ISSN 1758 843X

Criminal Law News online

THOMSON REUTERS

Contents -

PUBLISHED BY SALLY RAMAGE
COPEHALE, COPPENHALL, STAFFORD,
UNITED KINGDOM
TEL 01785 - 211370
FAX 01785 - 228281
WWW.SALLYRAMAGE.NET

The Crime of Rape

Sally Ramage

Rape as per common law

Some dictionary definitions of the word *rape* include any serious and destructive assault against a person or community. In the United Kingdom and the United States common law, ‘rape’ traditionally described a man who forces a woman to have sexual intercourse with him. Until the late 20th Century, forced sex by a husband against his wife was not considered rape, since a woman (for certain purposes) was not considered a separate legal person with the right of refusal. In some cases a woman is deemed to have given implicit informed consent in advance to a lifelong sexual relationship. However, modern criminal law in most Western countries have now legislated against this exception and now include spousal rape and acts of sexual violence other than vaginal intercourse, such as forced anal intercourse, which were traditionally barred under sodomy laws, in their definitions of ‘rape’. Therefore the term ‘rape’ is sometimes considered ‘loaded’ and many jurisdictions recognize, in its stead, broader categories of sexual assault or sexual battery. In some jurisdictions, battery has been

constructed to include directing bodily secretions at another person without their permission. In some jurisdictions this automatically is considered aggravated battery (Zarrokh, 2007).

Violent rape offence

When the violence used beyond the rape itself is a part of the assault, including physical force or threat of harm, death threats or threats against a family member, the offence is termed a violent rape. Violent rapes may be committed by strangers or even people that the victim already knows and research shows this type of rape to be most frequently reported. (Bachman and Saltzman, 1995).

Rape in the United States

The legal definition of rape varies from state to state, but nevertheless, rape is generally defined as forced or non-consensual sexual intercourse. Rape may be accomplished by fear, threats of harm, and/or actual physical force. Rape may also include situations in which penetration is accomplished when the victim is unable to give consent, or is prevented from resisting, due to being intoxicated, drugged, unconscious, or asleep.

The United States' *Uniform Crime Reports* use the term 'forcible rape' to describe rapes perpetrated by men against women. Male-on-male rapes are usually recognised as such, as are (rare) female-perpetrated rapes. With regard to 'acquaintance' rape, one study found that 'like the debate over rape-law reform, debates over the death penalty, gun control, and hate crimes all feature clashing empirical claims being advanced by culturally polarized groups that see the law's acceptance or rejection of their understanding of the workings of the world as a measure of where their group stands in society.' (See Kahan, 2009). Kahan stated that by the common law definition of rape, proof that a man engaged in vaginal intercourse with a woman without her consent is *not* by itself legally sufficient; and the prosecution must show in addition that the man overcame the will of the victim by force or threat of force. Kahan asserts that, culturally, in the United States, men are depicted as naturally impelled by strong and near-continuous sexual urges, whereas women are thought to be ambivalent (normally are uninterested in sex), but are aroused by aggressive sexual pursuit. By this logic, a man

who stubbornly chases after a women's affections, despite her signs of non-interest, including verbal ones, that she does not desire sex, is not acting abnormally; but merely displays exactly the sort of virility necessary to stimulate a normal woman's interest and pleasure.

Accordingly, the 'force or threat of force' element excludes this sort of badgering, which is expected to be commonplace in ordinary sexual relationships, from the definition of rape. He stated that the law indulges male sexual aggression not just through the 'force or threat of force' element but through the 'reasonable mistake' defence. Kahan stated that women communicate consent in an ambiguous way, making it possible that a man who treats a woman's actions (or lack of them) as a truer representation of her desires than her words could then be mistaken as to consent. So if a man construed a women's behaviour consistently with the cues by which women actually express their agreements to have sex in the real world, he cannot be morally culpable for his actions and the reasonable mistake defence shields him from criminal liability. These are valid points, were one to assume the US television series 'Sex in the City' were a real reflection of the actuality of women in the United States today. What Kahan fails to mention is that among young ladies at university, acquaintance rape is the most prevalent form of sexual violence[1] and the majority of these sexual assaults occur in situations involving alcohol consumption by the victim, the assailant, or by both victim and assailant.

