UNIVERSITY OF WINCHESTER

Media reporting on miscarriages of justice in England and Wales fundamentally changed after the creation of the Criminal Cases Review Commission resulting in a decline in coverage, a reduction in investigative journalism and a radically altered usage of the term “miscarriage of justice”.

Brian Thornton

0000-0002-1669-3636

Doctor of Philosophy

June 2018

This Thesis has been completed as a requirement
for a postgraduate research degree of the University of Winchester.

MPhil/PhD THESES

OPEN ACCESS / EMBARGO AGREEMENT FORM

THE UNIVERSITY OF WINCHESTER

Access Permissions and Transfer of Non-Exclusive Rights

By giving permission you understand that your thesis will be accessible to a wide variety of people and institutions – including automated agents – via the World Wide Web and that an electronic copy of your thesis may also be included in the British Library Electronic Theses On-line System (EThOS). Once the Work is deposited, a citation to the Work will always remain visible. Removal of the Work can be made after discussion with the University of Winchester's Research Repository, who shall make best efforts to ensure removal of the Work from any third party with whom the University of Winchester's Research Repository has an agreement.

Agreement:

I understand that the thesis listed on this form will be deposited in the University of Winchester's Research Repository, and by giving permission to the University of Winchester to make my thesis publically available I agree that the:

- University of Winchester's Research Repository administrators or any third party with whom the University of Winchester's Research Repository has an agreement to do so may, without changing content, translate the Work to any medium or format for the purpose of future preservation and accessibility.

- University of Winchester's Research Repository reserves the right to remove the Work for any professional, administrative or legal reason. Equally, I may request that the Work is removed at any point in the future. I understand that once the Work is deposited, a citation to the Work will always remain visible, although the author retains the right to update the Work.

- rights granted to the University of Winchester' Research Repository through this agreement are entirely non-exclusive and royalty free; that I am free to publish the Work in its present version or future versions elsewhere; and that no ownership is assumed by the repository when storing the Work.

*Please select **ONE** of the following six statements:*

1. **The thesis is to be made available from the moment the deposit has been approved by the University of Winchester.** ✖

2. **In order to facilitate commercial publication I request an embargo period of 1 year*** ☐

3. **In order to facilitate commercial publication I request an embargo period of 2 years*** ☐

4. **In order to facilitate commercial publication I request an exceptional embargo period of 3 years*** ☐

   Approval from the Director of Research and Knowledge Exchange (DRKE) is required for a 3 year embargo.

   Signature of DRKE:

N.B. under Research Council UK (RCUK) rules and regulations, students who have received RCUK funding may apply for access to their thesis to be withheld for no more than 12 months.

**Please provide an explanation for the length of the embargo period and information about the proposed publication arrangements. The date of the embargo period will commence from the date of the Award Letter sent from the Director of Postgraduate Research Students.*

5. **The title, abstract and keywords may be published, but the thesis may not be published in the data repository because it contains commercially sensitive data.^** ☐

^*Please identify the commercially sensitive data.*

6. **The title, abstract and keywords may be published, but the thesis may not be published because my sponsors/funders own the rights to it.** [#] ☐

[#]*Please identify the funder/sponsor and the contract information.*

Please tick if you agree to the following TWO statements :

1. I agree that my thesis may be copied on demand by individuals or libraries and that the copy of my thesis contains the following statement: ✖

Copyright © Brian Thornton, 2018, Media reporting on miscarriages of justice in England and Wales fundamentally changed after the creation of the Criminal Cases Review Commission resulting in a decline in coverage, a reduction in investigative journalism and a radically altered usage of the term "miscarriage of justice". University of Winchester, PhD Thesis, 1- 242, ORCID 0000-0002-1669-3636.

This copy has been supplied on the understanding that it is copyright material and that no quotation from the thesis may be published without proper acknowledgement. Copies (by any process) either in full, or of extracts, may be made only in accordance with instructions given by the author. Details may be obtained from the RKE Centre, University of Winchester.

This page must form part of any such copies made. Further copies (by any process) of copies made in accordance with such instructions may not be made without the permission (in writing) of the author.

No profit may be made from selling, copying or licensing the author's work without further agreement.

2. I agree that my obligation is to notify the University of Winchester of any change of address in order to facilitate any future requests for licensing. ✖

Author's Name:	Brian Thornton
Author's Signature:	
Date:	18/07/18

Metadata to be included with the thesis:

Title:	Media reporting on miscarriages of justice in England and Wales fundamentally changed after the creation of the Criminal Cases Review Commission resulting in a decline in coverage, a reduction in investigative journalism and a radically altered usage of the term "miscarriage of justice".
Author:	**Brian Thornton**
Supervisors:	**Dr Alan Grattan & Dr Jill Dealey**

Key words *(up to 10 keywords – ask your supervisory team for advice):*

Miscarriages of justice; Criminal Cases Review Commission; journalism

Abstract:

This study explores how the media's approach to miscarriages of justice changed after the creation of the Criminal Cases Review Commission (CCRC) in 1997. As a piece of research, it seeks to analyse the relationship between journalism and the appeal system. Miscarriages of justice in the UK are intrinsically linked in the minds of the public with investigative journalism. This is because of the successful campaigns run by journalists in the 1980s and 1990s that uncovered shocking examples of injustice. The appeal system before 1997 was structured in such a way that the voice of the press was amplified and its influence augmented. The exposure of miscarriages such as the Bridgewater Four, Birmingham Six and Guildford Four fundamentally challenged the legitimacy of the criminal justice system. The response of the government was to create an independent organization to investigate possible miscarriages of justice. This broke the structural relationship between politics, the press and the law because the CCRC had a statutory obligation to be neutral and was therefore beyond influence (including press campaigns). The research is informed by systems theory and uses a varied methodical approach to analyse the changing media discourse on miscarriages of justice. Content analysis of newspaper reporting of the courts showed that the disengagement by the media was resulting in thousands of cases going unreported. Interviews with key figures such as Lord Runciman and Professor Michael Zander were used to understand the relationship between the media and the institutional response to the crisis in the appeal system. Content analysis was carried out on national newspapers between 1992 – 2007 to illustrate how the level of reporting on miscarriages of justice fell sharply after the creation of the CCRC. These findings were then examined using critical discourse analysis (CDA) in order to identify the shifting discourse that lay behind the decline in coverage. The findings highlighted how the meaning of the term "miscarriage of justice" had fundamentally changed since 1997. Miscarriages are now more readily associated – at least in the right wing press – with the unpunished guilty rather than the punished innocent. The thesis indicates that the decline in coverage has two main impacts: firstly, individual cases no longer enjoy the support and investigative power of journalists and secondly, because journalists are no longer engaged in the appeal system the pace of reform has slowed dramatically.

Declaration

I hereby declare that except where specific reference is made to the work of others, the contents of this thesis are original and have not been submitted in whole or in part for consideration for any other degree or qualification in this, or any other university. This dissertation is my own work and contains nothing which is the work of others, except as detailed in the text. This dissertation contains fewer than 90,000 words including appendices and bibliography.

Acknowledgements

I would like to extend my warmest thanks to Dr Alan Grattan and Dr Jill Dealey for their support, guidance and patience.

I have also been lucky beyond measure to have been helped by Olivia, Toby, Ella and Abbie, the wisest people I know.

UNIVERSITY OF WINCHESTER

ABSTRACT

Media reporting on miscarriages of justice in England and Wales fundamentally changed after the creation of the Criminal Cases Review Commission resulting in a decline in coverage, a reduction in investigative journalism and a radically altered usage of the term “miscarriage of justice”.

Brian Thornton

0000-0002-1669-3636

Doctor of Philosophy

June 2018

This study explores how the media’s approach to miscarriages of justice changed after the creation of the Criminal Cases Review Commission (CCRC) in 1997. As a piece of research, it seeks to analyse the relationship between journalism and the appeal system. Miscarriages of justice in the UK are intrinsically linked in the minds of the public with investigative journalism. This is because of the successful campaigns run by journalists in the 1980s and 1990s that uncovered shocking examples of injustice. The appeal system before 1997 was structured in such a way that the voice of the press was amplified and its influence augmented. The exposure of miscarriages such as the Bridgewater Four, Birmingham Six and Guildford Four fundamentally challenged the legitimacy of the criminal justice system. The response of the government was to create an independent organization to investigate possible miscarriages of justice. This broke the structural relationship between politics, the press and the law because the CCRC had a statutory obligation to be neutral and was therefore beyond influence (including press campaigns). The research is informed by systems theory and uses a varied methodical approach to analyse the changing media discourse on miscarriages of justice. Content analysis of newspaper reporting of the courts showed that the disengagement by the media was resulting in thousands of cases going unreported. Interviews with key figures such as Lord Runciman and Professor Michael Zander were used to understand the relationship between the media and the institutional response to the crisis in the appeal system. Content analysis was carried out on national newspapers between 1992 – 2007 to illustrate how the level of reporting on miscarriages of justice fell sharply after the creation of the CCRC. These findings were then examined using critical discourse analysis (CDA) in order to identify the shifting discourse that lay behind the decline in coverage. The findings highlighted how the meaning of the term “miscarriage of justice” had fundamentally changed since 1997. Miscarriages are now more readily associated – at least in the right wing press – with the unpunished guilty rather than the punished innocent. The thesis indicates that the decline in coverage of miscarriages of justice has two main impacts: firstly, individual cases no longer enjoy the support and investigative power of journalists and secondly, because journalists are no longer engaged in the appeal system the pace of reform has slowed dramatically.

Keywords: [miscarriages of justice, journalism, Criminal Cases Review Commission]

LIST OF CONTENTS

CHAPTER 1: INTRODUCTION

1.1 Introduction

In this thesis I will investigate the relationship between the media and the issue of miscarriage of justice. The methodological approaches employed in the investigation include content analysis, interviews and critical discourse analysis. This chapter provides some context to the thesis, along with presenting the rationale for the study by locating it within relevant research and highlighting its contribution to the field. An outline of the structure of the chapters will also be described.

1.2 Investigative Journalism

Investigative journalism (IJ) is a form idealised by journalists (Bromley, 2005) and even politicians:

> The role of investigative journalism is to bring to light things that are not in the public domain and to help hold those in positions of power at a local, national and international level to account (Select Committee on Communication, 2012: 7).

But there is a general belief that that it is in decline (Doig, 1997; Foot 1999; Greenwald and Bernt, 2000; Hanna, 2005; Haxton, 2002, Davies 2008). A select committee report (2012) found that "investigative journalism is suffering" due to a lack of funding, a lack of support and a hostile legal environment. There is wide support for the discourse of IJ being a profession under threat (Glater, 2016; Drohan*,* 2016*;* Higgins-Dobney and Sussman, 2013).

> The changes wrought by technology and a fast-evolving economy have taken their toll on the institutions that have historically invested in investigative journalism. (Glater, 2016:510)

The hacking scandal and resultant Leveson Inquiry provided institutional recognition of the decline in IJ. If IJ is indeed in decline, then that has serious implications for miscarriage of justice because investigative journalists have historically led the way in uncovering evidence that led to exonerations. From Zola and Doyle through to Jessell and Foot, investigative journalists have established a sub-genre of journalism which is often seen as the best example of the profession's public interest credentials. But as Feldstein (2017) points out, "investigative reporting has long been more praised than practiced".

> "For news outlets, the costs [of investigative journalism] are high — time, money, and risk— while the financial benefits are uncertain at best" (Hamilton, 2017: 2).

Investigations into miscarriages of justice, like all investigative journalism, take a very long time and while this process may have been understood by the like of Harold Evans and the *Sunday Times* Insight team, modern editors are less likely to be as patient.

> News organisations are much less likely to have an appetite for stories that slowly unfold over time or for stories that are difficult to report without reference to their underlying and possibly complex origins (Manning, 2014: 21).

While this general decline obviously affects the coverage of miscarriages, there are particular factors which intensify the difficulties of investigating and then reporting on claims of innocence by people convicted of serious offences. This thesis argues that one of the main factors was the establishment of the Criminal Cases Review Commission (CCRC). It is arguable that the CCRC made life more difficult for investigative journalists for two main reasons. Firstly, it dissolved the network of interconnectivity that existed between the appeal system, politics and the media during the period when the Home Office investigated miscarriages of justice. The creation of the CCRC essentially de-politicised the issue meaning that media campaigns no longer had a target. Secondly, the creation of the CCRC was seen as an answer to the crisis (Nobles & Schiff, 2001) that had arisen because of cases such as the Birmingham Six and the Guildford Four. Because the politicians and the right wing press argued that the "innocence crisis" had been solved, they felt they were entitled to shift the discourse on miscarriage of justice (Blair, 2002). The emphasis began to be about guilt rather than innocence. Essentially the meaning of "miscarriage of justice" after the creation of the CCRC became much broader and there was a sustained attempt by the right wing press to gain ownership over the term.

1.3 Importance of language

The use of the phrase "miscarriage of justice" is absolutely central to this study and is specifically evaluated through a critical discourse analysis approach (CDA). The CDA is employed to complement content analysis carried on national newspapers. From a Foucauldian perspective, there is a recognition that the miscarriage of justice discourse has modified over time:

> Discourse analysis involves tracing the historical evolution of language practices and examining how language both shapes and reflects dynamic cultural, social, and political practices (Starks & Brown Trinidad, 2007: 1375).

This discussion/contest over language in the media has a very long history:

> Researchers over many decades have produced a vast literature charting the ways in which news media are firstly, highly selective in their choice of news topics, and secondly, 'frame' selected stories in very particular ways (Manning, 2014: 20).

The use of language is of course a subjective decision that has the potential to be indicative of underlying value systems. Bell is one of many (Oktar, 2001; Izadi and Saghaye-Biria, 2007; Wodak, 2016) to point out how important an element this is in the understanding of critiques of journalistic material:

> Language is an essential part of the content of what the media purvey to us. That is, language is a tool and expression of media messages (Bell, 1991: 3).

Although there is a tendency in news to forefront the journalistic commitment to neutrality, the media is often not as unmediated, or neutral, as journalists are willing to admit:

> Journalists produce cultural records in language and claim objectivity but language itself is not value free. Words, sentences, narratives are laden with inferences prompting meaning. (Wykes, 2000: 189)

Richardson is even more explicit in his challenge to the media's perceived objectivity:

> These assumptions [that journalism is neutral and factual] need to be contested because they can be quite dangerous. (Richardson, 2007: 13)

This tendency for the media to "construct for audiences a framework of interpretation" (Wykes, 2000: 187) is firstly framed through the subjective selection of news stories, and then via the subjective choice of the language used to portray "the facts" of the respective story. Any exploration of media attitudes must address this "meaning construction":

> Treating journalism as a cultural practice charged with delivering frequent, valid accounts of happenings in the world necessitates placing journalism within a field of discourse that continually constructs meaning around journalism and its larger social place (Carlson, 2016: 350).

Oktar sees the media performing a function "that is both ideological and political" (2001: 320). For

Fairclough news language has a particular "signifying power" (1995: 2). As Harrison explains:

> The use of specific words can be particularly significant because they are not value neutral. (Harrison, 2005: 24)

For some, Harrison's position is too benign and does not sufficiently stress the deliberate and calculated way in which the media wields its most powerful weapon: language.

> The power of journalistic language to do things and the way that social power is indexed and represented in journalistic language are particularly important to bear in mind when studying the discourse of journalism (Richardson, 2007: 13).

And the representation that Richardson describes is not one which seeks to encourage debate through the exposing of inequality; rather, it is one which supports and defends the status quo:

> The current practices of journalism play an essential role in maintaining the class authority within the political system (Richardson, 2007: 36).

This so-called alternative reading of the media is a recognized method in many academic approaches, but most often associated with the "culturalist" school:

> Like other dominant ideology perspectives, the culturalist approach suggests that the news media produce a value-laden product, which may seem 'neutral', but in fact represents many establishment or other dominant views. (Harrison, 2005: 29)

In this context, the work of Stuart Hall is seen as central. Informed by Gramsci's sociology, Hall suggested the possibility of decoding journalistic messages via alternative readings (Hall, 1980). Harrison believes that Hall's approach has achieved three things:

(a) Locates bias and influence on news from external forces
(b) Recognises the huge level of views and expressive forms
(c) Moves away from a purely socio-economic analysis (Harrison, 2005)

In this context, ideology for Hall is defined as "the mental frameworks, [i.e.] the languages, the concepts, categories, imagery of thought, and the systems of representation" (1996: 26). While Harrison recognizes that cultural studies is the "dominant paradigm for analysis of the media" (2005:

31), she points out that the approach has some inherent limitations:

> A weakness of this perspective is that it has little to contribute to the analysis of the production process in the newsroom. The culturalist approach prefers to concentrate on the consumption of the texts. Assumptions about the production process are made through the interpretation of the texts and the ideological messages found therein (Harrison, 2005: 31).

With this in mind there has been a sustained effort made in this study to include considerations of the "production process" when discussing media trends. As Manning explains, these have real impacts on the journalism produced:

> Much in the media landscape has changed since the 1970s. With the arrival of digital technologies, online news and social media, news platforms are now more fragmented, permitting news consumers to assemble their own 'Daily Me' from a variety of online sources (Manning, 2014: 19).

1.4 Rationale for the study

There is a broad consensus that coverage of miscarriages of justice in the media in England has decreased significantly since the 1990s (Naughton, 2009; Jessel, 2012; Robins, 2012; Runciman, 2013; Woffinden, 2015).

> Miscarriages of justice appear to have fallen out of fashion. While the early 1990s saw a series of cases that shook the criminal justice system to its core, today overturned convictions still make occasional headlines but rarely linger in the media for long. The general assumption appears to be that things just are not like they were in the bad days of the 1970s and 1980s, when 'fit ups' and forced confessions were a common problem (Bindman, 2013: 18).

Not surprisingly, the consensus doesn't extend to a general agreement on the reasons behind the decrease. Some like Runciman (2013) say there is no longer a need for such coverage, others like Naughton (2010) claim the CCRC has caused the decline, while journalists like Jessel (2012) and Woffinden (2015) also point to a shift in emphasis within the media. One of the key motivations behind this study has been to empirically investigate this assumption about a decline in coverage. While most commentators agree it has happened (certainly no one is arguing that coverage has increased), no one has actually systematically examined the issue in the context of national

newspapers. This isn't the case in the context of television, with the investigations and eventual demise of programmes like *Rough Justice, Trial and Error* and *World in Action* attracting a healthy amount of research (Young and Hill 1983; Sargant, 1985; Kennedy, 1991; de Burgh 2008; Campbell, 2017).

