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An Examination of the Newsprint Media's Construction of DNA Technology regarding Innocence
and Wrongful Conviction

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Reliance on Science:
An Examination of the Newsprint Media's Construction
of DNA Technology regarding Innocence and
Wrongful Conviction

Douglas N. Veld (2895923)

Thesis submitted to the Faculty of Graduate and Postdoctoral Studies
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Department of Criminology
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I further dedicate this thesis to all individuals who have been wrongfully convicted. We will remain dedicated in raising public awareness of this issue to ensure that your pain and suffering is not in vain.

“Energy and persistence conquer all things.” – Benjamin Franklin

*Wrongful convictions have the potential to seriously undermine public confidence in the judicial system. Thus, from the perspective of both individual and societal likely consequences, it would be difficult to overstate the seriousness of a wrongful conviction. Unwarranted punishment of the innocent is no less serious than the guilty escaping punishment.<sup>1</sup>*

– Mr. Justice William Marshall

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<sup>1</sup> “Priest gains new trial: Judge should have warned jury more strongly about accepting evidence of people with criminal records” [Final Edition]; No Author. *The St. John’s Telegram*, January 27, 2001, pg. A.1, 1,136 words



## Abstract

*Wrongful convictions remain an understudied problem in Canada. With the advent of recent technological advances in the form of forensic DNA analysis, newsprint media agencies have served as a medium for questioning the fallibility of the criminal justice system while raising public awareness of erroneous convictions. The social constructionist theoretical perspective provides the foundational underpinnings of a qualitative content analysis surrounding the print-news coverage of three Canadian wrongful conviction cases: David Milgaard, Guy Paul Morin and Gregory Parsons. Findings indicate disparity in the amount, extent, nature and content of coverage amongst wrongful conviction cases and between national and local coverage. The data suggests that for an individual to conclusively establish factual innocence, DNA technology must not only exonerate the wrongfully convicted individual but must also implicate the 'real' perpetrator. These results suggest the newsprint media is perpetuating a 'hierarchy of wrongful convictions' based on an individual's ability to conclusively establish their factual innocence through the utilization of forensic DNA analysis.*

## Introduction

The image of an accused individual, erroneously convicted and unjustly punished, has recently evoked both professional and popular concern in numerous countries throughout the world (Givelber, 1997). In 2001, in the *United States of America v. Burns & Rafay*<sup>1</sup> case, the Supreme Court of Canada referred to “a disturbing Canadian series of wrongful convictions” commencing with Donald Marshall Jr. in 1971 and included cases such as Guy Paul Morin, David Milgaard and Gregory Parsons. What happened to these individuals has created great apprehension around the ability of the legal system to dispense judgments fairly and impartially, a system based on the ideology that “it is better that ten guilty persons escape than one innocent suffer” (Blackstone, 1765, as cited in Huff, 2002, p. 3). Public fear of unjust violence at the hands of the state, which has a monopoly on the legitimate use of force, is one of the defining indices that distinguish democratic societies from totalitarian regimes (Steiker & Steiker, 2005). As such, depriving innocent citizens of their freedom is a problem that deserves attention from politicians, academics and the general public.

Recently, a newfound scholarly interest in the understudied problem of wrongful conviction is evident in academic literature. This interest is undoubtedly related to recent technological developments in the area of forensic science, most notably the advent of DNA testing<sup>2</sup> (Leo, 2005). With the advancements of forensic DNA analysis<sup>3</sup> and its relevance to

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<sup>1</sup> *United States of America v. Burns & Rafay* (2001) 1 S.C.R. 283 at paras 97 *et seq.*

<sup>2</sup> The concepts of DNA ‘testing’ and ‘sampling’ are used interchangeably when referring to the use of DNA in criminal investigations, while a DNA ‘profile’ refers to the forensic analysis or result of a test or sample. These terms are distinguishable from the original but misleading notion of DNA ‘fingerprinting’, a concept developed and patented in Britain by Dr. Alec Jeffries at the University of Leicester in 1985, because DNA ‘fingerprinting’ wrongly implies DNA technology produces unique results (Lussier, 1992; Saul, 2001)

criminal cases, there is a greater acceptance that wrongful convictions are a legitimate and continuous challenge facing the criminal justice system. As stated by Scheck, Neufeld and Dwyer (2000), “Not long ago, to claim that an innocent person had been imprisoned was audacious, even risky, a proposition that was close to unprovable...Now the fabric of false guilt is laid bare” (p. xv).

In Canada, the issue of wrongful conviction has come to the forefront of public dialogue through the media’s reporting of notorious cases of miscarriages of justice. The print-news media, who have a longstanding tradition of crime reporting, have become sensitized to the possibility of wrongful convictions and their continuous coverage of miscarriages of justice permit this sociological problem to remain in the public spotlight (Warden, 2003). Names such as David Milgaard, Steven Truscott, Guy Paul Morin, Gregory Parsons and Thomas Sophonow have become synonymous with wrongful conviction and have shown that like all legal systems, Canada is not resistant to miscarriages of justice (Denov & Campbell, 2005). Wrongful conviction cases provide media agencies an avenue for questioning the fallibility of criminal justice officials, potentially raising public awareness on the issue while encouraging debate regarding the existing policies and practices that guide the criminal justice system.

The purpose of this thesis is an attempt to analyze local and national newsprint media agencies examination of DNA technology in relation to how they construct notions of innocence and wrongful conviction. The thesis is divided into a number of chapters which outline the conceptual, methodological and theoretical perspectives that will be examined throughout.

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<sup>3</sup> “Forensic DNA analysis” is defined in s. 487.04 in the *Criminal Code of Canada* [1985] as “the comparison of the DNA of the bodily substance from a person in execution of a warrant with the results of the DNA in the bodily substance found at the place where the offence was committed, on or within the body of the victim, on anything worn or carried by the victim or on or within the body of any person or thing or at any place associated with the commission of the offence.”

## **Chapter Summaries**

This introduction describes why this topic is of relevance, not only for academics but for society as a whole, in order to provide a context for the overall topic that will be explored in this thesis. The second chapter provides a conceptual framework for understanding wrongful conviction and innocence. Specifically, this chapter presents an overview of the previous studies that have been completed on erroneous convictions in North America while addressing the underlying causes and contributing factors that have been linked to miscarriages of justice. Additionally, the potential psychological, emotional and familial effects associated with wrongful convictions are examined. Following this, the operational definitions of actual and legal innocence are provided along with an overview of the constitutionally protected rights in Canada surrounding the presumption of innocence. Potential legal solutions for an individual who has been wrongly convicted are also addressed with specific attention directed towards the role of appellate courts and the ministerial review process.

The third chapter presents the scientific and legislative advancements that have recently occurred in relation to forensic DNA analysis. Particularly, the biological structure of DNA is examined along with the relatively novel scientific advancements that have been achieved in DNA testing procedures associated with criminal investigations. Following this, the legislative history of DNA technology in Canada is outlined with specific attention drawn to the court proceedings, public debates and constitutional challenges that ultimately provided the underpinnings for the establishment of the national DNA data bank.

The fourth chapter is divided into two components; the first section is dedicated to analyzing the underlying principles associated with the theoretical perspective of social constructionism while the second addresses the role of the media in the claims-making process.

Specifically, the theoretical concepts of claims, claims-makers and social problems are examined along with the critiques and potential solutions that have been advanced in relation to the social constructionist perspective. The second section of this chapter analyzes the role of the media in constructing a news event, the underlying factors that determine the newsworthiness of a story, and the journalistic constraints and editorial bias that may potentially affect the production process of scientific news.

Methodological considerations are taken into account in the fifth chapter. Particularly, the research questions associated with this thesis are addressed along with a presentation of the case synopses surrounding the Milgaard, Morin and Parsons miscarriages of justice cases. Additionally, conceptual foundations pertaining to content analyses are discussed, with specific attention directed towards the necessary selection criteria required for the wrongful conviction cases and newsprint media organizations to be included in this study. The data collection process and a brief discussion surrounding potential research limitations conclude this methodological chapter.

The sixth chapter, which presents an analysis of the data, is divided into two sections: part I addresses the similarities and differences associated with local and national newsprint media coverage of the wrongful conviction cases, while part II addresses the newsprint media's construction of DNA technology in relation to notions of innocence and wrongful conviction. The first section entails quantifying the total number of local and national articles printed on each miscarriage of justice, tallying the average number of words published in each article, and recording the section and page where each article was located in the newspaper. Moreover, the tone of newsprint articles pertaining to forensic DNA analysis and the key claims-makers employed to describe this relatively novel scientific procedure are also examined in this initial

phase. The second section of the analysis examines the headlines, descriptive language and verbal imagery used by the newsprint media agencies to depict forensic DNA analysis. Three overarching themes emerged from this analysis and each is presented and supported by empirical data from the headlines and articles printed in the selected newsprint media agencies.

Lastly, the seventh chapter provides a discussion of the findings and begins with a brief summary of the overall findings and addresses the potential implications associated with this research study. Specifically, attention is focused on how the newsprint media have relied on DNA technology to socially construct the concepts of innocence and wrongful conviction in the absence of legal procedures and the potential implications this may have on the lives of the erroneously convicted. It is proposed that the newsprint media have constructed a hierarchy of wrongful conviction that is dependent on the availability and significance of DNA technology in conclusively establishing the factual innocence of an erroneously convicted individual. Finally, areas of future research relating to this subject matter are addressed.

## Constructing the Concepts of Innocence and Wrongful Conviction

*“Mankind censures injustice fearing that they may be the victim of it, and not because they shrink from committing it.”*

- Plato (360 BC, as cited in Waterfield, 1998, p. 344)

The problem of wrongful conviction has received attention in academia for some time now (Borchard, 1932; Cohen, 2003, Gardiner, 1952; Radin, 1964; Scheck et al., 2000; Westervelt & Humphrey, 2001; Yant, 1991), resulting in an ample and growing quantity of scholarly literature pertaining to this subject matter. Yet, only recently has a critical mass of criminologists and other social scientists emerged to research the prevalence and contributing factors associated with miscarriages of justice (Leo, 2005). As Rapp (2000) contends, “In an age when social justice has made such marked advances, it seems strange that so little attention has been given to one of the most flagrant of all publicly imposed wrongs; the plight of the innocent victim of unjust conviction in criminal cases” (p. 163).

Cases of wrongful conviction demonstrate the potential ineptitude and weaknesses of the judicial process, regardless of the constitutionally protected rights made available to an accused person. Central to the functioning of the adversarial system is the presumption of innocence, a doctrine that allocates the burden of proof beyond a reasonable doubt to the prosecution in criminal trials (Laudan, 2005). In Canada, the right of an accused person to be presumed innocent until proven guilty has been entrenched in section 11(d)<sup>4</sup> of the *Canadian*

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<sup>4</sup> Section 11(d) of the *Canadian Charter of Rights and Freedoms* states, “Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.” *Constitution Act* [1982] c.11

*Charter of Rights and Freedoms*,<sup>5</sup> with any infringement of the presumption passing the stringent test of justification set forth in section 1<sup>6</sup> of the *Charter* (Mahoney, 1988). Despite these legislated safeguards, the criminal justice system is based on human judgments and as such it is subject to error that can have devastating consequences.

This chapter will provide a conceptual framework with respect to the phenomena of wrongful convictions and the legal doctrine surrounding the notion of innocence. The first section of this chapter will focus on previous studies that have been conducted on wrongful convictions, addressing the contributing factors and the impact these errors have on the lives of those who endure a miscarriage of justice. The next section will provide a definition of actual and legal innocence along with an overview of the constitutionally enshrined rights in Canada pertaining to the presumption of innocence in the adversarial system of criminal justice. Finally, the potential remedies available to an individual who has been wrongfully convicted will be examined, specifically focusing on the role of appellate courts and ministerial review.

### **Wrongful Convictions: When the Criminal Justice System Errs**

In North America, the history of study relating to wrongful convictions began with the pioneering work of Edward Borchard in 1932. Arguing against the predominant assumption in academic and legal circles at that time that innocent individuals were never convicted, Borchard's classic research shifted the focus from *whether* individuals suffered a miscarriage of justice to questions relating to *why* these individuals were wrongly convicted and what could possibly be done to remedy the situation (Givelber, 1997). From this academic foundation, there was typically one major article published every decade on the subject of wrongful

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<sup>5</sup> *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K), 1982, c. 11 [Charter]

<sup>6</sup> Section 1 states, "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."



convictions, often following Borchard's format and arguments, but utilizing newer case studies (Bedau & Radelet, 1987; Gardiner, 1952; Huff, 2004; Radin, 1964; Yant, 1991).

Until the late 1980's, the topic of wrongful convictions had largely been ignored by criminologists along with most other social scientists (Leo, 2005). However, the watershed study of Bedau and Radelet (1987) led to an emergence of interest in this area. These academics identified 350 cases where a miscarriage of justice took place in America from 1900 to 1985, systematically identifying the contributing factors in each case along with quantifying the number of individuals who were erroneously executed (Bedau & Radelet, 1987). At the time of publishing, this study introduced the largest and most compelling data set on wrongful convictions in the literature, whose numbers increased to 416 individuals by 1992<sup>7</sup> (Radelet, Bedau & Putnam, 1992).

Following the influential and widely accepted study of Bedau and Radelet (1987), research studies in the area of wrongful conviction burgeoned in the 1990's with the advent of increasingly sophisticated forms of DNA testing (Leo, 2005). With the emergence of forensic DNA analysis, it was now possible to establish factual innocence as opposed merely to procedural innocence<sup>8</sup> (Bedau, Radelet & Putnam, 2004). Gross, Jacoby, Matheson, Montgomery and Patil (2005) suggest that the rapid increase in wrongful conviction studies may have also been effected by the fact that DNA exonerations<sup>9</sup> have become increasingly

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<sup>7</sup> Radelet et al.'s (1992) research estimated that 23 individuals had been erroneously executed in the United States of America from 1900 to 1985.

<sup>8</sup> The concepts of 'factual innocence' and 'actual innocence' are used interchangeably as are the concepts of 'legal innocence' and 'procedural innocence' throughout this paper. Each concept will be fully examined subsequently in this chapter.

<sup>9</sup> Gross et al. (2005) defines the term exoneration as, "an official act declaring a defendant not guilty of a crime for which he or she had previously been convicted" (p. 524). The exonerations included in their research design occurred in four ways: (1) Governors (or other appropriate executive officers) issued pardons based on evidence of the defendants' innocence. (2) The criminal charges were dismissed by courts after new evidence of innocence emerged, such as DNA. (3) The defendants were acquitted at a retrial on the basis of evidence that they had no

newsworthy which in turn has led to significant resources dedicated to the plight of individuals who have suffered a miscarriage of justice. As a result of forensic DNA analysis, it has now become widely accepted in the span of a decade that wrongful convictions occur with regular and troubling frequency, despite numerous constitutional rights that aim to protect an individual in criminal proceedings from miscarriages of justice (Leo, 2005).

Although impossible to quantify the actual number of wrongful conviction cases that have previously occurred, the 416 cases presented by Radelet et al. (1992) are certainly alarming. In a study designed to estimate what proportion of all felony convictions in the United States led to erroneous convictions<sup>10</sup>, Huff, Rattner and Sagarin (1996) estimated an annual error rate of 0.5%; which translates into approximately 7,500 persons arrested for index crimes who were wrongly convicted in 2000 (Huff, 2002). Other estimates of individuals who have been wrongly convicted range between 0.5% to as high as 20% (McCloskey, 1989; Poveda, 2001). Research conducted by Gross et al. (2005) has indicated that there were 340 exonerations between 1989 through 2003 in the United States of America alone; 144 of which have been cleared through the use of forensic DNA analysis. According to the New York based Innocence Project of the Benjamin N. Cardozo School of Law of Yeshiva University, there have been 220 wrongly convicted prisoners who have been exonerated and released as a result of DNA testing procedures (see Innocence Project, 2008), and there is every indication that this figure will continue to grow. Despite not being able to specify the exact number of individuals who have been wrongfully convicted in the past, it is believed that the miscarriages

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role in the crimes for which they were originally convicted. (4) The state posthumously acknowledged the innocence of defendants who had already died in prison.

<sup>10</sup> In this study, Huff et al. (1996) defined wrongly convicted individuals as “people who have been arrested on criminal charges...who have either pleaded guilty to the charge or have been tried and found guilty and who, notwithstanding plea or verdict, are in fact innocent” (p. 10). Huff et al. (1996) excluded many cases in which the conviction was overturned and either the charges were dropped or the defendant was found not guilty, because neither of those outcomes by itself establishes factual innocence.

of justice that do come to light are the 'tip of the iceberg' in relation to the actual number of individuals who have been wrongly convicted of a criminal offence (Gross et al., 2005; Huff et al., 1996; McCloskey, 1989; Poveda, 2001; Scheck et al., 2000).

### **Examining the Factors Contributing to Wrongful Convictions**

In addition to examining how prevalent wrongful convictions are in the criminal justice system, numerous lawyers, journalists and criminologists have shown interest in ultimately answering the question as to why they occur (Huff, 2004; Ramsey & Frank, 2007; Scheck et al., 2000; Westervelt & Humphrey, 2001; Zalman, 2006). Previous research has suggested that the contributing factors associated with wrongful convictions include mistaken eyewitness identification; misconduct on the part of overzealous law enforcement officers and prosecutors withholding exculpatory evidence; tunnel vision by criminal justice officials, so as to narrowly focus on a particular individual who fits an investigative or prosecutorial theory; false or coerced confessions and suggestive interrogations; perjury; misleading line-ups; inappropriate use of informants, including jailhouse 'snitches'; ineffective assistance of counsel; community pressure for a conviction; errors in forensic science testing procedures, as well as mistakes in the collection and explanation of scientific evidence in court (Huff, 2002; Leo, 2005; Ramsey & Frank, 2007; Scheck et al., 2000; Schehr & Sears, 2005). In the majority of wrongful conviction cases, there are interaction effects among these factors that ultimately lead to a miscarriage of justice (Huff et al., 1996).

Although the majority of academics are in agreement as to the contributing factors related to wrongful convictions, debate continues as to the most frequent type of error that results in a miscarriage of justice. Radelet and Bedau (1998) state that innocent individuals are sentenced to death because of "politically ambitious prosecutors, angry juries and incompetent

defence counsel” (p. 111). Liebman, Fagan, West and Lloyd (2000) suggest that the most common errors prompting reversals in criminal proceedings are incompetent defence attorneys along with police and prosecutors who fail to thoroughly examine exculpatory evidence. Research conducted by Drizin and Leo (2004) suggests that false confessions play a prominent role in erroneous convictions while Gross et al. (2005) argue that eyewitness identifications, perjury and false confessions are the key contributing factors that lead to miscarriages of justice.

Huff et al. (1996) believe that the single most important factor leading to wrongful convictions is eyewitness misidentification. In a survey dominated by prosecutors, judges, law enforcement officials and attorney generals,<sup>11</sup> Huff et al. (1996) found 79% of the respondents ranked eyewitness inaccuracy as the most frequent type of error resulting in wrongful convictions. Building on this foundational work, the Innocence Project (2008) has also highlighted the negative effects of mistaken eyewitness identification in criminal proceedings. Research conducted by this organization suggests that eyewitness inaccuracy has contributed to over 75% of the 220 wrongful convictions that have ultimately been overturned by post-conviction DNA evidence. As summarized by the American Supreme Court in the 1967 decision of *United States of America v. Wade*<sup>12</sup>,

The vagaries of eyewitness identification are well known; the annals of criminal law are rife with instances of mistaken identification...The influence of improper suggestion upon identifying witnesses probably accounts for more miscarriages of justice than any other single factor – perhaps it is responsible for more such errors than all other factors combined (p. 229).

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<sup>11</sup> The total sample size of this study was 353 individuals, of whom 229 responded to the survey request, a 65% response rate (Huff et al., 1996).

<sup>12</sup> *United States of America v. Wade* (1967) 388 U.S. 218

## **Examining the Impact of Wrongful Convictions**

Although some criminologists have recently explored the study of wrongful convictions (Harmon, 2001; Huff et al., 1996; Lofquist, 2001; Poveda, 2001; Schehr & Sears, 2005; Schoenfeld, 2005), few academics have focused their attention on the plight of the wrongly convicted themselves (Campbell & Denov, 2004; Gross et al., 2005; Grounds, 2003). However, this trend may appear to be altering slightly as recent public inquiries in Canada have attempted to shed light on the personal consequences and psychological costs that wrongly convicted individuals endure as a result of a miscarriage of justice (Kaufman, 1998; Lamer, 2006).

The experience of wrongful conviction can exact a heavy toll, both physically and psychologically on an individual who often suffers years of undeserved incarceration. While prisoners must learn to cope with the difficulties that arise in prison (Sykes, 1958), the detrimental effects of imprisonment are further exacerbated by the unjust nature of their incarceration in cases of wrongful conviction (Campbell & Denov, 2004). Attempts by the erroneously convicted to reject the criminal label leads to a 'burden of innocence' and further negative consequences in relation to their correctional program (Campbell & Denov, 2004, p. 152). The denial of wrongdoing may be interpreted as a greater threat to recidivate upon release as admissions of responsibility and remorse are seen as essential for the process of 'rehabilitation' (Campbell & Denov, 2004). As stated by Gregory Parsons,

In order for me to get parole at some time in my life, I'm going to have to get up before a panel not only say I'm guilty, to say why I did it, how I did it. That would have never happened...I would have spent life in jail (as cited in Lamer, 2006, p. 96).

The adamant rejection of guilt also contributes to a sense of futility relating to their eventual release and the irresolution of their case (Campbell & Denov, 2004; Givelber, 1997).

Unfortunately, the difficulties encountered by the wrongly convicted do not end once they are released from prison. Grounds (2003) found an unexpected pattern of severely disabling symptoms and psychological problems including difficulties such as estrangement, loss of capacity for intimacy, moodiness, suicidal tendencies, post-traumatic stress disorder, inability to settle and loss of a sense of purpose and direction. It is evident that the experiences of wrongful convictions continue to impact an individual's life beyond the wrongful incarceration (Grounds, 2003). Moreover, Campbell and Denov (2004) suggest that the problems experienced by wrongly convicted individuals differ from other long-term prisoners in that they demonstrated an increased intolerance of injustice and a desire for official exoneration and compensation.

Although the wrongly convicted suffer directly from miscarriages of justice, the families of these individuals must also cope with the financial difficulties and stigmatization of having a loved one in prison. The familial effects of a wrongful conviction can be immediate and direct, often endured through the loss of income and assistance with child care along with bearing the expenses of supporting and maintaining contact with incarcerated family members (Braman, 2002). Stress related to the incarceration of a loved one also takes a significant toll, not only on relationships with the prisoner, but also on the interactions between other family members. As Lewis (1995) states,

The impact of stigma is wide: it not only affects those who are stigmatized, but those who are associated with the person so marked...Stigmas are contagious: they impact on members of the family and even the friends of the stigmatized person. Like an infectious disease, the stigma not only affects the victim of the stigma but all who are associated with him or her (p. 200).

Goffman (1963) has suggested that stigma moves through relationships, tainting those associated with the stigmatized. The implications are apparent; the stigma of criminality

connected with imprisonment not only marks the person incarcerated, but also those closest to these individuals as well.

### **Defining Actual and Legal Innocence**

One of the difficulties with recognizing differing types of innocence is the term 'innocence' itself (Burnett, 2002). Marquis (2005) suggests that words such as 'innocence' convey an enormous moral authority that is intended to steer public debate in a particular direction by appealing to a universal revulsion at the idea that someone who is genuinely blameless could be imprisoned for a crime they did not commit. The harm of punishing innocent individuals resonates with a large majority of the public due to the fact that most citizens can empathise with the harms that they fear could happen to themselves, rather than those that occur to potential criminals (Steiker & Steiker, 2005). Although used interchangeably, actual and legal innocence are two separate concepts that have unique definitions. Unfortunately, the distinctions in legal terminology do not translate well to a public whose legal exposure is often negotiated by the mass media's use of high-profile cases of actual innocence.

The public connotation of 'innocence' typically refers to an individual who is completely blameless of any criminal activity, as in the case of a defendant misidentified as the perpetrator who had no involvement whatsoever in the offence for which they were accused and convicted (Steiker & Steiker, 2005). Referred to as actual or factual innocence in academic and legal circles, this concept connotes a phenomenon where an individual was not present at the scene of the crime and logically could not have committed the offence in question (Burnett, 2002). The mistaken conviction may become known when a thorough investigation or forensic DNA analysis clears the wrongly convicted individual by establishing

the truth of the prisoner's claims regarding non-presence at the crime scene, often through the investigative work completed by a dedicated post-conviction lawyer (Givelber, 1997).

Unfortunately, it has become an all too common occurrence in the Canadian criminal justice system that new evidence pertaining to actual innocence only becomes available late in the appeal or ministerial review process after an individual has served a significant amount of time incarcerated for a crime they never committed.

Actual innocence is fundamentally different than legal or procedural innocence in that legal innocence occurs in a situation where an individual admits that they contributed to the offence in question, but offers an excuse or a justification for their actions (Burnett, 2002). The assertion of this innocence rests on the ability to establish *mens rea* in a criminal case. If *mens rea* is not established beyond a reasonable doubt, the deliberateness and intentionality of the action cannot be proven (Burnett, 2002). A prominent example of this type of innocence can be seen in cases of self-defence or when a person is found not criminally responsible on account of a mental disorder. Rather, the person is responsible for the criminal activity in question; however, there are extenuating circumstances that have an impact on the determination of culpability. Despite the differences between actual and legal innocence, the constitutionally guaranteed doctrine of the presumption of innocence is meant to be afforded to all individuals accused of committing an offence.

### **Presuming Innocence in the Criminal Justice System**

Perhaps no other principle is more firmly entrenched in Canadian judicial proceedings than the presumption of innocence. This doctrine is among the small handful of legal standards in criminal law that is prevalent across a diverse spectrum of judicial systems (Laudan, 2005). Despite the broad agreement for a presumption of innocence in theory, the existence of this



principle in its practical application is often questioned. As stated by Justice Darling, “It is greatly feared that the so-called presumption of innocence in favour of the prisoner at the bar is a pretense, a delusion, and empty sound. It ought not to be, but – it is” (as cited in Laufer, 1995, p. 337).

The presumption of innocence constitutes a basic principle that operates to balance the general interest of the community with the protection of the fundamental rights afforded to an individual (Tadros & Tierney, 2004). This principle supplements other constitutional and administrative rights, such as the right to freedom, the right to equality, the right to silence and the right to counsel in an attempt to combat the overwhelming power of the state (Laufer, 1995). The presumption of innocence serves as a constant reminder to the general public, along with criminal justice officials, that the accused may indeed be innocent of all wrongdoing. This doctrine attempts to introduce an element of doubt and hesitation among law enforcement officials and prosecutors, reminding them that incriminating evidence against a person does not necessarily lead to a conclusion of guilt (Gelatt, 1982). It facilitates the right of an accused to perceive themselves as an integral part of the community, even during criminal proceedings and is essential for the preservation of an individual’s dignity (Kitai, 2002). As stated by Tribe (1970), the presumption of innocence,

[r]epresents far more than a rule of evidence. It represents a commitment to the proposition that a man who stands accused of crime is no less entitled than his accuser to freedom and respect as an *innocent* member of the community (p. 404, Emphasis in original).

Accordingly, the presumption of innocence serves to stall any predetermination of guilt by protecting the credibility of the accused’s innocence, in addition to guarding against an unjust imbalance in the burden of proof (Laufer, 1995).

In Canada, the presumption of innocence is enshrined in the *Charter* through the relevant portions of section 11(d) and section 1. Critical to an understanding of this constitutional guarantee is the continuous recognition by the Supreme Court that the presumption of innocence requires the Crown to prove an accused's guilt beyond a reasonable doubt<sup>13</sup>. There can never be, consistent with the presumption of innocence, a full legal burden on an accused to prove or disprove any fact that arises as innocence is presumed and need not be proven (Mahoney, 1988). Once a reasonable doubt has been achieved in relation to the prosecutor's case, it is impossible for the Crown to have proven guilt beyond a reasonable doubt. The *Charter* also presumes in section 11(d) that the presumption of innocence is afforded to the accused directly until guilt has been proven by the prosecution. As stated by Mr. Chief Justice Lamer in the 1985 ruling of *Dubois v. R.*<sup>14</sup>, "Section 11(d) imposes upon the Crown the burden of proving the accused's guilt beyond a reasonable doubt as well as that of making out the case against the accused before he or she need respond" (p. 357).