Nevertheless the man who commits rape in the United States has no defence in inebriation on drug use. He alone is responsible for his behaviour because being drunk is not an excuse for committing any criminal acts, including sexual assault. In law, despite the commentator's exploration, acquaintance rape is still criminal violence.

'Acquaintance' Rape

There is a common misconception that acquaintance rape is not as serious, not as criminal, and not as traumatic to the victim as stranger rape. , like the commentator Kagan, think it is not real rape but any rape is a felony crime, regardless of the offender's relationship to the victim. Research shows that acquaintance rape is just as serious and just as devastating to the

[1] Rape Treatment Centre in Santa Monica, US. See http://www.911rape.org/campus-rape/what-students-need-to-know/stranger-rape-vs-acquaintance-rape.

victim as stranger rape. In a study published by the Department of Justice, 82% of the victims were raped by someone they knew (acquaintance/friend, intimate, relative) and 18% were raped by a stranger.[2]

Rape in Russia

Rape is a criminal offence in Russia. According to the Article 131 of the Criminal Code of Russia, rape is defined as heterosexual vaginal intercourse using violence or threat of violence or if the victim is in a helpless state. Russian law does recognise other forms of violent sexual intercourse such as male-male, female-male, female-female and non-vaginal male-female and these are called *coercive sexual actions*, rather than rape and these criminal offences are punishable as per Article 132 of the code. Both types of offences are simiilarly punished with 3 to 6 years of imprisonment. If the rape is committed repeatedly (against 1 or more than 1 victim); if rape is committed by a group of criminals; if rape is committed with a threat of murder or grievous harm to the health; if rape is committed with particular cruelty or caused an SD infection, then it is punishable with 4 to 10 years of imprisonment with possible subsequent restraint of liberty for up to 2 years (i.e. the criminal may not change or leave residence without permission and must register himself at local penal inspectorate 1 to 4 times a month; court may also impose additional restrictions such as the criminal may not leave home in certain hours, visit certain locations, change work without permission).

Rape committed against a girl under 18 years, causing grievous harm her health, HIV infection or other grievous consequences, it is punishable with 8 to 15 years of imprisonment with subsequent mandatory restraint of liberty for up to 2 years and possible ban on certain occupations or employment positions for up to 20 years, similar to the UK's sex offender's regime. If the rape caused the death of the victim by inadvertency and was committed against a girl under 14 years of age, then it is punishable with 12 to 20 years of imprisonment with subsequent mandatory restraint of liberty for up to 2 years and possible ban on certain occupations or employment positions for up to 20 years. It is of note that Russian courts and the United States courts are the nations with the highest rates of imprisonment The Russian

[2]From a report on *Violence against Women* based on data from the National Crime Victimization Survey, Bureau of Justice Statistics, 1995.

rate of incarceration is 690 prisoners per 100,000 of population and the U.S. rate, is 600 per 100,000. These rates are generally 6-10 times the rates for most nations in Western Europe On the subject of punishment for rape, gang rape, rape and murder, the issue of chemical castration is still alive and well with many fervid believers in it.

Chemical castration after the crime of rape

Chemical Castration of sex offenders is the drug treatment as referred to by the government, involves the injection of anti-androgen drugs into the body. Two drugs licensed for such use are Medroxy-progesterone acetate (MPA- also known as Deprovera) in the United States and Cyproterone Acetate (CPA) in Europe and Canada. In England and Wales, CPA is available under the trade name of Androcur and is currently used for a variety of conditions. Both MPA and CPA are synthetic progestins which act on the brain to inhibit hormones that stimulate the testicles to produce testosterone. This is done by tricking the brain into believing that the body has enough testosterone so that no more is produced. The drugs have anti-gonad-tropic properties, which mean that they hamper the production of sex steroids by the gonads. This inhibits the production of testosterone, which is responsible for the development of male characteristics such as body hair, beard growth, deep voice, greasy skin or hair and, more importantly for public protection purposes; the male sex drive. By reducing levels of testosterone, an offender will usually experience a reduction in sexual desire, a decrease in erotic fantasies and will often become temporarily impotent. This occurs because testosterone is reduced to pre-puberty levels and if the drugs are taken in sufficient quantities, then testosterone levels can be reduced, in some offenders, to zero. Full effects also include a reduction in potency, orgasm, sperm production, frequency and pleasure of masturbation and sexual frustration.