> In 1982, the BBC launched the TV series *Rough Justice*, which carried out investigations over the next quarter-century. Some of its journalists went on to found *Trial and Error*, which did the same for Channel 4 from 1993 to 1999. But both *Rough Justice* and *Trial and Error* were discontinued, victims of media austerity (Campbell, 2017: 36).

Paul Jackson, of Carlton, told *the Telegraph* in 1992: "If World in Action were to uncover three more serious miscarriages of justice while delivering an audience of three, four or five million, I would cut it. It isn't part of the ITV system to get people out of prison" (quoted in Williams, 1997: 251). There isn't the same level of analysis of the anecdotal evidence about a similar decline in print. The content analysis and critical discourse analysis carried out as part of this thesis is an attempt to begin addressing this disparity. But what if there has been a decline in coverage, should a researcher detain themselves analyzing the reasons behind such a decline? I would argue that the answer should be yes, because any disengagement by journalists in the appeal system and more widely in the criminal justice system has profoundly negative impacts. The most obvious is the resultant widespread assumption among the public that innocent people are no longer being convicted because they no longer hear about it in the media. Unfortunately, the figures don't support this assumption. Research by McCartney and Roberts (2012) found that in the first few years of operation, the CCRC received about 800 to 1000 applications a year. There was an expectation that after the backlog of historical cases had been cleared and police reforms (PACE, HOLMES) started to take effect, the number of applications would begin to fall. What actually happened was completely the opposite, with the number of applications steadily growing to the extent that in recent years (2013, 2014, 2015, 2016, 2017) applications have averaged about 1,500 annually.

> The increase has undoubtedly placed enormous pressure on us as an organisation which is committed to conducting high quality investigations into potential miscarriages of justice (CCRC, 2016).

As the quote from the CCRC illustrates, this increase in applications has been framed as a challenge to resources rather than an indicator of a wider systemic problem. The framing of the discourse in this way has proved to be very effective for the CCRC in a narrow financial sense. It has enabled the

commission to challenge austerity cuts (not always successfully) and occasionally even secure additional funding (Thornton, 2013). What the CCRC, or the mainstream media, has not done is to ask what is behind this dramatic increase. Both the CCRC and the media is locked into a post-crisis discourse, unable or unwilling to challenge the narrative that the problem of miscarriages of justice has been resolved. This has resulted in a media that has become disengaged from large parts of the criminal justice system and unwilling to participate in campaigns aimed at reforming the appeal system. There are issues that have arisen since 1997, that would arguably have been the focus of media attention before the creation of the CCRC, that have passed almost unnoticed. The privatization of the Forensic Science Service and the resultant erosion of the scope of the CCRC's Section 17 powers, the policy of routinely destroying court transcripts and the denial of compensation to miscarriage of justice victims are issues that have only been covered by specialist outlets such as *The Justice Gap* website. They have been largely ignored by the mainstream media. It illustrates that any decline in media coverage of miscarriages of justice has an impact far beyond the individual cases that are no longer being investigated, it has the potential to fundamentally undermine the reform agenda.

1.5 Outline of thesis

The thesis is organised into seven chapters:

Chapter 1: Introduction

Chapter 2: Literature Review

The literature review seeks to define and frame the major terms and arguments of the thesis. The historical development of the appeal system will be explored, with special attention paid to the central role played by juries. The precursor to the Criminal Cases Review Commission, the Home Office's C3 Department, will be considered in this section. Investigative journalism (IJ) will also be explored from a historical perspective, with emphasis on the decades before the creation of the CCRC in 1997. Particular consideration will be paid to high profile media campaigns such as the one involving Chris Mullin and the Birmingham Six. The chapter ends with a consideration of the challenges currently facing investigative journalism.

Chapter 3: The Criminal Cases Review Commission

In this chapter the appeal system in England is examined, with a focus on reforms which have been implemented, particularly the Criminal Cases Review Commission. In order to understand the origins of the CCRC, its predecessor the C3 Home Office Department is carefully analysed. And due to its pivotal role as the architect of the CCRC, the Royal Commission on Criminal Justice (Runciman Commission) is carefully evaluated. Interviews with the two key figures from the Commission, Lord Runciman and Professor Michael Zander, offer a unique insight into the workings of the commission. Both figures explain their motivations for becoming involved in the commission and their reaction to seeing the CCRC become a reality. Runciman and Zander also discussed the role the media played in highlighting the issue of miscarriages of justice, and the role they believed the media should play following the establishment of the CCRC.

Chapter 4: Methodology

This thesis considers a number of different areas related to miscarriages of justice, and as such has taken a number of different approaches to gathering research data. This chapter describes in detail exactly what methods were used in each section. The approach to interviews with individuals such as Lord Runciman, Professor Zander and David Jessel is defined. The choice to devote large sections of the thesis to discussions about the CCRC is also considered. Methods of data collection are explained, with emphasis on quantitative content analysis and critical discourse analysis outlined in detail. At all times potential weaknesses and alternative approaches and opinions are included in the discussions on methodology.

Chapter 5: Miscarriages of justice: A reduction in coverage and a modified focus

In order to assess the level of reporting of miscarriages of justice, English national newspapers were studied between 1992 and 2007 using content analysis (CA) and critical discourse analysis (CDA). The two methods were chosen because of their compatibility and suitability to the data set. The CA study identified an overall fall in the level of reporting of miscarriages but the most interesting finding was that while reporting in the left wing press had fallen significantly, the opposite had happened in the right wing press. The CDA study showed that a developing discourse that emphasized guilt over innocence was the probable explanation behind this trend.

Chapter 6: Court reporting analysis

This chapter assesses the relationship between the media and the courts through an examination of the role of the court reporter. The reason for focusing on the court reporter in particular is that, due to the legal and professional framework, the level of investment devoted to court reporting is a very strong indicator of the level of engagement between the media and the criminal justice system. The role is examined via a historical perspective using secondary material such as journal articles and books. A comparative study using content analysis is also carried out in which the level of court reporting is examined using newspaper coverage from two particular days, 10 years apart.

Chapter 7: Conclusion

The final chapter concludes the study by recapping the significant findings identified and developed in the preceding analytical chapters. These findings then inform a discussion on the contributions of the thesis, with particular emphasis on what the findings mean for the role of journalists in the area of miscarriages of justice in a system dominated by the Criminal Cases Review Commission.

CHAPTER 2: LITERATURE REVIEW

"Every single righting of injustice has involved some form of journalistic campaigning."
(Morrell, 1999: 12)

2.1 Introduction

Through an analysis of existing material this chapter will explore the development of both investigative journalism and the criminal appeal system in relation to miscarriages of justice, highlighting the key points of interaction between the two. The chapter will discuss the relational interplay of agents and structures in the constructions of authority and transactions of power, particularly in relation to the C3 Division of the Home Office and the Criminal Cases Review Commission (CCRC). Part of the chapter will take the form of a narrative through the evolution of the concept of "miscarriage of justice" in the legal system and how the establishment of this principle has affected the jury model and the concept of finality of judgment. This chapter therefore both draws and builds upon a range of works in discrete subject areas in order to analyze the complex relationship between investigative journalism and the appeals system.

To begin with, there will be an examination of how the legal system in England reformed in reaction to the concept of legal fallibility. An understanding about how the appeal system developed informs interpretations of miscarriages of justice and helps to contextualize the creation of the CCRC. The development of investigative journalism will then be explored, emphasizing investigations that focused on miscarriages of justice and the influence they had on the law:

> The history of high profile miscarriages of justice is also a history of the relationship between the press and the legal system. (Nobles & Schiff, 1995: 311)

After sketching the historical background to investigative journalism, the journalistic investigations of the 1960s, 70s, 80s and 90s will be highlighted. These decades are explored in detail because the high profile media campaigns during this period helped to frame the discourse around miscarriages of justice before the creation of the CCRC, while also providing a benchmark to contrast with the media coverage of miscarriages post-CCRC. To illustrate the practical differences between a journalistic investigation before the CCRC and one after its creation, a single case will be analyzed in detail: Hale's campaign against Stephen Downing's murder conviction (R v. Stephen Downing [2002]

EWCA Crim 263). The role of the investigative journalist post-1997 will then be discussed, along with an examination of the challenges facing the profession following the hacking scandal and the Leveson Inquiry.

2.2 Emergence of 'miscarriage of justice' as a legal principle

> Miscarriages of justice are a blot on every legal system. There is none that can escape the problem (Zander, 1988: 203).

What Zander describes appears impossible to dispute. Mistakes happen because systems are created and administered by fallible humans. As Pattenden (1994) points out, the reason for having a right to appeal a criminal conviction is relevant and important not only to the individual but also to the system as a whole:

> The defence right of appeal simultaneously deters and corrects unfairness. It could be described as a quality control device (Pattenden, 1994: 487).

The reality of human/ system error is so widely recognized that we now consider the ability to appeal against an erroneous judgment a basic human right:

> Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal (Article 14(5) of the *United Nations Covenant on Civil and Political Rights* and by Protocol 7 of the *European Convention on Human Rights*).

But before one moves to how these legal errors may, firstly, recognized and, secondly, put right, it is worth remembering that this concept of fallibility has only emerged incrementally over hundreds of years. While the very notion of limited certainty is now enshrined in the legal system. The standard of proof in criminal cases is *beyond reasonable doubt* and *on the balance of probabilities* in civil cases. It is for the prosecution to prove guilt, not for the defence to prove innocence. But the way that the state and the courts came to terms with the concept of errors in the system is crucial because the attempt to reconcile this realization with the need to maintain legitimacy has defined and shaped the current institutional response to miscarriages of justice. This historical perspective

also illustrates how the system has grown pragmatically, responding to different stimuli and impediments, and why at times in the development of the appeal architecture journalists were potent agents of change.

In order to justify this argument, I will outline the legal/ governmental response to claims of miscarriage of justice from the medieval period to 1997 when the Criminal Cases Review Commission (CCRC) was launched. It is not intended to be a definitive historical guide to criminal appeals, more a historical evaluation of key themes which inform the current debate, such as why the "special aura of sanctity surrounding jury decisions" (Zander, 1988: 201) has shaped the Court of Appeal (Criminal Division) (hereafter CACD) more than any other factor. The positioning of jury trial as "the most precious inheritance of Englishmen" (Harding, 1973: 123) means it must be addressed in any research concerning miscarriages of justice. It is perhaps understandable that in the earliest types of legal system there was no appeal process at all because all judgments were divinely guided and as such could not contain any legal error. As Harding points out in his book *The Law Courts of Medieval England*:

> There was little concept of appeal for the decision of a lower court to the authority of a higher one to link the courts together (Harding, 1973: 119).

But even in this period there was a recognition that some cases were, or had the potential to be, more difficult than others. In the 14th Century judges did meet informally to discuss problematic cases. They met in a room at Westminster called the Exchequer Chamber, and as Harding points out:

> Naturally the decision of this 'court' had authority in the courts where the judges normally sat (Harding, 1973: 119).

Its authority was, to use Max Weber's (1922) approach, more charismatic/ traditional than legal. At this time the King's Bench, where the king himself sometimes sat in person, corrected 'errors in the record' of lower courts. The distinction between technical, administrative errors and errors of judgment was absolutely key. Errors could happen during the administration of justice but justice itself was divinely ordained. The manifestation of the divine hand was seen as the role of the jury. As one court declared in 1470:

> No other proof is effective in our law except trial by twelve men (quoted in Harding, 1973: 123).

This dichotomous approach meant that jury decisions could be hermetically sealed away from errors, as Tumanov *et al.* (2016) explain in the context of 17th Century England:

> The jury only had to discuss the facts and legal questions fell within the competence of judges (Tumanov, *et al.*, 2016: 4160).

This reverential approach to a jury's decision was certainly one of the key issues that halted efforts at reform because it was nearly 500 years before defendants were given a statutory right to seek an appeal against a criminal conviction. Even in 2013, Lord Runciman, chairman of the Royal Commission on Criminal Justice identified it as an issue:

> The jury system is a sacred cow in the English tradition. It was originally set up because you had 12 good men and true who knew enough about the locality and the person, that they could be relied on to deliver the verdict on the basis not merely of what they'd heard but of what they knew independently (Runciman, 2013).

The motion for a new trial could be used from the late 17th Century, but as Baker points out:

> These powers were exercised before judgment, not by a court of appeal. Once the court *in banc* had given judgment, the only redress was of the limited kind provided by the writ of error (Baker, 2002: 139).

In an example of how the shifting nature of society results in pragmatic change in the legal system, the growth of Britain's empire almost inevitably resulted in the extension of the jurisdiction of British legal instruments, changing these new societies, but also being changed itself in the process. This rational approach is seen as a strength by many:

> An institution which matures in this way may well appear somewhat strange, but it has the enormous virtue of accommodating change without the need for revolution (Neuberger, 2014: 30).

While British law was administered in the colonies, these courts across the Empire never had the same authority as those in Britain. Therefore, one of the unintended consequences of the centralized structure of the British Empire was that it established a hierarchy of courts, because regional courts could be overruled by British courts, meaning that by the 17th and 18th Centuries British plantations and colonies had the right to appeal to a British court (Baker, 2002). In 1833 this ad hoc situation (Neuberger, 2014) was given statutory underpinning as the Judicial Committee of the Privy Council. The committee could hear foreign appeals, and was also the final court of appeal for ecclesiastical and admiralty cases. Baker argues that this new Privy Council court "furnished a model for a court of appeal in the 1830s; but was limited to ecclesiastical cases and matters arising outside the realm" (2002: 141).

While the jury system remained (and remains) central to the criminal justice system, there was a growing realization for a need to at least recognise the possibility of human error in the system and, among some, even consider the possibility of establishing an outlet for those who felt they were victims of injustice. An appeal to a higher court began to be seen as an element of natural justice, and was as previously outlined paradoxically a privilege available to members of the Empire overseas, but not to the British. This particular argument was put forward in R v Cambridge University, ex parte Bentley (1723):

> The glory and happiness of our excellent constitution, that to prevent injustice no man is concluded by the first judgment; but that if he apprehends himself to be aggrieved he has another court to which he can resort for relief (quoted in Barker, 2002: 135).

The tendency of lower, *nisi prius*, courts to delay judgment until they had consulted with a higher court was enshrined in statute in 1848 (*Crown Cases Act 1848*), but it would be wrong to suppose that this in any way provided a system of appeal for the defendant. It was, in fact, little more than an updated version of the Medieval Exchequer Chamber meetings because the so-called "Court for Crown Cases Reserved" relied on the trial judge to involve it; there was still no statutory right of appeal for the defendant (Oldham, 2011). It was therefore just a reference or resource for trial judges, and was an attempt to resolve difficult cases, not problematic judgments. As Baker (2002) points out, it was not until 1854 that a "court of error" made its appearance in common law. Legislation was enacted that provided for an 'appeal' to a court of error but, crucially, only in civil cases. When the Exchequer Chamber was finally disbanded in 1875, it was essentially replaced by this "Court of Appeal" however it did not hear criminal cases. Criminal appeal rights remained

limited until the Court of Criminal Appeal was created as part of the *Criminal Appeal Act 1907*, largely through media pressure over cases such as George Edalji and Adolf Beck (Grey, 2016).

> The notoriety and the increase in public awareness achieved by the Beck case, and others such as those of Mrs Maybrick and George Edalji, provided the necessary emotive impetus to end the decades-old debate on the desirability of a criminal court of appeal (Nobles & Schiff, 1995: 311).

As Pattenden (1994), and others explain, the English legal system recognizes four generic types of appeal: Appeal *do novo*; Appeal *stricto sensu*; Review; Rehearing. The overall emphasis in all types is on errors in law, rather than errors in fact, what Michael Naughton (2010), founder of Innocence Network UK (INUK), called "factual innocence". On the face of it, only Appeal *do novo*, which takes the form of a re-trial, could be said to be tackling the facts of the case. It was only in 1964 that the Court of Appeal was given power in such cases to order a new trial before a new jury. The weakness of a retrial of course is that even though the trial begins as a blank slate, the police investigation on which the trial is based, is (usually) exactly the same as the first trial. Even advocates of the use of retrials such as Professor Michael Zander (2013) (who argued for automatic retrials in cases where there was evidence of police corruption) recognized that in his experience the vast majority of retrials result in the same verdict. Zander (2013) said he was speaking from personal experience, as he wasn't aware of any extensive study of the subject, though he thought it would be a very worthwhile area of study. The Court of Criminal Appeal existence as a separate court ended with the *Criminal Appeal Act 1966*. Its jurisdiction is now part of the Court of Appeal. Because of the ad hoc nature of the development of the appeal system the structure is complex and riddled with anomalies; for example:

> The prosecution can appeal against acquittals for the least serious offences but not the most serious, and the accused has an automatic right of appeal against convictions for minor offences but not against convictions for really serious ones (Pattenden, 1994: 489).

Under the *Criminal Appeal Act 1968*, the Court of Appeal (Criminal Division) (CACD) was required to allow an appeal if the case was unsafe or unsatisfactory, if the court made a legal error or if there was material irregularity. The Secretary of State could also refer a case to the CACD if he saw fit, or could also recommend the Queen grant a pardon (*Criminal Appeal Act 1968, section 2*). For example, the Secretary of State referred the murder convictions in the Luton sub-postmaster case, in 1969, to the (CACD) four times (*R v Cooper and McMahon* [2003] EWCA Crim 2257). As Griffith (1997) argues, some decisions by the CACD suggest that the judges might be willing to look beyond mistakes in the summings-up of trial judges or clear mistakes in law and consider whether an injustice had been done. In R v Cooper [1969], Widgery LJ in the CACD raised the issue of whether CACD judges should consider whether there was any "lurking doubt" that an "injustice has been done", essentially proposing that the CACD could unshackle itself from purely considering errors in law, to consider errors in judgment, or even justice. This is a red line, a sort of legal Rubicon, where appeal court judges hesitate because it puts them in the position of overruling decisions by juries and this is something they seek to avoid. As Griffiths points out, this concept of "lurking doubt" has not really been followed:

> Where the summing-up is impeccable and there are no mistakes of law, the Court of Appeal will not substitute its own opinion for that of the jury in the trial court (Griffith, 1997: 205).

Roberts and Weathered argue that there were three reasons why the CACD was reluctant to engage with the principle of "lurking doubt":

> First, too much deference has been shown to the jury verdict. Second, there has been undue reverence to the principle of finality and, third, a lack of resources has led to the fear that the floodgates will be open and there will be a deluge of applications to appeal (Roberts and Weathered, 2009: 56).

