

# Criminal Law News

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## False report to police brings civil suit against CPS

False reports to the police are rare. Most complaints are truthful and accurate and amount to a proper grievance. However, there are some that are either false or wild exaggerations of the truth. There are yet more that may well be true but amount only to such a trivial complaint that a reasonable person would not think it worthy of the attention of the authorities. The subject of such reporting has hitherto had limited redress in law until Waxman brought to notice an area of civil redress. There is a public interest in the prosecution of all crime. We must encourage genuine reporting and be slow to prosecute a person who has made even a misconceived complaint. It may contrary to public interest to act against an accuser who made a report in good faith. Public interest must, however, be balanced against an individual's right to be protected from repeated arrests and other instances of state intervention in his life. Also, the scarce resources of the criminal justice system must be used more wisely than pursuing the allegations of an unreasonable person....

[The full article can be bought from Westlaw]

## Unfitness to plead not a defence for acute intoxication

The concept of 'fitness to plead' is not solely a consideration of whether the defendant is actually capable of being arraigned on the indictment but whether a defendant is fit to enter a plea and stand trial. A person may have sufficient capacity to deny the allegation that is made and yet be unable to undergo the entire trial process. The defence should not overlook the possible benefits, where properly available, to a defendant of a finding of unfitness to plead. Where the issue of fitness to plead is raised it must be determined by a Judge. The defendant ought not to be arraigned before this issue is determined. If a defendant is found unfit to plead there is a further hearing before a jury to determine whether or not he did the act or acts alleged...

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## Not terrorism by uploading news videos to Internet

In the case of *R v Gul*,<sup>1</sup> the appellant had uploaded videos onto the internet which the Crown contended encouraged the commission of terrorism. The videos showed attacks on Coalition forces in Iraq and Afghanistan by insurgents. After retirement the jury asked questions including whether such attacks were terrorism. The judge responded that they were and that is the issue for this appeal...

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<sup>1</sup> 22 February 2012, CA, unreported.

## Form over substance: *Brewer v Smithkline Beacham Corp*

In *Brewer v SmithKline Beacham Corp*,<sup>2</sup> the court's decision found for the Plaintiff, Brewer, because GSK had failed move its head office to Delaware before this case began. Therefore GSK remains under the jurisdiction of Philadelphia's Court of Common Pleas. GSK in this court case argued that it had moved its head office to Delaware. The court laid out its reasons to decide otherwise: GSK's corporate books and records had not been transferred to a Delaware office and still remained in Philadelphia; GSK's listed business address was not changed from Philadelphia to Delaware on time...

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## Drug trafficking increase

### Global drug trafficking

Recent reports of bodies displayed on a bridge in the United States are an indication of the heightened drug war going on there. Illegal drug trafficking is a global black market of the distribution and sale of those substances which are subject to drug prohibition laws. Most jurisdictions prohibit trade, except under license, of many types of anti drug-trafficking statutes. Most countries prohibit trade, except under license, of many types of drugs by anti-trafficking statutes and conventions....

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## Money laundering

The following money laundering prosecution has meant that many companies have been reminded to carry out a risk assessment of their firm. On 19 December 2011, it was reported that several members of one family received prison sentences upon conviction for money laundering. They were sentenced to a total of nearly eight years in prison for masterminding a multi-million pound money laundering scheme. Business owner Issac William, 61, (Solomon Co-Operative Services/Chris Solo Co-Operative Services (CSCS) and Euro Co-Operative Services) who provided security guards to construction sites, was sentenced to 4 years imprisonment for failing to declare £5 million of business profits and not paying the correct amount of taxes. His wife Venus Williams, aged 54, and their three daughters; Maria Gunasekara, 33, Sylvia William, 34 and Sophie William, 26, received 16 months, 12 months, and 18 months prison sentences respectively for laundering £1.3 million from the business through their own bank accounts. The businessman had failed to declare his company's income or pay taxes of £1.1 million....