Chemical castration?

Weiss argued that the use of chemical castration will not only suppress sexual urges and desires, but will also aid a patient's concentration on other therapeutic activities, which are also aimed at controlling deviant behaviour.[3] This is achieved by bringing a feeling of calm

[3] See Weiss, P. (1999) 'Assessment and treatment of sex offenders in the Czech Republic and in Eastern Europe', *Journal of Interpersonal Violence*, 14(4), 411–21.

to the offender and can thus reduce a propensity for violence. When in this state, the offender is consequently more amenable to psychotherapy, which should be used in conjunction with chemically castrating drugs in order to achieve the most effective and long-term results. The combination of drug treatment with psychotherapeutic counselling is also put usually takes ten to 14 days to take effect, by which point the offender will have a below normal level of testosterone in his body. This, in turn, will affect sexual arousal, penile circumference and sexual urges, but will probably not affect erection capabilities. Offenders can, still perform sexually, but it is hoped will not have the same desire to do so. [4] Chemical castration is an urgent topic that needs attention in the face of growing levels of rape worldwide and should be integrated into future penal reforms.

Alongside considerations of castration policies, police should, as they have honed their sensibilities to sense a criminal, should now train and hone their sensibilities to know who is a victim, as well as removing their stereotype images and concepts about minorities. The police know only too well their own masculine exploits and readiness to use force; and that these broader characteristics still remain in police officers, even though this accepted police culture are as a result of having to face daily potential dangers.[5]

Rape in South Africa

A 2009 study by the South Africa Medical Research Council revealed that only one in 25 rapes were reported to the police. The same survey found more than one quarter of South African men admitted to raping a woman or girl. According to police crime statistics in South Africa, More than 56,000 cases were reported to police just in the year 2012, which means that there is a probability that outh African men committed 1,400,000 rapes in the year 2012 alone. On Saturday 9th February, 2013, hundreds of mourners were reported to have gathered in South Africa for the funeral of a 17-year-old girl, who was gang-raped and badly mutilated in an act of violence that sparked outrage across the country (*The Hindu*, 2013). The funeral took place on Saturday in Bredasdorp, a small town about 80 kilometres outside Cape Town, where Anni Dewani was murdered in a taxi in 2010. Mourners carried her white coffin, adorned with flowers, to be buried. Family members openly wept during the funeral service, attended by government leaders and activists. Three men, *including the victim's ex-boyfriend*, have been arrested over her death and are scheduled to appear in court on 11 February 2013. Since this victim's death, South Africa's President has appealed for a stop the high incidence of rapes in the nation. In part, this was not a stranger rape.

[4] See Craissati, J. (2004) *Managing High Risk Sex Offenders in the Community. A Psychological Approach*, New York: Routledge

[5] See Loftus, B. (2012) *Police culture in a changing world*, Oxford: Oxford University Press, pg. 160-200.

In another gang rape case in South Africa, reported in February 2013, a mentally disabled 17 year old girl was raped by 8 men. The eight suspects, including a 14-year-old boy, appeared in a South African court charged with the rape of a 17-year-old girl whose attack was filmed and has gone viral , having been uploaded onto a social media website. The eight suspects, aged between 14 and 37, appeared at the Roodepoort magistrate's court. Seven of the suspects, aged between 14 and 20, were arrested after they were traced to the video which horrified the nation. The eighth suspect is a 37-year-old man, in whose home the victim was found.

It is a criminal offence to view a rape on video under South Africa's child pornography law. The rape video was made using a cellphone and it showed the girl screaming and begging for her attackers to stop as they took turns to rape her. The video ended with one of the men offering the victim two rands (26 US cents) for her silence and she is heard crying. It has been acknowledged that South Africa had a high number of rape incidents.

Rape in the United Kingdom: statute law

In the United Kingdom the Criminal Prosecution Service decided to prosecute a taxi driver who was alleged to have raped a homeless, alcoholic woman as she slept outdoors in Maidstone Park in Kent ('stranger' rape). The case was *R v Onyeacholem* [2010]. If a person is unconscious or their judgement is impaired by alcohol or drugs, legally they are unable to give consent.