Zander, writing well before he was part of the Runciman Commission, said that this approach [failing to challenge erroneous judgements] was wrong, and that rather than just dealing with "exceptional cases" the CACD should work as an "additional level of judicial screening" in the system and be "seen as a fail-safe mechanism to avoid miscarriages of justice" (Zander, 1988: 201). But he was not hopeful that the appeal court judges would be keen to take on this role:

> The appeal system is highly restrictive and remarkably small numbers of convicted persons do in fact appeal. The basic underlying philosophy is that the defendant has had his day in court and only exceptional circumstances justify an appeal (Zander, 1988: 200).

The CACD works on the basis it will only consider an appeal if it is based on new evidence, "if they think it necessary or expedient in the interest of justice" (*Court of Appeal Act 1907, section 9*). This new or fresh evidence must not have been available at the trial, whether it was used or not by the defence is not relevant. It was believed that there was a danger of "public mischief" (*Court of Appeal Act 1907, section 9*) if lawyers were allowed to effectively re-run the trial at the CACD, saying nothing of the perceived danger of undermining the jury system. But as the *Devlin Report* pointed out:

> One of the difficulties that used to face the Court of Criminal Appeal was that if it received fresh evidence it had to re-try the case itself and perhaps substitute its decision for the verdict of the jury (*Devlin Report (1976) section 2.38*).

It is worth dwelling on this self-imposed limitation which the CACD has created, because it goes to the heart of the effectiveness/ineffectiveness of the appeal process and as will be shown, has a direct bearing on the day-to-day operations of the Criminal Cases Review Commission. The Luke Dougherty case (R v Dougherty (1973) Unreported, Court of Appeal, Criminal Division 14 March 1974) shows the impact of the CACD's requirement for "new evidence", an extreme example, which seems to fly in the face of common sense and natural justice (Devlin, 1976). Dougherty was charged in 1972 with shoplifting, even though he was on a bus with 20 people at the time of the offence. During the trial the defence only called two of these witnesses, his girlfriend and someone with criminal convictions. The jury did not believe them and Dougherty was convicted. Dougherty's appeal was then rejected on the grounds that there was no fresh evidence, the jury was aware of his alibi but had not believed it. Lord Gardiner, who campaigned for Dougherty, outlined his criticisms in the House of Lords:

> The rule that ordinarily they will not allow evidence to be called which could have been called at the trial is perfectly sensible, as otherwise one might get counsel and solicitors saying: 'Well, we need not call all our witnesses at the trial because if anything goes wrong, we can always call them in the Court of Appeal.' That would obviously be wrong. But while I

> approve of the rule in general, it is, I think, applied far too rigidly. They always seem terrified of being involved in an argument as to whether it was the client's fault that the witnesses were not called at the trial or whether it was perhaps the solicitor's fault. As Justice has observed before, the practical outcome is that a man who is wrongfully convicted because his solicitor was negligent has, at present, to bear the brunt of it (*Hansard, HL Deb 27 March 1974 vol 350 cc691-719, 7.32 p.m*.).

The Dougherty case was concerning enough for the government to ask Lord Devlin to carry out an inquiry into it and the Virag case (R v Virag (1969) Unreported, Court of Appeal, Criminal Division, 17 March 1970). Lord Devlin's recommendations largely related to the use of identification evidence, which is not directly connected to this research, but he did consider the role the Court of Appeal and fresh evidence played in Dougherty's case:

> The case of Dougherty illustrates the difficulties in the way of getting fresh evidence before the Court of Appeal (Devlin Report (1976) section 8.21).

The Devlin report recognized that the limitations the CACD placed on fresh evidence did cause difficulties for Dougherty and his legal team in their attempt to establish that there had been a miscarriage of justice. Despite this, Lord Devlin was reluctant to recommend any change of procedure to the Court of Appeal:

> We are not able to recommend any alteration to the law at present applied by the Court of Appeal (*Devlin Report (1976) section 8.21*).

But the Devlin report does appear to recognize that there are particular cases which will fall foul of the CACD's attitude to fresh evidence, and in such situations the politicians will need to make a judgment.

> If the law creates a hardship in a particular case, we think that it is best to deal with it as at present by a reference back by the Home Secretary (*Devlin Report (1976) section 8.21*).

This is significant, because it put the onus on the Home Secretary to deal with these "difficult cases" and removed the need for the CACD to consider reforming its approach to fresh evidence. It explicitly bolsters the role of the politician and, thereby, the role of the media, which can exert pressure on the politician, something which will become very significant in the 1980s and 1990s. But Lord Devlin clearly thought that the Home Office was a very unsatisfactory destination for such difficult cases, and put forward an idea which anticipated the recommendations of the Runciman Commission:

> We recommend that the Home Office should study the feasibility of setting up an independent review tribunal in which cases unsuitable for reference to the Court of Appeal could be handled (*Devlin Report (1976) section 8.24*).

This recommendation was echoed in 1982 by the House of Commons Home Affairs Select Committee that an independent review body was needed to investigate possible miscarriage of justice cases (*Sixth Report of the House of Commons Home Affairs Select Committee, Miscarriages of Justice, 1982, para 24*). But the government did not act on either of these recommendations. Central to the effective operation of the judiciary, and also influencing the perceived need for reform, is legitimacy. As Pattenden asserts:

> Unfairness in the way a trial is conducted not only exposes the defendant to the risk of being wrongly convicted, it threatens the integrity of the criminal trial which operates from the premise that means do not justify ends (Pattenden, 1994: 487).

In the 1980s and 1990s a number of cases directly undermined the unwritten contract between the judiciary and those who are subject to it.

> The release of the 'Guildford Four' and the Birmingham bombers was made the more embarrassing by the earlier quotes from Lord Denning. For a period in 1990 and 1991, it looked as if the English judiciary could do nothing right in terms of public relations (Stevens, 1993: 177).

Stevens is referring to the way in which Lord Denning dismissed the claim that the Birmingham Six had been tortured by police. Ultimately, according to Lord Denning, the integrity of the system must be protected above all else. The so-called "Appalling Vista" judgment has been latched onto by

campaigners and reformers ever since as the archetypal expression of the institutional conservatism and reluctance to countenance reform, even in the face of overwhelming evidence. Of course it later transpired that all the things that Lord Denning had been so confident in dismissing had actually occurred. The "appalling vista" was in fact the accurate picture of facts of the case. In August 1990, the Home Secretary referred the Birmingham convictions back to the CACD and the six men were freed. In the summer of 1990 the Director of Public Prosecutions and the Sir John May inquiry both found that the convictions in the Maguire Seven case (*R v Maguire and others* [1992] 2 All ER 433) were unsound (Griffith, 1997). The fact that these cases (Maguires, Birmingham Six, Guildford Four) were finally resolved was largely due to media pressure, as Zander, writing in 1988, points out:

> Almost all cases which have been reopened (by the Home Office) have resulted from the efforts of authors and journalists such as Paul Foot, Ludovic Kennedy, Robert Kee, Chris Mullin, or the work of the BBC TV series *Rough Justice* based on the files of the organization JUSTICE and its former secretary Tom Sargant (Zander, 1988: 207).

On 14 March 1991, when Paddy Hill (one of the Birmingham Six) was released after 16 years, he addressed the hundreds of spectators and assembled media outside the Old Bailey. Within hours his words were broadcast across the world:

> For 16 and a half years we have been used as political scapegoats. The police told us from the start they knew we hadn't done it. They told us they didn't care who had done it. They told us that we were selected and they were going to frame us. Justice, I don't think the people in there [the judiciary] have got the intelligence nor the honestly to spell the word, never mind dispense it. They're rotten [Paddy Hill, speaking outside the Old Bailey, on 14 March 1991].

There appeared to be a sustained interest in the media and among the public to see the crisis properly addressed, but it didn't appear to be reflected in the judiciary, where an "appalling vista" approach continued to prevail. The judges took a dim view of the media's interest in such cases:

> The work of the investigative journalist in this area is not well regarded by either the Home Office or the courts (Zander, 1988, 207).

One example of this stubborn approach was the case of three West Midlands police officers who were charged after the release of the Birmingham Six. The trial was abandoned because the judge concluded the police could not get a fair trial "because of the volume and intensity of the publicity since the Six were freed" (Logan, 1993: Vol 15, No 21). Alastair Logan, solicitor to Patrick Armstrong of the Guildford Four, raises an interesting and very pertinent point: why had the judiciary never considered the "volume and intensity" of the publicity in the wake of the bombings in considering the safety of the convictions in the Irish terrorism cases?

> Like the cases of the Guildford Four, the Maguire Seven and Judith Ward, it started in a blaze of publicity much more intense, hostile and pre-judicial than anything those policemen have encountered. No one, least of all the police and the trial judges, saw fit to ponder for one moment what effect that had on their chances of a fair trial (Logan, 1993: Vol 15, No 21).

Logan believed that Mr Justice Garland used the press as a weapon of convenience in order to avoid opening up the "appalling vista" envisaged by Lord Denning. Logan does not believe the same judge would have ended a terrorism trial for the same reasons:

> One law for the policeman put on trial for criminal offences in relation to the investigation and conduct of a case, and one for the rest of us? (Logan, 1993, Vol 15, No 21)

The point is underlined by the investigative journalist David Rose:

> Not one police officer accused of malpractice arising from the many miscarriages of justice put right by the Court of Appeal since 1989 has been convicted of a criminal offence (Rose, 1996: 296).

The institutional response to these cases and to the insistent calls for reform was to set up a royal commission to consider how such miscarriages could have happened and what could be done to avoid them in the future. Out of the deliberations of the commissioners emerged a consensus about the inadequacy of the investigations carried out by the Home Office's C3 department. This came as no surprise to campaigners and defence lawyers who were well acquainted with C3's glacial approach to referral requests. The originator of *Rough Justice*, Peter Hill, was scathing of the C3 approach:

> For one thing, they [C3] worked very slowly. There were 13 civil servants, all lawyers, in C3, who handled 650 files a year. That was not 650 cases (though the CCRC currently has about 2,000 cases on its files), but 650 files, and a file might mean simply that a letter from an MP was replied to (Hill, 2012).

Research by Laurie Elks, one of the founding commissioner of the CCRC, reveals that case referrals have increased dramatically since the days of the C3 Home Office department. C3 typically referred 10 cases a year. The CCRC was created in 1997 and since then has referred on average about 35 cases a year (Elks, 2008). But as David Jessel, among others, points out the CCRC rejects 96% of cases (Jessel, 2012). While these figures (Elks, 2008; Jessel, 2012) remained broadly stable since the CCRC's creation, in recent years there has been a marked decline in the number of cases that have been referred. Even supporters of the work of the CCRC admit that the statistics highlighted by Elks do not tell the whole story. Alastair MacGregor QC, deputy chairman of the CCRC, said that the commission makes no claims at perfection:

> Though mainly involving serious crimes, the cases referred have ranged from murder to traffic offences, and from those that have attracted widespread support to those that have little interest or sympathy (MacGregor, 2012: 11).

Many like David Jessel do not agree with this approach and believe that the CCRC should concentrate on only the most serious cases, and then prioritize the high-profile ones (Jessel, 2012). MacGregor was frank about some of the limitations of the CCRC but was also robust in his criticism of those who attack the Commission. He said that while journalists, pressure groups, academics and others do play a role in uncovering miscarriages of justice, the CCRC, as a public body "does not have the luxury of choosing the cases with which it engages or ignoring those that do not evoke its sympathy… it is both proper and inevitable that the body charged with investigating alleged miscarriages will focus on the evidence and the law and that it will give little weight to emotional declarations or campaigning fervour" (MacGregor, 2012: 16).

In the emotional and highly charged area of miscarriages of justice, the CCRC has reluctantly found itself again and again at the very heart of this bitter debate. Praised and damned in equal measure, it has become the grotesque villain to campaigners who see it as a creation of great promise that has never been realized but to others it symbolizes a maturing of the legal system that has at last come to terms with its own fallibility. So ambitious is this project, say defenders, that only two other

countries in the whole world have anything that can compare to it. Without exploring the entire legal framework and the procedures of the commission, Laurie Elks' book *Righting Miscarriages of Justice?* does that extremely well, it is worth examining two key parts of the CCRC's DNA; "the real possibility test" and the exceptional investigatory powers it has at its disposal.

The "real possibility test" is crucial because it defines the work and future direction of travel of the CCRC and is the focus of most of the criticism leveled at it. Secondly, the CCRC's investigatory powers are vital in this context because they are really the reason that many journalists left the field, believing that the victims of miscarriage of justice now had a champion capable of delivering them justice. Simply put "the real possibility test" means that the CCRC will only refer a case if there is a real possibility that the CACD will quash the conviction (*Criminal Appeal Act, 1995: s. 13(1)a*) . And because the CACD will only overturn convictions it believes to be "unsafe", the CCRC concerns itself with safety or unsafety rather than guilt or innocence (*Criminal Appeal Act 1968, section 2*).

> While there may be a widespread view that a particular case, for instance, the Birmingham 6, embodies a classic 'miscarriage of justice', the Court of Appeal will not quash the conviction unless it can translate that view into terms and concepts which are recognised in the enclosed and self-referential world of the legal system (Duff, 2009: 696).

It is this that has attracted the greatest heat in the debate over reform. David Jessel has described the "real possibility test" as "the wicked fairy at the christening of the CCRC" (2012: 17). The most fervent critic, Michael Naughton, founder of the Innocence Network UK (INUK), says the "real possibility test" means that the CCRC concerns itself with "technical" miscarriages of justice, meaning that "the official test of a miscarriage of justice relates to prevailing procedures of due process, not whether appellants are innocent" (Naughton, 2007: 2). The CCRC's defenders, such as MacGregor, often respond in varying degrees of exasperation:

> What useful purpose would be served by the commission being entitled to refer convictions to appeal courts where there is no real possibility that those convictions will be quashed? (MacGregor, 2012: 13)

To this charge, many like Gareth Peirce (2012) say the CCRC is "budgeting the number of innocent people" in the worse type of Benthamite utilitarianism. One development that came from this feeling among some campaigners that the CCRC was lacking vigor in its approach to miscarriages of justice was the creation of a grassroots academic-based movement called Innocence Projects.

Inspired by the American model, these projects are based largely in UK universities and carry out investigations into cases where prisoners maintain innocence in prison. One interesting aspect of Innocence Projects, being neither part of politics, law or the media, is that they had the potential to communicate between all three. Roberts & Weathered (2009) argued that there is a constant misreading even of concepts between the different media, political and legal actors.

> As the Innocence Project allows its actors to participate simultaneously in the communication of the media and politics and the legal communication of the law, their own communications involve, in autopoietic systems theory terms, an opportunity for structural coupling between media, politics and law which is perhaps greater than is possible within the CCRC or the Court of Appeal. This does not mean that there will be a common meaning as to what amounts to a miscarriage of justice, but what it does mean is that the Innocence Project can help in stabilizing the use of different meanings of miscarriages of justice by the law and the media, thereby achieving a structural coupling (Roberts & Weathered, 2009: 45).

If Innocence Projects once had the potential to fill this role, now that INUK has been disbanded it is reasonable to speculate that they never will, although organisations such as the Centre for Criminal Appeals and Inside Justice are beginning to fill this void.

2.3 Investigative journalism

The public sphere

Lord Leveson's report (2012 identified the press as a key opinion former, and emphasized the importance of the act of publishing or broadcasting to the profession. In terms of investigative journalism, the House of Lords select committee that looked into this aspect of the profession also emphasized the importance of the interaction between the journalist and the reader:

> We have taken investigative journalism to mean reporting which requires a significant investment, in terms of resource and/or funding; which runs a high risk of potential litigation; and which, most importantly, uncovers issues which are in the public interest but which were not hitherto on the public agenda. (*Select Committee on Communication, 2012: 7*).

Both of these perspectives chime with De Burgh (2008) who asserted that publicity/ publishing is a key element of investigative journalism. The name journalists give to the conceptual space where their published work exists is *the public domain.* Adut argues that information is in the public domain when it is "available for general scrutiny" (2012: 242). This space is to be contrasted with information that is private, secret or confidential. One will often hear a media commentator describe some item of information as being "in the public domain", an accessible, conceptual, intellectual space. Journalists are trained to recognize that anything that enters the public domain is potentially subject to legal action. Publishers and journalists run the risk of breaching laws such as copyright, defamation and contempt when they put their work in this space. Patterson and Lindberg describe the public domain as a concept but largely concern themselves with questions of ownership:

> There are certain materials, the air we breathe, sunlight, rain, space, life, creations, thoughts, feelings, ideas, words, numbers, not subject to private ownership. The materials that compose our cultural heritage must be free for all to use no less than matter necessary for biological survival (Patterson and Lindberg, 1991: 51).

The move away from a purely legal definition of the 'public domain' to a more conceptual one comes with risks, as Deazley (2006) points out:

> Reaffirming the already prevalent perspective of the public domain as a chimera, as too slippery, too imprecise to warrant any coherent and detailed consideration (Deazley, 2006: 105).

More useful in the context of journalism however may be the concept of the 'public sphere' as it does not have the purely legal connotations that cling to the 'public domain' term. Because journalists in general and investigative journalists in particular become opinion formers by way of publication, they inevitably exist in this contested area of the public sphere. But how expansive is this space, and once something exists there how accessible, in terms of the whole populace, is it? It was the German sociologist Jurgen Habermas who coined the phrase "public sphere" in an attempt to analyse the relationship between patterns of communication and social change (Manning, 2001). Adut sought to define the public sphere physically and conceptually:

> The public sphere is thus a generic term denoting all virtual or real spaces, the contents of which obtain general visibility or audibility (Adut, 2012: 243).

Oliver and Myers describe the public sphere as "the abstract space in which citizens discuss and debate public issues" (1999: 38). But even if the public sphere exists conceptually, it by no means follows that the public will actually wish to engage with it. There is research that suggests that people in developed countries like the UK are less inclined to participate in community-focused endevours, as Tam points out:

> The UK is ranked third in individualism, only after Australia and the United States. Individualism refers to the degree of interdependence a society maintains amongst its members. The UK received a score of 89 out of 100, meaning that citizens are expected to look after themselves and their families only. They are highly individualistic and private (Tam, 2016: 9).