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<sup>2</sup> 2011 WL 1103627 (E.D. Pa., Mar. 24, 2011).

## **‘Rule of Law’ Day in the United States- 1<sup>ST</sup> May**

The first day in May every year is known as the ‘Rule of Law’ day in the United States - a day to reflect on what the rule of law has meant to the development of our nation and the continuing role it plays. For example, why does the Constitution grant life tenure during good behavior to federal judges? The Founders knew that various political majorities might try to adversely affect minorities, and life tenure was provided to reinforce judges’ protection from majority pressures. ..

[The full article can be bought from Westlaw]

## **Praiseworthy efficient police action by New Jersey Police caught paedophile officer**

A New Jersey police officer sent a 12 year old girl explicit photos of him wearing his police uniform and tried to set up a sexual encounter, according to a NJ police report. He did this a few days after meeting the girl while assisting her family in an unrelated police matter. Woodland Park Police Officer Steven Vigorito Jr. was arrested on 23 April whilst on duty, was suspended without pay and charged with aggravated sexual assault and the sexual offence of luring and enticing a child. On 24 April 2012, he pleaded not guilty and was granted held of \$250,000 bail. The child’s mother had made the complaint to the police on 20 April 2012:

- Police Officer has committed a breach of trust because he went to the child’s family to assist them in a separate criminal matter;
- He made inappropriate comments to the complainant’s 12 year old daughter...

[The full article can be bought from Westlaw]

## **Murders in the United Kingdom: a selection**

### **1.1. Five children murdered by arson**

It was reported on 12 May 2012 that two people were being questioned on suspicion of murder after a fire at a family home in which five children died and one was badly injured. A 38-year-old man from Derby was arrested on 11 May 2012 by detectives investigating the deaths. Earlier a 28-year-old woman was also arrested in connection with the tragedy. Witnesses described seeing Mick Philpott, a father of 17, being beaten back by flames and heat as he battled to save the children at the semi-detached house in Derby as desperate neighbours used a ladder to try to rescue them. The children were asleep upstairs when the fire broke out. The father of the five dead children is 55 year old Mr Mick Philpott, father of 10 other children...

[This article can be bought from Westlaw]

## Criminal offence of hacking by newspaper journalists and others

Sally Ramage

### The newspapers and relevant employees

Rebekah Brooks angrily denounced the decision to charge her and six others with perverting the course of justice as a 'waste of public money'. Rebekah Brooks commented that the charges against her are as a result of a 'weak and unjust' decision by the prosecuting authority. As the inquiry progressed, News Corporation organisation was thought to have braced themselves to the possibility that Rebekah Brooks might be charged. But the fact that the former chief executive of its UK subsidiary, *News International*, has been charged on three counts of conspiracy to pervert the course of justice, was a surprise development.

### Crown Prosecution Service's statement

The Crown Prosecution Service, having received a file of evidence from the Metropolitan Police Service on 27th March 2012 in relation to seven suspects and having considered that evidence, decided to bring charges against seven individuals in respect of newspaper hacking. The Crown Prosecution Service (CPS), having carefully considered the evidence against the suspects, namely, Rebekah Brooks; Charles Brooks; Cheryl Carter<sup>3</sup>; Mark Hanna<sup>4</sup>; Paul Edwards<sup>5</sup>; Daryl Jorsling and a seventh suspect<sup>6</sup> charged them as follows:

- (1) the charge of 'conspiracy to pervert the course of justice' was brought against Rebekah Brooks, Charles Brooks, Cheryl Carter, Mark Hanna, Paul Edwards, Daryl Jorsling and persons unknown who concealed material from officers of the Metropolitan Police Service;
- (2) the charge of 'conspiracy to pervert the course of justice' brought against Rebekah Brooks and Cheryl Carter by permanently removing seven boxes of material from the archives of *News International*<sup>7</sup>;
- (3) The charge of conspiracy to pervert the course of justice brought against Rebekah Brooks, Charles Brooks, Mark Hanna, Paul Edwards, Daryl Jorsling and an unknown person for concealing documents, computers and other electronic equipment from officers of the Metropolitan police Service;