Interestingly, the criminal justice system warrants no inference of factual innocence from an acquittal, that is, that the accused did not commit the criminal activity in question. From the moment of arrest and prosecution to conviction, virtually all relevant decisions pertaining to an accused fail to include a finding of innocence among the possible outcomes (Laudan, 2005). Instead, each decision involves whether or not the case against the accused rises to a standard of proof considered beyond a reasonable doubt. If this threshold has been achieved, a verdict of 'guilty' is determined for the accused; if it has not, a verdict of 'not-guilty'<sup>15</sup> is the only result available to the fact-finder. While factual innocence cannot

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<sup>13</sup> *R. v. Appleby*, [1972] S.C.R. 303, at p. 317; *R. v. Oakes* [1986] 1 S.C.R. 109.

<sup>14</sup> *Dubois v. R.* [1985] 2 S.C.R. 350 at p. 357.

<sup>15</sup> As summarized by Laufer (1995), "The disposition of 'not guilty' confounds two qualitatively different classes of accused individuals: (a) individuals who are factually innocent and thus wrongly charged or prosecuted, and/or

necessarily be inferred from a finding of 'not guilty', a conviction implies the certainty of guilt (Kitai, 2002). Thus, terms such as 'not guilty', 'acquittal',<sup>16</sup> 'stay of proceedings',<sup>17</sup> or a 'withdrawal of the charge',<sup>18</sup> none of which entertain the notion of factual innocence. Furthermore, none of these facts are able to reduce the impression that it was proper for criminal justice authorities to charge and prosecute the accused, in spite of the fact that not enough evidence could be assembled to convict (Lamer, 2006). This point was reiterated by AIDWYC<sup>19</sup> at the public inquiry of Gregory Parsons,

"No longer an accused but forever shrouded in a cloud of officially induced suspicion...It preserves, if barely, the propriety of the initial prosecution and, simultaneously, indelibly tarnishes the defendant (as cited in Lamer, 2006, p. 318).

As the criminal justice system is not designed to grant moral absolution or to declare factual innocence (Kitai, 2002), the journey to clear one's name of any wrongdoing is a long and arduous process for those who suffer a wrongful conviction.

### **The Path to Redemption – Courts of Appeal and the Ministerial Review Process**

Once guilt has been proven by the Crown beyond a reasonable doubt, innocence is no longer presumed and there is, for the first time an onus on the accused, in cases of alleged

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(b) those factually guilty of a crime for whom evidence sufficient for conviction is missing. For many, this distinction is lost" (p. 376).

<sup>16</sup> Givelber (1997) suggest that neither "an acquittal on criminal charges does not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt" (p. 1323), nor does it prove the accused was factually innocent of the crime charged. Laudan (2005) states, "an acquittal is neither less nor more than an assertion by the trier of fact that the case offered by the prosecution failed to satisfy the relevant standard of proof" (p. 347).

<sup>17</sup> A stay of proceedings simply places the charges 'on hold'. The proceedings may recommence at any time within a year at the discretion of the Crown. If the proceedings are not resumed within the year, they are then "deemed never to have been commenced" (Lamer, 2006, p. 317).

<sup>18</sup> Lamer (2006) notes that a withdrawal of the charge, "is appropriate where the Crown Attorney decides that; (i) Reasonable and probable grounds did not exist to lay the charge; (ii) There is no probability of a conviction; or (iii) It is not in the public interest to proceed with the charge" (p. 323).

<sup>19</sup> AIDWYC is an acronym for the Association in Defence of the Wrongly Convicted. AIDWYC offers pro-bono legal services to those who believe they have been involved in a case of wrongful conviction and are attempting exoneration. This organization provided insights into the contributing factors and consequences associated with wrongful convictions in the public inquiries investigating the miscarriages of justice that occurred in the David Milgaard, Guy Paul Morin and Gregory Parsons criminal proceedings.

wrongful conviction, to attack the Crown's preliminary case or raise additional evidence that was not available to the fact-finders at the initial trial (Mahoney, 1988). Upon completion of a proceeding at the trial level, the Crown or accused has the right to appeal the verdict, the sentence or both to a higher court. An appeal verdict usually requires demonstration of a legal error during the trial proceedings. Three justices hear each appeal with the final decision resting with the majority (Griffiths & Cunningham, 2003). If at least one appellant judge dissents, however, the unsuccessful party may pursue another appeal to the Supreme Court of Canada. Decisions made at the Supreme Court are final and can only be altered in cases where the individual is successful in an application for ministerial review under section 696 of the *Criminal Code*.<sup>20</sup>

Section 696.1 of the *Criminal Code* allows an individual to apply to the Minister of Justice for a review of the circumstances pertaining to their conviction. The criteria of eligibility regarding application for conviction review under section 696 states that an individual must have been convicted of a serious criminal offence or have been sentenced under the dangerous or long-term offender provisions of the *Criminal Code*. Also, these individuals must have exercised all of their judicial rights to appeal, and there must be new matters of significance that have not previously been considered by the courts or new evidence that arose after customary avenues of appeal have been exhausted.

Following a case, if the Minister of Justice is of the opinion that a miscarriage of justice has occurred, he or she may order a new trial before any court that the Minister thinks proper or they may refer the matter or a specific question at any time to the Court of Appeal for hearing and determination by that court as if it were an appeal by the convicted person.

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<sup>20</sup> *Criminal Code* [1985] R.S.C. c. C-46

Although rarely the case, before the Minister reaches his or her ultimate decision, the claimant may be released from prison and placed on an interim bail condition. Despite the availability of a ministerial review, the time and detail required to investigate these multifaceted cases results in a very low success rate for overturning convictions and exonerating the wrongly convicted (Denov & Campbell, 2005).

The search for a genuine consideration of factual innocence often concludes with an attempt by a wrongly convicted individual to obtain financial compensation and an acknowledgement of error from the government that a miscarriage of justice has taken place. Unlike other segments of the criminal justice system, factual innocence plays a central role and serves as verification for government officials to conclude that an individual has been wrongly convicted and that compensation is warranted. The awarding of compensation is an attempt to rectify the losses incurred by the erroneously convicted; unfortunately, the financial remedy can never truly reimburse an individual who often continues to suffer the devastating physical and psychological results relating to a miscarriage of justice (Denov & Campbell, 2005). Research conducted by Campbell and Denov (2004) found that wrongly convicted individuals sought compensation more for its symbolic rather than its monetary value. Mr. Chief Justice Lamer (2006) described the costs associated with miscarriages of justice in his public inquiry into the wrongful conviction of Gregory Parsons,

A society that treats its administration of criminal justice as a low priority eventually pays the price. The personal cost of this tragedy to Gregory Parsons, his family and friends; the financial cost of a measure of compensation to him; the financial cost of this Inquiry; these are examples of the price to be paid for taking 'shortcuts' in the administration of justice (p. 133).

Unfortunately, financial remedies are small consolation for the devastation experienced by the family, as well as damage to the reputation, mental well-being and standard of living that often results from a wrongful conviction (Denov & Campbell, 2005).

In addition to financial compensation, wrongly convicted individuals often seek public accountability and an official apology for judicial errors. Historically in Canada, Royal Commissions or public inquiries have attempted to examine the systemic shortcomings that contribute to miscarriages of justice. Inquiries of this nature are created at the initiation of a provincial or territorial government when it is believed that a matter connected with the administration of justice warrants additional investigation to regain public confidence in the criminal justice system.<sup>21</sup> Similar to studies conducted on victims of crime, Fattah (1989) suggests that these individuals are not seeking revenge; rather, they aspire for an official acknowledgment of error and an apology for the struggles they have encountered as a result of a wrongful conviction. Interestingly, this was not lost on Mr. Chief Justice Lamer (2006) in his public inquiry into the wrongful conviction of Gregory Parsons when he stated,

At the time of your conviction, I was the Chief Justice of this country, the head of the system that convicted you, and I'm publicly inviting all those that were judges at the time to join me in accepting joint and several responsibility for the system having done to you what it did...Since the ultimate problem is inevitably systemic, those of us who form that system cannot simply say that any particular injustice has nothing to do with me (p. 100-101).

Royal Commissions serve as an opportunity for a wrongly convicted individual to separate the facts of the case from the gossip that often surrounds an individual who has been the victim of a miscarriage of justice. These inquiries also allow the public to become educated as to the actuality of wrongful convictions and the potential flaws that exist in the criminal justice system.

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<sup>21</sup> For example, see *Public Inquiries Act* [Ontario], R.S.O., 1990, c.p.41.

The presumption of innocence is a constitutional right that has been enshrined in the *Charter* which attempts to strike a balance between the broad interests of the community with the fundamental rights of an individual. The task of the presumption of innocence is to ensure, to the greatest extent possible, that predispositions and subsequent dispositions are consistent with an accused's constitutional right to an impartial trial while curbing the virtually unlimited power of the state to impose punishment on its citizens. This doctrine forbids considering a person as guilty during the trial proceedings simply because of the possible existence of incriminating evidence against them. Without substance, the presumption of innocence is a due process right that is a hollow symbol of our collective commitment to an impartial adversarial system of justice (Laufer, 1995).

No one expects a guarantee that only the guilty will be convicted and the innocent acquitted in each case; however, the protection of an individual's fundamental rights pertaining to the functioning of the criminal justice system is of utmost importance. As stated by Mr. Justice Marshall,

Honouring the presumption of innocence is often difficult; sometimes we pay substantial societal costs as a result of our commitment to the values we espouse. But at the end of the day the presumption of innocence protects the innocent; the shortcuts we take with those whom we believe to be guilty injure only those wrongfully accused and, ultimately, ourselves (as cited in Lamer, 2006, p. 421).

The costs relating to miscarriages of justice are immense, not only to those who have been wrongly convicted but also their families and the general public who lose confidence in the State's ability to dispense justice in criminal proceedings. Royal Commissions and public inquiries serve as important reminders to judicial officials and the public that the criminal justice system is a human system based on fallible judgments and subjective assessments.

At a time when the use of forensic DNA analysis has become an increasingly accepted method of constructing innocence, the examination of DNA technology has become all the more relevant to academics in criminology. DNA exonerations offer what Richard Rosen (2003) has labelled a 'random audit' of convictions, thus providing a window into the mistakes of the judicial process and generating a list of potential failures that need to be analyzed and corrected for a fundamentally adequate criminal justice system (p. 69). Critics suggest that an unreflective embrace of the term 'innocence' may be used to promote the creation of special procedures only for those who can assert the possibility of actual innocence rather than the maintenance of far more costly general protections for all defendants (Marquis, 2005; Steiker & Steiker, 2005). Steiker and Steiker (2005) suggest that an emphasis on the use of forensic DNA analysis may undermine the efforts and credibility of those who cannot 'prove' their actual innocence through clear and convincing evidence. Innocence of criminal charges itself is a socially constructed process whose legitimation in society is often based on the results obtained from the biological testing of DNA material discovered at the scene of the crime. Thus, the following chapter will examine the composition and structure of DNA along with the marked advances and legislative changes pertaining to this relatively novel scientific procedure to provide an understanding of what it means to be innocent through DNA profiling.



## The Scientific and Legal Background of DNA

*“It will be long before a British jury will consent to convict a man upon the evidence of his finger prints; and however perfect in theory the identification may be, it will not be easy to submit it in a form that will amount to a legal evidence.”*

- Sir Francis Galton (1892, as cited in National Research Council (U.S.A.), 1996, p. 1-1)

There is little question that the utilization of DNA testing has revolutionized the functioning of the criminal justice system, not only in Canada but throughout the world. In little over a decade, forensic DNA analysis has become the foremost scientific technique for the successful identification and prosecution of individuals accused of criminal activity when biological materials are left at a crime scene. DNA testing has also aided in the elimination of potential suspects from investigations and has exonerated individuals who have been wrongfully convicted. The Supreme Court of Canada emphasized the importance of this novel scientific procedure in the 2006 ruling of *R. v. Rodgers*<sup>22</sup> when it stated, “DNA evidence has revolutionized the way many crimes are investigated and prosecuted...The importance of this forensic development to the administration of justice can hardly be overstated” (para. 4). However, the profound implications regarding the privacy and security of the person with respect to the government’s ability to seize DNA samples cannot be ignored. Like all modern institutions, the criminal justice system must respond and adjust to technological developments in law enforcement techniques as they evolve and become accepted in courts of law. As can be seen in the statement made by Sir Francis Galton (1892), there must be a continuous

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<sup>22</sup> *R. v. Rodgers* (2006) 1 S.C.R. 554 (S.C.C.) at para 4.

equilibrium between the scientific and legal arenas for the advancement of any novel technology, even when the degree of accuracy appears to be extremely high.

This chapter will provide a background of the scientific and legislative advancements that have been achieved to date in relation to the biological structure of DNA. It is important to understand exactly the manner in which DNA analysis has been applied within criminal investigations, as “failure to appreciate the science and the technology will lead to misunderstandings” (Lugosi, 2002, p. 233). The first section of this chapter will focus on the biological underpinnings of DNA along with the progression of DNA testing procedures in criminal investigations. The next section will discuss the legislative history of DNA technology in Canada relating to the establishment of the national DNA data bank along with the acceptance of DNA technology in court proceedings despite constitutional challenges and controversial debates in legal, academic and scientific circles.

### **The Structure of DNA**

Deoxyribonucleic Acid, more commonly known by the acronym DNA, is the chemical dispatcher for genetic material that encodes the entire hereditary information of an individual in every cell of the human body that has a nucleus<sup>23</sup> (Briody, 2004). All the cells of an individual have the same DNA composition, which does not significantly change throughout a person’s lifetime (Lussier, 1992). A critical feature of DNA for forensic analysis purposes is that, with the exception of identical twins, no two individuals have the same DNA configuration (Smith & Gordon, 1997). Over time, the chemical composition of DNA is relatively stable and is quite resistant to environmental conditions that often destroy other biological materials such as proteins (Briody, 2004), although prolonged exposure to sunlight,

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<sup>23</sup> DNA is found in every cell of the human body, except red blood cells. This does not prevent DNA typing of blood since it contains white blood cells which contain a nucleus, and thus, have DNA. Often forensic DNA analysis is conducted on nucleated epithelial cells in tissue, or blood or spermatozoa (Smith & Gordon, 1997).

elevated temperatures or digestion by micro-organisms may lead to the degradation of DNA matter (Lugosi, 2002). Although all humans share a significant majority of DNA, the remaining regions of the molecule are highly variable between individuals (Briody, 2004). According to the estimates of genetic biologists, the DNA in an average human cell contains approximately 3 billion base pairs, of which only 3 million base pairs differ from one individual to another (Lussier, 1992; Smith & Gordon, 1997). It is the existence of these minor differences in the sequencing of base pairs, known as ‘polymorphisms,’ that provide the basis for DNA profiling.

### **The Profiling of a DNA Sample**

#### **Restriction Fragment Length Polymorphisms (RFLP)**

The first technology that was used in forensic DNA analysis was the Restriction Fragment Length Polymorphisms (RFLP) analysis. When a RFLP DNA profile is conducted, a uniform procedure is followed with the first step being the isolation of DNA from the collected sample. The DNA is then cut into fragments by restriction enzymes (REs), known as restriction endonucleases, which are then sorted by size through a process known as electrophoresis (Lugosi, 2002; Smith & Gordon, 1997). The sorted RFLPs are chemically split into two separate strands through a process known as “denaturalization” (Smith & Gordon, 1997, p. 2469), that are then transferred from the agarose gel to the surface of a thin nylon membrane,<sup>24</sup> a surface that is able to withstand subsequent manipulation and chemical treatment. An X-ray film is then placed on the membrane and radiation from the probe exposes the film, creating dark bands at the location of the double-stranded fragments that produce a “DNA print” (Smith & Gordon, 1997, p. 2470).

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<sup>24</sup> This technique is also called the “Southern Blotting” procedure, named after the scientist who developed the technique, Edwin Southern in 1975 (Lugosi, 2002; Smith & Gordon, 1997).

As a result of the inability to examine extremely minute traces of biological information present at a crime scene and the significant amount of time needed to complete this type of testing, the RFLP analysis is rarely if ever utilized by law enforcement laboratories. This pioneering analysis has been replaced by the 'gold standard' in forensic testing, a biological DNA testing procedure known as Short Tandem Repeats (McCartney, 2006).

### **Short Tandem Repeats (STRs)<sup>25</sup>**

The next generation of DNA technology that has been developed is the Short Tandem Repeats (STRs) technique<sup>26</sup>. When comparing DNA samples, a difference of a single allele will absolutely exclude a known individual from an evidence sample as law enforcement agencies have selected STR loci<sup>27</sup> that will either be present or will not be present in the DNA sample (Lugosi, 2002). This method of analysis is a marked change from the RFLP technique in that STR provides the opportunity to examine short fragments that are likely to be preserved intact in degraded material otherwise unsuitable for testing through the RFLP forensic analysis

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<sup>25</sup> Often the initial step taken by scientists before the STR forensic analysis is performed, Polymerase Chain Reaction (PCR) allows for the duplication of minute traces of biological material found at the scene of a crime (Lussier, 1992). PCR takes advantage of the reproductive nature of DNA, allowing a single sample of genetic material to be replicated into millions of copies of a DNA sequence in a matter of hours. Once the desired amount of DNA has been amplified, the analysis of the DNA proceeds through the STR forensic technique (Smith & Gordon, 1997). The PCR technique was invented by Kary Mullis during his employment at *Cetus Corporation*, a California based Genetics Company. Based on the development of the PCR analysis, Mullis was awarded the Nobel Prize for Chemistry in 1993. PCR analysis was first used in a criminal identification by another California scientist, Dr. Edward Blake (Smith & Gordon, 1997).

<sup>26</sup> The most recent development in DNA analysis is the forensic procedure known as Single Nucleotide Polymorphisms or SNP (McCartney, 2006). This DNA analysis is extremely precise and allows for the availability of additional information regarding the identity of an individual. The results of this type of DNA profile are almost instantaneous, with results becoming available in a matter of minutes rather than weeks. In spite of these advantages, this technique is still under development and it is unlikely that this forensic DNA analysis will replace existing data bank methods as the costs associated with re-analyzing the samples already in the national DNA data bank would be astronomical (McCartney, 2006).

<sup>27</sup> The RCMP has selected 10 loci, making the estimated frequency of the average genetic profile in the Canadian population as one in 94 billion. The FBI has selected to analyze 13 loci. A match of all 13 loci is in the range of one in a trillion (Lugosi, 2002).

(Lugosi, 2002). Another advantage of the STR analysis is that a very minute sample of DNA is needed to complete a DNA profile.<sup>28</sup>

The power of forensic DNA analysis lies in its ability to conclusively exclude the biological sample of a potential suspect when compared to the genetic material discovered at the crime scene. Properly administered, a forensic analysis resulting in different DNA fragment lengths demonstrates *absolutely* that they could not have originated from the same person (McCartney, 2006). However, when a genetic match is discovered, the test results are not absolute due to the fact that there may be rare instances where all loci chosen for examination between the two samples were identical. In the event of a positive result, a series of statistical probabilities are calculated to determine the possibility of a random genetic match (McCartney, 2006).

Despite the significant advances that have recently been developed in DNA profiling, the progression of these scientific techniques cannot be viewed in a vacuum. The potential for their investigative exploitation would not have been possible without the enabling legislative framework that has been enacted by the Government of Canada. As Johnson, Martin and Williams (2003) suggest, “Developments in DNA profiling have occurred in symbiosis with the state commitment to its application in forensic crime investigation and without this governmental commitment the technology would have remained limited in its development and applications” (p. 28-29). With this in mind, attention will now be drawn to the legislative history of DNA profiling and banking along with the precedence-setting Constitutional challenges that have shaped the acceptance of this scientific technology in Canada.

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<sup>28</sup> Using the STR fragment technique means all that is needed is one billionth of a gram (one nanogram) of DNA for an analysis to be possible (Lugosi, 2002).

## The Legislative History of DNA technology in Canada

The legislative history pertaining to the establishment of a national DNA data bank and the acceptance of DNA technology in court proceedings has not been accomplished without contested constitutional challenges and significant debates in the legislature, parliament and in academia. In tandem with technological advances and social developments occurring in the 1980s and 1990s, the legal context surrounding biological identification technology and its potential implications were becoming increasingly addressed through legislation. While promising significant advances in criminal identification and law enforcement potential, questions continuously arose as to whether the seizure and banking of genetic material in the form of DNA samples were violations of the *Charter*, which recognizes fundamental liberties that serve as the cornerstone of democracy in Canada. While the debate of balancing individual rights to privacy and confidentiality with the public sentiment for safety continues, legislative precedence has been established through a number of key Constitutional challenges in recent years. Despite the first use of DNA technology in the 1988 Canadian case of *R. v. Parent*<sup>29</sup>, it would not be until 1998 when the *DNA Identification Act*<sup>30</sup> was given Royal Assent that Canada's legislation pertaining to the creation of a national DNA data bank would come to fruition. This newly established legislation, along with subsequent amendments to the *Criminal Code*, significantly changed the way DNA technology has been utilized by law enforcement officials and perceived by the general public.

DNA evidence was first introduced into a Canadian criminal court in the 1988 trial of James Parent, accused of committing eleven counts of sexual assault and breaking and entering. During the investigation, samples of the accused's hair and blood were obtained and

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<sup>29</sup> *R. v. Parent* (1988) 65 Alta L.R. (2d) 18 (Alta. Q.B.)

<sup>30</sup> *DNA Identification Act* [1998] S.C. 1998, c. 37

tested against the biological samples left on the victims' clothes (Lussier, 1992). Having been exculpated by DNA evidence from a total of four of eleven counts, with non-biological factors eliminating Parent from three other counts, Mr. Justice Roslak concluded that reasonable doubt existed as to whether Parent was the assailant in the remaining offences (Lussier, 1992).

Forensic DNA analysis was subsequently used in the 1991 case of *R. v. Bourguignon*<sup>31</sup>, but at this point, Canadian courts were uncertain about how to treat forensic DNA technology. Some courts found DNA evidence to violate the *Charter* and consequently excluded this practice at the same time that others willingly accepted this novel scientific technique of identification and the expert opinions of those who conducted the analyses (Gerlach, 2004). In evaluating the circumstances in which expert evidence should be deemed admissible, the 1994 Supreme Court of Canada ruling in *R. v. Mohan*<sup>32</sup> was influential in establishing the precedence of admitting expert evidence of a novel scientific theory or technique. Writing for the majority, Mr. Justice Sopinka determined in *R. v. Mohan* that,

[e]xpert evidence which advances a novel scientific theory or technique is subjected to special scrutiny to determine whether it meets a basic threshold of reliability and whether it is essential in the sense that the trier of fact will be unable to come to a satisfactory conclusion without the assistance of the expert. The closer the evidence approaches an opinion on an ultimate issue, the stricter the application of this principle (para. 28).

Based on the lack of common law precedence and piecemeal guidance in relation to the statutory authority for seizing DNA samples from suspects, police officers often found themselves using unseemly methods of rummaging through garbage cans and ashtrays to obtain DNA evidence from potential suspects. It would not be until the public outcry surrounding the Supreme Court's first judgment on the gathering and use of DNA evidence in

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<sup>31</sup> *R. v. Bourguignon* (1991) O.J. No. 2670 (Q.L.)

<sup>32</sup> *R. v. Mohan* (1994) 2 S.C.R. 9 (S.C.C.)

*R. v. Borden*<sup>33</sup> in 1994 that the Government of Canada moved quickly to establish a national DNA identification system.

In 1994, the Supreme Court of Canada rendered a critical decision in the *R. v. Borden* case that changed the admissibility of DNA evidence in Canadian law. The accused, Borden, had been identified and arrested as the perpetrator of a sexual assault that took place in 1989. The police asked Borden to provide a DNA sample for that offence, which he agreed to do, that subsequently matched DNA from the semen sample found at the crime scene. However, the police also believed that Borden committed a previous sexual assault on an elderly lady who was unable to identify her attacker. The police then matched the DNA sample provided by Borden with evidence from the earlier attack and this led to a second charge of sexual assault. At trial, Borden was convicted of both crimes; however, the Court of Appeal for Nova Scotia overturned the conviction for the earlier assault against the elderly woman because he had not been asked to provide a sample for that criminal investigation. The Supreme Court of Canada upheld the Nova Scotia Appeal Court's decision in 1994 and stated that the police were obliged to inform the accused that they intended to use the sample to investigate an earlier crime, thus, the evidence was deemed inadmissible.

Upon this decision and the vehement outcry that followed, then Justice Minister Allan Rock released a discussion paper to the general public on the question of police powers in DNA testing and banking that asked whether Parliament should legislate a DNA data bank, what biological samples should be included, what kinds of offences should be involved, and what privacy safeguards should be provided (Government of Canada, 1996). This discussion paper was framed carefully to explain the benefits of DNA testing along with examining the potential problems that may arise, yet, limited itself to questions of privacy. Responses

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<sup>33</sup> *R. v. Borden* (1994) 3 S.C.R. 145, 92 C.C.C. (3d) 404 (S.C.C.)



received by the Justice Minister were generally favourable, and progress continued toward a Parliamentary bill (Gerlach, 2004).

The first phase of the federal government's legislative strategy regarding forensic DNA warrant provisions commenced on 22 June 1995, when the House of Commons passed Bill C-104, an Act to amend the *Criminal Code* and the *Young Offenders Act*.<sup>34</sup> Bill C-104 was proclaimed into force on 13 July 1995 which detailed the procedures and limitations involved in obtaining DNA samples from suspects (Gerlach, 2004). This legislation authorized provincial court judges to issue DNA warrants if there were reasonable grounds to believe: that a designated offence had been committed; that a bodily substance had been found at the place where the offence was committed, or, on or within the body of anyone or thing at the place associated with the offence; that a person was a party to the offence; and that a DNA analysis from the suspect would provide evidence regarding whether that person was involved (Government of Canada, 1997). This Bill also provided a list of primary<sup>35</sup> and secondary<sup>36</sup> designated offences incorporating numerous criminal activities from piracy and arson to violence and sexual offences; often limited to the offences in which bodily substances may be present at or near the scene of the crime. According to MacKay (2007), the difference between primary and secondary designated offences is that,

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<sup>34</sup> *Young Offenders Act* [1995] S.C. c. 27

<sup>35</sup> Primary designated offences, as defined by the amended *Criminal Code* include: piratical acts, hijacking, endangering safety of aircraft or airport, seizing control of ship or fixed platform, using explosives, participation in activity of terrorist group, facilitating terrorist activity, commission of offence for terrorist group, instructing to carry out activity for terrorist group, instructing to carry out terrorist activity, harbouring or concealing, sexual interference, invitation to sexual touching, incest, infanticide, murder, manslaughter, aggravated assault, aggravated sexual assault, kidnapping, hostage taking, residence or transport of internationally protected person, and an attack on premises, accommodation or transport of United Nations or associated personnel.

<sup>36</sup> Secondary designated offences, as defined by the amended *Criminal Code* include: bestiality in the presence of or by child, causing death by criminal negligence, causing bodily harm by criminal negligence, dangerous operation causing bodily harm, dangerous operation causing death, failure to stop at scene of accident, impaired driving causing bodily harm, impaired driving causing death, assault, torture, assaulting a peace officer and mischief that causes actual danger to life.

Where an offender has been convicted of a primary designated offence, the court is obliged to make an order that samples be taken for DNA analysis, unless satisfied by the offender that the impact on his or her privacy and security of the person would be grossly disproportionate to the public interest in the protection of society. In the case of a secondary designated offence, the court can make an order for a sample to be taken if satisfied that it is in the best interests of the administration to do so (p. 5).

Bill C-104 also provided guidelines for sampling procedures, limiting the DNA testing strictly for the purposes of forensic DNA analysis, the procedures for destroying of biological samples along with providing punishment guidelines for persons who violate the established restrictions (Government of Canada, 1997). The newly assented legislation received a generally positive response, providing an incentive for the federal government to continue the push for a national DNA data bank (Gerlach, 2004).