Under the 2003 Sexual Offences Act ('SOA') in force since April 2004, rape was redefined from non-consensual vaginal or anal intercourse and is now defined as *'non-consensual penile penetration of the vagina, anus or mouth of another person'*.
This means that the rape offence in English law can only be committed using a penis.
The act also made rape punishable by a maximum sentence of life imprisonment. Under English law and also in many other common law countries, rape is a sexual offence defined as non-consensual penetration of a vagina, mouth or anus with a penis. The prosecution must show that the Complainant did not consent. Consent is a key aspect of rape. The prosecution must show that the Complainant did not reasonably believe that she consented.

Having regard to all the circumstances

If the Defendant's defence is that *he* reasonably believed that consent was given, he can prove this, having regard to all the circumstances, which allows the defendant's barrister to brutally cross examine the Rape Victim as he attempts to prove her a liar, which is why Complainants such as 17 year old Lindsay Armstrong committed suicide after she was made to give evidence in her complaint against a 14 year old boy who had raped her.[6] 'Having regard to all the circumstances' is the reason why Frances Andrade gave evidence in court and shortly afterwards, she committed suicide. Days after giving evidence against Michael Brewer, a distinguished violinist[7] who was acquitted of the rape charge but convicted of a offence of indecent assault at Manchester Crown Court on charges relating to decades before, whilst Miss Frances Adrage had been a student at Chetham School of Music, the largest specialist Music School in the UK, where there are hundreds of pupils aged between 8 and 18 years old.[8] After this rape trial, Chetham School announced that the police are now investigating historic allegations of sexual abuse at the music school which has been the subject of recent newspaper reports and which put out a press release that Chetham School of Music will be assisting the police in their investigations of historic sexual abuse at the school.

Idiosyncrasy

In English law, a woman who forces a man to have sex cannot be prosecuted for rape under English law, although she can be prosecuted for causing a person to engage in sexual activity without consent. A woman who forces a man to have sexual intercourse with her would commit an offence which carries a maximum life sentence if it involves penetration of a mouth, anus or vagina. The SOA includes another sexual offence, namely, 'assault by penetration' which is committed when someone sexually penetrates the anus or vagina with a part of his or her body, or anything else, without that person's consent.

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[6] Andrew Beaven, 'Rape girl driven to suicide by her ordeal in court', *Mail*, 14 February 2013. See http://www.dailymail.co.uk/news/article-129105/Rape-girl-driven-suicide-ordeal-court.html.
[7] Editor, 'Woman commits suicide during rape trial', *Universal News*, 9 February 2013. See http://www.upi.com/Top_News/World-News/2013/02/09/Woman-commits-suicide-during-rape-trial/UPI-22191360454799/
[8] http://www.chethams.com/about-chets.

The principle in UK rape law

Whilst generally, it must be shown that the Defendant had the requisite *mens rea* at the time of the *actus reus*, in a rape crime which may have begun without any particular *mens rea* at the time the man started his actions, the required state of mind may come later while the *actus reus* is continuing. The offence is then complete at the first moment that there is *actus reus* and *mens rea* and this is a principle in the UK crime of rape. The sexual intercourse may be consensual at the time it starts out, but if that consent is withdrawn, the continuing intercourse will amount to an offence.[9] The principle had been used in road traffic cases as in *Fagan v Metropolitan Police Commissioner.*[10] It means, therefore, that a man who has sexual intercourse with a sleeping woman does not have her consent and is committing a rape crime according to s.75 of the Sexual Offences Act ('SOA') 2003 which states that:

> *'If in proceedings for an offence to which this section applies, it is proved-*
> *(a) that the Defendant did the relevant act;*
> *(b) that any of the circumstances specified in subsection (2) existed, and*
> *(c) that the Defendant knew that those circumstances existed,*
> *the Complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented and the Defendant is to be taken not to have reasonably believed that the Complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.*
> *The circumstances are that:*
> *(a)……*
> *(f) any person had administered to or caused to be taken by the Complainant, without the Complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the Complainant to be stupefied or overpowered at the time of the relevant act.'*

Rape in Islamic nations: eg Afghanistan and Iran

[9] *Kaitamaki v R* [1985] AC 147. In this case, The defendant was charged with rape. His defence was that when he penetrated the woman he thought she was consenting. When he realised that she objected he did not withdraw. The Privy Council held that the actus reus of rape was a continuing act, and when he realised that she did not consent (and he therefore formed the mens rea) the actus reus was still in progress and there could therefore be coincidence.
[10] [1969] 1 QB 439.