Alison Levitt, QC, Principal Legal Advisor to the Director of Public Prosecutions, oversees CPS decision making (and all potential prosecutions, in relation to the ongoing phone hacking investigations and other related matters) said:

*'This statement is made in the interests of transparency and accountability to explain the decisions reached in respect of allegations that Rebekah Brooks conspired with her husband, Charles Brooks, and others to pervert the course of justice.'*

### The elements of the charge of conspiracy

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<sup>3</sup> Mrs Brooks' personal assistant.

<sup>4</sup> Head of Security at *News International*.

<sup>5</sup> Mrs Brooks' chauffeur who was employed by *News International*.

<sup>6</sup> Daryl Jorsling and the un-named seventh person charged had provided security for Rebekah Brooks, and were employed by *News International*.

<sup>7</sup> *News International* publishes *The Times*, *The Sun* and *The Sunday Times*.

There are six elements to the offence of conspiracy. There must be (1) an agreement; (2) and a course of conduct; (3) necessarily involving the commission of a criminal offence; (4) which offence to be committed by one of the parties to the conspiracy. There must be (5) an intention and (6) knowledge as to circumstances. The offence is committed as soon as an agreement is made. As soon as such an agreement exists, this becomes a criminal conspiracy if the agreement is performed, abandoned<sup>8</sup> or frustrated and therefore further parties may join a subsisting conspiracy at any time until the agreement is performed, abandoned or frustrated. It is essential for the prosecution to prove that there was a common purpose or design and that each alleged conspirator has communicated with at least one, but not necessarily all, of the others charged with the conspiracy. The law was that according to s 2 (2) of the Criminal Law Act 1977, there could be no conspiracy if a defendant agrees with his spouse. It is to be noted, however, that agreement on a course of conduct is not limited to the physical acts, but includes the consequences of those acts also.

### **What the Prosecution must prove at trial**

Notwithstanding that the role of the jury at trial is to listen to the evidence presented by the prosecution and defence and decide whether the prosecution has proved its case beyond reasonable doubt, the prosecution will have to establish at trial exactly what consequences were agreed upon- for example, did the seven parties agree 'to pervert the course of justice'? The Prosecution must establish that the parties agreed to destroy documents and equipment. Or did Ms Brooks simply order certain papers to be gathered without giving a reason and then ordered others to deal with them as instructed, without those others knowing the contents of the boxes or containers? If so, unfortunately for the parties, there may still be a conspiracy even if one party had no intention of seeing it through- so long as the prosecution can show that they intended 'to play some part' as in the case of *Anderson*<sup>9</sup>. The Prosecution will say that playing a part can mean failing to stop the conspiracy as in the case of *Siracusa*.<sup>10</sup> This is an inchoate offence, one that is 'committed by doing an act with the purpose of effecting some other offence'. Conspiracy is an agreement by two or more persons to commit a crime. Under s.1 (1) of the Criminal Law Act 1977 (as amended by s5 of the Criminal Attempts Act 1981):

*'... if a person agrees with any other person that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either- (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or- (b) would do so but for the existence of facts which render the commission of the offence or any offences impossible, he is guilty of conspiracy to commit the offence or offences in question.*

### **Offences the Crown Prosecution chose not to charge: Document Destruction**

*Although the CPS chose to institute charges of 'conspiracy to pervert the course of justice' one wonders why they set aside the very serious offences of 'document destruction' as per the Companies Act 2006. Digitally stored data is retrievable from hard drives, discs, CDs, DVDs, mobile phones, telecoms equipment, credit cards, credit card reading devices, video systems, and many other electronic recording or processing devices that can provide evidence of the commission of a crime such as bribery, fraud, accounting irregularities, hacking, deletion of information, and alteration of records: all very serious criminal offences. The police must have an abundance of evidence from digital sources at News International, having armed themselves with the relevant warrants.*