In *Investigative Journalism*, Hugo De Burgh interprets Habermas's "public space" as a debate between competing groups on the issues of the day (2008, 36). De Burgh agrees with Dahlgren and Sparks' (1991) view that the growth of the public sphere led to a maturing of the political discourse and culminated in modern democracy. Peters' (1993) analysis of Habermas "public sphere", that the Enlightenment idea of debate through public communication, fits with De Burgh's (2000) analogy of viewing the public sphere as a modern equivalent of the Ancient Greek agora, places where opinion-formers and decision makers met to make public opinion. This idealized concept of the public sphere was not, as Outhwaite recognized in his *Critical Introduction to Habermas* (1994), ever fully realized or even wholly accepted:

> Marxists pointed out its limitations in terms of class, and feminists in terms of gender, while liberal-conservative critics also tend to stress the importance of private interests as against a warmed-up notion of the general will (Outhwaite: 1994: 11).

But while De Burgh (2000) is bullish about the beneficial impact that journalism has on the public space, others are not so ebullient. Stuart Hall and his colleagues sounded a note of caution:

> The media, thus, tend faithfully and impartially to reproduce symbolically the existing structure of power in society's institutional order. The result of this structured preference [for the powerful or high status] is that these 'spokesmen' become what we call the primary definers of topics (Hall *et al.,* 1978: 58).

Others recognized Hall's important intervention, which highlighted the latent or implicit values embedded in broadcasts and publications:

> Hall emphasizes that the media change the world. They do not passively reflect class interests that have been well developed. The media are not, according to this approach, crude agents of propaganda. They organize public understanding. However, the overall interpretations they provide in the long run are those which are most preferred by and least challenging to those with economic power (Curran & Seaton, 1997: 281).

Writers such as Frances Heidensohn (1989) have been very critical of Hall's depiction of a "conspiratorially successful ruling class" as "unproven and implausible". In his conclusion on the topic, Manning identifies access as a key method in assessing "the health of the public sphere(s) and its (their) capacity to serve the democratic good in contemporary capitalist societies" (Manning, 2001: 17). Adut (2012) agrees with this approach, claiming that "access is central to a realistic account of the public sphere" (2012: 242). This issue of access should certainly be considered in the context of the media in general and certain aspects of journalistic practice. It has fresh resonance with the development of new digital technologies that allow, and even encourage, a focus on particular types of content (and effectively self-limit their access).

> Rising numbers of media outlets, for example news websites and digital television channels, have fragmented the market and may have led to an 'individualisation' of media consumption (Reeves and de Vries, 2016: 283).

And as Adut (2012) emphasizes, even if access was universal, this does not mean that participation is universal or equal:

> By seeing the public as an engaged community, the dominant approach ignores not only that most people are willing spectators but also the way spectatorship affects participation in public. Events are public only to the extent that they are watched by an audience (Adut, 2012: 241).

Journalists can be directly involved with the public sphere, but they are not generally the spectators that Adut describes. They are more usually the spectacle. Such a position inevitably shines a

spotlight on journalists' relationship with powerful institutions and how this relationship informs the cultural discourse.

Investigative journalism prototypes

The aim of investigative journalism is to question "what is routinely taken for granted—the factual reliability of official spokesmen and the institutions they represent, who are news sources for the mainstream press" (Murphy, 1991: 18). The political agitator and journalist William Cobbett is often identified as one of the earliest examples of this type of anti-establishment belligerence (Kipperman, 2012; Paroissien, 2015). Cobbett was nearing 60 when he started out on his rides through rural England. Crisscrossing the countryside on horseback in the early 1820s he witnessed first hand a country reeling from war, threatened by revolution, and struggling to adjust to industrialisation. To Cobbett (1830), the countryside appeared traumatised by sudden change. Riding the back country of South-East England, summer and winter for four years, Cobbett delivered a damning verdict on his political overlords:

> Dogs and hogs and horses are treated with more civility [than the farm labourers]. This state of things never can continue many years! By some means or other there must be an end to it; and my firm belief is that that end will be dreadful. In the mean while I see, and I see it with pleasure, that the common people know that they are ill-used; and that they cordially, most cordially, hate those who ill-treat them (Cobbett, 1830: 320).

Cobbett bases his observations on the evidence he gathered during his extensive travels around the country. By publishing he hoped to engage his readers with the topic, with the aim of stimulating political action. This tradition of afflicting the powerful is described concisely by Jennings:

> When I visit British journalism schools I quote the late Louis Heren's advice to a young reporter to find out 'Why is this lying bastard lying to me?' and Lord Northcliffe's 'News is what somebody, somewhere, wants to suppress. Everything else is advertising.' I invite the students to chant these calls to arms back at me, and they do. It's very heartening (Jennings, 2012: 26).

Cobbett was in many ways simply channeling the spirit of other journalists such as Wilkes, Addison and Steele, but his approach was notably different in one respect: he chose to focus on the weak

rather than the powerful. Cobbett was jailed for two years for criticizing the flogging of soldiers who had objected to unfair deductions from their pay (Green, 1983):

> In the past, information entrepreneurs had gone to prison for offending someone high and mighty or for blasphemy or for getting the official line wrong, but Cobbett went to prison for defending the voiceless. It was an important moment in the development of journalism (De Burgh, 2008: 36).

These early journalists helped to create the myth of journalist as truth seeking, hard living *agent provocateurs*, an image that the likes of George Augustus Sala continued (Allen, 1999). John Wilkes was probably the most colourful of these proto-journalists. He is unique among journalists in having a statue erected in his honour. His reputation is less to do with his activities in the Hell Fire club (Lord, 2010) and more to do with his establishing, through a mix of guile and bloody-mindedness – privilege for accurate reporting of Parliament (Thomas, 1996). Carlson (2016) has discussed the difficultly of examining and comparing journalists across different periods and social settings:

> Journalism is not a stable, united entity, but an activity prone to modification and variety within and across outlets, communication media, national contexts, and time periods (Carlson, 2016: 354).

It is important to be mindful of this consideration when taking an historical perspective. Even with this in mind, it is difficult to classify the early journalists (Cobbett, Wilkes, Defoe) as investigative journalists. While their methods were certainly consistent with the approach one would expect from an investigative journalist, their political entanglements make it difficult to identify them as anti-establishment. Both Cobbett and Wilkes were members of Parliament and Defoe was actually a paid spy for the government (West, 1998).

Though not exactly an investigative journalist, *Times* reporter William Howard Russell deserves a mention in this context due to his reporting of the Crimean War in 1853 (Hankinson, 1983). Rather than falling back on patriotic propaganda, almost immediately after arriving on the front he started reporting on the poor leadership of the officers and the lack of supplies for the troops (De Burgh, 2008). Russell was the prototype for the war correspondents like Martin Bell and Kate Adie who would follow. However, it is the Victorian William Thomas Stead who is credited with being Britain's first investigative journalist (Campbell, 2014; Robinson, 2013). He was also one of the first to target law change as the reason for conducting his investigations. His dramatic and sensational approach

led to him being described as a mix of "Don Quixote and Phineas T. Barnum" (Griffiths, 1992: 532). As De Burgh (2008) explains, it was Stead's *The Maiden Tribute of Modern Babylon,* published in July 1885, for which the editor of the *Pall Mall Gazette* owes his continued fame. His investigation into the buying and selling of children for sex in Victorian London shocked and appalled the reading public (Robinson, 2013).

> Stead changed the style of reporting by conjoining high moral tone with sensational description, the favoured style of many newspapers in Britain today… Investigative journalism had been invented (De Burgh, 2008: 39, 40).

Stead's article was written explicitly to support a parliamentary bill aiming to raise the age of consent from 13 to 16. Stead was happy to use subterfuge to get his story, going as far as buying a 13-year-old girl, Eliza Armstrong. The story proved a sensation, but had some unintended consequences. It certainly helped the progress of the *Criminal Law Amendment Act 1885* (Robinson, 2013) but Stead himself was imprisoned for three months for purchasing the girl (Campbell, 2014):

> The revelation of a potential 'white slave trade' sparked (in an early example of Victorian investigative journalism) by W. T. Stead's 'shocking exposé' of child prostitution, '*The Maiden Tribute to Modern Babylon'*, scandalised Victorian society and catapulted it into the public discourse (Stevenson, 2012: 52).

Other investigative journalists working during the same period, such as Nellie Bly (Elizabeth Jane Cochrane) in America, saw subterfuge as the only way to infiltrate and expose impropriety in certain parts of society. *Ten Days in a Mad-House* published in 1887, is a landmark text in the history of undercover journalism (Kopple, 2016; Oputu, 2014*).* The articles written in the Manchester Guardian about Kitchener's Boer War concentration camps are also good examples during this period of a new emphasizes on controversial investigations exposing maltreatment of the vulnerable (Ayerst, 1971).

A contemporary of Stead, journalist and novelist Charles Dickens, was also concerned with exposing the merciless way that the Victorian poor were being exploited. His method, however, was very different from that of Stead and Bly. In his fiction he portrayed the true, shocking reality of the waifs and strays of the time and he was able to this with such effectiveness because he had almost been one himself. At 12 he was exposed to harsh adult work when he went to work in a factory because his father had been imprisoned for debts. These experiences and later his job as a journalist

provided him with a rich resource to draw upon when he came to create his memorable characters such as Twist, Jo, and Grandfather Smallweed (Tomalin, 2012). Dickens is unambiguous in his ambitions, he explicitly wants to change the reader's attitude and thereby set about changing society:

> Dear reader! It rests with you and me whether, in our two fields of action, similar things shall be or not. (Dickens, 1854: 352)

This movement using a forensic approach to detail in order to analyse the conditions of the disadvantaged, which was later classified as documentary realism (Keating 1991), was followed by the likes of Emile Zola. But it was Zola's journalism, rather than his novels that are most relevant to an examination of investigative journalism. In the field of miscarriages of justice, it was Zola's brief but highly significant *J'accuse* article which proved so influential to the investigative journalists who would follow (Harris, 2010; Horrie, 2008). The so-called Dreyfus Affair started innocuously enough, a piece of paper lying in a bin in the German Embassy. A cleaner, working for the French, collected the contents of the bin and passed it onto the French secret service. The document contained secret French military information and the French realized that someone in the French Army was passing secret information to the Germans. The Army immediately implicated Captain Alfred Dreyfus, largely due to the fact that he was intelligent, from Alsace, and a Jew, but he declared: "I didn't do this, it's not me, it's not me" (Harris, 2010).

What ensued was a number of court cases which divided France and much of Europe into Dreyfusards and anti-Dreyfusards and put the issue of anti-Semitism explicitly at the centre of European politics for generations (Adut, 2012). Ruth Harris's book *The Man on Devil's Island* follows the web-like trajectory of the Dreyfus affair, until the explosive moment of *J'accuse*. The article printed in the newly created *L'Aurore* on 13 January 1898 had a transformative effect on the Dreyfus affair and was a seminal moment in the history of journalism:

> *J'accuse* was one of the greatest journalistic events of the 19th Century (Harris, 2010: 116).

In the open letter to the president, Zola wrote: "I accuse Major Du Paty de Clam as the diabolic workman of the miscarriage of justice.." and he goes on to accuse all the men and organisations he believed to be guilty of wrongly convicting Dreyfus (Zola, 1898). The French army immediately pursued Zola for libel and "violence erupted virtually from the moment *J'accuse* appeared" (Harris,

2010: 118). There were clear echoes of the *J'accuse* approach in the *Daily Mail's* response to the Stephen Lawrence case:

> After the collapse of the trial the *Daily Mail* printed front-page pictures of the five youths beneath the block headline 'Murderers' and the prominent strapline: '*The Mail* accuses these men of killing. If we are wrong, let them sue.' (Horrie, 2008: 115)

The important distinction between Zola's article and that of the *Mail* is that Zola was championing an innocent man while the *Mail* is campaigning for the conviction of 'guilty men'. This shifting of emphasis from the innocent to the guilty is something that will be explored in detail in Chapter 5 in relation to the coverage of miscarriages of justice after the creation of the CCRC. The template of *J'accuse* is also mirrored in the campaign waged by another famous journalist in support of a victim of a miscarriage of justice.

> Amid the complexity of life and the limitations of intelligence any man may do an injustice, but how is it possible to go on again and again reiterating the same one? (Doyle, 2009: 26)

The question arises from the mouth of Arthur Conan Doyle, motivated by his attempt to find justice for a young man called George Edalji. Half-blind, with a striking physical appearance, Edalji was singled out by a community which was suspicious of his mixed race heritage. When livestock in the area was subjected to a series of slashings, Edalji was arrested and then convicted as the perpetrator of the so-called "Great Wyrley Outrages". Doyle took a radical approach, one which the police had chosen to ignore, namely "following truth rather than any preconceived theory" (Doyle, 2009: 26). He describes his first meeting with Edalji with the cold appraisal which one finds familiar from the adventures of his greatest creation, Sherlock Holmes:

> He held the paper close to his eyes and rather sideways, proving not only a high degree of myopia, but marked astigmatism. The idea of such a man scouring fields at night and assaulting cattle while avoiding the watching police was ludicrous (Doyle, 2009: 1).

Indeed, it was this forensic eye for detail and the relentlessness we associate with the resident of 221b Baker Street that enabled Doyle to prove both to the judiciary and the general public that a terrible miscarriage of justice had occurred. The articles he wrote on the case established at least the principle that mistakes in law can, and do happen. He also established that for the investigative

journalist the ultimate judge was not, as in the case of the misfortunate Edalji, some country gent without any legal training acting as a magistrate but the reading public:

> Now we turn to the last tribunal of all, a tribunal which never errs when the facts are fairly laid before them and we ask the public of Great Britain whether this thing is to go on (Doyle, 2009: 26).

The Court of Criminal Appeal was created in 1907 as a result of public pressure over the cases of George Edalji and another case Doyle worked on, Adolf Beck (Nobles & Schiff 1995):

> The curative property of introducing new appeal mechanisms has an old history. The creation of the Court of Criminal Appeal in 1907 had a similar effect. From its inception the Court reduced the sense of crisis, as expressed in the media, that had preceded its establishment (Nobles & Schiff, 2001: 296).

De Burgh (2000) argues very persuasively that during much of the 19th Century writers such as Dickens, Doyle and Zola were journalists and novelists but towards the end of century "there began a gradual bifurcation" (De Burgh, 2000: 36). This as De Burgh says is only reconciled in the literary movement called "New Journalism" in the latter part of the 20th Century. When Truman Capote declared that "In Cold Blood" was evidence that he had a created a new type of novel "the non-fiction novel", most commentators were inclined to agree: especially, those unaware of the antecedents. The realism employed by the likes of Zola and Capote became the hallmark of broadsheet/ literary journalism. It became the favoured technique of those wishing to expose social ills. The Joads of Steinbeck's *Grapes of Wrath* (1939) are as real as any family that the writer met during his research, the fact that they are fictional does not lessen the impact that they have on the reader. The lines between journalism and literature become blurred at the same time that well-researched detail becomes interchangeable with facticity. The level of research and attention to detail in articles such as *Mau-Mauing the Flak Catchers* (Wolfe, 1975) shows that Wolfe is essentially an investigative journalist expressing his research in a literary form. The research needed to write this story required the same commitment of time and energy that Cobbett, Stead, Dickens, and Zola had shown.

Challenging the status quo

Investigative journalists are often seen as malcontents or troublemakers. People like Veronica Guerin, who pursued her story to the point of obsession, until her quarry knew killing her was the only way to stop her (Sheridan, 2000). The Guardian journalist, David Leigh believes investigative journalists wear the badge of being "cantankerous" with pride.

> Investigative journalism is a state of mind, not a question of the size of the target (David Leigh, 2000: 71).

Leigh was one of those who worked on one of the defining investigative journalism stories of the last few decades, the Jonathan Aitken affair. At one point in the bitter legal struggle between *The Guardian* and Aiken's campaigning "sword of truth" it looked as if *The Guardian* (*Aitken v Preston and Others* [1997] EMLR 415)would have to admit defeat:

> I shook my wife awake and said, 'Look, you'd better know. We're going to lose. I'll never work again. I'll be the man who cost his employers a million by defaming a cabinet minister.' (David Leigh, 2000: 72)

The case illustrates the very serious ramifications to publication and the need for investigative journalists to amass evidence sufficient to defend their story in court. It was, in the end, a piece of evidence uncovered at the last moment that swung the case in *The Guardian's* favour.

> Then gloriously, at the 11th hour, we were saved. It was entirely thanks to Owen Bowcott, a *Guardian* reporter ... he found the crucial documents which saved the day, rescued us all, exposed the truth and ultimately put Aitken in jail. Sometimes, investigative journalism is actually about heroes (David Leigh, 2000: 73).

This success paved the way for *The Guardian* to expose the corruptive behaviour of Conservative MPs who were receiving money for asking questions in Parliament — the so-called "cash for questions" scandal (McNair, 1998). This case demonstrates one aspect of investigative journalism which is often overlooked by non-practitioner: the enormous amount of time which must be devoted to an investigation. It also illustrates that the idea of "agenda setting" is a key part of investigative journalism (Horrie, 2008). In his judgement in the Reynolds libel case, Lord Nicholls said that investigative journalists have the right to behave as 'bloodhounds' as well as 'watchdogs'

(Horrie, 2008). The reason for this is because the story may not be on any news agenda and it will be down to the investigative journalist themselves to say "look at this, isn't it shocking!" (De Burgh, 2008: 13).

De Burgh claims that investigative journalists aim to "discover the truth and to identify lapses from it" and these investigations are different from similar work done by police and lawyers "in that it is not limited as to target, not legally founded and closely connected to publicity" (De Burgh, 2008: 9). Lord Leveson sees these tendencies as a public good: "Without investigative journalism, and the ability of the press to scour hidden places, the domain of the powerful, for potential wrongdoing, our democracy would be severely impoverished" (2012: 89).

It is from the journalists' position as the unofficial Fourth Estate, the eyes and ears of the public, that they gain legitimacy. As Rolston observed in his examination of the reaction to the deaths of three members of the IRA on Gibraltar in Operation Flavius:

> The [investigative] journalist becomes the representative of a mass of citizens, probing, questioning, analyzing the actions of the powerful. The fact that most contemporary journalism bears no resemblance to this does not of itself detract from the ideal (Rolston, 1990: 25).

This approach was memorably defined by Finley Peter Dunne: to comfort the afflicted and afflict the comfortable (Dunne, 1902). De Burgh's version of Dunne's definition also emphasizes the role that investigative journalists have in telling truth to power: "Investigative journalism is the fearless uncovering of facts unpalatable to the powerful" (De Burgh, 2008: 30). This challenging of the political or social status quo by investigative journalism has often proved to be a catalyst for statutory change. For some practitioners, such as Eamonn O'Neill, this influence has been exerted most keenly in areas of crime and justice:

> The involvement of journalists carrying out investigations into alleged miscarriages of justice cases and influencing the criminal justice system in the UK has a long provenance (O'Neill, 2012: 43).