There is no rape in marriage in Islamic law. Under Islamic criminal law, rape means physically forcing another person to have sexual intercourse against the law and the Islamic rules. In the Islamic legal system women do not have independent identity and they are considered chattel of their husbands, as they did centuries ago in English law and so must avail herself to her husband at his disposal, so to speak. In cases where a woman is violently raped and killed, under Islamic criminal law (articles 205-206) this is an offence of murder. Murder is the killing of a person with a definite intention to kill that person and carries the death penalty. In Islamic law, the offence of involuntary manslaughter is committed when a person is killed without intention to act and effect. For example, in Iran, violent rape leading to the death of the victim is a murder offence. Under the Islamic criminal law (articles 205-206) murder is the killing of a person with definite intention to kill.

Rape in Israel

Murder is committed if there is a premeditated killing of the raped victim or the intentional killing of her whilst committing, preparing for, or escaping from the crime of rape. The mandatory punishment for this murder is life imprisonment. Life is usually commuted (clemency from the President) to 30 years from which a third can be deducted by the parole board for good behaviour. Where the rapist/murderer did not fully understand his actions because of mental defect (but not legal insanity or imbecility) the court can pass a sentence of less than life.

Conclusion

Rape is sexual violence and it will not be eradicated until criminal justice systems understand the social processes and psychological mechanisms that underpin sexual violence. At this individual level, evidence-based interventions can be designed to reform policy and practice and reform the police politically to assuage future gender subversion. Finally, it must be said that public health sector is in dire need of ascertaining exactly what effect practices such as internet-mediated sexual practices are having on society and what risk practices such as e-

dating; cyber-perversity, narcissism and other challenges technology in the form of the Internet has brought to society.[11]

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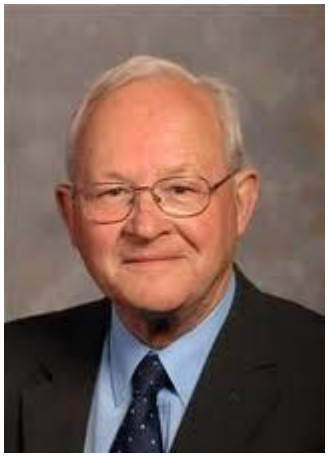
The incompetence of counsel as a ground of appeal

Alec Samuels



The ground of appeal in the Court of Appeal Criminal Division is the incompetence of counsel before the trial and at the trial. This is an unpromising ground of appeal, the Court is extremely reluctant to accede, and in the interests of the appellant D it must be hoped that there are other more promising grounds of appeal.

[11] See Beharrell, P. (1993) 'AIDS and the British Press' in Eldridge, J. (ed), Getting the message, London: Routledge
.See also Joyce, P. (2011) *Policing: development and contemporary practice*, London: Sage.

It is not enough that counsel was inept, he made a mistake, he was under a misapprehension, he made a tactical error, his judgment was flawed, he was unwise, another counsel might have conducted the case differently, or better. The papers arrived late, he was rushed. He neglected to check a point. He acted in good faith, he considered the options, he discussed matters with D. With the benefit of hindsight it may be seen that he gave poor advice and took some poor decisions.

What has to be established is that as a result of the flagrant incompetence of counsel, a serious misjudgement, no rationality or sense, a serious departure from the proper standards of advocacy, a dereliction of duty, no reasonable counsel would have acted in that way, the fault was truly significant, D was denied a fair trial article 6(3). He was so prejudiced as to be wrongly convicted, there was a miscarriage of justice, and the conviction was unsafe. Criminal Appeal Act 1968, s 2(1)(a). Did the incompetence of counsel deny D a fair hearing? As the judges say, such cases are extremely rare and wholly exceptional. D cannot normally expect to have a retrial, taking a different line of defence from that taken at the trial.