*Analysis of computers and associated storage media would have provided police with evidence of deleted files and images; emails; downloaded and created texts; address books and contact details; times and dates of activity and hidden files and data. Even if suspects had set up their electronic equipment with wireless facilities*

<sup>8</sup> *DPP v Doot* [1973] AC 807. In *Doot*, five American citizens had conspired in either Belgium or Morocco to smuggle cannabis from Morocco to the United States via England. They were caught by Customs Officers and charged with conspiracy to import cannabis. The House of Lords upheld their convictions. Lord Salmon had stated: 'It is obvious that a conspiracy to carry out a bank robbery in London is equally a threat to the Queen's peace whether it is hatched, say, in Birmingham or in the Brussels.'

<sup>9</sup> [1986] AC 27.

<sup>10</sup> [1989] 90 Cr App R 340. . '... if a person agrees with any other person that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either- (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or- (b) would do so but for the existence of facts which render the commission of the offence or any offences impossible, he is guilty of conspiracy to commit the offence or offences in question.'

*so that they can facilitate erasure of data even whilst away from the equipment, police can prove that this is what occurred. IT employees of News International should have been notified of the police investigation team's presence and the organisation's employees should have known about the need to preserve evidence – not to erase any data.*<sup>11</sup>

*The police have good capabilities (Digital Forensic Units) as far as performing forensic techniques required for the recovery and analysis of digitally based evidence such as deleted files recovered from a PC hard drive, for example. More ordinarily, the police must possess CCTV footage of suspects' whereabouts during the specific times as related in the charges, obtained with appropriate authorisations. Police forensic analysts would have enhanced the images and conducted thorough analysis. However CCTV tapes and disks are disclosable material under CPIA.*

*News Corporation*<sup>12</sup> *is one of the world's largest media conglomerates. Created and controlled by Rupert Murdoch, the \$50 billion company owns Fox News, The Wall Street Journal, The New York Post and 20th Century Fox film studio, among other assets. The company also owns influential British newspapers like The Times of London and The Sun.*

*By the end of 2011, revelations were out about News Corporation's questionable practices. In November, the company acknowledged that News of the World had hired a private investigator to conduct surveillance of two lawyers representing hacking victims. The scandal soon spread to another Murdoch tabloid, The Sun, as well as its flagship newspaper in Britain, The Times of London, which was being investigated for e-mail hacking. The report said Mr. Murdoch exhibited 'wilful blindness' toward wrongdoing at his organization and said News Corporation had made huge failings of corporate governance. For months, News Corporation's buoyant stock price and solid financial performance, driven by the strength of its United States television assets, had allowed executives based in New York to paint the scandal as an unfortunate but isolated series of events at the British tabloids, a tiny part of the overall business.*

### **Metropolitan Police and Scotland Yard**

In the course of this investigation, the Metropolitan Police had made more than 45 arrests across multiple probes into alleged wrongdoing by journalists at the two newspapers, namely, *News of the World* and the *Sun*. These seven persons charged bring to twelve the number of persons charged with hacking, as Scotland Yard's Operation Weeting investigation into phone hacking at the News of the World had led to just five arrests. It appeared to be making slow progress in questioning reporters who had allegedly listened to celebrities' mobile phone messages. It is of interest to note that in the United States, documents show that Law enforcement tracking of cellphones, once the province mainly of federal agents, has become a powerful and widely used surveillance tool for local police officials, with hundreds of departments, large and small, often using it aggressively with little or no court oversight, documents reveal.

### **Licence from the British Racehorses Authority not affected**

Rebekah Brooks' husband, Charles Brooks carries on a business as a racehorse trainer and it appears, and interestingly, according to reports reputed to be from the British Racehorses Authority, the criminal charge

<sup>11</sup> This applies to all company data in all forms. In *R v Saunders [1989] unreported, C.C.C. No.T881630*, the defendant had destroyed a jottings book, some correspondence, some pages from an address book and a diary. In addition, Part XIV of Companies Act 1985 (see also Companies Act 2006) is concerned with inspection and investigation of Companies by the DTI inspectors. If company documents are destroyed, the potential prison sentence for this offence is 7 years.