While this point will be addressed more comprehensively in the section dealing with the history of miscarriage of justice cases, it is worth noting that this clear binary cause and effect is not universally

accepted. As always when one is making an easy assumption that one thing follows another one should hear the cautionary voice of David Hume:

> The existence, therefore, of any being can only be proved by arguments from its cause or its effect; and these arguments are founded entirely on experience. If we reason a priori, anything may appear able to produce anything. The falling of a pebble may, for aught we know, extinguish the sun (Hume, 1748: 122).

Therefore, with Hume's non-rising sun in mind it is worth testing the proposition that the journalist can influence lawmaking by doing research and then publishing an article. The most obvious contrary voice to this is Stanley Cohen's theory of moral panics (Cohen, 2002). His view of a complex media landscape fueling a manic and disproportionate reaction to some troublesome reality, and ultimately causing a misguided knee-jerk statutory reaction is a sobering message to those media commentators who see such media campaigns as entirely benign. It is also worth considering the current trend for organisations and groups to bypass the media and speak unmoderated to the public. Social media has enabled this to become a significant feature of the media landscape. While it is well outside the scope of this research, it is worth observing that investigative journalism has been one of the first media players to have embraced this new development. An early example of this was the relationship between Wikileaks and investigative journalism organisations like *The Guardian*:

> In a moment when investigative journalism is recognizably in crisis, Wikileaks has emerged as something of a strange bedfellow to a beleaguered industry, one that holds itself up as a champion of principles many journalists hold dear, freedom of information and the sanctity of the source, yet embeds these principles in a framework of cyberlibertarianism that is frequently at odds with the institutional ethics of journalists and editors (Lynch, 2010: 317).

Investigative journalism of 1970s, 80s & 90s

> Certain witnesses before this Committee have described the 1960s to 1980s, when programmes such as *Panorama* on the BBC and *World in Action* on ITV received large audience ratings and *The Sunday Times* had a large 'Insight Team', as the 'golden age' of investigative journalism (*Committee on Communication*, 2012: 12).

This “golden age” described by journalists and academics during the select committee hearings apparently began in the early 1960s. It has been argued (Doig, 1997) that a growing lack of deference at the time made the atmosphere much more conducive to journalism exposés. The launch of *Private Eye* and *World in Action* in the early 1960s certainly supports this position. The Profumo affair (Earle, 1963), along with investigations into corrupt landlords (Leapman, 1992) and police (Tompkinson, 1982) were examples of type of ‘socially responsible journalism’ (De Burgh) that began to become popular in the national newspapers. The success, both professionally and in terms of circulation, led the papers to be more ambitious in their investigations. In 1972 *The Sunday Times* Insight Team began its iconic thalidomide investigation which eventually resulted in compensation for the victims (Evans, 1983):

> Parts of the British press established a reputation in the postwar period for campaigning journalism. The high point was reached in the 1970s with the *Sunday Times* Insight team, which specialised in the exposure of corruption, incompetence and illegality. These efforts were matched in television by *World in Action* and *This Week* (Williams, 1997: 250).

A financial downturn in the mid 1970s created challenging conditions for the newspapers, with the “Wapping revolution” of the mid-1980s completely transforming the UK’s print industry.

> If anything the Wapping revolution consolidated the power of those already in the market: the established press chains. The print unions had been broken, industrial relations transformed and proprietors were able to exert greater influence over their newspapers (Williams, 1997: 233).

Williams argues that these seismic changes have not benefited the cause of investigative journalism:

> Since the late 1970s there has been a decline in the nature and amount of investigative journalism in the British media. In the popular press such journalism has become confined to digging up dirt and revealing secrets about the private lives of the Royals, MPs and rock stars. In the quality press, technology, competition and new owners have acted to curtail investigative work (Williams, 1997: 250).

By the 1980s more in-depth investigations were being carried out by television (De Burgh, 2008). Bromley (2008) argues that the idea of the investigative journalist as a figure worthy of cinematic/ televisual treatment in his own right had been established by the film *All the President's Men* (1976) based on Berstein and Woodward's (1974) Watergate investigation:

> Their investigation of the conspiracy behind the break-in at Watergate re-established the investigative reporting paradigm and its centrality to Western journalism (Bromley, 2008: 176).

Recent films such as *Spotlight*, the investigation into child abuse in the Catholic Church, illustrates that the heroic figure of the investigative journalist is still a part of the American psyche:

> By expertly portraying the careful, methodical work of journalists, *Spotlight* creates a formidable statement about the importance of not only a free press, but one that has the time and resources to do the work necessary to hold the powerful accountable and give voice to the powerless—as an institution deserving of special privileges (Drohan, 2016: 221).

In the UK, a key area of interest during this period were the so-called 'Irish cases'. These high profile cases, such as the Guildford Four and Birmingham Six, had their beginnings in the 1970s. The IRA's post-Bloody Sunday strategy to expand their "war" to the British mainland brought the bloody terror of the Troubles to British towns and cities (Bloom and Horgan, 2008). Bombs in Birmingham, Guildford and Woolwich in 1974 inflamed the public and the media and in the maelstrom the police reacted quickly, but ultimately mistakenly, by arresting and prosecuting innocent men and women, later known as the Guildford Four, Maguire Seven and Birmingham Six. Police corruption also led to numerous other miscarriages of justice such as the Carl Bridgewater case in 1978. It was only after investigative journalist Paul Foot had worked on the case for 20 years (De Burgh, 2008), that the men were finally released (R v Hickey & Others [1997] EWCA Crim 2018). The reason that cases like the Birmingham Six and Bridgewater Four are known is largely because of investigative journalists like Chris Mullin and Paul Foot. De Burgh believes that the influence of such journalists in correcting such infamous injustices was crucial:

> The legal system, in other words, provided the opportunity, even the necessity for investigative journalists to investigate (De Burgh, 2008: 247).

This is absolutely right, but probably not broad enough in its context as it was not simply the legal system that created the perfect situation for investigations to be carried out, police procedure was also in a pre-modern phase. Pre-PACE (*Police and Criminal Evidence Act 1984*) and the before the full implementation of HOLMES (Home Office Large Major Enquiry System) in the wake of the calamitous Yorkshire Ripper case, British policing was not the envy of the world. One only has to read any of the accounts of the victims of miscarriages of justice during this period (Conlon, 1990) to know that police were regularly using torture and corrupt techniques such as officers overhearing fictitious confessions. It meant that miscarriages during this period followed a predictable course:

> These cases generally have a predictable pattern: a horrendous murder is followed by encouraging media reports of a 'meticulous' police inquiry and pictures of officers conducting a 'fingertip search' of the surrounding area; no immediate arrests are made; intense media pressure leads to criticism of the police and allegations of bungling and incompetence; the police then question the 'usual suspects' culled from local sex offender registers, and this is followed by sensational reports of a breakthrough; an arrest is reported with minimal attention to the rules relating to press coverage; eventually there is a trial at which mainly circumstantial evidence leads to the conviction of the suspect because the jury wants to convict someone of the terrible crime, and anyone sitting in the dock surrounded by security looks guilty (Kirk, 2009: 96).

This situation, in which both the police and the criminal justice system were facing serious challenges, presented an opportunity to the broadcast media, which was moving away from its subservient depiction of events to a more complex and combative approach:

> In 1950, Richard Dimbleby… distinguished between the 'immediate news' of the newsreel, the 'permanent news' of the documentary and 'current news' for which no form as yet existed. This latter category came to be known as 'current affairs' (Schlesinger, 1978: 43).

This idea of current affairs as being a type of investigative journalism and being different from the "immediate" news is echoed by Lockyer (2006) who sees "newsworthiness" for the "traditional" news journalist as being based on a set of values such as relevance and proximity.

> The first major BBC programme of this type was *Panorama*, launched in 1955 and still running today. It moved quite rapidly into areas of controversy, with its coverage of political and social stories, and of international affairs (Schlesinger, 1978: 43).

The genealogy of programmes like *Rough Justice, Trial and Error, World in Action* can clearly be traced to this new demarcation between 'on-the-day' news and long-form journalism. Longform journalism, such as documentaries, is more compatible with an investigative approach because journalists have greater time and appetite to explore the fine detail. The tone of many of the documentaries in this period represented a real challenge to the establishment. In 1991, Channel 4's *Dispatches* programme ran a report called "*The Committee*" which alleged there was collusion between the police and terrorists in Northern Ireland. Channel 4 was fined £75,000 for refusing to hand over the sources to the police (De Burgh, 2008).

Another programme that chose to challenge the establishment proved to be much more successful in generating political action (rather than reaction). The first *Rough Justice* was aired in 1982 and within months the Conservative government agreed to reopen cases highlighted in the programmes.

> Peter Hill, founder of *Rough Justice*, explained his motivation as 'outrage' that people in power can do shoddy things to people without power (De Burgh, 2008: 291).

It is important to remember that this period is before the creation of the Criminal Cases Review Commission in 1997, and so anyone wishing to be granted an appeal after failing in their first appeal had to ask the Home Secretary (specifically the C3 department) to refer their case to the CACD Criminal Division. This vital change from C3 to CCRC will be explored in detail in a separate section. As journalists began to analyze these Irish terrorism cases, striking anomalies began to appear. Articles, programmes and books such as Robert Kee's *Trial & Error: the Maguires, the Guildford pub bombings and British justice* (1989) began to ramp up the pressure on the politicians to look again at the cases. But it must be remembered that this publicity was deeply unpopular, and staunchly resisted, by many in the establishment. The judiciary in particular saw such media interventions as very unwelcome:

> The Lord Chief Justice, Lord Lane, was for instance, savagely critical in December 1986 of the BBC's *'Out of Court'* programme which raised doubts about the conviction for murder of Margaret Livesey who had been accused of killing her 14-year-old son (Zander, 1988: 207).

Lord Lane called it a "deliberate attack on the integrity and reliability of the system of criminal justice in this country" (quoted in Zander, 1988: 207). Zander (1988) thought that Lord Lane's view that investigations into specific cases were counterproductive, was representative of judges and legal professionals in the criminal justice system at the time.

To such figures, "any suggestion that the courts may have got it wrong or, worse, that there are systemic faults, verges on *lese majeste*" (Zander, 1988: 208). In 1989 the Guildford Four were released after the defence team established malfeasance on the part of the police and Home Secretary Douglas Hurd ordered a judicial inquiry. He told reporters: "We must all, I believe, feel anxiety, regret and deep concern at what has occurred."

Cracks were beginning to appear in the walls of the establishment: political disquiet was growing and the criminal justice system and the police were steeling themselves for the next wave of cases, which claimed to be in the same vein as the Guildford Four. It took Chris Mullin's book, *Error of Judgement* (1986), to force the establishment to think again about the convictions of the Birmingham Six. The case of the Birmingham Six (*R v McIlkenny, Hunter, Walter, Callaghan, Hill and Power* [1991] 93 Crim App R 287)is worth considering in detail because even in purely legal terms it is difficult to think of a more significant criminal case, with the possible exclusion of the Stephen Lawrence case, in the last 50 years. In relation to miscarriages of justice, no case looms larger than that of Hugh Callaghan, Patrick Joseph Hill, Gerard Hunter, Richard McIlkenny, William Power and John Walker (the Birmingham Six). Mullin (1990) noted with disbelief the words of the Mr Justice Bridge to the investigating police officers after the original trial of the Birmingham Six in 1975:

> I am entirely satisfied, he said, and the jury by their verdicts have shown, that these investigations both at Morecambe and Birmingham were carried out with scrupulous propriety by all your officers (quoted in Mullin, 1990: 208).

Throughout the many years that Mullin investigated the case he was constantly astonished at the stubbornness of the establishment to admit that a mistake had been made. Dismissing their claim that they had been tortured by police, Lord Denning could not be more explicit that, above all else, the integrity of the system must be protected. In the judgment in the case in which the six men claimed that police officers physically abused them, Lord Denning said:

> If the six men win, it will mean that the police were guilty of perjury, that they were guilty of violence and threats, that the confessions were involuntary and were improperly admitted in evidence and that the convictions were erroneous. That would mean the Home Secretary would either have to recommend they be pardoned or he would have to remit the case to the Court of Appeal. This is such an appalling vista that every sensible person in the land would say: It cannot be right these actions should go any further' (quoted in Mullin, 1990: 216).

Recognizing such resistance convinced Mullin and others that only remarkable new evidence could persuade a reluctant judiciary to reconsider the case. Using investigative journalism techniques, Mullin had a number of meetings with the real perpetrators of the Birmingham bombs (Mullin, 1990). Mullin went public with this information, protecting the men's identities but elaborating in great detail on what they had told him in *Error of Judgment*. Far from being the smoking gun that he thought it was, it in fact just allowed the judiciary and right wing media to portray him as a dangerous, left wing maverick. In the 1988 Appeal case, Crown counsel, Igor Judge declared:

> The outside world hears only what the media chooses to present to it. Our system of justice does not depend on the constraints of space which responsible journalists have to endure, nor the whims and prejudices of irresponsible journalists who have espoused a cause (quoted in Mullin, 1990: 299).

The three judges turned down the Birmingham Six's 1988 Appeal emphatically:

> As has happened before in References by the Home Secretary to this court, the longer this hearing has gone on the more convinced this court has become that the verdict of the jury was correct (quoted in Mullin, 1990: 310).

As Mullin notes the message was clear:

> The Home Secretary should not waste his time and that of the courts referring any more cases of this kind (Mullin, 1990: 310).

The media reaction to the 1988 Appeal is illuminating. It shows a clear split in terms of the right wing and left wing media. While I only raise the issue here, I will explore it in detail when I examine the coverage of miscarriages of justice in the national newspapers after the creation of the CCRC.

> *The Birmingham Post*, always lukewarm in its support for the re-opening of the case, promptly declared that enough was enough. *The Daily Express* declared, 'Justice has been Done'. *The Sun* saw the judgment as an opportunity to declare open season on those who had campaigned for the case to be re-opened. *The Sun's* front page headline the next day read, LOONY MP BACKS BOMB GANG. An editorial said, 'If *the Sun* had its way, we would have been tempted to string 'em up years ago' (Mullin, 1990: 310).

And then in a moment of astonishing frankness, Lord Denning, in a television interview clarified the almost insurmountable resistance that any victim of miscarriage faces in getting their cases overturned:

> Lord Denning was asked in a television interview if in his opinion the integrity of the system was more important than the fate of one or two individuals who been found innocent as a result of investigations by the television series, *Rough Justice*. He replied, 'Certainly … the general cause of upholding the system of justice is such that I would put aside all those *Rough Justice* cases.'
> The interviewer than asked, 'If I, a working journalist, see a man on the roof of a prison claiming he is innocent, should I investigate his claim or walk away?'
> 'Oh, walk away and ignore him. I have a lot of letters from people in prison who say they have been wrongly convicted. I'm afraid I put them into the wastepaper basket' (quoted in Mullin, 1990: 312).

On 28 March 1990, ITV broadcast the Granada Television documentary drama, *Who Bombed Birmingham?*, largely based on Mullin's book. And in 1991 the six were allowed a second appeal, which quashed the convictions largely because the forensic evidence had been discredited. In an emotional moment outside the Old Bailey, one of the six, Paddy Hill spoke to waiting crowds:

> For 16 and a half years we have been used as political scapegoats. The police told us from the start they knew we hadn't done it. They didn't care who had done it (Guardian, 1991).

Mullin's dogged examination of the Birmingham Six case was entirely consistent with the definition of investigative journalism:

> The exposure of scandal in the form of institutional misconduct and the abuse of power is the raison d'être of investigative journalism in liberal democracies (Greer & McLaughlin, 2012: 78).

De Burgh (2008) argues that the 1990s saw a boom in investigative journalism, particularly on television:

> In that year alone [1995] on UK terrestrial television there were 300 discrete programmes that could be classified as investigative (De Burgh, 2008: 61).

In the 1990s, new current affair programmes, which regularly carried out investigations, were launched:

BBC: *Inside Story, Public Eye, 40 Minutes*
ITV: *Big story, Network First, First Tuesday*
C4: *Street Legal, Cutting Edge*

There were also a number of investigative journalism series launched in this decade:

ITV: *The Cook Report, Beam and Da Silva, Disguises*
BBC: *Taking Liberties, Here and Now, Rough Justice, Private Investigations*
C4: *Countryside Undercover, Undercover Britain*

If investigative journalism was booming on television, then print journalism wasn't far behind although its focus was different. As far as the newspapers, especially the tabloids, were concerned, this was the decade of sleaze. Thanks to a *Sunday Times* sting and revelations from Mohamed al Fayed to *The Guardian*, it was established that MPs had accepted bribes in a scandal labelled *Cash for Questions* (Leigh and Vulliamy, 1997). When the Conservatives were defeated in 1997 and Tony Blair's government took over, the narrative initially changed:

> Just after the 1997 general election, Peter Horrocks, the editor of *Newsnight*, told his staff that the day of digging up facts that might disconcert the powerful had passed. 'Labour has a huge mandate, 'he wrote. 'Our job should not be to quarrel with the purpose of policy but question its implementation. Ennui is over for now' (Cohen, 2000: 123).

This perspective did not last long. The Gilligan affair, Iraq War and the Hutton Inquiry meant that *ennui* soon returned to the BBC and the wider media.

The role of the investigative journalist in miscarriages of justice post CCRC

> I believe the force that shook the long-standing and entrenched bastions of the law was the power of investigative journalism (Mansfield, 2012: 9).

In this quote, the renowned Queen's Counsel, Michael Mansfield, was referring to investigations such as those of Mullin and Foot. A narrative of "justice in crisis" in the years before the creation of the CCRC had enabled such stories to command front page coverage in national newspapers (Nobles and Schiff, 2001). In recognition of these investigations, the Law Lords in 1999 overruled the home secretary and CACD to say that prisoners had a right to meet and speak to journalists. In the landmark ruling Lord Steyn said:

> In recent years a substantial number of miscarriages of justice have only been identified and corrected [through] painstaking investigation by journalists (quoted in Woffinden, 1999).

Lord Steyn described investigative journalism as a "safety valve" for a "fallible" criminal justice system. While this was a valuable endorsement by a key part of the establishment, support for such investigative ventures within the media was beginning to wane. In the same *Guardian* article that noted Lord Steyn's encouraging comments, the investigative journalist Bob Woffinden pointed out that Channel 4 had just cancelled the investigative programme *Trial and Error*. The programme's presenter, David Jessel, regretfully interpreted the decision as indicative of the new priorities in the media:

> I'm very proud of our work. Investigative journalism, to a standard where it is accepted by the Court of Appeal, is not the worst thing that television does (quoted in Woffinden, 1999).