No instructions

Counsel acted without instructions, or without proper instructions, or in defiance of instructions. Although counsel is deemed to be acting upon instructions he must in fact be doing so. Counsel must advise D, strongly if need be. If D rejects that advice counsel must either act upon those instructions, competently, or withdraw if he feels that he cannot act properly in the interests of D. Counsel must not browbeat D into agreeing to a course of action which D manifestly does not really agree with; or give advice to D at the last moment, depriving D of the opportunity to reflect upon the situation.

Failure of counsel to study the legal brief adequately

Before the trial began counsel did not read the papers, did not meet D or his solicitor, did not seek an adjournment when he could and should have done, e.g. it was clear that a significant or vital witness could and should be found and called for the defence.

Failure to challenge prosecution evidence

Counsel failed to challenge the prosecution evidence. Discrepancies go to credibility. In identification case there may be many potential discrepancies, within the evidence of the victim, and within the evidence of all the prosecution witnesses. Colour, height, facial and body features, clothing, the actual circumstances, all may be significant and the evidence may differ in material respects. The victim may have been traumatised or shocked or confused at the time of the incident. Relevant matters going to the bad character of the prosecution witnesses were not put to them. Videos and transcripts were available revealing some relevant rather unsavoury features about the victim yet no use was made of them by counsel.

Failure to call witness

Whether or not to call a witness always involves a matter of judgment. Counsel may reasonably feel that the potential witness would be irrelevant, or rambling, or damaging, or reluctant, or hostile, or lacking in good character and credibility. The witness could be unreliable, not worth the risk. The prosecution case may anyway already be in tatters. However, not to call a witness of reliability, character and credibility, who was present at the incident, whose evidence contradicts the prosecution evidence, or who is a good alibi witness, or can speak convincingly to the good character of D, is a very different matter. Counsel should put as positive and as credible a case to the jury as he possibly can.

Failure to call Defendant

There may be good reason for not calling D. He would be a poor witness. He is inarticulate, he stammers and stutters, he easily becomes confused and upset and angry. He has nothing to say: his case is simply that the case is one of mistaken identity and he was not present at the incident. He would be “shredded” by prosecution counsel. He has an embarrassingly poor character and record. He would not be convincing or credible, he would not do the defence case any good. He does not wish to give evidence, having been advised of the advantages and disadvantages. However, calling D is usually the best course. The jury like to see and hear him; they are suspicious if he does not give evidence, whatever direction the judge may give them. He may wish to give evidence, he may be a credible convincing witness, he may

be articulate, he may be of good character. Not to call him may be a most serious misjudgement by counsel.

Wrong defence

Counsel ran the wrong defence to a charge of murder, namely accident, or self defence, or manslaughter by reason of loss of control, or manslaughter by reason of an unlawful act, or lack of intent to kill or to cause serious bodily harm. Though one might have thought that prosecution counsel and the judge would have intervened as the case proceeded and the evidence emerged.

Authorities

In the nature of things the appeal needs to be conducted on a close examination of the facts rather than a citation of legal authorities. However, felicitous, eloquent and persuasive submissions may benefit from a perusal of some of the leading judgments:-

Teeluck v R [2005] UKPC 14, [2005] 1 WLR 2421, [2005] 2 Cr App R 25, paras 36-40, Lord Carswell. (Failure to raise good character of Defendant).

R v Donnelly [1998] Crim LR 131 – failure to move to quash indictment and to seek adjournment and extension to legal aid, not flagrant incompetence.

R v Fergus [1994] 98 Cr App R 313, 322-324 – failure to ask for statements to be taken from key witnesses, failure to call alibi witnesses, failure to call character witnesses.

Sanker v State of Trinidad and Tobago [1995] 1 All ER 236, [1995] 1 WLR 194 PC - hostility shown to judge, failure to advise D on giving evidence, failure to seek an adjournment, thereby depriving D of the opportunity to put his defence.

R v Bevan [1994] 98 Cr App R 354, 358 – counsel should always advise on whether D should or should not give evidence, and record that advice.

R v Irwin [1987] 1 WLR 902, [1987] 2 All ER 1085, (1987) 85 Cr App R 294 – failure to call alibi witness, failure to communicate with D or to seek instructions from D, D deprived of opportunity to consider his defence.