On 18 January 1996, the Solicitor General of Canada (now the Minister of Public Safety and Emergency Preparedness) distributed a consultation document titled, *Establishing a National DNA Data Bank*, that commenced the final segment of incorporating DNA technology into the Canadian criminal justice system (Government of Canada, 1996). Upon completion of the consultation phase in early 1996, the Canadian government introduced a bill to the House of Commons on 10 April 1997, but it expired when a general election was called in the same year (Gerlach, 2004). Despite this setback, the newly re-elected Liberal government reintroduced this legislation in the form of Bill C-3 on 25 September 1997, and on 10 December 1998, the *DNA Identification Act* was given Royal Assent (MacKay, 2007). Proclaimed into force in two stages on 8 May 2000 and 30 June 2000, the *DNA Identification Act* created a national DNA data bank that would be maintained by the Royal Canadian Mounted Police (RCMP) and also amended the *Criminal Code* to expand the authority of the courts in ordering the collection of biological samples for testing (MacKay, 2007). A further

addition was made in 1999 to the national DNA data bank legislation through Bill S-10, a Senate bill, which added certain military offences to the list of designated offences (Gerlach, 2004).

The purpose of the *DNA Identification Act* was to “establish a national DNA data bank to help law enforcement agencies identify persons alleged to have committed designated offences, including those committed before the coming into force of this Act” (p. 2). This data bank is located in Ottawa, and consists of two indices: a crime scene index of DNA profiles found at crime scenes or on any individual, object or location associated with the offence; and a convicted offenders’ index of profiles taken from people convicted of designated offences (Gerlach, 2004). Once received, the new profiles are cross-referenced and compared with those already held in the data bank to examine whether any matches between the indices has transpired (MacKay, 2007). Any match that has been found is immediately communicated to the appropriate laboratory or law enforcement agency, along with the pertinent information regarding the crime and offender to which the new profile has been linked (MacKay, 2007). Ultimately, the Commissioner of the RCMP is responsible for receiving DNA profiles for entry into the data bank along with annually reporting to Parliament on the operation of the national DNA data bank.

Along with storing information profiles, the data bank also stores bodily substances in the event that significant progress is made on the advancement of forensic testing of DNA samples in the future (Gerlach, 2004). According to the *DNA Identification Act*, the biological information and samples are kept indefinitely, although provisions were established for the destruction of samples from individuals who have been acquitted or discharged along with young offender profiles after a definitive time period, based on the severity of the offence. To

ensure the privacy of individuals targeted by this legislation, only authorized law enforcement personnel would be permitted to access the data bank, with criminal penalties applied to those in violation of this Act. As part of the privacy safeguarding process, the use of forensic analysis on DNA samples may only take place on 'non-coding' DNA and strictly limits the use of these profiles to compare identifying information to an existing sample.

An advisory committee was also established in 2002, consisting of members from the legal, scientific and academic communities, to monitor and assist the Commissioner of the RCMP on any matter pertaining to the operation and privacy issues related to the national DNA data bank (MacKay, 2007). In connection with the advisory committee, the *DNA Identification Act* also stipulates, "within five years after this Act comes into force, a review of the provisions and operation of this Act shall be undertaken by any committee of the Senate, of the House of Commons or of both Houses of Parliament" (p. 9), however, this review still has not taken place three years after its scheduled date.

As of 15 September 2008, the national DNA data bank had entered 142,013 profiles into the convicted offender index while 44,282 biological samples had been deposited into the crime scene index (National DNA Data Bank, 2008). To examine the efficiency of the data bank, recent statistics presented by the Government of Canada suggest that the match inventory recorded 10,071 offender hits (crime scene to offender) and 1,570 forensic hits (crime scene to crime scene) (National DNA Data Bank, 2008). Over half of the investigations assisted by matching crime scenes to offenders involved break and enters (5,670), with fewer records being tallied for sexual assaults (1,352), armed robberies (1,192), assaults (716), and murders (634) (National DNA Data Bank, 2008).

Despite the rigorous Parliamentary framework surrounding the newly enacted *DNA Identification Act*, the ultimate functioning of this legislation would be shaped through contested court proceedings and constitutional challenges. Two of the most influential trials to contour the parameters of obtaining and storing biological information from individuals who were convicted of designated offences were the cases of *R. v. S.A.B.*<sup>37</sup> and *R. v. Rodgers*. In 2003, the Supreme Court of Canada in *R. v. S.A.B.* upheld the constitutionality of DNA warrant provisions along with the retroactive sampling of individuals guilty of designated offences before the proclamation of the *DNA Identification Act*. In 2006, the Supreme Court of Canada in *R. v. Rodgers* determined that the provisions established in the *DNA Identification Act* did not violate liberties protected under the *Charter*.

In the landmark case of *R. v. S.A.B.*, the accused was charged with sexual assault and sexual exploitation after the complainant, a 14-year-old girl, became pregnant and informed her mother that the accused had sexually assaulted her. The complainant had an abortion and the police apprehended the fetal tissue that was examined through forensic DNA analysis against the blood sample seized from the accused. At trial, the judge held that the DNA warrant provisions were constitutional and that the DNA evidence should be admissible in the judicial proceedings. With the majority of the Court of Appeal for Alberta upholding the conviction, the matter went forward to the Supreme Court where it was decided that the constitutionality of DNA warrant provisions conformed to the *Charter*. Writing for the majority, Mme. Justice Arbour ruled,

[I]n general terms, the DNA warrant provisions of the *Criminal Code* strike an appropriate balance between the public interest in effective criminal law enforcement for serious offences, and the rights of individuals to control the

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<sup>37</sup> *R. v. S.A.B.* (2003) 2 S.C.R. 678 (S.C.C.)

release of personal information about themselves, as well as their right to dignity and physical integrity (para. 52).

The Supreme Court also advocated the position that DNA warrants do not constitute a violation of the *Charter*, specifically section 8<sup>38</sup>, and the principle against self-incrimination.

In more recent 2006 judicial proceedings of *R. v. Rodgers*, the Supreme Court established the legal precedence with respect to the constitutionality of retroactive provisions in relation to seizing DNA samples for the national DNA data bank. Rodgers was sentenced to four years in prison for a sexual assault committed while he was on probation for a conviction of sexual interference that occurred prior to the enactment of the 1998 *DNA Identification Act*. Before his sentence expired, the Crown applied for authorization to take DNA samples from Rodgers for inclusion in the national DNA data bank. Rodgers challenged the actions of the Crown and stated that the DNA order violated the *Charter*, particularly sections 7<sup>39</sup>, 8 and 11(h)<sup>40</sup> and (i)<sup>41</sup>. The Court of Appeal for Ontario upheld the constitutionality of the retroactive provisions, leaving the final decision to be rendered by the Supreme Court. Mme. Justice Charron summarized the position of the court in *R. v. Rodgers* when she concluded, “The DNA sampling and analysis is no more part of the arsenal of sanctions to which an accused may be liable in respect of a particular offence than the taking of a photograph or fingerprints” (para. 65). The Supreme Court cautioned that care must be taken for the protection of privacy,

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<sup>38</sup> Section 8 of the *Charter* provides that, “[e]veryone has the right to be secure against unreasonable search or seizure.” In the 1997 ruling in *R. v. Stillman*, the Supreme Court held that for a search to be reasonable it must be (a) authorized by law; (b) the law itself must be reasonable; and (c) the manner in which the search was carried out must be reasonable (para. 25).

<sup>39</sup> Section 7 of the *Charter* (1982) provides that, “[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance of the principles of fundamental justice.”

<sup>40</sup> Section 11 (h) of the *Charter* (1982) provides that, “[a]ny person charged with an offence has the right if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again.”

<sup>41</sup> Section 11 (i) of the *Charter* (1982) provides that, “[a]ny person charged with an offence has the right if found guilty of the offence and if punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.”

individual security and procedural fairness; yet, anyone convicted of a serious offence is deemed to have a reduced expectation of privacy and cannot expect his or her identity to remain secret from law enforcement officials (MacKay, 2007). As alluded to in Mme. Justice Charron's statement, the majority of the Court ruled that the taking of a DNA sample is not a "punishment" but simply a consequence of being convicted of a serious criminal offence. With the entrenchment of the national DNA data bank in the criminal justice system, the Government of Canada moved to amend certain provisions of the *Criminal Code*, the *DNA Identification Act* and the *National Defence Act*<sup>42</sup> through Bill C-13 on 15 October 2004.

The purpose of Bill C-13 was to significantly increase the number of primary<sup>43</sup> and secondary<sup>44</sup> offences, including repealed sexual offences, to the lists of designated offences in the *Criminal Code*. It also allows a DNA data bank order from those who have committed a designated offence but who have been found to be not criminally responsible on account of a mental disorder, along with providing for the review of defective DNA orders and for the destruction of the bodily substances taken under DNA warrant provisions (MacKay, 2004). Bill C-13 also compels individuals who have committed designated offences to appear at a specific location and date to provide a DNA sample and allows for a DNA data bank order to be made after a sentence has been imposed (MacKay, 2004). In the case of primary designated

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<sup>42</sup> *National Defence Act* [1985] R. S. C. 1985, c. N-5

<sup>43</sup> Offences added to the list of primary designated offences included: sexual exploitation of a person with a disability, causing bodily harm with intent – air gun or pistol, administering a noxious thing with the intention to endanger life or cause bodily harm, overcoming resistance to the commission of an offence, robbery (moved from the list of secondary designated offences), extortion, breaking and entering into a dwelling-house (moved from the list of secondary designated offences), offences concerning child pornography (removed from the list of secondary offences), the luring of a child, procuring, aggravated offences related to under-age prostitutes, securing the sexual services of a person under the age of eighteen, and intimidation of a justice system participant or journalist (MacKay, 2004, p. 7).

<sup>44</sup> Offences added to the list of secondary designated offences included: criminal harassment, uttering threats, breaking and entering into a place other than a dwelling-house, being unlawfully in a dwelling-house, intimidation, arson – damage to property, arson for a fraudulent purpose, participation in activities of a criminal organization, commission of an offence for a criminal organization, and instructing the commission of an offence for a criminal organization (MacKay, 2004, p. 7).

offences, a court would be obliged to make an order for the taking of samples from an individual for forensic DNA analysis. In the case of secondary designated offences, the court must first consider “the person’s criminal record, the nature and circumstances of the offence, and the impact of such an order on the person’s privacy and security of the person” (MacKay, 2004, p. 7) before ruling whether a DNA sample should be provided for storage on the national DNA data bank. New provisions of Bill C-13 expanded the list of sexual offences included under the retroactive scheme by adding historical sexual offences such as indecent assault and acts of gross indecency to the list of primary designated offences.

In spite of an intensely controversial debate, most notably between the Privacy Commissioner of Canada and the Canadian Police Association (CPA), Bill C-13 was given Royal Assent on 19 May 2005. In an address to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness on 8 February 2005, the Privacy Commissioner of Canada, Jennifer Stoddart stated, “simply put, there is, at the present time, no demonstrable evidence to show how collecting DNA samples for the proposed new offences will help us achieve a safer and more just society” (p. 1). The Privacy Commissioner suggested that Bill C-13 is shifting away from the fundamental principles established in the *DNA Identification Act* and progressing towards a registry for all convicted offenders. Privacy Commissioner Stoddart (2005) explains,

We have seen a fundamental shift away from this rationale toward what appears to be a growing national registry of convicted criminals. This is a marked move away from the underlying philosophy of the DNA Data Bank scheme as it was originally conceived and approved by Parliament. New offences were added with the adoption of then Bill C-36, the *Anti-Terrorism Act*<sup>45</sup>, in 2001 and more offences are now being proposed in this Bill that do not appear to meet the criteria

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<sup>45</sup> According to the *Anti-Terrorism Act* [2001], the DNA warrant scheme and data bank would be extended to include terrorist offences in the list of “primary designated offences” for which DNA samples can be taken and stored. *Anti-Terrorism Act* [2001] S. C. c.41



of violent and sexual offences involving the loss or exchange of bodily substances (p. 2, Footnote added in original).

Contrary to the position presented by the Privacy Commissioner, the CPA advocated obtaining DNA samples from suspects of crime rather than upon conviction along with broadening the list of designated offences (Gerlach, 2004). The Canadian Police Association prioritized the combating of criminal activity above and beyond any concerns of genetic privacy, as can be seen in a statement released by the CPA attacking the arguments of privacy advocates,

The argument against using the broad base gathering [of DNA samples] currently employed in fingerprinting via the *Identification of Criminals Act*<sup>46</sup> is based on 'what ifs' and potential abuses imagined by those who oppose the use of this tool. No doubt, had the Office of the Privacy Commissioner existed 100 years ago, similar 'objections' would have been trumpeted to fingerprinting (Canadian Police Association, 1998, p. 3, Footnote added in original).

Despite the lack of demonstrable justification for including new designated offences and the real potential for a creeping expansion of the DNA data bank, Bill C-13 was proclaimed into force in slightly over seven months of Parliamentary debate.

The most recent amendment to the Acts concerning DNA identification and storage on the national DNA data bank was introduced in the House of Commons on 8 June 2006 in the form of Bill C-18<sup>47</sup> and was given Royal Assent on 22 June 2007. Bill C-18 amended the *Criminal Code* to clarify that a warrant can be executed for the arrest of a person who fails to appear for DNA sampling and allows for bodily identification samples to be taken by any Canadian police force that arrests the particular individual (MacKay, 2007). Other parts of the

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<sup>46</sup> The *Identification of Criminals Act* [1985] is an Act respecting the Identification of Criminals that allows specific individuals to be photographed or fingerprinted or subjected to such other measurements, processes and operations having the object of identifying persons as are approved by order of the Governor in Council (Government of Canada, 1985), which was updated on 31 August, 2004. *Identification of Criminals Act* [1985] R.S.C. c. I-1

<sup>47</sup> Bill C-18 amends the *Criminal Code*, the *DNA Identification Act*, and the *National Defence Act* to facilitate the implementation of Bill C-13 (MacKay, 2007).

bill ensured that DNA data bank orders can be carried out even when, for logistical reasons, it may not be possible to take an individual's biological sample set out in a DNA warrant along with providing specific guidelines for the destruction of samples under certain circumstances. The most notable changes proposed in Bill C-18 included the addition of attempted murder and conspiracy to commit murder to the offences covered by the retroactive provisions and the use of information provided by the national DNA data bank to investigate all criminal offences, not simply those offences designed to be included in the data bank (MacKay, 2007).

An examination of recent amendments to the DNA legislation concerning the sampling and storage of DNA profiles on the national DNA data bank, what is apparent is an increasing acceptance of this scientific technology in the Canadian criminal justice system. As Alan Young (as cited in Bindman, 1997) suggested,

The reason why DNA evidence has become so popular in criminal justice is because it approaches mathematical certainty in terms of proof. It is one of the few mechanisms that allow us to transcend subjective decision-making. It gets us away from the fallibility of the human process which we call justice (p. A2).

It would seem that genetic information is becoming more than a form of evidence that must be weighed accordingly during a criminal justice proceeding; it is becoming a type of proof that usurps the subjective decision-making process (Gerlach, 2004). In cases of wrongful conviction where DNA technology was being used to conclusively establish the innocence of an individual, existing *legal* safeguards were failing while *scientific* technology was succeeding. Through the amendments and modifications to the existing legislation surrounding forensic DNA analysis, the government has attempted to enhance public confidence by advocating the position that science would increase the accuracy of judicial decisions. Still, pertinent questions remain as to how this relatively novel scientific procedure of DNA

technology can be understood through the newsprint media process and disseminated to the public, a topic that will be the focus of the next chapter.

## **Part I – Theoretical Framework: Social Constructionism**

Due to the limitations of objectivist definitions of social problems, the social constructionist perspective has been used by academics to call into question certain aspects of claims made by claims-makers regarding a particular social condition or social policy (Best, 2003a). As a framework for examining how social reality is subjectively constructed or created by social actors, social constructionism analyzes how individuals categorize the objects and people in society and how these processes permit specific social conditions to be labelled as social problems (Loseke, 2003). Similar to other categories defined as social problems, issues pertaining to the criminal justice system are considered to be social constructions, brought to the attention of the public through the claims-making process of officials, interest groups or the media (Holstein & Miller, 2003; Lowney & Best, 1995; Spector & Kitsuse, 1977). The social constructionist theoretical perspective continues to be an important area of criminological study, providing individuals an opportunity to examine the characteristics of social problems and how claims-makers are able to promote their assertions and claims in society.

This chapter will commence with an analysis of the social constructionist perspective; specifically, examining the emergence of social constructionism and the concept of social problems, the criticisms and responses pertaining to this theoretical framework along with the role of claims and claims-makers in the creation and maintenance of social problems. The second section of this chapter will discuss the role of the media in the claims-making process, the construction of news, the newsworthiness of a story along with the journalistic constraints

that influence the production of scientific news. By examining the underlying principles of social constructionism and the processes involved in manufacturing news events, an overview of how the newsprint media shaped the newly emerging social problem of wrongful conviction through DNA technology will be explored.

### **Principles of Social Constructionism**

In many respects, the emergence of social constructionism originated as a response to the structural functionalist approach to social problems which assumed that social conditions exist separately from individual interpretations of them (Holstein & Miller, 2003). Although the term ‘social construction’ was initially discussed in the pioneering work of Lester Ward (1905), it was not until the work of Berger and Luckmann (1966) that academics became interested in how individuals used language to categorize objects and people in order to provide meaning to the world. Building on this work, Spector and Kitsuse (1977) further explained how social problems rose to public attention and evolved over time. Their contribution to the understanding of everyday reality as socially constructed has been increasingly recognized and accepted by the sociological community and has been described as the “watershed in the development of the contemporary sociology of social problems” (Miller & Holstein, 1989, p. 2). The article presented by Spector and Kitsuse (1977) represented a significant theoretical advance, offering a detailed exposition of a constructionist stance towards social problems (Best, 2003b).

More specifically, conditions are not social problems until claims are constructed and audience members evaluate the claims as intolerable (Loseke, 2003). Spector and Kitsuse (1977) suggest that the emergence of a social problem is best understood as the outcome of “the activities of individuals or groups making assertions of grievances and claims with respect

to some putative conditions” (p. 75). Loseke (2003) argues that for a condition to be labelled as a social problem, individuals must evaluate the condition as harmful, widespread, and changeable. Any condition could be deemed a ‘social problem’; however, it is the social construction or subjective interpretation of conditions that defines a social problem, not the specific nature of the condition itself (Goode & Ben-Yehuda, 1994). As Loseke (2003) states, “conditions might exist, people might be hurt by them, but conditions are not social problems until humans categorize them as troublesome and in need of repair” (p. 14). In essence, no condition is a social problem until someone considers it a social problem.

Constructionist approaches focus on what humans believe the world is and how one understands the world is a consequence of subjective judgments that construct this meaning. This perspective examines social problems as subjective definitions, how we think about social problems, rather than focusing on the objective characteristics of the world. The degree to which a given constructed reality prevails is not reliant on objective empirical validity but is instead strongly influenced by shifting social forces and cultural trends (Surette, 2007). As summarized by Loseke and Best (2003), “Constructionist perspectives focus on how people create and respond to conditions, how we categorize and typify, how we subjectively construct the meanings of problems, and how our constructions influence how we act towards these conditions” (p. 4).

Despite the acceptance of the social constructionist perspective in academic circles, this theoretical framework has not been without debate. At the heart of this controversy was an accusation presented by Woolgar and Pawluch (1985) that constructionists tend to invoke a ‘selective objectivism’ when conducting analyses (Holstein & Miller, 2003, p. 4). Woolgar and Pawluch (1985) suggested that constructionists “search for forms of argument which go

beyond the current impasse between proponents of objectivism and of relativism” (p. 224). Branded as ‘ontological gerrymandering’, Woolgar and Pawluch (1985) contended that constructionists were internally inconsistent and epistemologically flawed due to the fact that some analysts referred to ‘objectively real’ conditions to bolster their arguments pertaining to ‘subjective constructions’ of social problems (Best, 1995; Holstein & Gubrium, 2003; Holstein & Miller, 1993; Ibarra & Kitsuse, 1993). In light of this accusation, the school of thought pertaining to social constructionism has proposed two avenues to resolve this inconsistency in social problems research: strict constructionism and contextual constructionism.

### **Strict Constructionism vs. Contextual Constructionism**

Attempting to address the question of how social constructionists understand the objective conditions within their examinations of social problems, Best (1989) suggested a distinction between strict constructionism and contextual constructionism. The “strong” or strict constructionists require analysts to “avoid making assumptions about objective reality” (Best, 1989, p. 245-246) as no explicit or implicit references about a world outside human understanding is to enter into an analysis of social problems. Strict constructionists are unable to inquire about the relationship between the objective and the constructed dimensions of a social problem because for them, the objective dimension simply does not exist (Goode & Ben-Yehuda, 1994). Bogard (2003) suggests that strict constructionists hesitate to incorporate a broad notion of context into their analyses because of the tendency to reify ‘structure’ and ‘culture’, giving each of these abstractions an independent existence and causal powers (p. 212). Essentially, there is no possibility for strict constructionists to step outside the definitional process; therefore, objectivity does not exist as all claims are socially constructed (Goode & Ben-Yehuda, 1994).

Counter to this position are contextual constructionists whose middle-ground orientation within social constructionism allows them to evaluate others' claims about social problems while avoiding the pitfalls of an 'objectivist sociology' (Best, 1989, p. 246). According to Loseke (2003), contextual constructionism allows analysts to "make some references or illusions to the objective world *as long as it is done carefully and as long as the questions remain tightly focused on the process of creating human meaning*" (p. 198, Emphasis in original). Contextual constructionists focus on the claims-making process along with the development of meaning while allowing certain aspects of the social context to be brought into an analysis of social problems (Best, 1989). These constructionists use their assessments of diverse social problems claims to identify factors that facilitate and inhibit claims-makers' efforts to persuade audience members to their point of view, potentially leading to public policy or social change (Miller, 2003). In conducting this analysis, consideration is given to the historical factors and practical interests of the claims-makers, as well as the characteristics of the audience members along with the presence of competing claims-makers in constructing social problems. While strict constructionists promote the idea of being grounded in theoretical principle, contextual constructionists concentrate on the beneficial aspects relating to the practicality of conducting social problems research (Holstein & Gubrium, 2003).

Due to the fact that this research focuses on the area of claims and claims-makers, specifically focusing on the newsprint media's construction of DNA technology in relation to innocence and wrongful conviction, this study endorses the contextual constructionist school of thought. In adopting a contextual constructionist perspective, the central focus of this study will be on the "process of collective definition or claims-making" (Best, 2003a, p. 132), not the objective nature or 'empirically valid facts' of the conditions themselves.



## **Claims and Claims-Makers**

Whether contemporary or historical, claims and claims-makers can be examined through the adoption of the constructionist perspective (Spector & Kitsuse, 1977). Of particular importance in the construction of social problems are the claims presented, the individuals or organizations that portray these claims and the people who evaluate the legitimacy and importance of these conditions. Out of the complexity of social life, claims-makers utilize claims to assemble the creation and meaning of particular social problems in an attempt to persuade and influence audiences.

As used by social constructionists, a claim is defined as “any verbal, visual, or behavioural statement that seeks to persuade audience members to define a condition as a social problem” (Loseke, 2003, p. 26). According to Best (2003a) the language of claims does not exist independently of the social world; it is a product of, and has an influence on, society. Social problems claims may be presented verbally through the utilization of specific words or visually by encouraging audience members to react emotionally to certain individuals (Loseke, 2003). Claims encourage audience members to analyze an individual or a situation in a particular way, often attempting to suggest logical and rational reasons why audience members should define a specific social problem as widespread, upsetting and in dire need of change. Constructionists have suggested that claims attract notice when they “relate to deep mythic themes” (Hilgartner & Bosk, 1988, p. 64) or when they have “cultural resonance” (Gamson & Modigliani, 1989, p. 5). However, no claim can exist without claims-makers who package the conditions of social problems in a particular fashion to elicit favourable responses from audience members.

Claims-making represents “a demand made by one party to another that something be done about some putative condition” (Spector & Kitsuse, 1977, p. 78). Claims-makers construct the grounds of social problems conditions when they specify the parameters and extent of harm inflicted on a person or group of individuals along with potential solutions to rectify the ailing situation (Loseke, 2003). These individuals do more than simply draw attention to a particular social condition; they shape the way the phenomenon is presented to the audience and frame solutions in a specific manner (Surette, 2007). As any social condition is a potential subject of discussion, claims-makers inevitably choose to focus on particular aspects of the phenomena at the expense of other conditions that often results in claims competitions amongst claims-makers. As summarized by Best (1995), “Claims-makers inevitably characterize problems in particular ways: They emphasize some aspects and not others, they promote specific orientations, and they focus on particular causes and advocate particular solutions” (p. 9). According to Loseke and Best (2003), it does not matter *why* audience members are persuaded to evaluate a particular claim, what matters is that they *are* persuaded to analyze the social problem. Often, claims-makers that succeed reflect a particular construction of the conditions and achieve ownership of the social problem (Gusfield, 1981). To achieve legitimacy with audience members, successful claims-making often requires personal examples and evidence to support the soundness of the claim before public endorsement and support is provided. Through the use of typification, claims-makers characterize the nature of the condition, the individuals who have been affected by the social problem and the potential solutions endorsed by the claims-makers.

A prominent form of typification involves illustrating a social problem through the use of personal examples. Best (1995) suggests that because an individual’s attitude towards the

social problem often reflects one's reactions to 'typical' cases, the examples used by claims-makers comes to represent the larger social problem in general. Particular cases often shape one's sense of the social problem as claims-makers draw attention to examples that appear to justify their claims. Because individuals cannot have knowledge or personally experience all phenomena in society, typifications provide the opportunity to categorize specific types of conditions and people that would otherwise go unnoticed. As Loseke (2003) states, "the only feelings we can have about events we do not personally experience and about people we do not personally know is through our typifications" (p. 18). Claims-makers often expand the grounds of their social problems conditions by constructing typifications of the types of people harmed and the individuals or institutions influencing these difficulties. Terms such as 'victims' or 'villains' are frequently constructed in ways that encourage audience members to react emotionally towards these types of individuals, often moving beyond bland general descriptions and counting the numbers of those affected (Loseke & Best, 2003).

### **Examining the Construction of Victims and Villains**

It is difficult to consider a social problem that does not involve a classification of victims; indeed, Holstein and Miller (1990) suggest that a social problem is not fully constructed until a victim category has been identified. Victims tend to be evaluated as 'morally pure' individuals who have been greatly harmed through no fault of their own (Loseke, 2003, p. 110). A social constructionist approach to victimization analyzes the social processes by which particular individuals become recognized and understood as victims, that is, the meaning conferred upon these individuals is not automatic but rather organized and interpreted through public policy and social interaction (Blumer, 1969; Holstein & Miller, 1989). The definitional process that results in assigning victim status to some and not others is

critical as the term 'victim' implies certain social relations surround the individual as well as their relationship with the larger social problem (Jenness, 1995). Victims become the objects of sympathy rather than people highly regarded as models for how others might profitably live their lives (Loseke, 2003). As Berger (2003) suggests, an emphasis is often placed on a particular type of individual labelled as a victim who are morally deserving of public sympathy and whose suffering justifies remedial social action.

Claims-makers can also appeal to the emotions of audience members through the construction of villains who are to blame for the suffering and hardship endured by victims. Villains may be constructed as social institutions such as the criminal justice system or social forces such as racism; however, villains are frequently constructed as people (Loseke, 2003). Despite the fact that specific individuals are often seen as villains, claims-makers do not typically construct them as people who should be condemned or punished but rather blame a breakdown in the system or a psychological mentality or culture that dominates a particular professional field (Goode & Ben-Yehuda, 1994). Due to the fact that it is far easier for claims-makers to evoke a sympathetic response to the plight of victims rather than scorn for the villains, there is a tendency for claims-makers to pay far more attention to constructing descriptions of victims rather than images of villains. As Loseke (2003) summarizes, often claims that are able to persuade audience members to evaluate the condition as a social problem promote "a story of extreme harm done to pure victims with a moral that *something must be done!*" (p. 112, Emphasis in original). Clearly, the words and images presented by claims-makers have an effect on the construction of social problems and the emotional reactions that are elicited through the development and maintenance of the construction of victims and villains.