Research has revealed that the media's involvement in miscarriages of justice investigations diminished after peaking in the period 1989-93 (Poyser, 2012). Nobles and Schiff explain this shift in the mid-1990s due to an end of the perceived crisis, by the establishment of the Royal Commission on Criminal Justice. Others have argued that journalists were forced away from this type of investigation due to increased regulation and a gradual reluctance among the public to engage with lengthy, complex stories (Snoddy, 1993). There is a view that such investigations should be consigned to the decade of the rubix cubes and football hooliganism:

> The media, which did so much of the spadework exposing the notorious miscarriages through the 1970s and 1980s through, for example, the BBC's *Rough Justice*, has long given up. The broadcaster pulled the plug on *Rough Justice* after 25 years in 2007; Michael Jackson, chief executive of Channel 4, dismissed *Trial and Error*, which also investigated miscarriages, and its subject matter as a 'bit 1980s' (Robins, 2012: 5).

David Jessel, presenter on *Rough Justice* and *Trial and Error*, is one of the many who point to the setting up of the Criminal Cases Review Commission (CCRC) in 1997 as being the main cause in the ending the media's interest in miscarriages of justice. He said that the fact that there was now an independent statutory body with wide ranging powers to investigate miscarriages of justice gave media executives the opportunity to argue that there was no need for journalists, and certainly not prime time programmes, to concern themselves with such investigations (Jessel, 2004). But he recognizes that such a view was misguided:

> Concern with miscarriages of justice is an obsessive pursuit. Ludovic Kennedy, Paul Foot, Peter Hill, Tom Sargent, Bob Woffinden and both the Duncan Campbells, these are people whose passion, commitment and anger I recognize. The creation of the CCRC, however, was seen as the nationalization of zeal, the taking of fervour into public ownership (Jessel, 2012: 17).

Other commentators, like Poyser (2012), also point to a gradual shift in emphasis on crime and punishment, clearly indicated by Tony Blair's slogan, 'Tough on crime, tough on the causes of crime':

> The investigative journalists packed up their bags in 1997 and the circus moved on. They have done their shift at the coal face in the 80s and 90s but now the professionals were involved and so it was time to look at other areas (Poyser, 2012: 47).

Alongside this, some commentators accuse media organisations of "dumbing down" in order to chase fragmenting audience, a key issue among contributors to Sparks & Tulloch's *Tabloid Tales* (2000). Writers such as Elizabeth Bird (2000) acknowledge the views of Krajicek (1998) and Langer (1998) who noted the tendency for the media to gravitate towards sex and violence, along with the potential influence of an audience with a taste for sensational news. But her view is that influence of the audience is more nuanced than many care to admit:

> I see tabloid preference as neither subversive nor as a symptom of mindlessness. Rather, I see audiences as active, selective readers who approach all kinds of news with the unstated questions, How does this story apply to my life? (Bird, 2000: 215)

Janice Peck (2000) disagrees with this view, stating that "one of tabloidizaton's chief flaws is its emphasis on the particular, personal experience of individuals…tabloid media thus work against the development of and ability to move from concrete personal experience to the abstract" (Peck, 2000: 233). Myra Macdonald (2000) thinks Peck's point of view is simply an evaluation resting on "binary oppositions". For Macdonald this erroneous viewpoint originated at "the time of the Enlightenment and sustained by Habermasian thinking , which elevate principles of abstraction and rationality over instantiation and affectivity, without full consideration of how these might translate into communicative success within differing media" (Macdonald, 2000: 251). Jostein Gripsrud supports this argument, stating emphatically: "A degree of 'tabloidization' is not always a bad thing" (Gripsrud, 2000: 299). Gripsrud argues that a mix of journalism "make a democratic media system work as it should" (2000: 299).

But while this argument undoubtedly has merit, there are other considerations to include when one is focused on journalism's relationship with miscarriages of justice. It is important to also contemplate the altering political and systemic structures. The creation of the CCRC brought an end to the C3 department which was located in the heart of arguably politics most turbulent ministry, the Home Office. This structural change broke the direct link between the press and the political elite on miscarriage of justice matters. One just needs to recall Douglas Hume's words after the Guildford Four convictions were quashed to understand the point:

> Even though that wrongful conviction has now been righted, . . . we must all, I believe, feel anxiety, regret and deep concern at what has occurred (quoted in Frankel, 1989).

And this view contrasts with Jessel's argument that the CCRC could never hold such feelings - it could certainly not possess the passion that motivated campaigners:

> It was a system, a mechanism, and it's hard to detect the heartbeat in a machine (Jessel, 2012: 18).

A Home Secretary in an under pressure administration facing an election is vulnerable to pressure, an independent, statutory body is not. The C3 Home Office Department was in autopoietic terms like a Cartesian pineal gland allowing the two worlds of journalism and politics to speak to each other fluently. The fact that the C3 Department was highly inefficient at investigating miscarriages of justice just made the need for the interaction with journalists all the more acute. Duff (2009) points out that the new CCRC was a "linkage institution" but not with journalism.

> Nobles and Schiff usefully identify the Royal Commission, which recommended setting up the English Commission, as (in Teubner's terms) 'a linkage institution', in other words, a body which straddles two different systems, in this case that of politics and the law, and which must attempt to communicate with both. In my view, this analysis can usefully be applied to the Criminal Cases Review Commissions themselves (Duff, 2009: 695).

But Nobles and Schiff had highlighted that the greatest challenge linkage institutions face was one of communication:

> The operation of linkage institutions is necessarily precarious. They need to understand the internal constructions of reality of various systems (law, politics, media) and attempt to make proposals which can be read and incorporated into the discourses of these systems (Nobles & Schiff, 1995: 314).

Before the creation of the CCRC in 1997, anyone who had been convicted and exhausted the appeal process could apply to the Home Secretary under Section 17 of the *Criminal Appeal Act 1968*. The Home Secretary could then refer the whole case or aspects of the case to the CACD, "as he thought

fit". Manning's (1999) exploration of information flows in *Media Culture Society* provides an insightful interpretation of the relationship between journalists and departments of governments. He argues that these "power networks" are "characterized by a series of conflicts, resistances and accommodations" resulting in "the promotion and subordination of particular discourses and categories and knowledge" (Manning, 1999: 314).

Manning, structuring his argument on Foucauldian themes of power and "governmentality" and Habermas's "public spheres", strongly contends that the prevailing view that stories about industrial relations decreased because there were fewer strikes and that strikes were seen as somehow less newsworthy is not accurate. Instead he discusses the alternative interpretation that the "power webs" between the parties broke down "as the perspectives and political objectives of the participants, particularly of the political elite, changed" (Manning, 1999: 322). This reading of the relationship between journalists and official bodies clearly informs the interaction between investigative journalists and Home Office C3 Division and later the CCRC. For example, the official purpose of the C3 division was:

> To assist Ministers in discharging the Home Secretary's responsibilities in relation to the Royal Prerogative of Mercy, references to the Court of Appeal under Section 17 of the Criminal Appeal Act 1968, and the payment of compensation to persons who are wrongfully convicted. (The Minister of State, Home Office (Earl Ferrers) [*Hansard 17 May 1993 vol 545 c75WA*]

The powers are of the CCRC were established by Section 17 of *Criminal Appeal Act 1995*, and are very wide ranging. It gives the commission the power to investigate material from any public body, overriding any confidentiality concerns. As Elks points out, these powers are so potent that officials are often left in disbelief at having to hand over confidential material to the commission (Elks, 2008). The ability to legitimately demand papers from police, health authorities, local authorities, the Court Service and always receive them is something that investigative journalists could only fantasize about. On first view, this is the reason that there are fewer investigative journalists working in the area of miscarriages of justice, the CCRC is now doing it and has the ability to complete the work much more effectively than a journalist or programme ever could. As De Burgh explains:

> The introduction of the Criminal Cases Review Commission (CCRC) has changed the environment. The CCRC investigates miscarriage allegations which in the past would only have been undertaken by television (De Burgh, 2008: 251).

The view that this difficult work was now being taken up by a statutory body allowed media organisations to cut programmes like *Rough Justice* and *Trial and Error* because such investigations by journalists were seen as superfluous (Naughton, 2010). The celebrated investigative journalist Eamonn O'Neill has also noticed this "hard-won tradition" of journalists investigating miscarriages of justice coming "grinding to a semi-voluntary halt when the CCRC was established" (O'Neill, 2012:44). But as a practitioner, he thinks that journalists should not and must not abdicate their responsibility to victims of injustice. He points to his own work on the case of Robert Brown, in which he uncovered compelling evidence over 11 years of investigative work which eventually led to Brown's release in 2002:

> I remain convinced that CCRC would not have acted as it did without press pressure (O'Neill, 2012:45).

In *Claims of Innocence,* edited by Michael Naughton,which is aimed at prisoners and campaigners, Eamonn O'Neill explains how one can use the media in order to prove one's innocence:

> A well-placed press piece can undoubtedly shunt a possible wrongful conviction forward (O'Neill, 2010: 69).

He does however sound a note of caution, explaining that in the past he did uncover compelling evidence from a witness but, because it was a piece of journalism rather than something produced as a result of a legal process, the CACD refused to be swayed by it:

> I now strive to work in a partnership arrangement with lawyers, whilst still maintaining strict professional boundaries where possible (O'Neill, 2010: 68).

This dilemma is one familiar to all journalists working on miscarriages: can the interests of the client be served by publishing? And is the very collection of material by journalists putting the integrity of the legal arguments under threat? It is worth recalling the autopoietic debate over whether discrete

systems can ever effectively communicate with each other. This difficulty is explored by Teubner, Nobles and Schiff, in *The Autonomy of Law: An Introduction to Legal Autopoiesis:*

> Autopoiesis is a social theory which makes sense of the circularity of legal authority, that it is law which decides what is to count as law. Autopoiesis tells us not to worry unduly about this, for it is a feature not only of law, but all autopoietic sub-systems of social communication. Education, politics, law, the economy, these entities exist not as things which one can touch or feel, but as circulating systems of communication (Teubner, Nobles and Schiff, 2002: 900).

As Duff points out: "a 'miscarriage of justice' is not a miscarriage of justice, no matter what anyone else claims, until the CACD says it is, and the Court's pronouncement must be justified by legal doctrine" (2009: 65). The purpose of publishing articles in the days of the Home Office C3 Department were very clear indeed: to produce the biggest public reaction and thereby exert the greatest pressure possible on the Home Secretary to refer the case to the CACD. As Steve Haywood, former editor of *Rough Justice* and *Trial and Error*, points out in an interview with Hugo De Burgh:

> Politics has a lot to do with it, if you can build up a level of public concern to the extent that the case must be dealt with then you stand a much better chance (quoted in De Burgh, 2000: 247).

Investigative Journalism & miscarriages of justice: A case study

The case of Stephen Downing provides an important insight into the paradigm shift that happened when the responsibility for investigating possible miscarriages of justice passed from the C3 department of the Home Office to the CCRC in 1997. Downing was convicted of the murder of Wendy Sewell in 1973 in a graveyard in Bakewell in the Peak District. He was a 17-year-old council worker at the time and convicted largely because of the confession he signed following police questioning. He was sentenced in 1974 to be detained at Her Majesty's pleasure (indefinitely) and given a minimum tariff of 17 years. Later in 1974 Downing lost his appeal.

The Downing family continued to campaign for Stephen for the next 20 years without any success until a journalist called Don Hale took up the case. The editor of the local newspaper, *The Matlock Mercury*, described his eight-year battle to establish Downing's innocence in his book *Town Without*

Pity (2002). During his investigation he spoke to dozens of witnesses, challenged suspects and received confidential information from police whistleblowers. In the book, Hale described three attempts on his life, which he believed were related to his investigation.

Hale published his first story about the case in the *Matlock Mercury* on 27 January 1995, after five months of research. He was confident enough to call on the Home Office to reassess the case:

> The Home Secretary is to be asked to reopen the file on Stephen Downing, the teenager convicted of the Bakewell cemetery murder of Mrs Wendy Sewell. A portfolio containing new evidence is to be presented to the authorities by Stephen's parents Ray and Juanita Downing in a bid to secure his freedom (Hale, 2002: 155).

In the article Hale (2002) put forward evidence "that perhaps should have been placed before the jury, but never was". The two main points were: psychiatric reports which suggested Downing's confession was not reliable and blood staining on his clothes, which indicated he was not the killer. Later in January 1995, Hale submitted an application to the Home Office to have the case referred to the CACD. The document was presented to the Home Office by West Derbyshire MP Patrick McLoughlin, who was also a junior minister in the Conservative Government. This moment is a useful illustration of the close relationship that existed between the press and politicians in miscarriage of justice cases under the C3 system.

As Hale became more expert on the topic of miscarriages of justice he began "to wonder how many other Stephen Downings had been locked away and forgotten" (Hale, 2002: 237). He argued that the reason these people might be forgotten was because there was no one to fight their corner, no one to campaign, investigate and publicize their plight:

> Stephen Downing desperately needed someone who would take the time to listen to his claims and, more important, find someone prepared to stick his or her neck out and investigate the merits of the case (Hale, 2002: 237).

Hale believed it had been he and other journalists who had "stuck their necks out" and not the body that should be doing this as part of their job; the Home Office.

> One of my first conversations with the Home Office (C3) gave me that extra impetus to keep going: 'He's what we call an IDOM, In Denial of Murder. If they don't admit to their crime they're pushed back down the queue.'
> 'But what if he's innocent? He's hardly likely to admit to something he didn't do. What if he never changes his plea?'
> 'Innocent!' he almost spat out the word. 'They're all innocent aren't they? That's what keeps journalists like you in business.' (Hale, 2002: 239)

For Hale it wasn't so much prisoners claiming innocence that kept journalists in business, it was actually the attitude of the Home Office C3 division to claims of innocence. The role of journalistic campaigns in putting pressure on politicians to reconsider cases is illustrated in the Home Office's response to Downing's submission:

> The Home Office sent its initial response to my submissions [on 29 November 1995]. It was addressed to MP Patrick McLoughlin and was sent by Timothy Kirkhope MP, the Parliamentary Under Secretary of State: 'I have to say at the outset, that I have not found anything in these representations that provides grounds for the Home Secretary to refer the case' (quoted in Hale, 2002: 274).

Two things that are worth underlining: firstly, the highly political nature of the decision (rather than purely legal); secondly the fact that the Home Office made a decision in 10 months. In 1997, Downing's case was one of the first to be considered by the newly formed Criminal Cases Review Commission (CCRC). After two years at the CCRC the investigation "seemed to grind to a halt" (Hale, 2002). Local MP Patrick McLoughlin raised the case in the House of Commons but nothing happened: the game had changed. Press pressure, which in turn stimulated political pressure had worked on the Home Office but it wasn't having any affect on the CCRC:

> More than 15 months later [after the case was raised in Parliament], Patrick McLoughlin and I were still asking the same questions. Again we faced a blank response from the commissioner (Hale, 2002: 329).

It wasn't until 14 November 2000 that the CCRC announced it was referring Downing's case to the CACD. This was over three and a half years since Downing's team had applied to the Commission. But it wouldn't be until 15 January 2002 that Downing's conviction would be quashed by CACD. By

that time, he had served 27 years in prison, making the case one of the longest miscarriages of justice in UK history. It also meant that it had taken five years from the point at which Downing had applied to the CCRC to the point that he walked free from court. The final decision of the CACD is especially telling in the context of this study. For the eight years Hale had investigated the case, putting himself in personal danger (he claims there were attempts on his life) and establishing the likelihood that other men (whom he was able to identify) had carried out the killing. But this alternative narrative and the evidence to support it did not interest the Appeal Court judges.

Lord Justice Pill made four main points:

> 1 The forensic evidence of the blood-staining could not be relied upon.
>
> 2 The appellant's confession was not reliable. It was difficult to understand why it was not challenged at trial.
>
> 3 There seemed to be nothing unusual about the appellant's appearance or demeanor at the time of the murder.
>
> 4 The appellant denied making the statements which the police produced.
>
> (quoted in Hale, 2002: 369)

There was nothing new in these points. They were, in fact, all contained in Hale's first published story about the case in the *Matlock Mercury* on 27 January 1995. The over-riding issue for the judges was the nature of the confession. It had certainly breached the so-called 'judges' rules' which governed police practice in 1973 but, seen in the context of post-PACE procedures, it was a complete aberration. Ed Fitzgerald, QC for the defence, maintained "that the confession was unreliable and should have been excluded" (quoted in Hale, 2002: 367).

In conclusion, the case of Stephen Downing raises some key issues. Firstly, how the narrative of establishing so-called 'factual innocence' to the public is the main preoccupation of journalists (such as Hale) but is often unimportant or irrelevant to the appeal system. Secondly, while evidence of factual innocence may not directly assist the appeal process, it does create a public groundswell that puts pressure on politicians. This was effective when miscarriage investigations were overseen by

politicians, but less so when they are handled by an independent body such as the CCRC. Thirdly, the case shows how campaigns over miscarriages of justice often become in effect two separate, parallel, campaigns: One concerning factual innocence illustrated through narrative storytelling and a second concerning safety in law and legal technicalities. The BBC's *Panorama* programme, *Who Bombed Omagh?* (2000), is a good example of this:

> [The programme] is illustrative of investigative journalists using persuasive and accurate but legally inadmissible evidence gathered by the police (and in this case by the intelligence services) (Horrie, 2008: 115).

These two strands may complement each other, or provide a context or hinterland for the other but they are often very different arguments because they are aimed at completely different audiences:

> In more concrete terms, evidence that an accused is factually innocent might well be considered 'inadmissible' by the legal system (for instance, because it does not fit within the definition of 'fresh' evidence) and thus is irrelevant to the determination of the appeal. Conversely, a 'procedural impropriety' which would cause an appeal court to quash a conviction might well be of a nature which politicians, the media and the general public would prefer to ignore in the interests of ensuring that an accused who is undoubtedly factually guilty remains in jail (Duff, 2009: 697).

While it was a breach of PACE (or judges' rules) which freed Stephen Downing, rather than any evidence of his actual innocence, so too it was a flawed forensic test that freed the Birmingham Six, rather than the evidence of their innocence gathered by Chris Mullin.

