

## **Criminal Justice and Technology**

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Rapidly developing technology poses numerous challenges for criminal justice systems around the world. This special edition focuses on three specific such challenges relating to: the use of technology to protect legal professional privilege where digital material is seized under a search warrant; the management of risk where law and computer science intersect; and the danger of erroneous identification where human participants in the criminal justice system are required to make identifications from images.

Adopting a comparative approach and addressing a gap in the literature, in the first article Mitchell, Stockdale and Gilligan examine ways of protecting legal professional privilege when digital material is seized under warrant. Examining practices developed in England and Wales, New Zealand and the United States to provide safeguards to preserve privilege, the authors consider the part played by technology to identify and protect privileged material. The article recommends best practice measures to be included in legislation, codes of practice or guidance to ensure that legal professional privilege is not undermined where digital material is seized under a search warrant.

In the second piece, Wilson, Bergman, Jackson and Popov explore a different approach to managing probative risk where law and computer science intersect. It couples socio legal research with computer science research which had developed out of research into communications on the Dark Web. The authors argue that, rather than viewing this risk through the lens of socio-technology, it should be viewed as an ethical issue which arises in criminal justice systems because of epistemological differences between lawyers and scientists exacerbated by issues of political economy and safeguard evasion. Broad interdisciplinary collaboration is essential for insight into what is required to adapt to increasing reliance on AI-assisted decisions in criminal justice.

In the final article, Edmond and Wortley consider the interpretation of images in criminal proceedings. Investigators, analysts and jurors may be involved in identifying offenders in a criminal trial using images of suspects acquired during the course of an investigation. The flawed assumption that investigators and analysts can readily identify persons viewed in images, articulate how they were able to do so and do so without cognitive bias from exposure to extraneous information is challenged by the authors, who explain that the risks associated with contextual and cognitive biases in identifying individuals from images is a threat to fairness, proof and rationality. Similar risks exist in relation to comparisons made by jurors between images and the appearance of the defendant in court. The authors demonstrate their hypothesis with reference to *R v Yaryare* [2020] EWCA Crim 1314. They propose that only witnesses with demonstrable expertise should be permitted to testify as to the identify of persons of interest in images.

The three articles in this special edition each concern different aspects of human/technological interaction within the criminal justice system. What becomes clear from all three is that such interactions create both opportunities and risks and that the key issue is developing regulations, practices or approaches to enable the management of such risks.

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