The media play a significant role in the process of endorsing victims and villains as coverage of a particular condition or individual is an important aspect of social problems claims-making (Spector & Kitsuse, 1977). More than merely transmitting information to the general public, the media examine and selectively introduce information by framing claims-makers' social problems in particular ways that have the potential to elicit specific responses to the social phenomenon being promoted. In this vein, the media may become claims-makers in two select ways, as primary claims-makers or as secondary claims-makers. The media can be primary claims-makers when reporters search for information to cover a story, taking an active role in the construction of the social problem or they can be secondary claims-makers when they actively translate and package claims made by others, determining whether the claims are newsworthy enough to promote upon considering the journalistic constraints and systematic operations of the media agency (Best, 1991). The press helps construct new problems by providing typical cases, citing statistics and quoting experts, thereby explaining what is at issue, who is to blame and what solutions can lead to a correction of the social problems condition. Due to the fact that the media play such an integral part in the 'construction of reality', academics have good reason to examine the messages they convey (Surette, 2007, p. 32).

## **PART II - The Media's Role in Constructing the News**

*"The media (...) are in the best position to alert and inform the wider public, educate to a certain point, even, if necessary, to call it to action when governmental or institutional decision-makers have eliminated public debate on certain issues"*

– CEST, 2003, p. 28.

While the role of the media is controversial, numerous researchers suggest this forum is significant in constructing an image of reality upon which the public bases their attitudes and opinions (Barak, 1994; Chermak, 1994; Surette, 1998). Consequently, the media is perceived to be largely influential in the construction of social problems along with providing possible solutions to overcome these collective dilemmas (Cavender, Jurik & Cohen, 1993). News is not an object, but is defined, selected, covered and presented for explicit purposes (Altheide, 1976). Fowler (1991) claims that the media create the news; it is a product that results from the journalistic process and is not something that is simply found or gathered from an objective, impartial location.

The media provides its audience with information about current events and occurrences within society, and ultimately shapes and influences their opinions (Surette, 1990). According to Altheide (1997), media sources contribute to public perception, albeit in less than precise ways; whether as 'priming' (Iyengar & Kinder, 1987), agenda setting or shaping public discourse through news formats. As a result, it is important to examine how the media can sculpt the perceptions and attitudes of their audience. The study of criminology has a history of using the media as a research guide in order to examine the public's understanding of crime. In part, this can be attributed to the fact that members of the public typically derive their image

of criminal activity based on their exposure to 'mass media accounts' (Noaks & Wincup, 2004).

### **The Construction of the News: Why Study the News?**

The media can have an important effect on how social problems are constructed and presented to the public (Spector & Kitsuse, 1977). For decades, media scholars have examined the social construction of news, describing how social factors have influenced the selection, production and presentation of the news (Gamson, 1992; Gans, 1979; Molotch & Lester, 1974, Schudson, 1995; Tuchman, 1978). The underlying hypothesis suggests that news is a cultural product which reflects what is deemed significant in society and the organizational structure of news agencies. The social function of this process of selecting the issues is evident in the setting of a 'public agenda' (Noelle-Neumann & Mathes, 1987), whereby topics are discussed and thought to require a political solution (Graber, 1984; McCombs & Shaw, 1972; Weaver, 1984). For many people, the media in general, and the news in particular, provide an opportunity to indirectly experience events that are occurring throughout the world. Schudson (1995) argues that by offering "the public an item of news, [the media] confer upon it public legitimacy," amplifying its importance, and distributing it widely in its particular story frame (p. 19). It is through the formatting and framing of a story that media agencies are able to amplify particular segments deemed important while downplaying others considered irrelevant.

Formats and frames shape mass media content (Altheide & Snow, 1991; Couch, 1984; McLuhan, 1960). Studies of media frames and formats have complemented findings from research of media content while providing a conceptual foundation in the practices of media agents (Altheide, 1997). Formats has been described as a way in which selecting, organizing and presenting information shape audience assumptions and preferences for certain types of

information (Altheide, 1985; Meyrowitz, 1985; Schlesinger, Murdock & Elliott, 1983). Put differently, formats pertain to the underlying organization and assumptions of time, space and manner of experience that impact on a news story (Snow, 1983).

The concept of framing emphasizes the selective presentation of particular subject matter, themes and claims, but not others (Hansen, 2000; Miller & Riechert, 2000; Priest, 1994). According to Entman (1993), to 'frame' is to select some aspect of a perceived reality and make it more salient in a communicating text, in such a way as to promote a particular problem definition and underlying interpretation along with recommending a solution to the particular incident in question. Although frames are usually implied, they can exert a significant influence on what is defined as a public issue (Petersen, 2001). As Priest (1994) suggests, it is through framing, which invites certain interpretations, where the mass media may have their most powerful effects. Journalists do not simply report 'the facts' or 'both sides of the story,' rather, they present the news in the context of a particular frame (Conrad, 2001). Frames become the central organizing idea to selectively represent certain aspects of the story (Binder, 1993; Gamson & Modigliani, 1989). Thus, reporters are more than messengers of information (Gans, 1979); the process of placing the news in some type of context along with developing a narrative line about a particular event can be depicted as a type of story-telling (Schudson, 1989).

Through the everyday news work of selecting what to report, locating and quoting expert commentary while organizing and presenting the news in a particular frame, news agencies provide an important element to the public discourse. News reports serve as a window into organizational frameworks of reality maintenance and provide broad societal definitions that serve as the foundation for opinions regarding particular criminological issues.



How the public views matters pertaining to the criminal justice system may be influenced by the mass media, although researchers disagree about the direction and nature of this relationship (Gerbner & Gross, 1976; Gunter, 1987; Hirsch, 1980; Katz, 1987; Sparks, 1992; Zillman & Wakshlag, 1987).

Although it is true that media messages “create an interpretive framework for thinking about solutions to the social problem of crime” (Pritchard & Hughes, 1997, p. 50), societal interactions and political processes are multifaceted and complex, therefore, to posit a direct causal relationship between media sources and policy is incorrect (Critcher, 2002). This statement is further supported by the work of Surette (1992) when he states, “research findings indicate that the media do influence, to various degrees, the agendas, perceptions and policies of its consumers with regard to crime and justice, but not directly and simply” (p. 102). Despite this, it cannot be denied that significant media exposure to particular incidents in the past has contributed to legislative changes and considerable shifts in public policy (Critcher, 2002; Doyle & Lacombe, 2003; Petrunik, 2003; Silverman & Wilson, 2002). The influential nature of the media may be subtle and indirect, but these organizations continue to play a prominent role in shaping societal reactions to particular events that are deemed newsworthy. By examining media portrayals in their broader socio-political context, one not only observes media depictions and processes, but also the level of social reaction an incident may elicit.

### **The Newsworthiness of a Story**

The newsworthiness of a story is considerably enhanced if it is linked with an issue that has already been established as a public concern (Petersen, 2001), such as an individual’s wrongful conviction in the criminal justice system. Rare and extraordinary events are particularly seen as newsworthy, despite the fact that they may be less predictable in their

outcomes. Kepplinger and Habermeier (1995) suggested that an unusual event could trigger a temporary change in the criteria for news selection, resulting in an increase of news on similar incidents and thematically related events. As Thompson (1995) states,

The media are actively involved in constituting the social world. By making images and information available to individuals located in distant locales, the media shape and influence the course of events, and indeed, create events that would not have existed in their absence (p. 117).

Similar to this, Khaki and Prasad (1988) suggest that media portrayals often become a substitution for personal, interactive social experiences. As members of the public come to rely on the media's interpretation of events they are not directly connected to, media organizations become authoritative voices in shaping the perceptions of their audience.

The newsworthiness of a story often depends on the values and beliefs of the individual journalist along with the opinions of the particular news agency. According to Tuchman (1978), newsworthiness is a negotiated phenomenon rather than an application of independently derived criteria of news events. Despite this, deviance is almost universally deemed newsworthy in any situation; with a greater level of deviance obtaining a higher proportion of news coverage (Shoemaker, Chang & Brendlinger, 1987). Crime news is of widespread interest because it speaks dramatically to issues that are of direct relevance to readers' existential challenges, whether or not readers are preoccupied with the possible personal misfortune of becoming victims of crime (Katz, 1987).

An issue is determined to be significantly newsworthy if the incident is both spatially and culturally proximate to the audience. This represents events that are geographically close to the reader along with the similarities between the individuals being covered in the story and the audience, regarding characteristics such as gender, race and class. Lacking these factors, the story must be deemed dramatic and significant in nature to obtain public exposure (Jewkes,

2004). Sonwalker (2005) argues that conventional journalism operates through the diametrical categories of *us* or *them*, whereby individuals who share value systems and attributes similar to those of newsmakers have their perceptions highlighted while others who do not often become marginalized and disregarded. Similarly, Ryan, Anastario and DaCunha (2006) suggest that “far from being neutral hosts of public discourse, media outlets participate in ongoing policy contests by choosing whom to quote and whom to ignore, journalists decide whose accounts count” (p. 210). Consequently, these preconceived notions often go unnoticed by both newsmakers and the general public largely due to the normalcy and habitual nature associated with journalistic coverage of a newsworthy story (Sonwalker, 2005).

Consequently, the value of promoting specific conditions as social problems resides in the influential nature of the social construction process (Surette, 2007). According to Surette (2007), if one is able to utilize a reality-defining engine in society such as the media, one is able to influence the social reality of numerous individuals. By giving certain claims greater credibility and coverage than others, the media format and frame social problems in a particular manner that make it difficult for counter-claims to gain legitimacy in the general public.

Ultimately, the social policies supported by the public and the solutions forwarded by claim-makers are connected to the successful construction of social problems. Both wrongful conviction and innocence are socially constructed concepts and intricately intertwined; an understanding of each cannot be achieved without acknowledging and examining the meanings and definitions that have been disseminated by the newsprint media.

## Methodology and Research Considerations

*“Over the last several years more researchers have focused on the role of the mass media and popular culture in influencing members’ definitions and perspectives about social reality, including the shaping of culture, communication formats, and the formulation of mundane as well as policy issues and practical matters in high places and in everyday life.”*

- Altheide, 2000, p. 288.

To examine the newsprint media’s construction of DNA technology in relation to notions of innocence, three prominent Canadian cases of wrongful conviction became the central focus of this research. Specifically, the cases of Guy Paul Morin, David Milgaard and Gregory Parsons were selected to complete a qualitative content analysis<sup>48</sup> of four Canadian newsprint media agencies<sup>49</sup> coverage of their cases. Despite the inability of this study to conclude any direct causal relationship between the media’s portrayal of DNA technology in relation to public perceptions, the objective of this research is to narrow the gap that exists in criminological literature pertaining to this scientific procedure and how it is constructed by newsprint media organizations. Surette (1992) suggests that, “the media, by emphasizing or ignoring topics, may influence the list of issues that are important to the public – what the public thinks about, rather than what the public thinks” (p. 87). The media thus play not only a reporting role but a defining role, establishing their audiences’ sense of reality while stipulating the accepted norms and boundaries in society (Bergman, 1971; Cohen & Young, 1981). As

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<sup>48</sup> This is to be distinguished from ‘discourse analysis’, a specific approach used when conducting a cultural text analysis that is informed by linguistics (see for example Schiffrin, Tannen & Hamilton, 2001) and ‘critical discourse analysis’ whose objective is to examine the processes by which social power, dominance and inequality are produced, reproduced and resisted in social institutions (see for example Fairclough, Graham, Lemke & Wodak, 2004; Van Dijk, 1993)

<sup>49</sup> The newsprint media organizations selected for analysis were: the *Globe & Mail*, the *Saskatoon Star-Phoenix*, the *St. John’s Telegram* and the *Toronto Star*.

Jewkes (2004) contested, despite often being described as a 'window on the world' or a mirror reflecting 'real life', a more accurate symbol describing the media may be that of a prism, subtly bending and distorting the view of the world it projects (p. 36-37). This chapter will illustrate the methodology of this study. Specifically, this involves an outline of the research questions examined, the wrongful conviction cases used in this research, the criteria according to which the specific cases were selected, the conceptual foundations pertaining to content analyses, the selection of the medium, and the data collection process along with a brief discussion surrounding potential research limitations.

### **Research Questions**

Despite the increasing academic, political and media attention addressed to the issue of wrongful conviction, this area of study is arguably still in its infancy (Leo, 2005). The focus of most research pertaining to this issue has been conducted on the underlying causes of wrongful conviction through the examination of particular individuals who have been erroneously accused, tried and sentenced for a criminal activity they did not commit (Cohen, 2003; Scheck et al., 2000; Westervelt & Humphrey, 2001). While research into this field of study is important in its own rite, one must go beyond the examination of individual sources of error to understand how social forces and erroneous human judgments come together to further understand the phenomenon of wrongful conviction.

There are a number of gaps in the criminological literature, both conceptually and theoretically, surrounding the examination of this subject matter (Leo, 2005). Notably absent from the literature has been the examination of how the media constructs DNA technology and the possible implications this portrayal may have on ideas about innocence and wrongful conviction. To further delve into this subject, this thesis compares the content of four

Canadian English-language local and national<sup>50</sup> newsprint media coverage<sup>51</sup> of three Canadian wrongful conviction cases; David Milgaard from Saskatchewan, Guy Paul Morin from Ontario and Gregory Parsons from Newfoundland and Labrador. In each of the cases examined, the factual innocence of the erroneously convicted individual was later established by forensic DNA analysis. This thesis examined the following questions:

- 1) What similarities/differences can be drawn between the coverage of miscarriages of justice in local and national newsprint media organizations?
- 2) How did the newsprint media construct DNA technology in relation to notions of innocence and wrongful conviction?

In many ways, this thesis is both timely and relevant as the question of how an individual can be labelled as ‘wrongfully convicted’ has been the subject of recent deliberations in the commission of inquiry relating to the trial and conviction of James Driskell (LeSage, 2007). As the procedures of forensic DNA analysis become an increasingly accepted mechanism for determining the factual innocence of an erroneously convicted individual, further miscarriages of justice are sure to gain the attention of the newsprint media and become the subject of public debate and discussion.

Wrongful conviction cases by their very nature are extremely complex and multifaceted, often including numerous trials, appeals, and ministerial reviews that span a number of years (Radelet et al., 1992). Although difficult to summarize the intricacies of each wrongful

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<sup>50</sup> The local cases selected for study were the *Saskatoon Star-Phoenix* for the David Milgaard case, the *Toronto Star* for the Guy Paul Morin case and the *St. John's Telegram* for the Gregory Parsons case. The national paper selected for examination in all three cases was the *Globe and Mail*.

<sup>51</sup> For the purposes of this thesis, the concept of ‘media coverage’ entails any information, in particular, headlines, articles and text printed by the four Canadian English-language newsprint media agencies within the timeline selected in relation to the three cases of wrongful conviction.

conviction case, the following synopses provide a foundational understanding of the proceedings that occurred in each case selected for analysis in this research study.

### **Case Synopses**

#### ***Guy Paul Morin***

On October 3<sup>rd</sup>, 1984, nine-year-old Christine Jessop disappeared while on her way home from school in Queensville, Ontario, a small village northeast of Toronto<sup>52</sup>. Three months later, on December 31<sup>st</sup>, 1984, her body was found in a field approximately 56 kilometres east of her family residence. Autopsy results indicated that she had been sexually assaulted, while the cause of death resulted from fatal stab wounds and blunt force trauma. A police investigation continued until April 22<sup>nd</sup>, 1985, when Guy Paul Morin, Christine's neighbour, was arrested and charged with the murder.

At trial, prosecutors relied heavily on forensic evidence relating to hair and clothing fibres along with the testimony of two jailhouse informants. In relation to the forensic evidence, three hairs found in Morin's car were similar to Christine's hair; however, scientists could not determine conclusively whether or not these hairs originated from the victim. The Crown also utilized the testimony of Mr. May and Mr. X<sup>53</sup>, two jailhouse informants who testified that they had heard Morin confess to the crime while in prison. On February 7<sup>th</sup>, 1986, at the end of the one-month long trial, Morin was found not guilty. After the verdict, the Crown appealed the decision to the Court of Appeal for Ontario who ordered a retrial based on questionable jury instructions pertaining to reasonable doubt. On November 17<sup>th</sup>, 1988, the Supreme Court of Canada agreed with the Ontario Court of Appeal and ordered a new trial.

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<sup>52</sup> See Appendix A for a more detailed account of the Guy Paul Morin wrongful conviction case.

<sup>53</sup> This was the pseudonym used throughout the trial and subsequent public inquiry by the courts to protect the identity of this individual.

Seven years after the crime, on November 13<sup>th</sup>, 1991, jury members heard the Crown's opening address at the second trial against Guy Paul Morin in London, Ontario after a change of venue motion was granted to the defence. At the second trial, the prosecution made much of the fact that Morin did not participate in the search for Christine and did not attend her funeral. On July 30<sup>th</sup>, 1992, despite evidence of police wrongdoing and questionable Crown tactics, Guy Paul Morin was convicted of Christine Jessop's murder.

Morin appealed the decision and the application was granted, but days before it was to heard, Morin's lawyers called for another DNA test to be performed on the biological material that was found at the body site. A semen sample from Christine's undergarments was sent to a forensic laboratory in the United States and on January 23<sup>rd</sup>, 1995, conclusive results were obtained that determined Guy Paul Morin could not have been the perpetrator of the crime. The Ontario Court of Appeal moved to acquit Morin while calling for a public inquiry into the investigation and prosecution of the case. The inquiry, headed by Mr. Justice Fred Kaufman, lasted ten months and resulted in a 1,400 page report condemning the conduct criminal justice officials used while investigating the case. On January 24<sup>th</sup>, 1997, Morin was finally awarded a \$1.2 million dollar compensation package from the Ontario government for his years of struggle with the criminal justice system.

### ***David Milgaard***

The facts pertaining to the David Milgaard case span twenty-eight years, twenty-three of which Milgaard spent in prison<sup>54</sup>. On January 31<sup>st</sup>, 1969, the body of Gail Miller, a nurse's aide, was discovered in an alley in Saskatoon, Saskatchewan. Autopsy results showed that she had been sexually assaulted and stabbed to death. Milgaard had been visiting an individual named Albert Cadrain with two other friends, Nichol John and Ronald Wilson, in Saskatoon at

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<sup>54</sup> For a more detailed account of the David Milgaard wrongful conviction case, see Appendix B.



the time of the murder. When police mentioned that the investigation was at a standstill, Cadrain came forward and claimed that he had seen blood on Milgaard's pants the day of the murder. The police in turn focused their investigation on Milgaard and began to build their case. On May 30<sup>th</sup>, 1969, sixteen-year-old David Milgaard was arrested and charged with the murder of Gail Miller.

The trial took place in January 1970 and lasted two weeks, during which the statement made by Albert Cadrain along with both of Milgaard's travelling companions testifying against him, sealed his fate. On January 31<sup>st</sup>, 1970, exactly one year after the murder, David Milgaard was convicted of murder and sentenced to life in prison. Upon conclusion of the trial, Milgaard's lawyers launched an appeal; however, leave to appeal was denied by the Court of Appeal for Saskatchewan. Joyce Milgaard, David's mother, began a campaign to free her son, appealing the Saskatchewan Court of Appeal's decision to the Supreme Court of Canada. On November 15<sup>th</sup>, 1971, the Supreme Court of Canada refused to hear Milgaard's appeal. While incarcerated, Milgaard escaped once, failed to return while out on a day pass but was subsequently recaptured near the Toronto area and attempted to commit suicide twice. In December 1988, Milgaard's lawyers applied to have the case reopened through a section 690 application for a ministerial review; however, the application was denied. Almost three years later, then Minister of Justice Kim Campbell took the unusual step of not only granting the application for a review, but also referring the case to the Supreme Court of Canada. On April 14<sup>th</sup>, 1992, the Supreme Court ruled that Milgaard's 1970 conviction should be overturned and he should be granted a new trial. Subsequently, Saskatchewan's Attorney General elected to stay the proceedings against David Milgaard.

Milgaard's lawyers began to call for DNA testing procedures to be conducted on the biological material that was left at the crime scene; however, the initial results were inconclusive. Finally, on July 18<sup>th</sup>, 1997, DNA test results conclusively determined that David Milgaard's sample did not match that of the crime scene sample, but Larry Earl Fisher's<sup>55</sup> did. The Federal government in partnership with the Saskatchewan government admitted its mistake and provided Milgaard with a \$10 million dollar financial compensation package on May 17<sup>th</sup>, 1999. A public inquiry has also been conducted on the proceedings in this case, with the results to be made public in 2008.

### ***Gregory Parsons***

On January 2<sup>nd</sup>, 1991, Gregory Parsons attempted to visit his mother, Catherine Carroll, to wish her a happy new year only to find her murdered body in the bathroom<sup>56</sup>. In their investigation of the crime, the Royal Newfoundland Constabulary interviewed over two dozen individuals close to Catherine Carroll, most notably her lawyer and psychiatrist, who told police that Catherine had complained on a number of occasions of familial problems with her son Gregory and that she was fearful he would one day take her life. Unfortunately, no serious efforts were made to investigate alternative explanations pertaining to these statements which ultimately led investigators to conclude that Gregory Parsons was to blame in the slaying of his mother. On January 10<sup>th</sup>, 1991, Gregory Parsons was arrested and charged with the murder of Catherine Carroll.

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<sup>55</sup> During the initial investigation, police interviewed a man who lived nearby, Larry Fisher, who had been questioned earlier about a knifepoint attack on an elderly woman in the neighbourhood. When asked about his whereabouts on the day of the murder, Fisher claimed that he was at work, and the police did not follow it up. A year after Milgaard's conviction, Fisher was convicted of a number of knifepoint sexual assaults in Winnipeg, and later, four more in the Saskatoon neighbourhood where Gail Miller had been murdered.

<sup>56</sup> See Appendix C for a more detailed account of the Gregory Parsons wrongful conviction case.

On September 23<sup>rd</sup>, 1993, the trial of Gregory Parsons for the first-degree murder of his mother began before a judge and jury, at which 119 witnesses were called. On February 15<sup>th</sup>, 1994, the jury concluded that Parsons was guilty of second degree murder and was sentenced to life imprisonment with no eligibility for parole for fifteen years. Gregory Parsons appealed his conviction and applied for judicial interim release pending the outcome of the appeal. The Supreme Court of Newfoundland and Labrador, Court of Appeal, granted Parsons interim bail pending his appeal; a rare occurrence in a murder trial. It was not until December 3<sup>rd</sup>, 1996, two years later, that the Supreme Court of Newfoundland and Labrador, Court of Appeal, quashed the conviction and ordered a new trial.

In August 1997, certain exhibits used in the case against Gregory Parsons were released for DNA profiling. On January 26<sup>th</sup>, 1998, the results of DNA testing confirmed that Parsons DNA sample did not match the biological sample that was obtained at the crime scene<sup>57</sup>. Based on this fresh evidence, the Crown called no evidence in the case and on November 5<sup>th</sup>, 1998 Parsons received a public apology from then Minister of Justice and Attorney General for Newfoundland and Labrador, Chris Decker. On February 28, 2002, the Government of Newfoundland and Labrador announced an agreement to compensate Gregory Parsons for his arrest and conviction in the death of Catherine Carroll. An addition to this financial compensation was made on September 1<sup>st</sup>, 2005, providing Parsons with a total package of \$1.3 million dollars. A public inquiry was commissioned, headed by the Right Honourable Antonio Lamer, whose findings and recommendations were made public on May 31<sup>st</sup>, 2006.

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<sup>57</sup> The forensic test results concluded that Brian Joseph Doyle's DNA, a childhood friend of Gregory Parsons, matched the sample of DNA found at the crime scene. Doyle was subsequently convicted of second degree murder in the death of Catherine Carroll.

### **Case Selection Criteria**

When deciding on which cases to use in conducting this research, a number of features were taken into consideration before the final decision was made to choose Morin, Milgaard and Parsons. Of most importance was the fact that each case had ultimately been exonerated through the use of DNA technology. Importantly, the use of DNA testing to exonerate these individuals all took place over a three year span, 1995 to 1998; a critical time when this novel scientific procedure was still in its initial phases of development.

To be included in this research, individuals also needed to be deemed factually innocent rather than legally innocent to allow for comparison. As stated previously, factual innocence is considered to have taken place when an individual was not present at the scene of the crime and logically could not have committed the offence in question (Burnett, 2002). In these instances, the 'wrong person' was falsely accused and convicted even though they had nothing to do with the criminal activity in question. This is in stark contrast to legal innocence where an individual admits that they contributed to the offence in question, but offers an excuse or a justification for their actions (Burnett, 2002). In each of the cases selected, the accused individual adamantly denied their guilt throughout their trial, conviction and incarceration. As the focus of this study is to examine how the newsprint media construct DNA technology in relation to notions of innocence, it became imperative to select cases where factual innocence was determined through the employment of DNA testing procedures.

Further similarities also exist between each of the cases examined in this research. In every instance, individuals were arrested, charged and ultimately convicted in a horrific and alarming murder, creating public pressure on law enforcement officials to capture the perpetrator immediately. An absence of direct evidence led to the reliance on circumstantial or

highly questionable evidence by criminal justice officials in the cases examined. Each case was determined to be of significant importance to the media as saturated news coverage drove Morin, Milgaard and Parsons into the national spotlight. Initial research into media coverage revealed more than 3,900 newspaper articles<sup>58</sup> relating to the wrongful conviction cases used in this study.

Also of importance is the fact that all wrongful conviction cases selected in this research were exonerated through DNA and awarded financial compensation. Furthermore, mistakes in each of these cases were thoroughly examined through the establishment of a public inquiry<sup>59</sup>. Compensation represents a public acknowledgement that government officials erred in completing their task and attempts to financially rectify the losses incurred by individuals who have been wrongly convicted. Commissions of inquiry allow for the investigation of ‘what went wrong’ along with providing an opportunity to reduce the stigma associated with a wrongful conviction while providing a forum to examine how such gross miscarriages of justice can be avoided in the future (Lamer, 2006).

Some differences were also discovered between the wrongful conviction cases selected for examination. The most obvious difference is that the Parsons, Morin and Milgaard cases took place in different Canadian provinces; Newfoundland and Labrador, Ontario and Saskatchewan respectively. Although an ideal research project would envision all cases selected for analysis to originate within a single province, this was not possible. To complete

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<sup>58</sup> To conduct this query, the *Canadian Newsstand* database was used with the key words “Guy Paul Morin”, “Gregory Parsons”, or “David Milgaard” in the *Globe and Mail*, the *Toronto Star*, the *St. John’s Telegram* and the *Saskatoon Star-Phoenix*. In total, 3,943 articles were discovered for this group.

<sup>59</sup> In 1998, Mr. Justice Fred Kaufman presented his findings in the public inquiry surrounding the Guy Paul Morin case while Mr. Justice Antonio Lamer made his findings public in the wrongful conviction of Gregory Parsons public in 2006. Mr. Justice Edward MacCullum has been commissioned to investigate the erroneous conviction of David Milgaard and his results are expected to be forthcoming in the fall of 2008.

this objective, compromises would need to be made in relation to the availability of newsprint media coverage that was not realistic.

Another difference between the cases selected is that the Parsons and Milgaard cases were ultimately resolved due to the outcomes obtained from DNA testing procedures while the perpetrator of the murder in the Morin case is still at large. Also of importance is the difference in the amount of time each individual spent in attempting to clear their name from the judicial error that led to their wrongful conviction. For David Milgaard, the process began in 1969 and continues to this day as the findings of the public inquiry, headed by the Honourable Mr. Justice Edward P. MacCallum, have yet to be released. Guy Paul Morin's connection with the criminal justice system spans a fourteen year period while in the case of Gregory Parsons, fifteen years had past between his initial arrest and the findings of the royal commission in 2006.

Although this analysis will not be completed in the traditional sense of conducting case study research, these events will serve as instrumental case studies in this project. Stake (1994) describes instrumental case studies as providing a supportive role, a background against which the actual research interests will be examined. As Berg (2004) states,

Instrumental case studies often are investigated in depth, and all aspects and activities are detailed but not simply to elaborate the case per se. Instead, the intention is to assist the researcher to better understand some external theoretical question or problem (p. 256).