Challenges for investigative journalism

As we have seen, investigations into miscarriages of justice can take a very long time. Hale worked on the Downing case for seven years (Hale, 2002). This is a huge investment of time and money by the journalist/ publication, as the BBC has pointed out:

> Investigations ... can take months, sometimes years, to come to fruition. This is intrinsically costly (quoted in *Select Committee on Communication, 2012: 12*)

It is also potentially ruinous for a media organization if they lose a libel action as a consequence of

publishing material related to the case. Edmund Curran, member of the Newspaper Society, told a House of Lords inquiry that the cost of "getting into trouble" are so high that it could put a local paper out of business (*Select Committee on Communication, 2012*). For these reasons and for other challenges faced by journalists, which are vigorously outlined in Nick Davies' *Flat Earth News* (2008), investigative journalism has become a luxury which many media outlets are trying to cut down on:

> Those sections of the news business most preoccupied with their survival in the face of competition from the internet have resorted to a more tried and tested response to uncertain conditions: saving money through cutting costs and increasing productivity (Fenton, 2010: 41).

Fenton (2010) argues that in order to survive media organisations concentrate on news that can be turned around quickly and curb the more labour-intensive types of journalism:

> The internet's siphoning off of advertising revenue has also led news organizations to cut back on expensive editorial commitments like investigative reporting and specialist and foreign correspondents (Fenton, 2010: 41).

This description immediately brings to mind the vivid description of 'churnalism' by Nick Davies in *Flat Earth News*:

> This is journalists who are no longer out gathering news but who are reduced instead to passive processors of whatever material comes their way, churning out stories, whether real event or PR artifice, important or trivial, true or false (Davies, 2008: 59).

Davies identifies the significant cutbacks made to local news outlets: local newspapers reducing the number of reporters; local radio stations relying on one journalist for all of their news output. He also identifies the obsession with speed, due to the advent of the internet, as a key reason for the growth of churnalism. For Davies (2008) the BBC rule of writing breaking news within five minutes perfectly illustrates this tendency. This tendency towards faster news production is something that arouses widespread concern:

> Journalists have suffered from a speeding-up and intensification of news production that pressures them to constantly work on 'breaking stories' and to adapt their work for different

> media platforms: broadcast, print, and web. There is little or no time permitted to investigate stories in depth or add creativity to storytelling (Higgins-Dobney and Sussman, 2013:857).

The clear implication in Davies' book is that journalism is being degraded and that investigative journalism is being forgotten about or perverted into a nefarious activity obsessed with puerile subject matter. One notorious example illustrates the point. In 1986 *the Sunday Times* fell for the Hitler Diary hoax but, while the journalists may have felt humiliated, the paper's owner Rupert Murdoch wasn't too concerned, because "we are in the entertainment business" (quoted in Harris, 1996).

> Circulation went up and stayed up [after the diaries]. We didn't lose money, or anything like that (quoted in Harris, 1996: 567).

Many commentators who wouldn't have been able to bring themselves to agree with anything Rupert Murdoch said about journalism may have reluctantly recognized his "entertainment business" definition:

> The amount of news and information in the popular press has declined, to be replaced by an endless spewing out of sex, nudity, exposes of the private lives of people (and not only those in the public eye) and countless stories about the comings and goings of the Royal Family and the characters of soap operas (Williams, 1997: 224).

This level of cynicism about evidence and fact checking at such a high level of the newspaper business is suggestive of a newsroom culture which was becoming increasing comfortable with the use of questionable tactics. It is worth noting that Davies' chapter, *The Dark Arts*, written in 2008, clearly exposed illegal practices used by some journalists. Three years later these practices exploded into the mainstream with the hacking of Milly Dowler's phone (exposed by Davies). It is arguable that the reason that the press was so unprepared for the public backlash following the revelations of hacking, blagging and bribing of public officials was that journalists assumed that everyone knew about it. After all, Davies had explained all these practices in 2008. It was not until 2011 that these issues came into the mainstream and immediately forced the topic of investigative journalism, legitimacy, legal context and practices into centre stage (Tam, 2016). The irony that it was an

investigative journalist who had exposed malpractice in investigative journalism was not lost on Lord Justice Leveson:

> It is widely, and rightly, recognised that there would not have been the public concentration on these issues of press culture and ethics had not an investigative journalist, (Nick Davies), with the support of national newspaper (*The Guardian*), not pursued phone-hacking determinedly (Leveson report, volume four: 1743).

The charges laid against the press in general, and investigative journalism as practised by newspapers, included gross invasions of privacy using techniques such as phone hacking, blagging and bribing of public officials. The scandal presented a profound challenge to the moral authority of investigative journalism, as the Select Committee on Communication highlighted:

> If investigative journalism is to fulfil its proper role, it is essential that journalists act with integrity (Select Committee on Communication, 2012: 9).

As the numerous scandals crisscrossed key institutions, the press's relationship with politicians and the police also came under scrutiny. The *News of the World* was forced to shut in July 2011 on the basis of the *Guardian's* investigation into the hacking of the phone of the murdered schoolgirl Milly Dowler. As another example of how far some of investigative journalists' behaviour was from the ideals of Stead and de Burgh, one only has to look at the example of Mazher Mahmood:

> To many he is the epitome of what real investigative journalism is all about. To others, not only his victims but some judges, politicians and broadsheet journalist he is a bugging, intrusive menace and a blot on the trade (Marr, 2005: 48).

While the journalists of the 70s, 80s and 90s made their names exposing miscarriages of justice, Mahmood, known to the tabloids as the Fake Sheikh, became the first investigative journalist to be jailed for actually causing a miscarriage of justice:

> Undercover reporter Mazher Mahmood has been jailed for 15 months after being found guilty of tampering with evidence in the collapsed drug trial of singer Tulisa Contostavlos (Guardian, 2016).

These were clearly dark times for investigative journalism when one of the profession's leading exponents was actually helping to convict, rather than exonerate, the innocent. This kind of behaviour was having implications for the media in general:

> Even though 32% of the respondents trusted the traditional media, tabloid newspapers, like the *News of the World*, were only trusted by 14% of the respondents. On the other hand, 58% of the respondents trusted TV and radio news outlets. And 47% of the respondents trusted broadsheets like the *Times* and the *Guardian*. These results pointed to the need to examine whether the high competitiveness of the news industry had led the tabloid to adopt a short-term perspective by using unethical means to collect news sources for immediate gains (Tam, 2016: 10).

Under increasing pressure, the Prime Minister David Cameron, himself directly involved via his appointment of Andy Coulson, announced that there would be an inquiry into the behaviour of the press carried out by Lord Justice Leveson. Of course it wasn't the first time that the press had been the subject of this type of criticism. The Press Council was established in 1949 by the Royal Commission to act as the focal point of the voluntary self-regulation framework. It was supposed to adjudicate on complaints but most readers had never heard of it. Almost 80% of people polled in 1976 had never even heard of the organisation (Tunstall, 1996). In response to "public criticism as well as outcry from members of Parliament" (Williams, 1997: 235) over activities such as press intrusion, the Calcutt Commission recommended that the Press Council be replaced by the Press Complaints Commission (PCC).

The Leveson Inquiry: Culture, Practices and Ethics of the Press foregrounded the key issues facing the press and also examined the function and practical application of investigative processes used by journalists. One of the witnesses who appeared before the inquiry was Dr Neil Manson, a senior academic specializing in media ethics. He argued that the press served two roles, to inform and to investigate:

> A free press, free of the censorship and restrictions imposed by the powerful … serves the public interest by its investigative and communicative role. Both roles are necessary (quoted in the Leveson report, volume one: 64).

Robert Giles noted in his study of repressive regimes that officials would go to great lengths to destroy any culture of investigative journalism:

> There is only sporadic investigative journalism in the autocratic countries of the Middle East (Giles, 2010: 39).

While many of the witnesses, and even Lord Leveson himself, were keen to praise investigative journalism and argue for it to be protected there was a view that there were clear limits as to what was a legitimate subject for an investigative journalist. As Manson argued:

> The fact that the press has certain investigative powers doesn't mean automatically that it has carte blanche to do whatever it wishes to find things out (Leveson report, volume one: 84).

Lord Leveson commented that the "British press has a strong tradition of holding power to account" (Leveson report, volume one: 64). He said that for this tradition to continue the press "must be independent from those in power" and above all must be "active, professional and inquiring" (Leveson report, volume one: 64). Justice Leveson was explicit in his belief that investigative journalism was a public good, and lay at the heart of a democratic society:

> The public interest in a press which is free, which is viable, and which is diverse cannot be too highly valued (Leveson report, volume one: 89).

In his report, Lord Leveson constantly made the distinction between legitimate and illegitimate investigative journalism, using the public interest to denote this demarcation. Acting in the public interest is one of the key defences used by journalists to protect themselves against legal action. While it has been regularly used as a defence, it has never been clearly defined. The Press Complaints Commission attempted to provide a clear definition in its Editors' Code of Conduct, but this has never been accepted by the judiciary. Succeeding bodies such as the Independent Press Standards Organisation (IPSO) have also produced such guidelines. However, as Lord Leveson observed:

> In practice any public interest argument would need to be considered in the context of specific cases (Leveson report, volume one: 22).

The positioning of a public interest test as an assessment to identify legitimate investigative journalism clearly calls on the judiciary to compile a more robust definition of what in fact the public interest is. This ambiguity at the heart of the debate was recognised by Lord Leveson when he called upon Crown Prosecution Service to draw up fresh guidance for journalists:

> Keir Starmer told the inquiry on Wednesday that the CPS will shortly release an interim policy on the factors to consider when deciding whether to prosecute journalists over illicit newsgathering methods (Guardian, 2012).

While the practices, the actual techniques, used by the press were examined as part of the inquiry, the actual role, the cultural context of journalism was also central to the inquiry and to the public debate that surrounded it. Put simply, what role does journalism play now in our society? Lord Leveson believed that a free press "serves democracy by enabling public deliberation" (Leveson report, volume one: 64):

> Citizens need information to make intelligent political choices. To this end, the press serves both as a conduit for the dissemination of information as well as a forum for public debate (Leveson report, volume one: 64).

A year after the Leveson Inquiry began, the House of Lords Select Committee on Communications published a report entitled *The future of investigative journalism* (2012). It was keen to emphasize that it did not intend to cover the same ground as Leveson:

> This report explores the media landscape in which investigative journalism operates and argues that any changes should not be rooted in the past but should seek to enable responsible investigative journalism to flourish in the future (Select Committee on Communication, 2012: 5).

The committee found investigative journalism was suffering from a "funding crisis" due to a "lack of proper investment and organization support" (Select Committee on Communication, 2012: 5). The Committee's report had a very pessimistic view of the state of the newspaper industry:

> Even before the current scandal [hacking] started to unfold fully, newspapers in the UK were under threat; the combined effect of declining newspaper readership and the migration of classified advertising to online have coincided with the severe economic recession. As a result local newspapers have been forced to close and many journalists and newspaper staff have lost their jobs (Select Committee on Communication, 2012: 9).

John Mair, Senior Lecturer in Broadcast Journalism at Coventry University, told the inquiry:

> Newspapers are dying. They are dying not so slowly. Local papers are in the intensive care ward (quoted in Select Committee on Communication, 2012: 18).

In its findings the Committee made a number of recommendations to address the "crisis", such as:

Tax breaks and financial incentives from the government
Legally strengthening the Public Interest defence
Government intervention to prevent media monopolies
Improved training of young journalists in universities and media organisations.

It is clear that the Committee believed that investigative journalism was in such a perilous state that government intervention was needed urgently to halt its decline. The Committee's conclusion that investigative journalism will ultimately survive sounds more hopeful than confident:

> We heard much evidence which painted a pessimistic picture of the economic problems facing investigative journalism but we have heard no evidence that leads us to conclude that investigative journalism will disappear: we believe that it will continue (Select Committee on Communication, 2012: 72).

2.4 Conclusion

The purpose of this chapter was to establish the parameters of the research project and expand and critically evaluate some of the key issues contained within it. One of the key considerations was an exploration of what is understood by the term: investigative journalism. De Burgh's approach was used as a starting point but throughout this section there has been a consistent attempt to address conflicting views. The pessimistic view of Nick Davies is explored, along with the regrettably realized dystopian future that he envisaged via the findings of Lord Leveson. Whether the challenges facing

investigative journalism amount to a genuine crisis is obviously difficult to assess, but are certainly easier to evaluate using a historical perspective. An analysis of the works of journalists such as Cobbett, Wilkes, Stead affords such an assessment. This section, exploring the journalism of key historical figures, underlines the tendency for investigative journalism to gravitate towards crisis, to seek out watersheds of one type or another. Viewed in this way it is perhaps unsurprising that investigative journalism is currently seen to be in crisis. As the historical examples show, it was rarely in any other state.

There are of course exceptions to this observation, and we have explored in detail a period when investigative journalism was seen to be in very rude health indeed. The period of the 1970s to mid-1990s is often seen as a "golden age" of investigative journalism, usually because of the iconic investigations into miscarriages of justice such as the Birmingham Six and Stephen Downing. It was a period when "miscarriages of justice appear to have proliferated" (De Burgh, 2000: 290). While giving full credit to the likes of Chris Mullin and Don Hale, the reason for this so-called "golden age" was not so much the quality of the journalists working at the time as the relationship between the relevant institutions. The fact that miscarriages of justice were a political issue in this period meant that journalists held the whip hand when it came to seeking redress in particular cases. The creation of the CCRC largely de-politicised the issue of miscarriages of justice, fundamentally changing the structural relationships and robbing journalists of their pivotal role.

The purpose of this chapter was to highlight the vital roles that C3 and the CCRC had in defining the role of investigative journalists in the appeal system, along with recognizing that changes in technology and media attitudes could also potentially affect levels of coverage of miscarriages of justice. Subsequent chapters will interrogate the central topics, such as the CCRC, in greater detail using primary research to analyze, and at times challenge, the current thinking on the relationship between the criminal appeals system and investigative journalists.

CHAPTER 3: DEVELOPMENT OF THE CRIMINAL CASES REVIEW COMMISSION

"*When we no longer feel rage at injustice, we will have lost our humanity and our claims at living in a civilised society."*

(Baroness Helena Kennedy QC, 2004)

3.1 Introduction

This chapter will trace the development of the Criminal Cases Review Commission (CCRC), beginning from the cases that established the need for the reform of the appeal system, and finishing with the findings of the latest parliamentary inquiry into the organisation's effectiveness. I will begin by looking at its predecessor, the C3 Division of the Home Office, and explain the circumstances that resulted in it being seen as unfit for purpose. I will then examine in detail the Royal Commission on Criminal Justice, the architect of the CCRC. In order to do this, I carried out interviews with the chairman of the commission, Lord Runciman, and the commission's legal expert, Professor Michael Zander. Using the interviews and the actual findings of the commission I trace how the recommendations of Runciman and his fellow commissioners were expressed in statute. The beginning of the CCRC in 1997 will be analyzed to ascertain how the new powers granted to it via the Criminal Appeal Act 1995 were applied to real cases. Since 1997 the CCRC has been the subject of a great deal of debate, and a certain amount of criticism. I have sought to align the various critical voices into general positions, e.g. those critical of the 'real possibility test', and then to show how the scrutineers on the Justice Select Committee endeavored to deal with these issues.

3.2 C3 Division

The CCRC was established by the Criminal Appeal Act 1995, replacing the Criminal Case Unit of the C3 Division of the Home Office where the Home Secretary had the power to order reinvestigations of alleged miscarriages of justice and send them back to the CACD under s.17 of the Criminal Appeal Act 1968. The urgency to create the new body had come from the crisis caused by numerous high profile miscarriage of justice cases (outlined previously) but underlining this was the perceived ineffectiveness of the C3 unit and the discomfort that politicians felt about dealing with these difficult cases. The Runciman Commission ruled that the C3 unit was unconstitutional because it was part of a government department. This meant it was hampered in making referrals by the doctrine of separation of powers, which requires the executive not interfere with the judicial system (Nobles and Schiff, 2010).

> The principal reason for establishing a new review body to replace the Home Office was the need for such investigations to be carried out independently of the executive (Roberts, 2009: 59).

In this point, Runciman was drawing upon an earlier report on the Maguire case by Sir John May which found that there was a systematic constitutional difficulty in giving the executive branch of government the responsibility of reviewing claims of miscarriage. This point is contested by Roberts and Weathered (2009), who claim that the CCRC's connection with the government is not completely separate because its commissioners are appointed by the Queen, the Home Office decides on its budget and select committees have oversight of its operations. There is a general agreement among experts, such as Zander and Naughton, that the C3 unit had key weaknesses. Paul May, who chaired the campaign for the Birmingham Six and led campaigns for Judith Ward, the Bridgewater Four and Danny McNamee, described his view of C3 in his contribution to the Triennial Review 2012:

> C3's lamentable performance and obduracy in the face of notorious miscarriages of justice contributed significantly towards the serious reputational damage which the English criminal justice system suffered, domestically and internationally, in the 1980s and 1990s (quoted in The Justice Gap, 2012).

But it is worth noting that it was very poorly resourced. It received up to 800 cases a year and had annual staff costs of £357,000 in 1991 (equivalent to about half a million pounds in 1997 when the CCRC was created). In contrast the CCRC was given a budget of nearly £5m pounds, but as Elks (2008) points out, there has been a four-fold increase in the number of cases referred to CACD in comparison with the C3 regime. Much of the keenest criticism of the C3 division came from journalists working on miscarriage of justice cases, such as the creator of *Rough Justice*, Peter Hill:

> There were 13 civil servants, all lawyers, in C3. When a petition was taken seriously, C3 would order a re-investigation. The first problem with a re-investigation was, inevitably, the police. The Home Office, who are in charge of all police matters, was in charge of all investigations of miscarriages of justice, and invariably chose the police to re-investigate a case (often from the original investigating officers!) (*Rough Justice TV* [Online], 2009).

The criticisms of the C3 investigations weren't confined to journalists, in many ways the most

scathing critique came from lawyer and former CCRC Commissioner Laurie Elks, who claims that the C3 department was positively against investigating miscarriages.

> In general, the Home Office refused to take a proactive stance in investigating allegations of miscarriage and referred cases only when served with clear cut evidence of miscarriage. It was left to under-resourced voluntary bodies, drawing on the pro bono efforts of lawyers, and supported by a small number of broadcasters and journalists, to bring the miscarriages to light (Elks, 2008, 11).