R v Ullah [2000] 1 Cr App R 351, 355G–359 – failure to use transcripts of a recording of efforts by the victim to suborn the evidence of prosecution witnesses.

R v Ensor [1989] 1 WLR 497, [1989] 2 All ER 586, (1989) 89 Cr App R 139, 143-144 – carefully considered decision not to apply for severance possible erroneous but not incompetent.
R v Nangle [2001] Crim LR 506 – did the incompetence of counsel deny D a fair hearing?
Daud v Portugal (2000) 30 EHRR 40, [1998] EHRLR 634 – a test less demanding than flagrant incompetence may be appropriate under article 6.
R v Gautam [1988] Crim LR 109 – counsel properly advised and D agreed, not to call medical evidence, no ground for appeal.

Alec Samuels is an established law writer of articles for journals found in Westlaw and Lexisnexis.

UPCOMING EVENT

On 15 March 2013, a day conference, suitable for instructing solicitors as well as for expert witnesses is being held at the Institute of Arbitration in London. The morning session will be conducted by barrister Giles Eyre of 9 Gough Square Chambers who will explore the complex and difficult issues that arise when dealing with legal tests in evidence. Three issues commonly arise because experts are not aware or are not fully instructed by solicitors as to which legal test to apply; how to apply the legal test; and how to apply it in complex factual situations.

This will be a useful conference, not only for experts but for instructing solicitors who may not always realise that they can give guidance to the expert.

In the afternoon session, Lynden Alexander, of Atlas Chambers, 3 Field Court, London, will explore writing techniques that will improve the clarity and reliability of a report. Solicitors will find this useful not only for assisting them to choose a quality expert but in writing their report to counsel. The whole day will cost £550.00 plus Value Added Tax and Lynden Alexander can be contacted regarding bookings at lynden@prosols.uk.com.

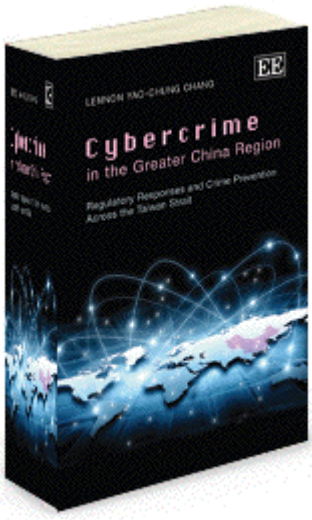
CYBERCRIME in the Greater China Region

Lennon Yao-Chung Chang

Edward Elgar (2012)

ISBN 978-0-85793-667 -7

Book review by Sally Ramage



The publisher *Edward Elgar* is a leading international publisher of academic books and journals in economics, finance, business and management, law, environment, public and social policy.

We are reminded that the Internet was built for research and not for commercial purposes and its founding protocols 'are inherently insecure. (See Lessing, 2000). The world's total population is over 7 billion and today, the Internet plays a major part in the life of many people on this planet, from giant organizations to a bare-footed schoolchild in a developing country.

Today, China alone has 564 million Internet users. In his book, Professor Chang reminds the reader at the start of the book that, for research purposes, his book does not address conventional crimes which may be facilitated by the Internet; rather, his work consists mainly

of a discussion about computer crimes and the criminals who target computers; these people are known as ‘hackers’.

Since 2006, it was known that China had the world’s greatest number of bot-infected computers. Beijing alone had 7% of the worldwide total of bot-infected computers. In December 2012, it became widely reported that China had 55% of the world’s total bot-infected computers, if the Spanish company Panda Security is to be believed in its annual report and after China, the next-worst-infected countries were South Korea (54.15 per cent) and Taiwan (42.14 per cent), although it is widely believed that these are not attacks from other countries but attacks by Chinese hackers on Tiawanese hackers. A study by a Calfornia-based research institute reported in August 2012 that China’s black economy affects nearly a quarter of that union’s internet users in 2012 and cost the Chinese economy over 5 billion yuan (£500m) (Muncaster, 2013). Worldwide, the staggering number of different malware in computers today consists of a total of 27 million new strains, according to the report.