In instrumental case studies, the case being studied actually becomes of secondary importance to the phenomenon being researched. The choice of a particular case for study is made because the investigator believes that their understanding about some other research interest will be advanced (Berg, 2004); in this research project, the application of a qualitative content analysis.

## **Qualitative and Quantitative Schools of Thought**

Qualitative and quantitative research designs must not only be consistent with the questions asked and the methodological requirements of constructing knowledge but also with the properties of the phenomena under investigation (Schatzman & Strauss, 1973). Through the use of qualitative methods, one is able to explore a wide array of dimensions in the social world, including the characteristics of everyday life, the way that social processes and institutions function along with the significance of the meanings and concepts that are put forward by particular individuals (Mason, 2002). Unfortunately, because qualitative research tends to access the meanings and implications of words, themes and descriptions whereas most quantitative research focuses mainly on numerical data, individuals sometimes regard quantitative strategies as 'more scientific' than those employed in qualitative research (Berg, 2004, p. 2). Borman, LeCompte and Goetz (1986) countered this argument by suggesting that criticism of qualitative approaches arises out of an "erroneous equation of the term 'empirical' with quantification, rather than with any real defect in the qualitative paradigm itself" (p. 51). As human behaviour is an ongoing and negotiated interpretation of objects, events and situations (Bogdan & Biklen, 1992), examining the construction of meaning and definitions pertaining to a particular phenomenon provides qualitative methods a unique opportunity to conduct research that cannot be considered through quantitative methods alone.

Qualitative research is designed to provide an interpretive approach when analyzing the world that is not numerically focused or statistically bound (Bouma, 1996; Denzin & Lincoln, 2003). However, social scientists situated in the qualitative realm often employ some form of quantification measures, but statistical forms of analysis are not seen as central to the completion of the research (Mason, 2002). Although this study adopted primarily a qualitative

approach to data analysis, the use of statistical techniques such as tallies, frequencies and percentages were also taken into account when examining the total number of articles published in each miscarriage of justice, the section/pages where the articles were located, the tone of the articles in relation to DNA technology, the average number of words in each article along with the tone qualifiers employed by the newsprint media organizations. However, the use of arithmetic procedures was of secondary importance to the study's qualitative focus.

### **Conducting a Content Analysis**

As a research technique, content analysis allows for the formation of replicable and valid inferences from texts that provides new insights and increases the understanding of a particular phenomenon of interest in a research study (Krippendorff, 2004). As defined by Krippendorff (2004), content analysis is “an unobtrusive technique that allows researchers to analyze relatively unstructured data in view of the meanings, symbolic qualities, and expressive contents they have and of the communicative roles they play in the lives of the data's sources” (p. 44). Content analysis involves the interaction of two processes: the specification of the content characteristics being examined and the application of explicit rules for identifying and recording these characteristics (Berg, 2004). These communications can be analyzed at numerous levels (images, words, themes, patterns, tone), thereby creating a wide range of research opportunities (Kolbe & Burnett, 1991).

The crucial distinction between a content analysis and other qualitative research techniques, such as interviews or participant observations, is the focus on manifest and latent content of textual material (Berg, 2004). As described by Berg (2004), manifest content is comparable to the written characteristics that are physically present in the text being researched. When examining latent content, the analysis is extended to an interpretive reading of the



symbolism underlying the physical data (Berg, 2004). In each case, researchers must offer detailed excerpts from the relevant statements examined in the textual material that serve to document the researchers' interpretation. In summarizing both types of analysis, Berg (2004) suggests that, "manifest content is comparable to the *surface structure* present in the message, and latent content is the *deep structural* meaning conveyed by the message" (p. 269, Emphasis in original).

Before one is able to discuss the manifest and latent meanings of the text, researchers must first incorporate independent corroborative techniques and coding schemes to the data set (Heilman, 1976). Coding involves the identification of relevant words, terms and concepts upon reviewing the data to clarify the themes, patterns and trends present in an organized and systematic examination of the textual material (Altheide, 2000). In completing a qualitative content analysis for this research, a closed ended coding scheme was developed as a means to assess newsprint media articles that met the appropriate selection criteria<sup>60</sup>. Of specific importance to this study was the examination of descriptive words and tone used to construct the scientific techniques of DNA testing and how this procedure related to an individual's overall perception of innocence in cases of wrongful conviction. Were Morin, Milgaard and Parsons deemed to be completely innocent beyond question because of DNA technology or was their still lingering doubt as to their innocence? Was DNA testing portrayed as a panacea for determining the guilt or innocence of an individual in conflict with the criminal justice system or were the shortcomings of this scientific procedure also discussed by newsprint media agencies? Was the tone of the article positive, negative or neutral when newsprint media agencies constructed this novel scientific procedure? Who were the legitimating sources used in newspaper articles to state the conclusiveness of DNA technology in relation to an

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<sup>60</sup> For the complete data collection sheet, see Appendix D.

individual's actual innocence? Notably, by focusing on what is present or absent from the texts as well as which individuals are emphasized and the overall tone of the article, a clearer picture can emerge of the nuances and complexities of media representations pertaining to the particular phenomenon in question (Surette, 1992).

When examining the 'tone' in which the article's author presented DNA technology in relation to notions of innocence, one of three categorical frames were used (positive, negative, or neutral). The use of descriptive language, concepts, adjectives and adverbs along with statements pertaining to DNA testing procedures and how this affected one's innocence were employed as a means of identifying the overall manner in which the article was written. For example, the use of terms such as 'absolute proof' or 'conclusively established' in describing DNA technology along with descriptions such as 'cleared beyond a shadow of doubt' justified the labelling of the article's tone under the positive category. Similarly, pessimistic terms such as 'testing incompetent', 'crime tests questioned' or 'a highly intrusive measure' in relation to forensic DNA analysis were categorized under the negative category. Finally, language such as 'all scientific opinion evidence, including DNA opinions, will be thoroughly analyzed and scrutinized', 'police can't act on any DNA test until they have the results' or 'we have to have a balance between the human rights of people and what we call the rights of the offender' in relation to DNA technology would be coded under the neutral category.

Similarly, 'tone qualifiers' or evidence employed by the author to support their position were also noted in this research project. Through the use of individuals seen as legitimate sources of information, authors provide justification to support the language and descriptive words selected to portray an issue in a particular manner. Examples of such qualifiers may

include, but are not limited to, professional testimonials from the scientific community or academic circles, opinions of law enforcement personnel or statements made by legal experts.

Headlines of newspaper articles also provide a defining characteristic of print-news and should not be ignored when conducting a content analysis of this nature. Teo (2000) argues that examining headlines is important given the limited space reporters and editors have to communicate to their readers what has taken place. Headlines provide a concise space to summarize the news event in question while “orienting the reader to process the text in a predetermined direction” (Teo, 2000, p. 13). Due to the fact that each word in the headline must be carefully selected to maximize its effect, examining headlines may also provide a researcher insight into the ideological nature of a print-news organization.

### **Selection of the Medium – Newspapers**

To examine the media’s construction of DNA technology pertaining to notions of innocence and wrongful conviction, newspapers were selected for analysis. Since their emergence, newspapers have been an important source of data for researchers studying media content (Davis & Morsdell, 2006; Krippendorff, 2004). Recently, it has been suggested that newspapers are a dying medium (Glenn, 1994; Shafer, 2006), rendered all but obsolete in a technology driven society such as Canada’s. However, NADBank (2007) suggests that now more than ever, newspapers are becoming an important location for individuals to obtain news.

According to NADbank (2007) statistics,

Across all markets, adults spend an average of **46 minutes** reading a daily newspaper on the **average weekday** and **84 minutes** reading on the **weekend**...Despite hectic lifestyles and an increasing number of media choices, adults still spend a significant amount of time reading the daily newspaper (p. 1, Emphasis in original).

It must be acknowledged that newspapers are often regarded as having elevated ratings of objectivity and impartiality, scoring higher than other mediums such as television in terms of credibility and accuracy when covering a particular news story or incident (Claussen, 2004). In light of the fact that newsprint media's discussion of crime related topics has been marketed to the public as coherent and objective (Surette, 2007), it is important for researchers to examine this form of mass media.

### **Data Collection**

In order to develop a data set of articles and headlines for examination, archival newsprint material was collected and analyzed. Specifically, *Canadian Newsstand*, an online English-language print-media database containing full-text articles from national and leading regional Canadian daily newspapers (University of British Columbia, 2008), was employed as a data collection source. Hailed as offering "unparalleled access to the full text of over 190 Canadian newspapers from Canada's leading publishers" (ProQuest Multimedia, 2008, para. 1), *Canadian Newsstand* included access to articles from Canada's prominent national newspaper, the *Globe & Mail* (Globe & Mail, 2008), as well as leading regional publications, including but not limited to, the *Toronto Star*, the *Saskatoon Star-Phoenix* and the *St. John's Telegram*. Unfortunately, the University of Ottawa does not have a subscription for complete access to the *St. John's Telegram*, Newfoundland and Labrador's largest and oldest daily newspaper (St. John's Telegram, 2008). To gather this data, newspaper articles were retrieved online from the Nepean Centrepointe branch of the Ottawa Public Library through *eLibrary Canada* and on microfilm from Library and Archives Canada through the *AMICUS* operating system. The headlines and full-text articles were scanned and photocopied and then examined according to the coding scheme.

Although obtaining national exposure, coverage relating to the wrongful conviction cases also received significant local newsprint media attention in the region where the murder and subsequent trial took place. Due to this fact, articles were sought out from the largest regionally based commercial newsprint media sources, in terms of circulation numbers, closest to the judicial proceedings. In particular, the *Toronto Star* was selected to examine the case of Guy Paul Morin, the *Saskatoon Star-Phoenix* was selected for the David Milgaard proceedings and the *St. John's Telegram* was chosen for the examination of the Gregory Parsons case. These three newspapers are all owned by different media conglomerates; the *St. John's Telegram* is owned by Montreal-based GTC Transcontinental Inc. (*St. John's Telegram*, 2008), the *Saskatoon Star-Phoenix* by Canwest Global Communications Corp. (*Saskatoon Star-Phoenix*, 2008), and the *Toronto Star* by the Torstar Corporation (*Toronto Star*, 2008).

To find the articles used for this research, a 'keyword search' was employed to construct the data set using the individual names of the wrongfully convicted individual in addition with the acronym "DNA" or the words "Deoxyribonucleic Acid." For example, in conducting a data set for the Morin case, an article search would be conducted using the words "Guy Paul Morin" and "DNA" or "Deoxyribonucleic Acid" into each of the search fields. The resulting 'hits' were then filtered manually, excluding articles that were not published as final editions along with overlapping articles that were printed in the exact format as another paper<sup>61</sup>. Letters to the editor were also omitted in favour of articles written by journalists conveying information about the event rather than an opinion. Also, articles found to be of irrelevant content, as in the case of simply mentioning the term DNA or the name of the wrongly convicted individual in passing, were excluded from the study in order to focus on articles that were more suitable for completing the objectives of this research.

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<sup>61</sup> In this instance, one of the articles was selected from a particular paper, however, duplications were not.

Due to the abundance of articles satisfying the selection criteria, an initial commencement and termination date were selected in order to obtain a suitable number of articles for a comprehensive evaluation of the research questions. The timeline selected for each case started at the beginning of the month an individual was exonerated through the use of DNA technology and finished at the end of the calendar month the individual obtained compensation from their respective governments<sup>62</sup>. It was felt that this timeline provided the greatest opportunity to examine the media's construction of DNA technology in relation to notions of innocence that may not have been highlighted by newsprint media agencies at other periods of time. In the end, the search identified 419 articles, of which 353 articles<sup>63</sup> met the criteria necessary for inclusion in this study.

### **Research Limitations**

Content analysis methodologies are sometimes dismissed as mere interpretations of another individual's writings that are ineffective to demonstrate clear cause and effect relationships (Berg, 2004). In this vein, cursory attention was given to the traditions in which readers interpret newsprint media messages and translate them cognitively into ideals,

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<sup>62</sup> These dates were selected due to the fact that a number of articles directly before the results of the DNA testing procedures were made public speculated as to what this may mean for the individual's claim of actual innocence while articles directly after an individual obtained compensation provided an overview of how the individual was able to obtain their financial reimbursement. Therefore, the dates selected for each case were: Guy Paul Morin, 01/01/1995 to 02/01/1997; David Milgaard, 07/01/1997 to 06/01/1999; Gregory Parsons, 01/01/1998 to 09/01/2005.

<sup>63</sup> Analyzed on a case by case basis, a search of the *Saskatoon Star-Phoenix* for the David Milgaard case identified 83 articles in total, of which 75 met the criteria essential to be included in this study. A key word search of the *Globe and Mail* for the David Milgaard case identified 58 articles in total, of which 49 met the criteria necessary to be included in this study. A search of the *Toronto Star* for the Guy Paul Morin case identified 79 articles in total, of which 65 met the criteria essential to be included in this study. A key word search of the *Globe and Mail* for the Guy Paul Morin case identified 41 articles in total, of which 39 met the criteria necessary to be included in this study. A search of the *St. John's Telegram* for the Gregory Parsons case identified 138 articles in total, of which 106 met the criteria essential to be included in this study. A key word search of the *Globe and Mail* for the Gregory Parsons case identified 20 articles in total, of which 19 met the criteria necessary to be included in this study.

stereotypes or beliefs. Rather than focusing on a positivist cause and effect approach to the data, the purpose of this research is to explore the complex ways a number of factors might intersect to create unique newsprint media representations of DNA technology in relation to notions of innocence in selected cases of wrongful conviction. A qualitative content analysis provides an appropriate framework and opportunity to complete this objective.

In addition, since this research focuses specifically on three cases of wrongful conviction portrayed by four newsprint media organizations, the results obtained in this study cannot be stated as representative or generalizable to all print-news media coverage of DNA technology with respect to wrongful conviction in Canada. However, using a rigorous qualitative content analysis provides an opportunity to better understand how these novel scientific procedures are shaped and constructed within the social world and how these technologies impact on an individual's portrayal of actual innocence.

Furthermore, given the time constraints and limited available resources of this research, it is inevitable that some data is overlooked. Relevant text not containing the appropriate 'keywords' may have been neglected despite careful consideration of the language used when employing the search fields. Since this study was dependent on four English newspapers, French language newsprint organizations, such as *La Presse* or *Le Devoir*, along with alternative news sources such as commercial magazines and not-for-profit print media were not examined. Although these avenues could provide potentially distinct and divergent viewpoints from the newsprint media agencies examined, space does not permit an in-depth consideration of these matters at this time.

Although the *Canadian Newsstand* database offers full access to articles that met the timeline selected for analysis, it is limited in its ability to provide published photographs or a

selected article's physical layout. Graber (1996) posits that combining visual images with media text serve a significant function in the construction of a news event. It is suggested that photographs arouse the interest of the audience and enhance the adjoined narrative while providing a more memorable experience for the reader (Graber, 1996). Nevertheless, the reliance on a computerized database system to collect the vast majority of pertinent articles confined the analytic abilities of this research study to textual material.

In addition, the coverage of a news event by one newsprint media company cannot be adequately compared to that of a differing agency as one organization may highlight a particular facet of the wrongful conviction case that is completely ignored by another. Due to limited time and space constraints, the impact of unique media ownership in the creation of differing ideologies was not explored in-depth. Similarly, coverage from different provinces cannot be adequately compared since the provinces from which the selection of wrongful conviction cases originated were different. Although difficult to determine the exact impact to which differential newsprint media representations can be attributed to geographical differences between provinces, one must be aware of this possibility when conducting the research study.



## Analysis: Newsprint Media in the Spotlight

*“Obviously there’s going to have to be an arrest in my mother’s murder before everyone is 100 per cent sure that I didn’t do it, ... I’m confident that will happen, but it will be DNA evidence that brings the killer to justice, not the police. I became a true believer in science when the system failed me.”*

– Gregory Parsons<sup>64</sup>

To answer the research questions presented at the initial phases of this project, a qualitative content analysis was conducted and will be presented in two sections. Supported as appropriate for an examination of media studies (Davis & Morsdell, 2006), qualitative content analyses provides an interpretive approach to the social world through the study of descriptive language and verbal imagery presented by organizations such as the newsprint media (Bryman, 2001). This chapter will be divided into two sections. Part I is intended to answer the first research question, that being ‘what similarities and differences can be drawn between the coverage of miscarriages of justice in local and national newsprint media organizations?’ This preliminary examination entailed counting the total number of articles published in each wrongful conviction case, the average number of words in each article, the section/pages where the articles were located, the tone of the article and the key claims-makers employed to describe DNA technology. Part II of the qualitative content analysis will answer the second research question, that being ‘how did the newsprint media construct DNA technology in relation to notions of innocence and wrongful conviction?’ This analysis entailed the examination of headlines, the descriptive language used to depict forensic DNA analysis in the articles and the broad over-arching patterns and themes present in the articles pertaining to DNA technology, notions of innocence and wrongful conviction.

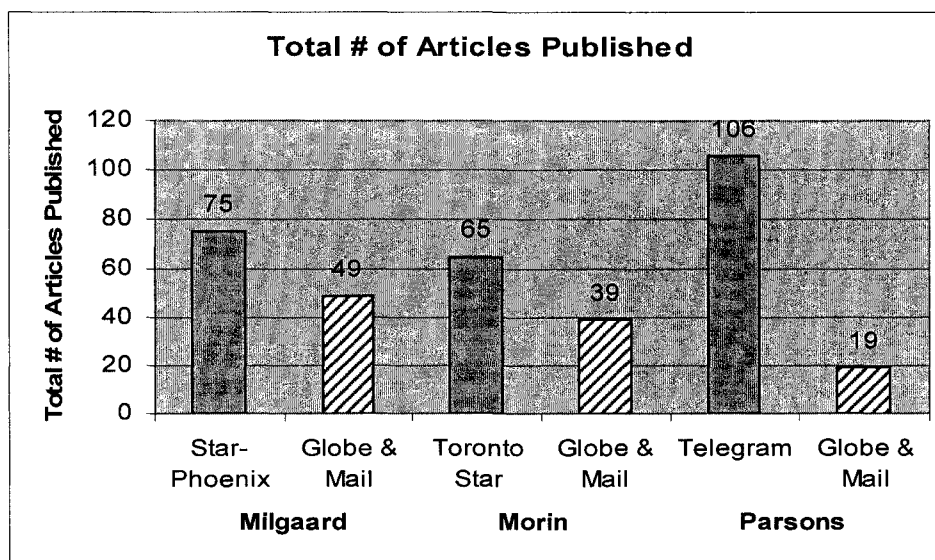
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<sup>64</sup> “Gregory’s version: Parsons to write book about his wrongful conviction, fight for compensation” [Final Edition]; Will Hilliard. *The St. John’s Telegram*, May 30, 1999, pg. A.1, 1439 words

## Part I –Examining Local and National Newsprint Media’s Coverage of Wrongful Conviction

When determining the similarities and discrepancies in the content and extent of coverage between local and national newsprint media agencies in relation to the Milgaard, Parsons and Morin cases of wrongful conviction, particular differences in coverage were immediately evident. Overall, 246 articles were found to be of relevance in the selected local newsprint media agencies, with an average of 82 articles printed for each case. In contrast, only 107 articles were located in the national newspaper, with an average of 36 articles of importance pertaining to the objectives of this research. Overall, the local print-news media attention of the wrongful conviction cases received 2.3 times more articles published than the national paper covering the same case (Figure 1).

**Figure 1. Total Number of Articles Published**



Despite differences between the total number of articles published in local and national newsprint media agencies covering the same wrongful conviction case, the average number of words per article reflects the opposite. The articles written about the wrongful conviction cases

were on average 778 words in length for the national newspaper while the local paper averaged 590 words per article (Table 1).

**Table # 1: Average Number of Words per Article – Local vs. National**

| <i>Wrongful Conviction Case</i> | <i>Average # Words Local</i><br>(246 Articles) | <i>Average # Words National</i><br>(107 Articles) |
|---------------------------------|------------------------------------------------|---------------------------------------------------|
| <b>Milgaard</b>                 | <b>532</b><br>(Saskatoon Star-Phoenix)         | <b>829</b><br>(Globe & Mail)                      |
| <b>Morin</b>                    | <b>566</b><br>(Toronto Star)                   | <b>918</b><br>(Globe & Mail)                      |
| <b>Parsons</b>                  | <b>673</b><br>(St. John's Telegram)            | <b>588</b><br>(Globe & Mail)                      |
| <b>TOTAL</b>                    | <b>1771</b>                                    | <b>2335</b>                                       |
| <i>Average</i>                  | <b>590</b>                                     | <b>778</b>                                        |

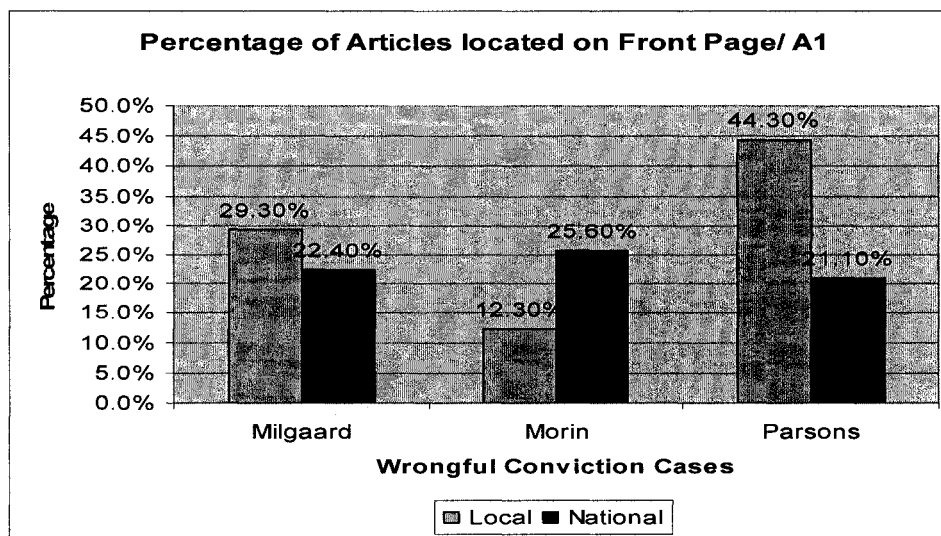
*Note:* Each number was rounded to the nearest whole number.

This discrepancy suggests that while local newspapers provided a greater total number of articles on the subject matter in question, newsprint attention in the national newspaper provided a higher count of words on average in its coverage of each article. Local newsprint media coverage may be drawn to continuously report the wrongful conviction case due to the fact that their audience may have a personal connection with the individuals at the centre of the controversy. Thus, local newsprint media agencies have at their disposal a ready audience at the slightest advancement of the case. National newspapers on the other hand, may be willing to cover to the wrongful conviction case only when there is a significant decision relating to the case's progression rather than simply stating every detail to an audience that has no interest in discovering minor advancements in the miscarriages of justice. However, when an important judgment is determined, national newspapers may be more willing to enter into

greater detail as to the implications of this decision, thus providing a higher word count per article compared to local newsprint media agencies.

Further variation was discovered with respect to the section/page the articles were located in both local and national newsprint media organizations. An analysis of the data revealed that 31.3% or 77 of 246 of the total articles printed in the local newspapers appeared on the front page/A1 section of the newspaper. In comparison, 23.4% or 25 of 107 of the total articles published in national newsprint coverage of each wrongful conviction case were located on the front page/A1 section. Overall, the local newsprint media attention of the wrongful conviction cases received 1.3 times more articles published on the front page/A1 section than the national paper covering the same case (Figure 2).

**Figure 2. Percentage of Articles Located on Front Page/A1 Section**



This finding suggests that despite obtaining considerable national exposure, attention directed towards the wrongful conviction cases received a greater percentage of coverage overall on the Front Page/A1 section in local newspapers. As previously stated, this may be the case as audience members may have a vested interest in the outcome of the judicial

proceedings while national readers may be more removed from the wrongful conviction case, both personally and geographically. As the *Globe and Mail* prides themselves on delivering, “Canada’s best and deepest coverage of national, international and business news” (Globe and Mail, 2008), other news stories and events may have taken precedence over the coverage of each detail relating to the Milgaard, Morin and Parsons cases of wrongful conviction.

An examination of the tone each article portrayed to the audience with respect to DNA technology was conducted in both local and national newspapers. To make this decision, three categorical frames were utilized: positive, negative or neutral<sup>65</sup>. As discussed, expressive terms such as ‘conclusively proves’ or ‘absolutely determines’ used to construct DNA technology along with descriptions such ‘finally learned with certainty their claim of factual innocence’ justified the labelling of the article’s tone under the positive category. Similarly, pessimistic terms such as ‘a highly intrusive measure’ or ‘a threat to individual privacy’ in relation to forensic DNA analysis were labelled under the negative category while language such as ‘all scientific opinion evidence, including DNA opinions, will be thoroughly analyzed and scrutinized’ were categorized as having a neutral tone.

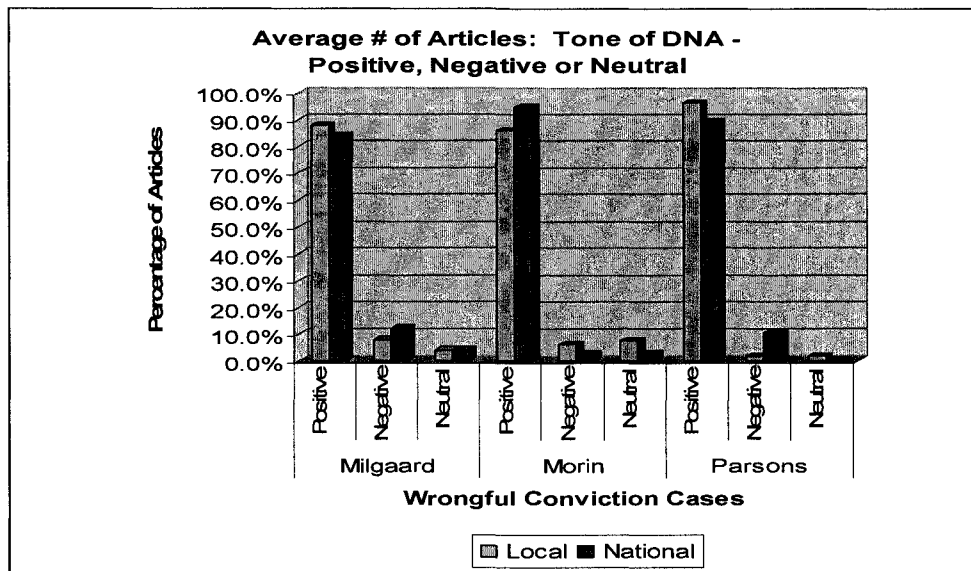
Examining the tone pertaining to DNA provides an opportunity to place the content analysis in a broader context. On average, both local and national newsprint media agencies were extremely optimistic in their tone towards forensic DNA profiling while covering all cases of wrongful conviction selected for study. Specifically, a positive tone describing forensic DNA testing was found in 88% or 66 of 75 articles circulated by the local newsprint media organization covering the Milgaard wrongful conviction case in comparison to 83.7% or 41 of 49 articles published in the national paper. Similar attitudes were found in the Morin

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<sup>65</sup> Although it is admitted that subjective judgment may have entered into the categorization of the newsprint media’s tone associated with DNA technology, attempts were made by the researcher to remain as objective as possible in this process.

case with 86.1% or 56 of 65 local articles and 94.8% or 37 of 39 national articles portraying a positive attitude in relation to DNA. Optimistic attitudes were also seen in the Parsons wrongful conviction case with 96.2% or 102 of 106 local articles and 89.5% or 17 of 19 national articles conveying a positive tone towards forensic DNA analysis (Figure 3).