<sup>12</sup> News Corporation is a New York company and is a diversified global media company. The Company operates in six segments: Cable Network Programming; Filmed Entertainment; Television; Direct Broadcast Satellite Television; Publishing, and Other. Cable Network Programming produces and licenses news, business news, sports, general entertainment and movie programming for distribution through cable television systems and direct broadcast satellite operators. Filmed Entertainment engages in the production and acquisition of live-action and animated motion pictures for distribution and licensing in all formats in all entertainment media worldwide. Television is engaged in the operation of broadcast television stations and the broadcasting of network programming. It engages in the direct broadcast satellite business through its subsidiary, SKY Italia. It is engaged in the publishing business, primarily through its subsidiaries. In April 2011, the Company acquired Shine Limited (Shine).

against him will not affect his business licence. Charles Brookes has been charged with the criminal offence of conspiracy to pervert the course of justice.

### **Illegal hacking is a global problem**

Examples of global hacking incidents abound.

Romanian authorities are investigating a 20-year-old who is suspected of hacking into several Pentagon and NASA servers and posting confidential data he retrieved from those servers on his blog, officials said. The suspect was identified as Razvan Manole Cernaianu, reportedly an information technology student known online as TinKode.<sup>13</sup>

A Twitter hacker revealed thousands of user names and passwords for the microblogging site, but here's the good news: Most of the compromised accounts appear to be spam. Word of the breach began spreading after hacking news and activist hub Airdemon posted a dispatch saying 55,000 accounts had been compromised.<sup>14</sup>

In the year 2008, the Federal Trade Commission charged Myspace with violating federal law by breaching its promise not to share users' personal information, including their Web browsing habits, with advertising companies. Without admitting or denying the charge, the social media Internet site agreed to a tentative consent order that requires it to obey its stated privacy policies, to establish comprehensive privacy controls and procedures and to submit to audits of its actions every other year for 20 years.<sup>15</sup>

### **British Newspapers' hacking was suspected ten years ago**

It has been revealed that police suspected newspaper hacking since 2002 when the schoolgirl Millie Dowling had become a missing person, no action was then taken. This was confirmed in 2011 when the News of the World newspaper had admitted to violating Milly Dowler's privacy by accessing her mobile phone whilst the child was missing. However, it must be expressed that hacking is not relevant to the future of the Press Complaints Commissions and on 16 April, 2012, former Press Complaints Commission chairman Sir Christopher Meyer urged Lord Justice Leveson to strengthen rather than abolish the current system of self regulation.<sup>16</sup> The more fundamental and important issues involving journalistic sources are (1) the protection of sources (which remains at the heart of responsible journalism); (2) attacks on the principle of protecting sources (which can arise in the most unlikely of cases, for example, in the present trend in which demands for disclosure of confidential sources and information are becoming more frequent), (3) publishers remaining willing to support and protect their journalists (both in practical terms and by bringing in legal support). Although, today, judges recognise that the issue of the protection of sources is fundamentally important to a free and independent press, yet, whether or not to order journalists to reveal their sources will still be decided on a case by case basis.

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<sup>13</sup> Editor, 'Romania Probes Suspect in Pentagon, NASA Hackings', Gigalaw, 1 February 2012.

<sup>14</sup> <http://gigalaw.com/2012/05/08/twitter-hacker-discloses-55000-passwords/> (Source: CNNMoney).

<sup>15</sup> <http://gigalaw.com/2012/05/08/ftc-charges-myspace-with-privacy-breach/> (Source: The New York Times).

<sup>16</sup> Dominic Ponsford, 'Meyer: Hacking not relevant to debate over future of PCC', *Press Gazette*, 16 April 2012.

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