Cyberattacks on government computers are political. They are performed to extract security information; and strategic commercial information, as when hackers in China attacked the computers of the New York Times (‘NYC’) on 7 February 2013.(See Paul, 2013) because the NYC had published information about a Chinese political figure. The attacks coincided with an exposé by the NYT about the vast wealth acquired by the family of *Wen Jiabao,* the prime minister o China. In this monograph, Professor Chang of Hong Kong University has studied China’s internet system and the ‘hacking’ that takes place in China and in Taiwan. He claims that this activity is mostly political but admits that commercial interests are not included.

Although this book is not directly related to any other country, it is an important study that reveals the culture in China and the secrecy in those spheres and the almost impossibility of penetrating that secrecy. This gives us a flavour of a macro situation that can bring new knowledge through the mining of the micro cybercrime situation between China and Taiwan. Cybercrime can only be known about by its impact thereafter. It cannot be revealed without digital evidence and the term ‘digital evidence’ encompasses any and all digital data that can establish that a crime has been committed or can provide a link between a crime and its victim or a crime and its perpetrator. It is his digital evidence that revealed that the NYC was cyber attacked using techniques of the Chinese military.

The application of forensic science principles is used in the location, recovery, and examination of digital evidence. Digital evidence is evidence that is stored on or transmitted by computers play a major role in a wide range of crimes. Though an increasing number of criminals are using computers and computer networks, few investigators are well versed in the technical and legal issues related to digital evidence. How computer networks function; how they can be involved in crime and how they can be used as a source of evidence, criminal profiling; and understanding criminal motivations, is very necessary knowledge in order to understand the law related to cybercrime.

Cybercrime is the use of computers for criminal activity. Cybercrimes such as e-mail defrauding, harassment in chat rooms, 'spoofing' and 'cracking' of computer networks are activities that leave digital evidence which can be gathered with minimal distortion and used legally for prosecution in a court of law.

Professor Chang's book in only concerned with terrorist cybercrime when computer experts illegally interrogate the whole computer systems of a country's government or any organization related to a government, which, today, can mean that literally anybody's computer can b attacked to glean information in it. This includes automatic data-mining techniques being developed to find out what is in large databases. (Isenberg, 2013)

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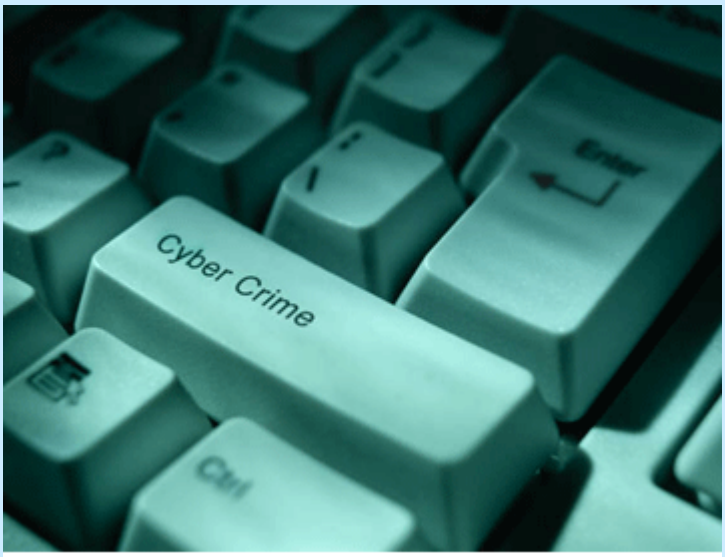
http://www.darkreading.com/insider-threat/167801100/security/news/240148043/nearly-a-third-of-all-computers-scanned-around-the-world-in-2012-were-infected-reports-pandalabs, accessed on 10-2-2013.

Update



Land Registry advises law firms to check 'address for service'

On 5 February 2013, the UK Land Registry issued a notice, advising law firms to check their 'address for service' in order to prevent fraud. The address for service is the address to which they send notices and correspondence. They say that keeping your address up to date and accurate is an important step in helping to prevent property fraud. In order to ensure swift and correct delivery the Land Registry is, whenever possible, now entering in the register an address for service in a format that conforms to official sources like Royal Mail. In some instances this might be slightly different to the format of the address provided by the applicant or their conveyancer in a deed or application form.