**Figure 3. Average Number of Articles: Tone of DNA – Positive, Negative or Neutral**



An analysis of the data suggests that similar to popular opinion surrounding DNA technology (Gross et al., 2005) the newsprint media's construction of forensic DNA analysis unquestioningly accepts the reliability and validity of the testing procedures. The tone presented, both by local and national newsprint media organizations, continued to emphasize the far reaching implications of this technology in conclusively establishing the factual innocence of the wrongfully convicted. However, Feige (2006) suggests that an overemphasis on forensic DNA analysis may function to the detriment of the procedural protections established in the criminal justice system and may actually reduce the fundamental rights such as the presumption of innocence of an accused individual. This may occur if members of the public rely solely on the highly technical evidence of DNA at the expense of exculpatory

evidence. Often, potential jurors are not in a position to evaluate the complex procedures or statistical calculations of this scientific procedure, possibly leading to an unquestioning acceptance of DNA evidence in judicial proceedings (Hoeffel, 1990).

Despite occurring only minimally, pessimistic attitudes towards DNA technology printed in local and national newspapers also did not question the legitimacy or validity of the testing procedures. Instead, newsprint media agencies often underlined the potential privacy concerns that could arise if an unconditional acceptance of DNA technology were to take place. As the findings suggest, the newsprint media continue to endorse the employment of DNA technology in an extremely optimistic manner at the expense of a more balanced approach to the utilization of this scientific procedure.

Additionally, the employment of key claims-makers or 'tone qualifiers' in relation to DNA technology was also analyzed in this content analysis. By citing individuals seen as justifiable sources of information, journalists attempt to provide validation for the tone and descriptive language utilized to portray an issue in a particular manner. Claims-makers often do more than simply draw awareness to a social condition; they shape the way the phenomenon is presented to the audience along with framing solutions in a specific fashion (Surette, 2007).

Data analysis revealed that defence lawyers were the most often cited tone qualifier in the newspapers examined, regardless of whether the newsprint media organization printed locally or nationally. Of particular interest was the scarce use of scientists as tone qualifiers who were found in only 12.5% or 13 of 104 articles printed in the Morin case whereas 1.6% or 2 of 125 scientists were utilized in the overall coverage of the Parsons case (Table 2).

**Table # 2: Tone Qualifiers Used in Local and National Newspaper Articles**

| <i>Wrongful Conviction Case</i> | <i>Tone Qualifier</i> | <i>Total # of Articles (Local &amp; National)</i> | <i>Total Percentage (Local &amp; National)</i> |
|---------------------------------|-----------------------|---------------------------------------------------|------------------------------------------------|
| <b>Milgaard</b>                 | Defence Lawyer        | 69/124                                            | 55.6%                                          |
|                                 | Prosecutor            | 19/124                                            | 15.3%                                          |
|                                 | Police Officer        | 26/124                                            | 21.0%                                          |
|                                 | Politician            | 31/124                                            | 25.0%                                          |
|                                 | Scientist             | 10/124                                            | 8.1%                                           |
| <b>Morin</b>                    | Defence Lawyer        | 46/104                                            | 44.2%                                          |
|                                 | Prosecutor            | 21/104                                            | 20.2%                                          |
|                                 | Police Officer        | 14/104                                            | 13.5%                                          |
|                                 | Politician            | 42/104                                            | 40.4%                                          |
|                                 | Scientist             | 13/104                                            | 12.5%                                          |
| <b>Parsons</b>                  | Defence Lawyer        | 80/125                                            | 64.0%                                          |
|                                 | Prosecutor            | 21/125                                            | 16.8%                                          |
|                                 | Police Officer        | 35/125                                            | 28.0%                                          |
|                                 | Politician            | 29/125                                            | 23.2%                                          |
|                                 | Scientist             | 2/125                                             | 1.6%                                           |

Despite having a prominent role in the dissemination of information pertaining to DNA technology in academic journals and scholarly literature, the use of scientists as tone qualifiers was limited in the newsprint media's construction of forensic DNA analysis in this research. This finding suggests that the construction of DNA technology by local and national newsprint media organizations may no longer be an issue relating to the actual scientific procedures of forensic DNA analysis, but a legal matter in determining who may or may not be declared 'wrongfully convicted'.



## **Part II – The Newsprint Media’s Construction of DNA Technology in relation to Notions of Innocence and Wrongful Conviction**

### **Headlines**

As discussed by Teo (2000), descriptive words selected for inclusion in headlines of newsprint articles are of particular importance due to the limited space available to express opinions regarding subject matter. An initial comparison of the headlines for each case selected suggested a continuation of the positive tone towards DNA technology and its ability to exonerate one individual while implicating another. However, differences were seen in the headlines presented when local newspapers were compared to those printed by national newsprint media agencies, as the locals conveyed an elevated level of sensationalism surrounding forensic DNA analysis. For example, local coverage of the wrongful conviction cases commonly employed overtly positive descriptive words in the headlines constructing DNA technology through language such as, “high-tech vindication”, “proves man innocent”, “technology unlocks mysteries”, or “most credible ‘witness’ in trials”. In comparison, national coverage of the same cases utilized a more subtle form of optimistic coverage. For example, explanatory language used in the national paper to describe DNA technology were, “linked to slaying”, “implicates”, “evidence exonerating”, or “undermines conviction”. The following section is an example of the unique ways both local and national newspapers use descriptive headlines to portray forensic DNA technology to their audiences [Emphasis added]:

Local Newsprint Media Coverage - Headlines:

New DNA *technology unlocks mysteries* of old criminal cases (DM SSP 1)<sup>66</sup>  
How *science proved* Morin right (GPM TS 1)  
DNA *most credible 'witness'* in trials, U.S. expert says (GPM TS 2)  
*It's 'miracle' time* for Morin, Wife safe in crash, he hugs *his 'saviour'* (GPM TS 3)  
DNA *proves man innocent* of mother's brutal murder (DM SSP 2)  
*High-tech vindication:* DNA evidence clears Parsons of mother's murder seven years later (GP T 2)  
*Proven innocent:* Acquittal, apologies for Gregory Parsons (GP T 3)  
Canada leads the way in *fighting crime with DNA* (GP T 4)  
Inconsistent attitude: Parsons says he was *guilty until proven innocent* (GP T 5)

National Newsprint Media Coverage - Headlines:

Milgaard: The Search for Justice *DNA test exonerates* Milgaard: Saskatchewan offers apology and compensation for 28-year ordeal, considers inquiry into wrongful murder conviction (DM G&M 1)  
Milgaard: The Search for Justice *DNA implicates Fisher*, Milgaard lawyers say (DM G&M 2)  
*DNA test undermines conviction* of Morin: Crown mum on next step (GPM G&M 1)  
Crown to seek Morin's acquittal: *DNA evidence ends* Jessup neighbour's 10-year court ordeal (GPM G&M 2)  
Man jailed in murder *freed after DNA test clears him* (GP G&M 1)  
New life begins for *man freed in DNA case:* Newfoundlander who was wrongly convicted of killing his mother will be exonerated today (GP G&M 2)

Rarely did either local or national newsprint media agencies feature headlines reflecting negatively on DNA technology or the possible limitations of this forensic analysis, however, occasionally this tone was presented by both local and national newsprint media organizations. Although infrequent, the negative portrayal of DNA in headlines was found more frequently in national newspaper coverage when compared to those depicted in local newspapers covering the same cases. Examples of this negative tone towards DNA in the headlines of both national and local articles include [Emphasis added]:

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<sup>66</sup> DM is an acronym for David Milgaard, SSP is an acronym for the *Saskatoon Star-Phoenix*, GPM is an acronym for Guy Paul Morin, TS is an acronym for the *Toronto Star*, GP is an acronym for Gregory Parsons, T is an acronym for the *St. John's Telegram* and G&M is an acronym for the *Globe and Mail*. Each reference can be found under the secondary articles reference list according to number.

Local Newsprint Media Coverage - Headlines:

When justice is blind, so is science: Any inquiry into Morin case *needs to examine standards of forensic science* in Ontario (GPM TS 4)

*Experts on DNA face grilling: Lawyer* (GPM TS 5)

DNA data bank *legislation under microscope* (GP T 6)

National Newsprint Media Coverage - Headlines:

*Canadian testing incompetent*, U.S. expert says British laboratory finds massive amount of semen missed in earlier examinations (DM G&M 3)

Police chief *not convinced by DNA tests* (DM G&M 4)

Years of *crime tests questioned*: Scientist says backlog caused forensic centre to use techniques avoided elsewhere (DM G&M 5)

Although both local and national newspapers expressed extremely positive attitudes towards forensic DNA analysis, the language in which this description was conducted in headlines differed. The *Globe and Mail* employed less sensationalistic and more neutral language in the headlines promoting the effectiveness of DNA technology while providing examples of the limitations relating to this scientific procedure. The differences in the newsprint media's construction of DNA technology may have been affected by the scientific background of the newsprint media's editors. As suggested by Leon (1997), headlines written by editors are a major concern for scientists and journalists due to the fact that the titles given to scientific news stories may be misleading. Editors at local newsprint media agencies may not have the scientific background their colleagues possess at national newspapers and therefore not be aware of the sensationalistic language they are presenting to their audience regarding forensic DNA analysis. Differences in the descriptive language used to construct DNA technology may have also been influenced by the ideological view of the local and national newspapers. Due to the *Globe and Mail's* political affiliation and ontological stance as a comprehensive publication, editors at this national paper may have been more willing to

express scepticism surrounding the validity of DNA technology in the headlines of articles that their counterparts at local newsprint media agencies were not.

### **Articles – Descriptive Language and Verbal Imagery**

Krippendorff (2004), Berg (2004) and Mason (2002) provide guidance for understanding several unique features of the newsprint media's coverage of DNA technology in relation to notions of innocence and wrongful conviction. Of particular interest were the descriptive words utilized to construct the scientific procedure of forensic DNA analysis in both local and national newspapers. To illustrate, the following language was employed to depict forensic DNA analysis by both local and national print-news media organizations: "a cold, disinterested technology"; "high-tech wizardry"; "a sophisticated technique"; "an advanced science"; "a legal powerhouse"; "an incredible, amazing tool"; "a miraculous find"; "the most powerful evidence"; "a powerful investigative tool"; "a crime-fighting technology"; "the 'voice' of crime-scene evidence"; "one of the most credible 'witnesses'"; "a radical change"; "an arcane science"; "specialized testing"; "penetrating accuracy"; "amazing clairvoyance"; and "the biggest breakthrough in a century". This positive portrayal of forensic DNA technology was aptly summarized by Guy Paul Morin on the day of his exoneration when he stated,

My lawyers did the best they could through the avenues of the justice system. But in the end, science gave the final word. Science is wonderful. I love science...I thought he [the real perpetrator] would come forth either in a rage or a drunken stupor; by being overheard in a bar or by making his last words before he died. To have science prove it is wonderful, in my view...The justice system failed me, but science saved me.<sup>67</sup>

Undoubtedly, the extent of coverage surrounding DNA testing by both local and national newsprint media organizations constructed a positive outlook for this novel forensic procedure, regardless of the wrongful conviction case being analyzed.

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<sup>67</sup> "DNA test undermines conviction of Morin, Crown mum on next step" [Final Edition]; Kirk Makin. *The Globe and Mail*, January 21, 1995, pg. A.1, 1905 words

Similarly, the descriptive words used to reiterate the conclusiveness with which DNA evidence established a wrongfully convicted individual's innocence was also constructed by both local and national newsprint media organizations. Articles printed in both types of papers employed extremely descriptive words to express the innocence of each individual case of wrongful conviction, whether it be Milgaard, Morin or Parsons. To demonstrate, within the *Saskatoon Star-Phoenix*'s local coverage of the David Milgaard case, words such as the following were utilized to describe the power of DNA evidence in demonstrating one's innocence: "showed conclusively", "exonerated", "finally exonerated", "fully exonerated", "proved", "absolutely proved", "conclusively proved", "absolutely and unequivocally proved", "confirmed", "concluded", "revealed", "vindicated", and "finally learned with certainty".

Although scant in comparison, negative language describing DNA testing procedures was also present in both local and national newspaper articles. The following descriptive words provide an illustration of local and national articles expressing negative language towards forensic DNA testing: "a highly intrusive measure"; "incompetent testing procedures"; "spurious results"; "further analyzed to provide information about a donor's personal traits"; "extremely precarious testing"; "every aspect of a person's privacy", "rather than just his physical integrity, is threatened"; "it provides some of the most private information in a person's life"; and "the myriad of other personal details that could potentially be gleaned from genetic material". Interestingly, for the majority of articles employing negative words to describe DNA technology, it was not the actual testing procedures that were criticized but the privacy issues and potential to exploit confidential information available in one's genetic material that was emphasized. As stated by Gregory Parsons' defence lawyer Bob Simmonds,

It's Big Brother at his best: 'We're going to get a piece of you and we're going to check your profile every time.' It's a case of Big Brother trying to gather as much

information on us, so you're always under the gun and it makes individuals constantly a suspect. I find that offensive in the extreme.<sup>68</sup>

It appears that when print-news media agencies depict DNA technology through the employment of negative language in the articles, it is presented as an infringement on an individual's right to privacy and due process of the law pertaining to self-incrimination.

### **Over-Arching Themes Present in Newspaper Articles**

An initial examination of the descriptive words selected and the language employed to construct forensic DNA analysis by journalists in both local and national newsprint media agencies conveys a sense of extreme optimism towards this novel scientific procedure and its ability to absolve one of a criminal offence they did not commit. However, when examining the over-arching themes presented in the coverage of the Milgaard, Morin and Parsons cases of wrongful conviction, the media's construction of forensic DNA analysis is not as straightforward as it appears. Three over-arching themes continued to surface when an analysis of the newsprint media's construction of DNA technology pertaining to notions of innocence and wrongful conviction was conducted; a doubtful mentality relating to the factual innocence of each wrongful conviction case until the actual perpetrator was apprehended, the selective use of the term 'victim' to describe the erroneously convicted, and the continuous effects of wrongful conviction long after an exoneration through forensic DNA analysis. This uncertainty pertaining to factual innocence was seen in every newspaper examined and for all three wrongful conviction cases studied in this research. An analysis of the data suggests that for an individual to conclusively establish one's factual innocence, DNA technology must not only exonerate the wrongfully convicted individual but must also implicate the person responsible.

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<sup>68</sup> "Police building local DNA bank" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, February 10, 2001, pg. A.1, 735 words

***Doubt surrounding one's factual innocence, until an arrest is made***

Although it is true that both local and national newsprint media organizations utilize optimistic descriptive words to depict DNA technology in the majority of the headlines and articles examined, doubt concerning the innocence of Milgaard, Morin and Parsons was also presented to the audience *after* each individual was exonerated by forensic DNA analysis. Through the employment of key claims-makers who were not accepting of DNA as conclusive evidence in proving innocence, the print-news media raised scepticism regarding factual innocence surrounding each case. Although the persons responsible for the criminal activity in the Parsons and Milgaard cases were eventually arrested and sentenced; to this day, no one has ever been convicted in the murder of Christine Jessop – for which Guy Paul Morin was wrongly convicted. It would appear that given that no one has been apprehended in the murder of Christine Jessop, a cloud of suspicion continues to linger in the newsprint media's depiction of Guy Paul Morin, despite his full exoneration through forensic DNA analysis.

The Milgaard case reveals that prominent individuals who played a significant role in his wrongful arrest, prosecution and conviction were cited in both local and national newspapers that continuously raised doubts as to his factual innocence until the arrest of Larry Earl Fisher. In each of the following examples, the publication dates were before July 25<sup>th</sup>, 1997, the day Larry Fisher was apprehended in connection to the murder of Gail Miller. After this date, no member of the police force, crown prosecutors office or Department of Justice was ever quoted again in either the *Saskatoon Star-Phoenix* or the *Globe and Mail* in relation to questioning the factual innocence of David Milgaard. Not surprisingly, the only person to doubt the conclusiveness of the forensic DNA testing procedures which established Milgaard's innocence after Fisher's arrest was his own defence lawyer, Brian Beresh.

To illustrate, the *Globe and Mail* interviewed Staff Sergeant Glenn Thomson of the Saskatoon police department who suggested, “Assuming it was Mr. Fisher’s semen on the clothing, all that shows is that he was in contact with the victim. It doesn’t say Mr. Milgaard didn’t commit the murder. It wouldn’t be fair to say this clears one person and implicates another.”<sup>69</sup> Days later, Saskatoon’s police chief was still reluctant to accept the findings, stating that the results prove nothing on their own. With the headline reading ‘Police Chief Not Convinced By DNA Tests’, the *Globe and Mail* printed Police Chief David Scott’s comments as, “‘We accept that Milgaard did not make the sample DNA stains that were tested.’ But he said the test results don’t necessarily exonerate one suspect or implicate another.”<sup>70</sup> Similar doubts were raised in the *Saskatoon Star-Phoenix*’s coverage of the Milgaard case when they interviewed Staff Sergeant Glenn Thomson who was quoted as saying, “One DNA test isn’t enough to justify an arrest. We are not going to court with one DNA test.”<sup>71</sup> When asked whether or not the police department was willing to offer an apology to Milgaard, Glenn Thomson replied, “We are starting an investigation, so I don’t think we’re prepared to apologize right now, until we’ve determined what happened.”<sup>72</sup>

Similar doubts were expressed through local and national newsprint media agencies as to the factual innocence surrounding Gregory Parsons after DNA testing excluded him as the perpetrator of his mother’s murder. However, the reporting of this doubting mentality

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<sup>69</sup> “Milgaard: The Search for Justice DNA test exonerates Milgaard: Saskatchewan offers apology and compensation for 28-year ordeal, considers inquiry into wrongful murder conviction” [Final Edition]; David Roberts and Kirk Makin. *The Globe and Mail*, July 19, 1997, pg. A.1, 1582 words

<sup>70</sup> “Police chief not convinced by DNA tests” [Final Edition]; No Author. *The Globe and Mail*, July 24, 1997, pg. A.3, 244 words

<sup>71</sup> “Serial rapist’s DNA a match, lawyer confirms” [Final Edition]; Leslie Perreux and Dan Zakreski. *Saskatoon Star-Phoenix*, July 19, 1997, pg. A.2, 464 words

<sup>72</sup> “But Kujawa, Caldwell deny wrongdoing in Milgaard affair” [Final Edition]; Leslie Perreux. *Saskatoon Star-Phoenix*, July 23, 1997, pg. D.1, 495 words



significantly changed once Brian Joseph Doyle, the actual perpetrator of the murder of Gregory Parsons' mother, was arrested on June 8<sup>th</sup>, 2001 – ten years after the murder took place.

Upon obtaining the results of the forensic DNA analysis, the Crown stayed the proceedings for nine months against Gregory Parsons instead of immediately withdrawing the charges or entering an acquittal. According to Lamer (2006), “A stay of proceedings may leave an impression with the public that the charge is merely being ‘postponed’ or ‘the authorities’, in a broad sense, still believe in the validity of the charge” (p. 317). The Crown's approach to the stay of proceedings for Gregory Parsons initially left him under a shadow of doubt, a point reiterated by his defence lawyer Jerome Kennedy when he was quoted as saying, “Until such time as someone says he has nothing to do with anything, we accept he's absolutely innocent, we apologize to the man, there will still be a cloud of suspicion hanging over his head.”<sup>73</sup>

This doubt and uncertainty continued and was evident when the Crown asked for the release of court exhibits, mainly those belonging to Gregory Parsons, for additional testing after Parsons was exonerated by the same DNA technology. Bob Simmonds, Gregory Parsons' defence lawyer expressed his concern publicly when he was quoted in the *St. John's Telegram* as saying, “But there's no doubt it appears a significant part of what they're concentrating on are items belonging to Gregory Parsons which leads only to one conclusion; that he appears to be still under investigation and a suspect here.”<sup>74</sup>

This doubting mentality surrounding the factual innocence of Parsons changed, however, once Brian Doyle was arrested and charged with the murder of Catherine Carroll, Gregory

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<sup>73</sup> “New DNA testing nothing to do with Parsons: Lawyer” [Final Edition]; Bonnie Belec. *The St. John's Telegram*, February 28, 1998, pg. A.3, 502 words

<sup>74</sup> “Parsons' lawyers seek full acquittal” [Final Edition]; Bonnie Belec. *The St. John's Telegram*, April 3, 1998, pg. A.1, 513 words

Parsons' mother. For example, the *St. John's Telegram* printed comments such as [Emphasis added],

In 1998, the government offered an apology and an acquittal to Parsons when DNA found underneath Carroll's fingernails and on a towel didn't match his. However, he wasn't *fully vindicated* until 2001 when the DNA was shown to match that of his childhood friend, Brian Doyle...*For 10 years [Parsons] lived under a cloud of suspicion* that he was a crazed maniac who took his mother's life.<sup>75</sup>

This was also evident in the questioning of Royal Newfoundland Constabulary (RNC) Inspector Alban Singleton by defence lawyer Jerome Kennedy at Parsons' public inquiry. As printed in the *St. John's Telegram* [Emphasis added],

'But it's clear to me you fully accept Gregory Parsons' innocence,' Kennedy said to Singleton. 'Yes', Singleton said. Kennedy asked when he had come to that conclusion. Singleton said it was *after he spoke with officers who headed up the second investigation and Doyle was arrested.*<sup>76</sup>

Reports of negotiations surrounding Gregory Parsons' compensation package also revealed a certain level of scepticism. It would not be until the police began to focus their investigation on Brian Doyle that discussions between Parsons and the government of Newfoundland and Labrador regarding compensation for his wrongful conviction began to take place and were conveyed in the media. The *St. John's Telegram* reiterated this fact by reporting [Emphasis added],

After the DNA evidence emerged in 1998, Parsons said his family felt a measure of relief...It would be *almost four more years* before the government started to talk about compensation. Coincidentally, he [Parsons] said, *the lines of communication with the government opened up when the investigation into Brian Doyle – his mother's actual killer – began.*<sup>77</sup>

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<sup>75</sup> "Compensation review sought" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, February 7, 2004, pg. A.1, 814 words

<sup>76</sup> "Lead investigator believed son killed mother" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, January 27, 2004, pg. A.1, 759 words

<sup>77</sup> "Parsons recalls his family's struggle" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, November 3, 2004, pg. A. 3, 1001 words

This sceptical trend pertaining to DNA technology and its ability to conclusively establish one's innocence was also discovered in the Morin wrongful conviction case. The *Toronto Star* printed an article that quoted Robert Jessop, Christine Jessop's father, who suggested that DNA testing does not provide any new insight into who may or may not have murdered his daughter; "Although Jessop repeated he did not want 'the wrong person convicted', he said he's unsure how semen DNA tests can totally exonerate Morin. 'All that tells me is that he didn't sexually assault her; it doesn't mean he didn't murder her.'"<sup>78</sup> The next day, the *Toronto Star* printed another article reflecting an interview with Robert Jessop which conveyed similar doubts pertaining to the ability of forensic DNA analysis to exonerate Morin,

Obviously I'm disgusted that such a severe decision has come down to the discretion of three scientists from a country I'm not even from. Their word is gospel...There's been few moments of happiness, more of total shock and sadness...And the whole thing has made a skeptic [sic] out of me. It's just been an upside-down time.<sup>79</sup>

The cloud of suspicion relating to Morin's factual innocence was also emphasized by the police, as reported in the *Toronto Star*. Following the commencement of another probe into the murder of Christine Jessop weeks after Morin's DNA exoneration, Staff Inspector Ken Cenzura raised doubts pertaining to Morin's factual innocence when he was reported as saying [Emphasis added],

We know that he's been acquitted *as far as the courts are concerned*, but we have a job now to look at it all...I suppose because of (the acquittal) it's considered, *technically*, an unsolved case...He is not, *right now*, considered a suspect. He's been acquitted in the eyes of the court and *we don't have the information to assess it any further*...At this point, he's *certainly a central figure* in this for the past 10

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<sup>78</sup> "Morin deserves apology if he's cleared, group says DNA tests may be evidence at appeal hearing starting today" [Final Edition]; Trish Crawford. *Toronto Star*, January 23, 1995, pg. A.2, 643 words

<sup>79</sup> "No peace for Jessops until killer is found [Final Edition]; Jim Rankin. *Toronto Star*, January 24, 1995, pg. A.14, 798 words

years, because he was accused and acquitted, and now we've been assigned this task...*there may be a need to talk to him again.*<sup>80</sup>

Similar uncertainties were also presented through the use of key tone qualifiers in the *Globe and Mail's* coverage of Morin's DNA exoneration. In an attempt to thwart any financial compensation for the wrongful conviction of Morin along with raising doubts as to his factual innocence, Robert Jessop was quoted as saying, "What would happen if, two months down the road, the trail suddenly leads back to the Morins? I said I'm not prepared to run down and embrace the Morins at this point...Because of their inherent lack of trust in the police from Day One, I'm suspicious."<sup>81</sup> One year after the Ontario government promised compensation and a public inquiry into his wrongful conviction, the *Globe and Mail* printed another article updating the progress of the ongoing investigation into Christine Jessop's murder. In this article, Detective Stephen Hulcoop is reported as presenting a subtle pessimistic attitude around Morin's factual innocence through forensic DNA analysis. The *Globe and Mail* article states [Emphasis added], "Although no overriding suspect has emerged, *Mr. Morin himself is very low on the list...* 'It would be fair to say we *spent very little time investigating anything around Guy Paul Morin,*' Detective Hulcoop summed up."<sup>82</sup> The report details that although Detective Hulcoop admits that Mr. Morin is low on the suspect list, it is proposed that even being on this list leads to the conclusion that a cloud of suspicion continues to linger over Guy Paul Morin, despite having conclusive proof of his factual innocence. As summarized by Reverend Jim McCloskey, founder of Centurion Ministries, a New-Jersey based organization established to investigate allegations of wrongful conviction,

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<sup>80</sup> "Police may question Morin in new probe" [Final Edition]; Jim Rankin. *Toronto Star*, February 9, 1995, pg. A.4, 529 words

<sup>81</sup> "Jessop asks Boyd for delay in any payment to Morin: Father of murdered girl wants police probe first" [Final Edition]; Kirk Makin. *The Globe and Mail*, January 28, 1995, pg. A.8, 1144 words

<sup>82</sup> "Morin angry at lack of action: No compensation or inquiry yet" [Final Edition]; Kirk Makin. *The Globe and Mail*, January 22, 1996, pg. A.1, 1367 words

You have lived a nightmare. You wake up and they say, 'Go home, you're cleared.' So after years in hell, you are now in heaven. Then, a short time later they say, 'Sorry buddy, we're considering your involvement in this crime.' It's back to hell again.<sup>83</sup>

### ***Identifying 'victims' of wrongful conviction: What's in a label?***

As suggested by Surette (1992), in undertaking an analysis of media representations, it is just as important to take note of the information present in some accounts but absent in others. Thus, an analysis was conducted in relation to the newsprint media organizations use of the labels 'victim', 'victimized' or 'revictimized' in each case of wrongful conviction. According to Jenness (1995), the definitional process that results in assigning victim status to some and not others is critical as the term 'victim' implies that certain social relations surround the individual as well as their relationship with the larger social problem. This approach to victimization departs radically from conventional formulas for examining victimization as it directs our attention to the interpretive and descriptive work through which the label of 'victim' emerges rather than on the objective harms endured by these individuals (Holstein & Miller, 1990).

In the newsprint media's coverage of the Milgaard wrongful conviction case, 5 of 7 or 71% of the local and national articles examined in this study labelled David Milgaard as a victim after July 25<sup>th</sup>, 1997; the day Larry Earl Fisher was arrested and charged for the murder of Gail Miller. Similarly, the label of 'victim' was found in 7 of 14 or 50% of the local and national coverage surrounding the Gregory Parsons miscarriage of justice after Brian Doyle was apprehended. It was only after the arrest of Brian Doyle that members of the Royal Newfoundland Constabulary (RNC) were willing to come forward and publicly label Parsons a victim. Contrasting the Milgaard and Parsons cases of wrongful conviction to that of the Morin miscarriage of justice, it was discovered that the terms 'victim', 'victimized' or 'revictimized'

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<sup>83</sup> "How can Morin still be on suspect list? Police reluctant to exclude Guy Paul Morin raises new questions about justice and fairness" [Final Edition]; Harold Levy. *Toronto Star*, February 10, 1995, pg. A.17, 949 words

were noticeably absent in the Morin case. In the *Toronto Star* and the *Globe and Mail's* coverage of the Morin case, only 1 of 104 or 0.96% of the articles examined labelled Guy Paul Morin as a 'victim' or having been 'victimized' or 'revictimized'. It would seem that the newsprint media's construction of innocence is dependent in part on whether this procedure was able to identify the 'real' perpetrator before an individual can be declared factually innocent and thus declared a 'victim'.

