears clear that Bandana Man intended to kill Gnango and therefore Bandana Man would have been guilty of Magda's murder on the basic principle of 'transferred malice'. Nevertheless, Gnango was convicted of murder on the basis of joint enterprise.

### **Comment**

Gnango's murder conviction was quashed on 31 August 2010 by a five judge Court of Appeal (Criminal Division). One man was convicted of the offence of attempted murder, contrary to section 1(1) of the Criminal Attempts Act 1981. The court decided that there was no common purpose and the conviction was quashed as the two defendants who were guilty of affray did not necessarily have a common purpose, but rather competing purposes. This is the vital point in this case- no common joint enterprise. Although some argue for the subject of joint enterprise to be clarified, past decisions have stayed the test of time.

Had the two defendants had a joint enterprise to shoot at a guard whilst robbing a bank, for instance, then that would be a joint enterprise and accidental departure from this joint enterprise, for example, by shooting a nearby customer in the bank, would have warranted this charge. One would be responsible for the unforeseen consequences of their acts to the same extent as the other as in *R v Baldesarre* [1930] 22 Cr App R 70, CCA and also *R v Anderson*; *R v Morris* [1966] 2 QB 110. In *R v Powell*, House of Lords, the court said (at para 79):

*'I have already stated that the issue raised by the second certified question in the appeal of English is to be resolved by the application of the principle stated by Lord Parker in R v Anderson, at p. 120B. Having so stated and having regard to the differing circumstances in which the issue may arise I think it undesirable to seek to formulate a more precise answer to the question in case such an answer might appear to prescribe too rigid a formula for use by trial judges...'*

Nicely stated at para 81 of *R v Powell*, House of Lords, the court said:

*'I have already stated that the issue raised by the second certified question in the appeal of English is to be resolved by the application of the principle stated by Lord*

*Parker in Reg v Anderson, at p. 120B. Having so stated and having regard to the differing circumstances in which the issue may arise I think it undesirable to seek to formulate a more precise answer to the question in case such an answer might appear to prescribe too rigid a formula for use by trial judges...’.*

In Attorney General’s Reference (No.3 of 2004) [2005] EWCA Crim 1882, the Court of Appeal had emphasised that in all cases it is the *Powell* principle which decides the outcome.