In both quality and quantity, the utilization of the terms 'victim', 'victimized' or 'revictimized' when describing a wrongfully convicted individual's experience with the criminal justice system were commonly found in the Gregory Parsons case. To demonstrate, the following examples depict the unique ways both the *Globe and Mail* and the *St. John's Telegram* categorized Gregory Parsons as a victim [Emphasis added],

#### Local Newsprint Media Coverage

John Ottenheimer [Opposition Justice critic] has called on the government to step in and prevent Parsons from being further *victimized* by the justice system (GP T 12)  
Parsons and his family have been crucified for eight years and they continue to be *victimized* by the government (GP T 13)  
Parsons was a *victim* of police negligence and/or misconduct (GP T 14)  
Because Greg Parsons is a *victim*, we suggest, doesn't give him or anyone else the cloak of immunity to abuse others (GP T 15)  
It's a double tragedy when such errors result in a miscarriage of justice, because it creates a new *victim* where only one existed before (GP T 16)

#### National Newsprint Media Coverage

Gregory Parsons was the *victim* of a not-so-subtle attempt...to 'get Parsons at all costs' (GP G&M 3)  
Gregory Parsons, the province's best-known *victim* of judicial miscarriage (GP G&M 4)

As previously mentioned, the only time members of the RNC came forward and labelled Gregory Parsons a 'victim' was the same day that Brian Doyle was charged with the first

degree-murder of Catherine Carroll, Gregory's mother. As stated by the *St. John's Telegram*

[Emphasis added],

During a news conference Monday afternoon, members of the RNC special investigative team said *Parsons is also a victim*. 'Greg Parsons is the son of a victim, *he's an innocent victim* who found his mother murdered in her home, said chief investigator Staff Sgt. Bob Johnson, who added he's convinced Doyle is responsible for Carroll's murder.<sup>84</sup>

Similar to the Gregory Parsons case, both local and national newsprint media coverage of the David Milgaard miscarriage of justice labelled him as a victim of the criminal justice system, as demonstrated in the examples below [Emphasis added],

Local Newsprint Media Coverage

David Milgaard says he's being *revictimized* by the system over delays in receiving compensation (DM SSP 5)

Mr. Milgaard is...a *victim* of a miscarriage of justice (DM SSP 6)

But Milgaard...unfortunately the *victim* of circumstances (DM SSP 7)

National Newsprint Media Coverage

An increasingly desperate *victim* who scratches away at the prison walls that have defined his adult life (DM G&M 6)

David Milgaard...says he's being *victimized* once more by the system (DM G&M 7)

A wrongly convicted person becomes a *victim* on an express train without brakes (DM G&M 8)

Those who are *victims* have to go through a bureaucratic process full of delays (DM G&M 9)

For Guy Paul Morin, the label of victim was virtually non-existent. The only mention of this term was found in a *Globe and Mail* headline that read [Emphasis added], 'Morin appeals to Premier for justice: *Victim* of wrongful murder conviction asks Harris to speed up delayed inquiry and compensation'<sup>85</sup> An analysis of the article made no other mention of why Morin was considered a victim or how the author came to that conclusion. It appears that the label of

<sup>84</sup> "Parsons boyhood friend up for murder" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, June 12, 2001, pg. A.3, 865 words

<sup>85</sup> "Morin appeals to Premier for justice: Victim of wrongful murder conviction asks Harris to speed up delayed inquiry and compensation" [Final Edition]; Kirk Makin. *The Globe and Mail*, June 14, 1996, pg. A.8, 940 words

'victim' is often reserved for cases where DNA technology was able to exonerate the wrongly convicted individual while at the same time implicate the actual perpetrator of the criminal activity. Given that Christine Jessop's killer remains at large, Guy Paul Morin's innocence fails to be conclusively established.

### ***Continuing Effects of Wrongful Conviction***

Although an analysis of the articles pertaining to the Milgaard, Parsons and Morin cases of wrongful conviction suggested variation in the coverage received by local and national newsprint media agencies, one clear similarity between the coverage of each case was the continuing effects of wrongful conviction long after their release from prison and eventual exoneration through DNA technology. Similar to the findings of Grounds (2003) and Campbell and Denov (2004), in each miscarriage of justice examined, the wrongly convicted individual continued to struggle financially, emotionally, and psychologically; however, these difficulties were exacerbated by the expectation of an immediate compensation package from the government upon being exonerated by forensic DNA analysis.<sup>86</sup> Similar to the study of Campbell and Denov (2004), it was discovered that wrongly convicted individuals sought compensation, not specifically for the monetary value but for its symbolic meaning in officially acknowledging their factual innocence.

It would seem that this analysis revealed that simply because one's innocence was established through DNA technology does not mean that the effects of wrongful conviction will cease to exist. To illustrate, the *St. John's Telegram* printed an article that highlighted the

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<sup>86</sup> The enduring impact of imprisonment is not only found in cases of wrongful conviction, as can be seen in the research conducted by Grounds and Jamieson (2003) on Irish Republican ex-prisoners. The findings of Grounds and Jamieson (2003) suggest that numerous Republican ex-prisoners suffered growing detachments from loved ones over time, chronic psychological issues such as depression, post-traumatic stress disorder and drugs/alcohol abuse, financial hardships stemming from unemployment along with difficulties regaining a sense of purpose and having an optimistic outlook for the future.



continuing plight of Parsons and his family through an interview with Gregory years after he was exonerated by DNA technology [Emphasis added],

For more than *three years after DNA evidence cleared him* of his mother's murder, Greg Parsons and his young family struggled to make ends meet... 'We were pretty hungry, we had bills, the Royal Bank had fired my wife, we tried to survive' ... Having endured prosecution for his mother's murder knowing he was innocent was horrific, but he said the embarrassment and indignity didn't end there. 'This point in my life was a major struggle. I couldn't find work and had to turn to Social Services. *Naïve as we were, we thought there would be a compensation order after the DNA evidence (emerged)*... We hoped [sic] government would repair what had been done, but that didn't happen and a whole new set of struggles began.'<sup>87</sup>

As the financial situation of the Parsons family continued to slide, Gregory was forced to file a civil court claim against the government on the grounds of false arrest and charge along with wrongful imprisonment. To further exacerbate the situation, the government initially denied allegations of wrongdoing for the erroneous conviction of Parsons and was quoted in the *St. John's Telegram* under the heading 'Government Denies Injustice' as stating: "The defendant's actions in dealing with Gregory Parsons have been lawful, for no improper purpose, and that no fraud was committed on the administration of justice."<sup>88</sup> With an inherent lack of interest from government officials in rectifying his wrongful conviction financially, the shadow of doubt surrounding his innocence continued long after Parsons' exoneration through forensic DNA analysis.

This opinion was also evident in the *Globe and Mail's* coverage of the Gregory Parsons wrongful conviction case as well. Despite having his innocence clearly established through DNA technology, the difficulties of an erroneous conviction continued [Emphasis added],

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<sup>87</sup> "Parsons recalls his family's struggle" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, November 3, 2004, pg. A.3, 1001 words

<sup>88</sup> "Government denies injustice" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, March 20, 1999, pg. A.1, 505 words

What the government did was take my youth away from me... *We had such high hopes when I was exonerated.* Now, we are striving just to put a life together. I'm pushing 30 now. I just want a normal life, and better Christmases... We are very frustrated people.<sup>89</sup>

Similar sentiments were expressed in the coverage of the Milgaard case. The local print-news media agency wrote an article that expressed the frustration and lack of closure surrounding the wrongful conviction case of Milgaard despite his exoneration through forensic DNA analysis. As described by Joyce Milgaard, David's mother in the *Saskatoon Star-Phoenix* [Emphasis added],

*The lack of closure continues to weigh heavily on the Milgaard family... 'It's more for David than anything else, because of the guilt he feels,' she said ... Lorne [Milgaard's father] continues to work because all the money he was saving for his pension went into proving David was innocent, she said. David now blames himself for the fact that his father can't retire.*<sup>90</sup>

The *Globe and Mail's* coverage also highlighted the continuous struggles surrounding David Milgaard's life years after his DNA exoneration, "David Milgaard...is being victimized once more by the system over delays in receiving compensation... 'Waiting for compensation is like another prison sentence...I've been retraumatized.'"<sup>91</sup>

Not unlike the Milgaard and Parsons cases, it was reported that the effects of wrongful conviction continued to dominate the existence of Guy Paul Morin and those closest to him. Reports indicated that the stress pertaining to his wrongful incarceration had a significant effect on Morin's entire family, both emotionally and financially, and with the continuous delays in compensation, the tribulations of his ordeal continued long after his exoneration through DNA.

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<sup>89</sup> "Exonerated man can keep legal team: Court says lawyers would not be in conflict representing him against police, Newfoundland" [Final Edition]; Kirk Makin. *The Globe and Mail*, December 22, 1999, pg. A.2, 784 words

<sup>90</sup> "Two years after apology and no offer from province" [Final Edition]; Murry Mandryk. *Saskatoon Star-Phoenix*, March 31, 1999, pg. D.1, 588 words

<sup>91</sup> "Milgaard 'retraumatized' by delay" [Final Edition]; No Author. *The Globe and Mail*, April 19, 1999, pg. A.7, 183 words

Coverage in the *Toronto Star* emphasized this continuous burden when they printed an article featuring Ida Morin, Guy Paul's mother [Emphasis added],

But his dark eyes cloud at memories of being tossed in 'the hole' – a cramped cell with only a cement slab to sleep on and a pit for a toilet – for protection from other prisoners. Of their death threats. Of newspaper headlines that screamed 'child killer.' His parents...lost all their savings and mortgaged their house. His brother and sisters experienced firings, job denials and harassment over Morin's notoriety. Allison's [Morin's wife] father and two older brothers have refused to meet Morin – still uncomfortable with his past. *'They ruined his life and ours. And with the government's foot-dragging and excuses, they're still ruining us.'*<sup>92</sup>

Clearly, the potential of DNA technology to establish the factual innocence of the erroneously convicted is of significant value to society. However, as the media reports reveal, it is not a panacea that will resolve the lingering effects associated with miscarriages of justice and may even exacerbate the expectations of the wrongfully convicted, particularly if they associate exoneration with compensation. The neglectful approach towards financial compensation taken by provincial governments in each case of wrongful conviction examined in this study only aggravated the complications that are associated with this miscarriage of justice.

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<sup>92</sup> "Morin's hideous injustice must end" [Final Edition]; No Author. *Toronto Star*, June 21, 1996, pg. A.2, 773 words

## Discussion: Reliance on Science

*"I'm starting to believe that DNA stands for Dawn of a New Age, like we're going from the slide rule to the calculator overnight."<sup>93</sup>*

- Steven Skurka, Toronto Criminal Lawyer

The purpose of this research project was to answer the following questions:

- 1) What similarities and differences exist between how local and national newsprint media organizations cover miscarriages of justice?
- 2) How do the newsprint media construct DNA technology in relation to notions of innocence and wrongful conviction?

Through an examination of the newsprint media's coverage of the David Milgaard, Guy Paul Morin and Gregory Parsons cases of wrongful conviction, discernable differences were evident. As discussed, the data analyzed demonstrated that biological evidence available at the crime scene in the form of DNA served to be the catalyst in constructing the 'factual innocence' of each wrongful conviction case. What was evident was that both local and national newsprint media agencies were extremely optimistic regarding DNA technology as evinced through the descriptive words and verbal imagery used. However, doubt surrounding the factual innocence of the erroneously convicted individual continued to be constructed by prominent claims-makers until the same testing procedures implicated the actual<sup>94</sup> perpetrator.

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<sup>93</sup> "What will future role be of DNA?" [Final Edition]; Tracey Tyler. *Toronto Star*, January 29, 1995, pg. A. 12, 598 words

<sup>94</sup> As previously stated, the use of the term 'actual' or 'real' perpetrator refers to the individual who was ultimately responsible for the criminal activity that resulted in the erroneous conviction of three factually innocent individuals; David Milgaard, Guy Paul Morin and Gregory Parsons. Larry Earl Fisher and Brian Joseph Doyle were subsequently arrested and convicted in the murders of Gail Miller and Catherine Carroll respectively; however, no arrest has been made for the murder of Christine Jessop.

In this way, it would seem that the newsprint media have constructed a ‘hierarchy of wrongful convictions’ based on an individual’s ability to conclusively establish *factual* innocence through the utilization of forensic DNA analysis.

As a guideline for analyzing how social reality is subjectively constructed, social constructionism examines how individuals classify objects and individuals and how particular social conditions emerge as social problems (Loseke, 2003). This research sought to examine the media’s construction of DNA technology in relation to notions of innocence and wrongful conviction. Given the large gaps in the legal system in determining whether an individual has suffered a miscarriage of justice, the newsprint media has constructed a rather particular idea of factual innocence and wrongful conviction. An analysis of the data for this study, while limited, suggests that individuals who have been wrongfully convicted are reliant on the scientific analysis of DNA testing (in those cases where physical evidence is present) in order to be exonerated. Even then, it would appear that these individuals are dependent on whether this procedure was able to further identify the ‘actual’ perpetrator before they can be viewed as being factually innocent, particularly by the media.

For a condition to be considered a social problem, Loseke (2003) suggests that a claim presented to an audience must be widespread, upsetting and in need of immediate change; all of which were found in the newsprint media’s construction of the Milgaard, Parsons and Morin miscarriages of justice. In constructing the social problem of wrongful conviction as pervasive in society, the newsprint media perpetuated the idea that anyone at anytime could be caught in the middle of an erroneous trial. As stated by Guy Paul Morin, “Believe me, it could happen to anybody... It happened to an innocent bystander like myself.”<sup>95</sup> Dianne Martin, law professor

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<sup>95</sup> “DNA test undermines conviction of Morin, Crown mum on next step” [Final Edition]; Kirk Makin. *The Globe and Mail*, January 21, 1995, pg. A.1, 1905 words

at York University, reiterated the extent to which erroneous convictions frequent the criminal justice system when she stated, “The system has been shaken recently in England, Canada, Australia and the U.S...The wrongful conviction problem is staggering and we are all facing it.”<sup>96</sup> On numerous occasions, print-news media agencies reiterated the fact that the detrimental consequences associated with wrongful convictions were too important and too costly for society to continue to avoid. By emphasizing the financial, emotional and physical struggles each wrongfully convicted individual endured, readers were left with the impression that something must be immediately done to correct the social problem of wrongful conviction. News reports constructed the foundation for broad societal definitions surrounding erroneous convictions and presented a framework for understanding the pervasiveness of this social problem in the criminal justice system.

When constructing the extent and defining features of the social problem of wrongful conviction, the newsprint media presented personal examples and ‘typical’ cases of false conviction through the use of the Milgaard, Morin and Parsons miscarriages of justice. These typifying cases served not only as a defining feature in the newsprint media’s construction of wrongful convictions, but also provided a chance to explore the potential implications of forensic DNA analysis at a time when this novel scientific procedure was in its early stages of development. Through the use of the Milgaard, Parsons and Morin false conviction cases, the newsprint media conveyed that wrongful convictions are in actual fact a normative part of the criminal justice process. By typifying erroneous convictions through the use of personal examples, the newsprint media provided knowledge of the consequences and effects associated with wrongful convictions and placed the issue on the public agenda. The Milgaard, Morin or

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<sup>96</sup> “Police ‘tunnel vision’ gives no justice, critics say blind focus: When officers get a suspect, the pressure is on to close the case, an advocate for the wrongfully convicted contends” [Final Edition]; Kirk Makin. *The Globe and Mail*, July 22, 1997, pg. A.1, 1749 words

Parsons miscarriages of justice served as an opportunity for individuals and organizations to explore the potential weakness and inadequacies of the judicial system. In this way, the newsprint media effectively normalized the issue of wrongful convictions and conferred legitimacy on this social problem at a time when the sheer existence of erroneous convictions was still under debate.

In reporting on the concept of DNA technology, newsprint media journalists interviewed and quoted claims-makers from within the criminal justice system, such as defence lawyers and prosecutors, to provide validation and support regarding the utility of forensic DNA analysis. An examination of the data set revealed that defence lawyers were the most often cited claims-maker in each of the newspapers examined, while scientists were minimally used by either local or national newsprint media organizations to support their arguments about the power of forensic DNA analysis. This finding suggests that the construction of DNA technology in this regard appears not to be so much of a scientific issue, but is rather more legal in nature. Often, lawyers and prosecutors are relied upon by the newsprint media to discuss the legal implications of being exonerated by DNA technology rather than questioning the validity of the actual testing procedures performed by forensic scientists. This appears to be an acceptance of forensic DNA analysis as a science, and the debates are more focused on to what extent DNA technology should be the basis of determining factual innocence.

Although the subject of recent deliberations, as seen through the commission of inquiry pertaining to the trial and conviction of James Driskell, the question of how a “declaration of wrongful conviction can be made”<sup>97</sup> in section 696<sup>98</sup> cases is gradually proceeding through

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<sup>97</sup> Despite having far-reaching powers to set the threshold for when a declaration of wrongful conviction should take place in Canada, some academics and legal professionals have criticized Mr. Justice Patrick LeSage for not taking full advantage of this opportunity in his inquiry surrounding certain aspects of the trial and conviction of James Driskell.

both judicial and academic circles (LeSage, 2007, p.142). In the absence of specific legal criteria, it appears as though the selected newsprint media agencies have constructed and continue to perpetuate a 'hierarchy of wrongful convictions'. At one side of the spectrum are individuals that have been exonerated by forensic DNA analysis whose procedures also implicate the person responsible for the crime. Those further from the top of the hierarchy are cases where the wrongly convicted have been exonerated, but where no 'actual' perpetrator has been implicated and at the other end are the cases where physical evidence is not available for scientific testing. At its most influential and damaging, this hierarchy could create a category of partial wrongful convictions whose members are unable to avoid the shadow of doubt and lingering questions surrounding their innocence. In this small study, the case of Guy Paul Morin stands out as one where there has been a partial exoneration and his actual innocence continues to be questioned by some<sup>99</sup>. Given that the newsprint media's construction of innocence has raised the bar to the extent that DNA evidence must not only convincingly exonerate an individual, but also identify the 'real' perpetrator before a person can be viewed as truly factually innocent, exoneration from a wrongful conviction is increasingly problematic.

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<sup>98</sup> As previously stated, section 696.1 of the *Criminal Code* allows an individual to apply for a review of the circumstances pertaining to their conviction by the Minister of Justice. The criteria of eligibility regarding application for an indictable and summary conviction review under section 696 states that an individual must have been convicted of a serious criminal offence or have been sentenced under the dangerous or long-term offender provisions of the *Criminal Code*. Also, these individuals must have exercised all of their judicial rights to appeal, and there must be new matters of significance that have not previously been considered by the courts or new evidence that arose after customary avenues of appeal have been exhausted.

<sup>99</sup> In an interview with the *Toronto Star*, Staff Inspector Ken Cenzura questioned the innocence of Guy Paul Morin when he was quoted as saying [Emphasis added], "We know that he's been acquitted *as far as the courts are concerned*, but we have a job now to look at it all...I suppose because of (the acquittal) it's considered, *technically*, an unsolved case...He is not, *right now*, considered a suspect. He's been acquitted in the eyes of the court and *we don't have the information to assess it any further*...At this point, he's *certainly a central figure* in this for the past 10 years, because he was accused and acquitted, and now we've been assigned this task...*there may be a need to talk to him again*." "Police may question Morin in new probe" [Final Edition]; Jim Rankin. *Toronto Star*, February 9, 1995, pg. A.4, 529 words



By differentiating the type of coverage received and the verbal imagery used, the selected newsprint media appear to have perpetuated this hierarchy of wrongful conviction. The data suggests that some officials in the criminal justice system cling tenaciously to the belief of guilt despite evidence in the form of DNA technology that conclusively established factual innocence. In the Milgaard and Parsons cases, it was only when the 'actual' perpetrator was apprehended and convicted by the same forensic testing procedures that law enforcement personnel and government officials acknowledged a miscarriage of justice had taken place and began the process of compensation in earnest. Similarly, Milgaard and Parsons were classified in the majority of the newsprint media articles as 'victims' when the 'real' perpetrator was arrested and convicted of the crime that led to their wrongful convictions. According to Jenness (1995), this label suggests that the individual has been "harmed by forces beyond his or her control, dramatizes the person's essential innocence, renders her or him worthy of others' concern and assistance, and makes it easier to label the implicated social condition(s) as a social problem" (p. 215). For Guy Paul Morin, the label of 'victim' was virtually absent when describing the events of the miscarriage of justice that occurred in his case. As the murder of Christine Jessop continues to be unsolved, it appears as though doubt continues to characterize the print-news media's construction of Morin's innocence<sup>100</sup>.

In cases where no physical evidence is present to test for DNA, the possibilities of a full exoneration appear even further out of reach. For example, in what has been described as one of the most egregious miscarriages of justice in Canadian history, the extent to which Steven

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<sup>100</sup> For detailed examples illustrating this doubting mentality, see "How can Morin still be on suspect list? Police reluctant to exclude Guy Paul Morin raises new questions about justice and fairness" [Final Edition]; Harold Levy. *Toronto Star*, February 10, 1995, pg. A.17. and "Police may question Morin in new probe" [Final Edition]; Jim Rankin. *Toronto Star*, February 9, 1995, pg. A.4.

Truscott's factual innocence has been established continues to be debated in the general public (CBC, 2007). In an attempt to establish his innocence during a hearing before the Ontario Court of Appeal, the body of Lynne Harper was exhumed in the hopes of finding DNA evidence that would exonerate Truscott. However, scientists were unable to conduct any forensic procedures due to the poor condition of the remains (AIDWYC, 2008). Almost fifty years after the rape and murder of twelve-year-old Lynne Harper, the Ontario Court of Appeal concluded that Steven Truscott suffered a miscarriage of justice and determined that an acquittal be entered in his case. Still, the Court of Appeal for Ontario did not go so far as to determine that Truscott was factually innocent of the crime but suggested that if a new trial was possible an acquittal may likely be the result. Without forensic DNA analysis, however, the Ontario Court of Appeal maintained that certain immutable facts – particularly that Truscott was the last person to see Lynne Harper alive and that he was geographically close to the location of the murder – continue to cast a shadow of doubt on his actual innocence<sup>101</sup>. Similar to the situation in Guy Paul Morin's case, there are some who continue to question Truscott's innocence, despite his judicial acquittal<sup>102</sup>. Unmistakably, DNA technology has been constructed by the print-news media as the 'gold standard' in conclusively establishing the factual innocence of wrongfully convicted individuals; however, this reliance on science alone may cloud the importance of other issues.

For the majority of criminal investigations, the physical evidence needed to conduct forensic DNA analysis is not present at the scene and logically cannot be forensically analyzed (Rapp, 2000). Similarly, in a case of an unexpected, accidental death, the scene could be

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<sup>101</sup> *R. v. Truscott* (2007) ONCA 575 at para. 264.

<sup>102</sup> Lynne Harper's family was opposed to the compensation order of \$6.5 million for Steven Truscott because the Ontario Court of Appeal did not explicitly clear him of responsibility for the girl's murder. While Truscott was acquitted of the 1959 crime, the Court of Appeal for Ontario did not declare him factually innocent. Lynne Harper's brother suggested that the family considered the compensation order "a real travesty" (CTV, 2008, p. 3).

covered with physical evidence but this biological material provides few answers as to how a death or even a crime occurred; DNA found at a crime scene can simply establish a person's presence but this says little about involvement in criminal activity in the absence of other corroborating evidence. Clearly, there are many cases where a wrongfully accused individual is caught in the dilemma of being factually innocent yet unable to prove this innocence with physical evidence such as DNA. As stated by William Marshall, former Newfoundland Court of Appeal Justice,

It is singularly dangerous for such a notion [forensic DNA analysis] to be adopted as the sole criterion of wrongful conviction...The stakes are just too high for society, and most particularly, for the wrongly convicted and their families.<sup>103</sup>

Relying exclusively on DNA technology to establish a claim of factual innocence may potentially undermine wrongful conviction cases "that fall between the cracks" of the criminal justice system, resulting in a greater level of stigmatization and suspicion pertaining to their innocence (LeSage, 2007, p. 140). An over-reliance on DNA exonerations as the only means to rectify wrongful convictions may serve to draw attention away from other factors that influence wrongful convictions (such as, *inter alia*, the use of jailhouse informants, police and Crown misconduct, false confessions and eyewitness misidentification) and other procedural protections within the law. In an effort to maximize the possibilities that law enforcement authorities can gather all available genetic evidence, an accused individual's civil liberties may become of secondary importance in the investigation of criminal activity (Hoeffel, 1990; Rapp, 2000). Likewise, the over-reliance on DNA evidence may lead jurors to assume that once forensic DNA analysis results are presented in judicial proceedings, other evidence will be

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<sup>103</sup> "Judicial accountability urged in wrongful-conviction cases" [Final Edition]; Kirk Makin. *The Globe and Mail*, June 13, 2005, pg. A.5, 634 words

deemed unnecessary (Feige, 2006). Although a powerful tool for investigating criminal activity, the power and applicability of this scientific procedure is not without limitations.

Newsprint media attention plays an important role in raising awareness regarding the tribulations of the wrongfully convicted and provides a medium for ongoing public debate and questioning of criminal justice policies. However, by continuing to question the factual innocence of wrongful conviction cases where DNA technology is unavailable or insignificant is a dangerous trend that may exacerbate the continued stigmatization and lasting effects that are often associated with miscarriages of justice. To require proof of innocence is inconsistent with the foundational underpinnings of the criminal justice system that requires the Crown to establish guilt beyond a reasonable doubt. Furthermore, the media appears to have created another category that goes beyond 'guilty' and 'not guilty' verdicts, – not guilty but not able to conclusively establish factual innocence (Robins, 2008). As stated by Professor H. Archibald Kaiser (1989), "It is argued that persons who have been wrongfully convicted and imprisoned are *ipso facto* victims of a miscarriage of justice... To maintain otherwise introduces a third verdict of 'not proved' or 'still culpable'" (p. 139). Whether an erroneously convicted individual conclusively establishes factual innocence through forensic DNA technology, recanted testimony, revelations of perjury, or unethical conduct on the part of criminal justice officials, wrongful conviction is a social problem that must be publicly confronted and explored. Unfortunately, individual exonerations do not necessarily end the dilemma of wrongful conviction but rather illuminate the need for reform.

## Conclusion: Directions for Future Research

In this thesis, the examination of the newsprint media's construction of DNA technology focused on an era where this scientific procedure was still in its infancy (1995 – 1998). During the early stages of forensic DNA analysis, a lack of knowledge relating to the actual testing procedure and the potential implications of establishing that an individual's genetic sample did not match the biological material at the scene of the crime, may explain some of the results that have been obtained in this study. However, advocates for the wrongfully convicted point to the fact that many law enforcement personnel and government officials continued to deny the existence of error, even in cases where conclusive proof was provided. Rev. James McCloskey reiterated this point when speaking to reporters after David Milgaard was exonerated through forensic DNA analysis, “[T]he system did everything it could to hide the truth and keep it from coming forward... They [criminal justice officials] are afraid of being embarrassed, humiliating their predecessor, or bringing the justice system into disrepute.”<sup>104</sup> Future research studies are needed in this area and similar to the research design in this thesis, an examination of more recent wrongful conviction exonerations may provide further answers regarding how the media conveys the role of DNA in these cases. In this way, it may be possible to understand whether newsprint media organizations have changed their construction of DNA technology as a result of the widespread acceptance this scientific procedure has attained.

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<sup>104</sup> “Police ‘tunnel vision’ gives no justice, critics say blind focus: When officers get a suspect, the pressure is on to close the case, an advocate for the wrongfully convicted contends” [Final Edition]; Kirk Makin. *The Globe and Mail*, July 22, 1997, pg. A.1, 1749 words

How DNA technology is constructed by the newsprint media can potentially have real life consequences as the stigma associated with miscarriages of justice continue to interfere in the lives of the erroneously convicted long after they have been released from prison. As noted by Mr. Justice John Sopinka, “there is every indication the [wrongfully convicted] person may have ‘suffered the same social stigma, loss of liberty, loss of earnings...that are suffered by the rightfully convicted.’<sup>105</sup>” Future study examining the experiences of the wrongly convicted, those exonerated by DNA and those not, could provide insights into how newsprint media manufacture claims of innocence in individual cases. An analysis of this nature may also provide the opportunity to further explore the hierarchy of wrongful convictions that has been proposed in this thesis. Moreover, a study of this kind could provide insight into whether individuals who have not been exonerated through DNA technology have suffered an increased level of stigma and personal loss, as compared to those who have.

Ultimately, it is my hope that this thesis will serve not only as a springboard for future research endeavours but to keep up the momentum that has been achieved in recent years surrounding the study of wrongful conviction. Given that news is at its centre a human construction, editors, journalists and news agencies are rarely, if ever, unaffected by the social, cultural and political positions they occupy or the news events they cover. By locating these complex and multifaceted cases within their political, social and historical contexts, (Barak, 1994), researchers can provide a credible voice supported by theory and evidence to those who are often absent from the academic literature, the wrongfully convicted themselves (Campbell & Denov, 2004). If we deny the fact that wrongful convictions take place or attempt to brush them off with mere excuses and justifications, what has happened before is surely to happen

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<sup>105</sup> “Judge suggests new way to sue crown: Charter may offer more opportunity to get damages” [Final Edition]; No Author. *Toronto Star*, February 9, 1995, pg. A.13, 370 words

again. By bringing cases of wrongful conviction to the attention of criminal justice officials, law enforcement personnel, legislators and the Canadian public, continuous efforts to curb miscarriages of justice can prevail. Only then will individuals who have suffered an erroneous conviction be able to state that they have not suffered in vain when future wrongful convictions can be prevented.

## **Appendix A: Chronology of Events**

### **The Case of Guy Paul Morin**

#### **Oct. 3, 1984**

The investigation into the disappearance of Christine Jessop, 9 years old, commences by the York Regional Police force. It is later acknowledged that Christine Jessop was murdered on or after this date. The investigation continued through November and December of 1984.

#### **Dec. 31, 1984**

The Durham Regional Police investigation commences when Christine Jessop's body was discovered in Durham Region, found 50 kilometres from her Queensville, Ontario home.

#### **Feb. 19, 1985**

After a conversation with Janet Jessop (Christine's mother), who claimed that Guy Paul Morin was a "weird-type guy", police surveillance was established on the Morin house.

#### **April 22, 1985**

Guy Paul Morin, 25 years old and neighbour to the Jessop family, is arrested and charged with the first-degree murder of Christine Jessop. At the station, Guy Paul Morin volunteered samples of his hair, blood and saliva, which were subsequently delivered to the Centre of Forensic Sciences in Toronto. The same night, police executed a search warrant of the Morin residence.

#### **June 26, 1985**

Guy Paul Morin is committed to stand trial on a charge of first-degree murder after a preliminary inquiry before the Honourable Mr. Justice Norman Edmondson.

#### **July 1, 1985**

Two jailhouse informants [Mr. May and Mr. X (a pseudonym used by the courts to protect the identity of this individual)] contact police and, after some negotiations for benefits for themselves, told police officers that Morin had confessed the night before that he had "killed that little girl." Allegedly, Mr. X had overheard the confession.

#### **Oct 7, 1985**

The Honourable Mr. Justice John Osler grants a defence application for an order changing the venue for the trial. The trial was directed to take place in London and was considered essential due to the extensive media coverage in the case, including press releases both before and after Mr. Morin's arrest.

#### **Jan. 7, 1986**

Mr. Morin's first trial, presided over by the Honourable Mr. Justice Archibald McLeod Craig, commences. Mr. Morin is represented by Clayton Ruby and Mary Bartley; John Scott and Susan McLean appear on behalf of the Crown.



**Feb. 7, 1986**

Guy Paul Morin is acquitted of the murder of Christine Jessop after his jury trial after its members had deliberated for approximately 13 hours.

**March 4, 1986**

The Attorney General of Ontario launches an appeal to the Court of Appeal for Ontario against the acquittal in the case against Guy Paul Morin.

**June 5, 1987**

A new trial is ordered by the Court of Appeal for Ontario into the judicial proceedings against Guy Paul Morin on the charge of first-degree murder. Mr. Morin appealed to the Supreme Court of Canada against the reversal of his acquittal.

**Nov. 17, 1988**

New trial order is affirmed by the Supreme Court of Canada for Guy Paul Morin to stand trial for the first-degree murder of Christine Jessop.

**May 28, 1990**

Mr. Morin's second trial commences, with the hearing of two defence motions, (access to the complete investigative file and a stay of proceedings on the basis that non-disclosure and misleading disclosure, combined with police misconduct, rendered the first trial proceedings and abuse of Mr. Morin's *Charter* rights), both of which are dismissed.

**Nov. 12, 1991**

Following an Ontario Provincial Police investigation, the charges [perjury (for allegedly knowingly making false statements under oath), wilfully attempting to obstruct justice (for allegedly preparing and testifying from a second undisclosed notebook), and wilfully attempting to obstruct justice (for allegedly tendering a cigarette he falsely claimed to have seized at the body site)] against Sergeant Michalowsky, the chief identification officer responsible for collecting and preserving crime scene evidence at the body cite, are stayed by the Honourable Mr. Justice O'Connell of the Ontario Court of Justice (General Division) due to Michalowsky's ill health. Jury selection is completed for the second trial against Guy Paul Morin.

**Nov. 13, 1991**

Jury members hear the Crown's opening address in the second trial against Guy Paul Morin. The trial spans a period of approximately nine months, during the course of which 120 witnesses were called.

**July 30, 1992**

Guy Paul Morin is convicted of the first-degree murder of Christine Jessop.

**August 22, 1992**

Guy Paul Morin launches an appeal from his conviction to the Court of Appeal for Ontario.

**Feb. 9, 1993**

Mr. Morin's application for bail pending his appeal is granted by the Honourable Mr. Justice Marvin Catzman.

**Jan. 20, 1995**

Drs. Bing, Wayne, and Blake report they have been successful in DNA typing the sperm recovered from the undergarments of Christine Jessop. They conclude that the DNA from the sperm sample could not have originated from Guy Paul Morin.

**Jan. 23, 1995**

Guy Paul Morin is acquitted by the Court of Appeal for Ontario on the basis of DNA testing not previously available tendered jointly by Crown and defence counsel. Fresh evidence of the comparison of semen found on Christine Jessop's panties to Guy Paul Morin's DNA profile demonstrated to the complete satisfaction of a panel of experts representing the prosecution, the defence and the Court that Mr. Morin was not the donor of the biological material.

**June 26, 1996**

The Honourable Mr. Justice Fred Kaufman, C. M., Q. C. is appointed Commissioner of the public inquiry into the administration of justice surrounding the case of Guy Paul Morin.

**Sept. 3, 1996**

The proceedings of the Commission pertaining to the administration of justice in the case of Guy Paul Morin commence.

**Jan. 24, 1997**

The Government of Ontario awards Guy Paul Morin and his parents a compensation package in the amount of \$1.25 million dollars.

**March 31, 1998**

The investigation into the administration of justice surrounding the case of Guy Paul Morin is completed, with the findings and recommendations of the Honourable Mr. Justice Fred Kaufman made available to the general public.

**April, 2008**

The investigation continues into the murder of Christine Jessop, presently being conducted by the Metropolitan Toronto Police force.

*Source:*

Kaufman, F. (1998). *Report of the Kaufman Commission on the proceedings involving Guy Paul Morin*. Retrieved on 6 March, 2008, from <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/morin/>

## **Appendix B: Chronology of Events**

### **The Case of David Milgaard**

**Jan. 31, 1969**

Body of nursing aide Gail Miller, 20, found in a Saskatoon snow bank. Milgaard is travelling through Saskatoon the morning the body is found.

**May 30, 1969**

Milgaard, 16, is arrested and charged with murder.

**Jan. 31, 1970**

Saskatchewan Court convicts Milgaard of murdering Miller; He is sentenced to life in prison.

**Jan. 31, 1971**

Saskatchewan Court of Appeal rejects Milgaard's appeal.

**Nov. 15, 1971**

Supreme Court of Canada refuses to hear Milgaard's appeal.

**Dec. 28, 1988**

Milgaard's lawyers apply to have the case reopened.

**May 14, 1990**

Federal Justice Minister Kim Campbell brushes past Milgaard's mother Joyce, who tries to hand her a report from a Vancouver forensic pathologist that could clear Milgaard. Campbell says it could jeopardize any future review if she sees the report.

**Feb. 27, 1991**

Campbell turns down Milgaard's request to review his case.

**Aug. 14, 1991**

Milgaard's lawyers file second application to Minister of Justice to have the case reopened.

**Nov. 29, 1991**

Campbell directs the Supreme Court to review Milgaard's conviction.

**April 14, 1992**

Top court says Milgaard should have new trial. He is freed after Saskatchewan decides not to prosecute him again. He is not formally acquitted.

**July 18, 1997**

Milgaard's team announces that more sophisticated DNA tests in Britain prove Milgaard did not commit Miller's murder. That same day, Milgaard receives apology from the Saskatchewan government for his wrongful conviction.

**July 25, 1997**

Larry Fisher arrested in Calgary for the rape and murder of Gail Miller.

**May 17, 1999**

Milgaard and his family receive \$10 million compensation package from both the Federal Government and the Government of Saskatchewan.

**Oct. 12, 1999**

Fisher's trial opens in Yorkton, Sask. His lawyer successfully argued to have the trial moved from Saskatoon to avoid potential juror bias.

**Nov. 22, 1999**

Larry Fisher convicted of rape and murder of Gail Miller.

**Jan. 4, 2000**

Fisher sentenced to life in prison; parole eligibility to be decided by National Parole Board.

**April 15, 2003**

Saskatchewan Court of Appeal hears Fisher's case for a new trial.

**Sept. 29, 2003**

Saskatchewan Court of Appeal dismisses Fisher's appeal of his first-degree murder conviction.

**Sept. 30, 2003**

The Saskatchewan government announces inquiry into how Milgaard was wrongly convicted for the murder of Gail Miller.

**Aug. 26, 2004**

The Supreme Court of Canada refuses to hear Fisher's appeal. The decision clears the way for the inquiry to proceed.

**Jan. 17, 2005**

The public inquiry into the wrongful conviction of David Milgaard opens in Saskatoon. Mr. Justice Edward MacCallum is expected to hear from more than 100 witnesses – including David Milgaard and Larry Fisher – over the course of a year. A list of high profile potential witnesses includes former prime ministers Brian Mulroney and Kim Campbell and former Saskatchewan premier Roy Romanow.

**April 20, 2005**

The first phase of the Milgaard inquiry ends. During 41 days of testimony the inquiry hears from nearly 50 witnesses, all of whom were involved in the 1969 investigation of Gail Miller's murder. The commission also heard from a number of women who were sexually assaulted by Larry Fisher in the months before and after Miller's murder.

**April 24, 2006**

Milgaard's videotaped testimony is played at the inquiry into his wrongful conviction. The tape shows Milgaard trying to recall the events that led to his conviction. He says his memory is cloudy, though, from years spent in prison. He says he began to doubt his own innocence after being misdiagnosed with so many different psychological problems while in prison.

**May 8, 2006**

Joyce Milgaard tells the inquiry she began her fight to free her son with the assumption that the police "twisted the facts into what they were not to put him behind bars." She says she regrets not starting sooner to prove David Milgaard's innocence.

**Aug. 28, 2006**

The Milgaard inquiry resumes public sessions, and expects to hear from key government and RCMP witnesses before wrapping up in September 2006. The commission of the inquiry is to find out why David Milgaard was wrongfully convicted of a 1969 rape and murder, and spent 23 years in prison before being exonerated.

**April, 2008**

The findings and recommendations by Mr. Justice Edward MacCallum into the wrongful conviction of David Milgaard are expected to be released to the public in the spring of 2008.

*Source:*

Canadian Broadcasting Corporation (2006). *David Milgaard: Timeline*. Retrieved 29 April, 2008, from <http://www.cbc.ca/news/background/milgaard/>

## **Appendix C: Chronology of Events**

### **The Case of Gregory Parsons**

**Jan. 2, 1991**

The discovery of Catherine Carroll's body by Gregory Parsons commences the murder investigation for her killer.

**Jan. 10, 1991**

Following an investigation conducted by the Royal Newfoundland Constabulary, Gregory Parsons was arrested and charged with the murder of Catherine Carroll.

**Jan. 18, 1991**

Gregory Parsons was granted judicial interim release.

**Feb. 19, 1992**

Gregory Parsons' preliminary inquiry commences.

**July 31, 1992**

Gregory Parsons committed to stand trial for first degree murder by Judge O. M. Kennedy.

**Sept. 23, 1993**

The trial of Gregory Parsons for first-degree murder commences before a judge and jury, at which 119 witnesses are called.

**Feb. 15, 1994**

Gregory Parsons was convicted of second degree murder in the death of Catherine Carroll.

**Feb. 17, 1994**

Gregory Parsons sentenced to life without parole for 15 years.

**March 25, 1994**

Gregory Parsons was granted judicial interim release by the Supreme Court of Newfoundland and Labrador, Court of Appeal, pending his Appeal of the Conviction of second degree murder.

**Dec. 3, 1996**

The Supreme Court of Newfoundland and Labrador, Court of Appeal, overturned Gregory Parsons' conviction of second degree murder in the death of Catherine Carroll and ordered a new trial.

**Aug. 1997**

Certain exhibits used in the trial of Gregory Parsons were released for DNA testing.

**Jan. 26, 1998**

The results of the DNA testing confirmed that the DNA found at the murder scene was not that of Gregory Parsons.

**Feb. 2, 1998**

A Stay of Proceedings was entered on the murder charge against Gregory Parsons.

**Nov. 5, 1998**

After the Crown called no evidence, then Minister of Justice and Attorney General, the Honourable Chris Decker, publicly apologized to Gregory Parsons and his family and stated that Gregory Parsons had no involvement in the murder of Catherine Carroll. Retired Justice Nathaniel Noel was appointed to investigate the circumstances of Mr. Parsons' arrest and prosecution.

**Jan. 8, 1999**

Gregory Parsons commenced a civil action against the Government of Newfoundland and Labrador and, as a result, Justice Noel suspended his investigation.

**Feb. 28, 2002**

The Government of Newfoundland and Labrador announced that it had reached an agreement to compensate Gregory Parsons for his arrest and conviction in the death of Catherine Carroll. The Government awarded an *ex gratia* payment totalling \$650,000. This payment included \$450,000 to provide a monthly income, \$200,000 cash payment. In addition, \$198,000 was paid to cover the legal fees and disbursements incurred by Mr. Parsons.

**March 14, 2003**

The Lieutenant-Governor in Council appoints the Right Honourable Antonio Lamer as Commissioner of a public inquiry into the administration of justice, particularly pertaining to the cases of Ronald Dalton, Gregory Parsons and Randy Druken, in Newfoundland and Labrador.

**Sept. 1, 2005**

The Minister of Justice and Attorney General, Tom Marshall, announces that government will provide an additional compensation package for Gregory Parsons. A total of \$650,000 is given to Mr. Parsons in addition to the original compensation provided in February 2002. The total amount awarded to Mr. Parsons equals \$1.3 million dollars.

**May 31, 2006**

The investigation into the cases of Ronald Dalton, Gregory Parsons and Randy Druken are completed, with the findings and recommendations of the Right Honourable Antonio Lamer made available to the general public.

*Source:*

Lamer, A. (2006). *The Lamer Commission of Inquiry pertaining to the Cases of: Ronald Dalton, Gregory Parsons and Randy Druken*. Retrieved 6 March, 2008, from <http://www.justice.gov.nl.ca/just/lamer/>

## Appendix D: Data Collection Sheet

Wrongful Conviction Case: (a) MORIN (b) MILGAARD (c) PARSONS

Newsprint Media Agency: (a) Globe & Mail (b) Toronto Star (c) Star-Phoenix (d) Telegram

Name of Author: \_\_\_\_\_

Date of Publication: \_\_\_\_\_

Headline of Article:  
\_\_\_\_\_

Article Length: \_\_\_\_\_ (words)

Location within Newspaper: \_\_\_\_\_ (Section/Page)

Tone/Portrayal of DNA technology in relation to Notions of Innocence:  
(Positive/Negative/Neutral)

---

Mention of Wrongfully Convicted Individual as 'Victim': a) Yes b) No

Summary Chart of Examined Criteria:

| Descriptive words used to portray DNA technology in Newspaper Article | Language used to construct Notions of Innocence in Newspaper Article | Individuals cited as sources of Information ('Tone Qualifiers') | Patterns/Trends relating to topic observed in Newspaper Article |
|-----------------------------------------------------------------------|----------------------------------------------------------------------|-----------------------------------------------------------------|-----------------------------------------------------------------|
|                                                                       |                                                                      |                                                                 |                                                                 |



## Appendix E: Secondary Articles Reference List

### **David Milgaard: *Saskatoon Star-Phoenix***

- 1) "New DNA technology unlocks mysteries of old criminal cases" [Final Edition]; Brad Evans. *Saskatoon Star-Phoenix*, July 19, 1997, pg. B.16, 633 words
- 2) "DNA proves man innocent of mother's brutal murder" [Final Edition]; No Author, *Saskatoon Star-Phoenix*, February 4, 1998, pg. B.7, 479 words
- 3) "Serial rapist's DNA a match, lawyer confirms" [Final Edition]; Leslie Perreaux and Dan Zakreski. *Saskatoon Star-Phoenix*, July 19, 1997, pg. A.2, 464 words
- 4) "But Kujawa, Caldwell deny wrongdoing in Milgaard affair" [Final Edition]; Leslie Perreaux. *Saskatoon Star-Phoenix*, July 23, 1997, pg. D.1, 495 words
- 5) "Delays in compensation from the Sask. Government taking a toll on his personal life" [Final Edition]; No Author. *Saskatoon Star-Phoenix*, April 19, 1999, pg. A.3, 522 words
- 6) "Apologies are five years too late" [Final Edition]; Murry Mandryk. *Saskatoon Star-Phoenix*, July 23, 1997, pg. A.4, 695 words
- 7) "Wrongful convictions few and far between" [Final Edition]; Claire Hoy. *Saskatoon Star-Phoenix*, July 22, 1997, pg. A.2, 713 words
- 8) "Two years after apology and no offer from province" [Final Edition]; Murry Mandryk. *Saskatoon Star-Phoenix*, March 31, 1999, pg. D.1, 588 words

### **David Milgaard: *Globe and Mail***

- 1) "Milgaard: The Search for Justice DNA test exonerates Milgaard: Saskatchewan offers apology and compensation for 28-year ordeal, considers inquiry into wrongful murder conviction" [Final Edition]; David Roberts and Kirk Makin. *The Globe and Mail*, July 19, 1997, pg. A.1, 1582 words
- 2) "Milgaard: The Search for Justice DNA implicates Fisher, Milgaard lawyers say" [Final Edition]; David Roberts. *The Globe and Mail*, July 19, 1997, pg. A.6, 772 words
- 3) "Canadian testing incompetent, U.S. expert says British laboratory finds massive amount of semen missed in earlier examinations" [Final Edition]; Stephen Strauss. *The Globe and Mail*, July 22, 1997, pg. A.4, 944 words

- 4) "Police chief not convinced by DNA tests" [Final Edition]; No Author. *The Globe and Mail*, July 24, 1997, pg. A.3, 244 words
- 5) "Years of crime tests questioned: Scientist says backlog caused forensic centre to use techniques avoided elsewhere" [Final Edition]; Kirk Makin. *The Globe and Mail*, October 3, 1997, pg. A.1, 1626 words
- 6) "Listless movie locks up the emotion in Milgaard's story" [Final Edition]; John Allemang. *The Globe and Mail*, April 10, 1999, pg. C.9, 813 words
- 7) "Milgaard 'retraumatized' by delay" [Final Edition]; No Author. *The Globe and Mail*, April 19, 1999, pg. A.7, 183 words
- 8) "The lawyer who has 'a cause for a client': James Lockyer is famous for clearing the wrongfully convicted. He's not so big on helping the guilty" [Final Edition]; Kirk Makin. *The Globe and Mail*, May 12, 1999, pg. A.1, 2881 words
- 9) "Compensation failure violates world treaty, lawyer charges" [Final Edition]; Kirk Makin. *The Globe and Mail*, April 21, 1999, pg. A.2, 274 words
- 10) "Police 'tunnel vision' gives no justice, critics say blind focus: When officers get a suspect, the pressure is on to close the case, an advocate for the wrongfully convicted contends" [Final Edition]; Kirk Makin. *The Globe and Mail*, July 22, 1997, pg. A.1, 1749 words

**Guy Paul Morin: Toronto Star**

- 1) "How science proved Morin right" [Final Edition]; Harold Levy and Tracey Tyler. *Toronto Star*, January 25, 1995, pg. A.7, 852 words
- 2) "DNA most credible 'witness' in trials, U.S. expert says" [Final Edition]; Tracey Tyler. *Toronto Star*, May 6, 1995, pg. A.8, 407 words
- 3) "It's 'miracle' time for Morin, Wife safe in crash, he hugs his 'savior'" [Final Edition]; Ellie Teshler. *Toronto Star*, May 5, 1995, pg. A.1, 902 words
- 4) "When justice is blind, so is science: Any inquiry into Morin case needs to examine standards of forensic science in Ontario" [Final Edition]; Donna Laframboise. *Toronto Star*, January 30, 1995, pg. A.17, 1155 words
- 5) "Experts on DNA face grilling: Lawyer" [Final Edition]; Tracey Tyler. *Toronto Star*, October 22, 1995, pg. A.4, 372 words

- 6) "Morin deserves apology if he's cleared, group says DNA tests may be evidence at appeal hearing starting today" [Final Edition]; Trish Crawford. *Toronto Star*, January 23, 1995, pg. A.2, 643 words
- 7) "No peace for Jessops until killer is found" [Final Edition]; Jim Rankin. *Toronto Star*, January 24, 1995, pg. A.14, 798 words
- 8) "Police may question Morin in new probe" [Final Edition]; Jim Rankin. *Toronto Star*, February 9, 1995, pg. A.4, 529 words
- 9) "How can Morin still be on suspect list? Police reluctant to exclude Guy Paul Morin raises new questions about justice and fairness" [Final Edition]; Harold Levy. *Toronto Star*, February 10, 1995, pg. A.17, 949 words
- 10) "Morin's hideous injustice must end" [Final Edition]; No Author. *Toronto Star*, June 21, 1996, pg. A.2, 773 words
- 11) "Judge suggests new way to sue crown: Charter may offer more opportunity to get damages" [Final Edition]; No Author. *Toronto Star*, February 9, 1995, pg. A.13, 370 words
- 12) "What will future role be of DNA?" [Final Edition]; Tracey Tyler. *Toronto Star*, January 29, 1995, pg. A. 12, 598 words

### ***Guy Paul Morin: Globe and Mail***

- 1) "DNA test undermines conviction of Morin: Crown mum on next step" [Final Edition]; Kirk Makin. *The Globe and Mail*, January 21, 1995, pg. A.1, 1905 words
- 2) "Crown to seek Morin's acquittal: DNA evidence ends Jessup neighbour's 10-year court ordeal" [Final Edition]; Kirk Makin. *The Globe and Mail*, January 23, 1995, pg. A.1, 1331 words
- 3) "DNA test undermines conviction of Morin, Crown mum on next step" [Final Edition]; Kirk Makin. *The Globe and Mail*, January 21, 1995, pg. A.1, 1905 words
- 4) "Jessop asks Boyd for delay in any payment to Morin: Father of murdered girl wants police probe first" [Final Edition]; Kirk Makin. *The Globe and Mail*, January 28, 1995, pg. A.8, 1144 words
- 5) "Morin angry at lack of action: No compensation or inquiry yet" [Final Edition]; Kirk Makin. *The Globe and Mail*, January 22, 1996, pg. A.1, 1367 words
- 6) "Morin appeals to Premier for justice: Victim of wrongful murder conviction asks Harris to speed up delayed inquiry and compensation" [Final Edition]; Kirk Makin, *The Globe and Mail*, June 14, 1996, pg. A.8, 940 words

**Gregory Parsons: *St. John's Telegram***

- 1) "Gregory's version: Parsons to write book about his wrongful conviction, fight for compensation" [Final Edition]; Will Hilliard. *The St. John's Telegram*, May 30, 1999, pg. A.1, 1,439 words
- 2) "High-tech vindication: DNA evidence clears Parsons of mother's murder seven years later" [Final Edition]; Glen Whiffen. *The St. John's Telegram*, February 3, 1998, pg. A.1, 863 words
- 3) "Proven innocent: Acquittal, apologies for Gregory Parsons" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, November 6, 1998, pg. A.1, 721 words
- 4) "Canada leads the way in fighting crime with DNA" [Final Edition]; Glen Whiffen. *The St. John's Telegram*, October 7, 2001, pg. A.1, 635 words
- 5) "Inconsistent attitude: Parsons says he was guilty until proven innocent" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, December 18, 2003, pg. A.1, 1022 words
- 6) "DNA data bank legislation under microscope" [Final Edition]; Wendy Cox. *The St. John's Telegram*, February 4, 1998, pg. A.5, 562 words
- 7) "Police building local DNA bank" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, February 10, 2001, pg. A.1, 735 words
- 8) "New DNA testing nothing to do with Parsons: Lawyer" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, February 28, 1998, pg. A.3, 502 words
- 9) "Parsons' lawyers seek full acquittal" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, April 3, 1998, pg. A.1, 513 words
- 10) "Compensation review sought" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, February 7, 2004, pg. A.1, 814 words
- 11) "Lead investigator believed son killed mother" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, January 27, 2004, pg. A.1, 759 words
- 12) "Opposition calls for fair deal for Parsons" [Final Edition]; No Author. *The St. John's Telegram*, March 13, 1999, pg. A.4, 93 words
- 13) "Government denies injustice" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, March 20, 1999, pg. A.1, 505 words
- 14) "Delay angers Parsons" [Final Edition]; Will Hilliard. *The St. John's Telegram*, May 30, 2000, pg. A.4, 876 words

- 15) "Parsons' comments seen as threat: Lawyer says his client didn't mean any disrespect" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, May 14, 2004, pg. A.1, 350 words
- 16) "The wrong guy" [Final Edition]; Peter Jackson. *The St. John's Telegram*, May 23, 2004, pg. A.3, 859 words
- 17) "Murderer gets life: Victim's son renews call for public inquiry" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, February 21, 2003, pg. A.1, 937 words
- 18) "Parsons boyhood friend up for murder" [Final Edition]; Bonnie Belec. *The St. John's Telegram*, June 12, 2001, pg. A.3, 865 words
- 19) "Parsons recalls his family's struggle" [Final Edition]; Bonnie Belec, *The St. John's Telegram*, November 3, 2004, pg. A.3, 1001 words
- 20) "Priest gains new trial: Judge should have warned jury more strongly about accepting evidence of people with criminal records" [Final Edition]; No Author, *The St. John's Telegram*, January 27, 2001, pg. A.1, 1,136 words

***Gregory Parsons: Globe and Mail***

- 1) "Man jailed in murder freed after DNA test clears him" [Final Edition]; No Author. *The Globe and Mail*, February 3, 1998, pg. A.4, 298 words
- 2) "New life begins for man freed in DNA case: Newfoundlander who was wrongly convicted of killing his mother will be exonerated today" [Final Edition]; Kirk Makin. *The Globe and Mail*, November 5, 1998, pg. A.1, 1132 words
- 3) "Murder suspect a victim of overzealous police, probe: Assault charge part of mission to 'get' accused, now exonerated" [Final Edition]; Kirk Makin. *The Globe and Mail*, March 10, 1999, pg. A.3, 667 words
- 4) "Exonerated man can keep legal team: Court says lawyers would not be in conflict representing him against police, Newfoundland" [Final Edition]; Kirk Makin. *The Globe and Mail*, December 22, 1999, pg. A.2, 784 words
- 5) "Judicial accountability urged in wrongful-conviction cases" [Final Edition]; Kirk Makin. *The Globe and Mail*, June 13, 2005, pg. A.5, 634 words

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