Given the analysis of someone like Elks, it is therefore unsurprising that journalists would concentrate their disapproval on the actual techniques used by the officials to investigate potential miscarriages of justice. Journalists like Chris Mullin, Peter Hill and David Jessel clearly saw the police as often being part of the problem rather than the solution. Given that most of the worst miscarriages of justice– such as the Irish terrorism cases, happened before the implementation of the codes of practice enshrined in the Police and Criminal Evidence Act 1984 (PACE), it was not an unreasonable point of view. For example, pre-PACE there was no requirement to record interviews under caution, leading to a large number of false/ forced confessions. PACE has largely eliminated these, but not entirely, as the case of the Cardiff Three (*R v Paris, Abullahi and Miller* [1992] 97 Cr App Rep 99) showed (The Royal Commission on Criminal Justice, 1993: 12) As Mansfield and Taylor say:

> It is rather naïve to expect a police force to investigate fully its own misconduct (1993: 164).

For the lawyers, the unsatisfactory nature of the C3 Division was its location, positioned as it was at the intersection between politics and the judiciary. The potential of bleed from one system into another was clearly present, and was recognized immediately by the Runciman Commission, which considered it unconstitutional. This view was echoed by experienced appeal lawyers such as Michael Mansfield QC:

> The English post-appeal system, designed as a judicial 'safety net' to prevent or root out miscarriages of justice, has been an abject failure in recent years (1993: 163).

To illustrate these deficiencies, Mansfield and Taylor (1993) explain that in the days before the CCRC, the Home Office had clearly defined options open to it when presented with a petition from a

convicted individual:

A. Grant a pardon (technically through the Crown), Zander, among others, believes this remains an underused remedy. It effectively nullifies the sentence but not the conviction, but is very controversial among many lawyers: “The Home Secretary is here usurping the function of the courts.” (Mansfield and Taylor, 1993:165)

B. Refer the case back to the CACD [under section 17 of the Criminal Appeals Act 1968], “The only statutory restriction on the Home Secretary’s decision to refer a case is that he should only do so where ‘he sees fit’.” (Mansfield and Taylor, 1993: 165) The key point about the Home Secretary referring a case to the CACD is that he is essentially disagreeing with or at the very least calling into question, the decision of the jury in the original trial. “There are good reasons to view the trial verdict as final, and to constrain the opportunities for review at the appeal and post-appeal stages. To reduce the finality of conviction at trial would potentially diminish the jury's role, upset the efficient distribution of work within the judicial hierarchy, and make it more difficult for victims to achieve closure.” (Hamer, 2014: 311) As explained previously, this is something which the legal system does very reluctantly. To avoid this rather uncomfortable situation in which an elected official undermines a jury’s decision, the Home Secretary ostentatiously based his decision on the basis of “new evidence”, not available to the jury: “The overriding factor governing the exercise of the discretion is a concern to avoid even the appearance of interfering with the independence of the judiciary. As a consequence, the Home Secretary will only act according to an established departmental formula, whereby the petitioner must produce new evidence which was not available at the original trial” (Mansfield and Taylor 1993: 165).

C. Or reject the application. “The first and possibly last, contact the prisoner may have with the Home Office is often a simple, formal rejection of the petition.” (Mansfield and Taylor, 1993: 164-5)

It is worth mentioning in this context that, while no one would ever contend that the decision by a Home Secretary to refer or reject an application was easy, the personal ramifications for the prisoner of this decision were less profound when capital punishment was abolished (the last executions taking place in 1964). David Faulkner, writing on the history of the Home Office, said the abolition of the death penalty was greeted with huge relief by the C3 department:

> The notorious executions of the '50s and early '60s, Derek Bentley, Ruth Ellis, James Hanratty, affected the whole Department, and there was a universal sense of relief when capital punishment for murder was abolished in 1964 and its abolition was made permanent in 1969 (Faulkner, 1991: 36).

However, in many cases such as Hanratty the fact that the prisoner had been executed didn't end the media, or public's, interest in the case in terms of whether it had been a miscarriage of justice, as veteran investigative journalist Louise Shorter explains:

> A BBC *Panorama* programme in 1966 examined the case in detail and questioned whether James Hanratty, hanged four years earlier for the crimes, had been guilty at all. It is a question that endures 50 years on (Shorter, 2012: 40).

It would be wrong to view the calls for a more effective method to address miscarriages of justice as arising solely from the growing recognition of the inadequacies of the C3 department. There were also individuals and organisations actively campaigning for reform as former CCRC Commissioner and author of one of the main guides to the CCRC, Laurie Elks, points out:

> The need for effective redress for victims of miscarriage of justice has been pursued by Justice from its very inception 50 years ago. Two committees of Justice, which reported as long ago as 1964 and 1968 highlighted the many practical difficulties (Elks, 2008: 11).

A report by Sir George Waller, called *Miscarriages of Justice*, identified the top five causes of miscarriages of justice: Mistaken identification; false confessions; perjury by witnesses or co-defendants; police misconduct; poor defence tactics (Waller, 1989). One of the most persistent critics of the Home Office's handling of claims of innocence was the organization Justice. The body was founded in 1957.

> In the early years, under the leadership of the inimitable Tom Sargant, Justice was renowned for casework on miscarriages of justice. We helped secure the release of many wrongfully convicted prisoners and highlighted systematic failures in the criminal justice system (Justice [ONLINE] Accessed 09 October 15).

It is interesting to note that Justice and the Home Affairs committee both recommended setting up a

review body in the 1980s, and both connected it to the Home Secretary, with the Home Secretary having to respond publicly to its recommendations. This contrasts greatly with the approach later taken by the CCRC. The select committee recommended:

> We would wish to see a revised procedure for the handling of alleged miscarriages of justice which would operate as follows. Petitions from convicted persons would continue to be directed to the Home Office and would be examined in the first instance by officials. If it appeared to them that new evidence, defined in the way we suggest (i.e. all evidence which was available, whether used at the trial or not), had emerged since the trial, the case would be referred to an independent review body whose chairman would allocate it to one or more of its members for consideration or submit it to a formal hearing if necessary. The review body would then advise the Home Secretary either not to intervene or to invoke the Royal prerogative in order to remit the sentence or to set aside the conviction (*Miscarriages of Justice*, Home Affairs Committee of the House of Commons 1982, h c 421).

In reply the government said in paragraph seven:

> Minister consider that as a matter of constitutional principle it should primarily be for the courts and the judicial process to review convictions and if necessary, upset them: and that accordingly, action under the Royal Prerogative should be limited to the exceptional case which could never be brought within any judicial process.

Later in paragraph 15, the government continues:

> As a matter of principle, priority should be given to improving and enhancing the part played by the courts in these matters, rather than, as the Committee propose, curtailing the present arrangements for referring cases to the Court of Appeal.

The government adds in paragraph 16:

> The issue involved turns in the end on a judgment of the facts (often complex and obscure) of each individual case. The introduction of an advisory body, or any other institutional change, would not ensure that such decisions are infallible. Nor would they offer any

> guarantee that in every instance the petitioner would accept the eventual decision as just (Government Reply 1983, Cmnd. 8856).

A report written by Justice in 1989 about miscarriages of justice provides an insight into the difficulties faced by individuals and campaign groups under the C3 system. In the report, Justice said it was still receiving the same volume of requests from prisoners in 1989 as it had been when it began in 1957. In the 1980s it was receiving 200-300 requests a year. Through screening Justice investigated 50 cases a year and about five of these led to preparation of grounds for appeal or petition to the secretary of state. Justice took two or three years to investigate each of the five cases (*Miscarriages of Justice*, A report by Justice, 1989):

> We recommend that an independent review body should be established to investigate petitions to the Secretary of State alleging a miscarriage of justice after a trial by jury which resulted in imprisonment. It should publish a report of its findings and recommendations and the Secretary of State should report to Parliament on what steps he takes in relation to those findings (Justice, 1989: 72).

Justice believed that the setting up of this body was the only way to address the issue of miscarriages, and detailed how the new organization would work:

> The review body would not have power to quash a conviction or alter the sentence; its function would be to attempt to establish the truth in a case and to advise the Secretary of State accordingly. The Secretary of State would not have to follow its advice, although he would undoubtedly have to answer searching Parliamentary questions if he rejected it (Justice, 1989: 71).

Perhaps conscious of the fact that governments are often reluctant to countenance new organizations due to the expenditure involved, Justice was keen to calm the concerns of the politicians by explaining that the new body would be a very small affair, that would in the long term actually save money by helping to identify flaws in the system:

> As we expect the number of cases investigated to be small, we do not think that such a body would involve very much extra public expenditure. Indeed, if it was able to identify

> institutional failings in the criminal justice system as a result of its inquiries, it might in the long term lead to substantial savings (Justice, 1989: 72).

3.3 Royal Commission on Criminal Justice

Given this widespread concern about the potential for the system to produce miscarriages, and a lack of confidence in its ability to self-correct these mistakes, it is unsurprising that the overturning of the convictions of the Birmingham Six, Guildford Four and Maguire Seven would have had such a seismic effect on the legal system. On the very day that the Birmingham Six convictions were quashed, the government established the Royal Commission on Criminal Justice under the chairmanship of Lord Runciman with the aim of tackling the issue of how to limit and redress miscarriages of justice. Because the Runciman Commission provided the blueprint for the CCRC, it will be examined in detail to understand what the main arguments were behind its recommendations which were later enshrined in statute, largely unchanged, in the Criminal Appeal Act 1995. In order to do this, I will analyze the report itself, *The Royal Commission on Criminal Justice* (1993), and writings of supporters of the Commission such as Laurie Elks and critics such as Michael Naughton. Informing this analysis will be interviews carried out with the chairman of the Commission, Lord Runciman, the leading academic on the Commission, Professor Michael Zander QC, who also wrote the dissenting note that was included in the official report and CCRC Commissioner and journalist David Jessel, who also gave evidence to the Commission during the two years that it gathered evidence.

Frances Gibb, writing in the *Times* (London, March 15, 1991) a day after the Royal Commission had been announced said the criminal justice system was going to be put "under rigorous scrutiny".

> The Royal Commission's sweeping terms of reference embrace almost every aspect of the criminal process, from pre-trial investigation to the role of the Court of Appeal and, after that, the way alleged miscarriages of justice are handled. The commission will face pressure for specific changes: the creation of an independent review body to investigate alleged miscarriages of justice; and for a statutory duty on the Court of Appeal to widen the test judges apply when considering if a conviction is safe. The Court of Appeal is under particular scrutiny (Gibb, 1991).

It is difficult to overstate the powerfully emotive issue miscarriages of justice had become, for

example there were persistent calls for the Appeal Court judges involved in the Irish terrorism cases to resign. Lord Lane, who famously declared in the Appeal hearing of the Birmingham Six: "The longer this hearing has gone on, the more this court has been convinced the jury was correct", came in for some acute criticism. As the Runciman commission itself notes, the issue of miscarriages had grown into a question of legitimacy about the whole of the criminal justice system:

> Public confidence was undermined when the arrangements for criminal justice failed to secure the speedy convictions of the guilty and the acquittal of the innocent (Royal Commission, 1993: 1).

3.4 Lord Runciman

Walter Garrison Runciman, 3rd Viscount Runciman of Doxford, CBE, FBA (born 10 November 1934), usually known informally as Garry Runciman, is a leading British historical sociologist. Lord Runciman has been a Senior Research Fellow at Trinity College, Cambridge since 1971, researching in the field of comparative and historical sociology. Lord Runciman chaired the Royal Commission on Criminal Justice (known as the Runciman Commission). As a result, the Criminal Appeal Act 1995 established the Criminal Cases Review Commission.

The interview with Brian Thornton took place in his home in London on Tuesday, May 21st May 2013. The interview was audio recorded, as Lord Runciman was reluctant to have it filmed. Lord Runciman says he was obviously aware of what had brought about the crisis and, although was surprised to be approached, he said he understood why he had been chosen:

> That my qualifications for being asked to do the job, which I was very surprised to be asked to do, were first that I had no party affiliation, and I sat as a crossbench peer in The Lords, and secondly that I had no connection with the law, and certainly not with the criminal law. The Chairmanship was deliberately to go to somebody who was not a professional lawyer (Runciman, 2013).

Lord Runciman's recollection on how the terms of reference were agreed is very telling, especially when we consider the press reports of "sweeping terms of reference" (Gibb, 1991).

> I was rung up by the then Solicitor General, Nick Lyell, whom I knew, who said, 'Can I come around on Saturday morning about a government thing?' 'This is what we'd like you to do', and the terms of reference were fished out of the briefcase (Runciman, 2013).

Lord Runciman had never seen the terms of reference before they were presented to him and, when they were, they were presented as a fait accompli. He admits he was taken aback by this, as it wasn't how he, or he suspects the general public, thinks terms of reference for Royal Commissions are created. He says he was listening to the radio at the time and a senior civil servant was explaining to a journalist how terms of references are agreed:

> Well the first thing is that the minister in the responsible department approaches the chairman who's going to be selected to discuss the terms of reference (Runciman, 2013).

But, according to Lord Runciman, this was not the case:

> I remember I actually burst out laughing [while listening to the civil servant on the radio], because that was exactly what did not happen. I was told, you know, 'You can more or less say what you like. You're not constrained by the terms of reference, but these are the terms of reference and you take it or leave it' (Runciman, 2013).

Lord Runciman was adamant that he had no say in the terms of reference: "No. They had been decided" (Runciman, 2013). Given that one of the main factors behind the miscarriages of the 1970s and 80s was police corruption, it was notable that the behavior of the police was not part of the terms of reference, something that Lord Runciman was keenly aware of:

> Let me say at this point we were quite clear that neither juries nor the police were in our terms of reference. I was told, 'You can recommend what you like. I mean, you can go beyond the terms of reference', but with the clear implication, 'You'll be wasting your breath'. The question of juries had in effect already been settled at that stage, even for complicated fraud trials. I mean, it's resurfaced, of course. But I was clear that it didn't matter what we were going to say about that. And equally obviously we talked to a lot of police and the senior policeman on the Commission, Bob Bunyard [Sir Robert Sidney Bunyard], again that was absolutely invaluable from that point of view. And we visited

> prisons and the whole business. But we were not going to talk about the organisation or conduct if you like of the police as such in our report (Runciman, 2013).

Lord Runciman was very forthright about the issue of police corruption:

> I do not know how you ensure that the police anywhere in the world behave as they should (Runciman, 2013).

Once he accepted the chairmanship, he was clear that his priority was to produce recommendations that would be acted upon:

> We all recognised that we were going to be trying to produce a set of recommendations which would hang together as a whole. We also recognised it was very unlikely that any government would actually see it exactly the way we saw it. And I do remember being, by implication, congratulated by a legal grandee of the time, who said to me, which I didn't realise, he said, 'Are you aware that more of the recommendations of the Report of your Commission have been implemented than any Royal Commission since the Second World War?' (Runciman, 2013)

One of the key recommendations of the Commission related to correction of miscarriages of justice. Recommendation 331 states:

> The Home Secretary's power to refer cases to the Court of Appeal under section 17 of the Criminal Appeal Act 1968 should be removed and a new body ("the Authority") should be set up (Royal Commission, 1993).

Lord Runciman was clear what the Commission was trying to achieve by recommending the creation of a new body:

> The overriding concern was that it should be independent of the Court of Appeal, and of course there were members of the judiciary who were very reluctant to surrender anything of the overriding powers of the Court of Appeal to a body that was genuinely independent of it. We were very aware that the calibre of the case controllers, whatever they were called,

> was going to be crucial. And that comes back to the resources question. You've got to be able to recruit and retain and support the people with the necessary skills to conduct these very complex investigations in such a way that hopefully miscarriages are actually corrected (Runciman, 2013).

But Runciman's view, or interpretation, of how this independence manifests itself is quite nuanced. While "it should be independent of the Court of Appeal", the CACD remained dominant:

> I think it's an inevitable consequence of the fact that the power of decision ultimately rests, and must rest, with the Court (Runciman, 2013).

He argues that since the CACD, and it alone, has the power to quash a conviction, it is not unreasonable for the CCRC to have the Court uppermost in its mind when considering whether to refer or not. Runciman does however believe that the CACD should be more open to the possibility of considering fresh evidence in a case, rather than just looking for errors in law:

> I think I'm speaking for all of us [his fellow commissioners], we hoped and indeed expected to see that there would be considerably more scope for fresh evidence to be considered and less emphasis on irregularities of procedure as the grounds for concluding that the verdict was unsafe or unsatisfactory (Runciman, 2013).

While Lord Runciman may have seen the hardwiring of the CCRC to the CACD as straightforward, and inevitable, critics point to this subservience to the CACD as the great weakness in the CCRC's structure. I will return to this point specifically later in this chapter when I address the criticisms of the CCRC. However, there is a key point here: even though the Royal Commission may have wished for a more open CACD it didn't in any way recommend any reforms. From its very inception, the CACD was profoundly conservative and keen to curtail its own influence:

> It took approximately thirty-one Parliamentary bills between 1844 and 1906 before the Court of Criminal Appeal was created, with judges being the most vocal opponents. Official reports generated from various enquiries into alleged wrongful convictions between 1844 and 1906 show that judges were reluctant to accept that innocent people were convicted. This attitude of denial contributed to the delay in setting up the court (McCartney & Roberts, 2012: 1335).

Lord Runciman was keen to acknowledge the role that journalism had in highlighting miscarriages before the creation of the CCRC:

> There clearly was back then a lot of mileage for Granada Television if they got it right, to get their teeth into a suspected miscarriage of justice, to investigate it in a way that it would not be under the existing system (Runciman, 2013).

Clearly he thinks that the investigatory powers that journalists had at their disposal were superior to those of the civil servants overseeing the C3 investigations, but what about the situation now, post-the establishment of the CCRC? Lord Runciman is emphatic in his view that investigative journalism is no longer needed in this role, when the CCRC has such an array of statutory powers.

> I would be very disappointed to be told that there were still people in the media who were sufficiently confident that the CCRC was not doing a good job that they thought it worthwhile to mount a whole long expensive investigation of their own into a suspected miscarriage of justice (Runciman, 2013).

What of the political influence that the media could wield back in the C3 days, was the focusing of public opinion on a particular case a useful way to deal with the problem of miscarriages of justice?

> It seems that the trade off was overwhelmingly in favour of the benefits of the independent body, as against the very occasional cases where for short term political reasons pressure could be exercised from within C3 which was woefully inadequate (Runciman, 2013).

But as Roberts points out, the CCRC's independence isn't as complete as it first appears:

> The Commission's connection with the government is not completely severed, in that its eleven members are appointed by the Queen on the recommendation of the Prime Minister. Also, the Commission is reliant on the Ministry of Justice for resources and the terms and conditions of the Commission members' employment are set by the Minister for Justice (Roberts, 2009: 59).

While Lord Runciman finds it difficult to see the benefit of a team of investigative journalists concentrating on miscarriages of justice, he does think that there is "a great deal of mileage" in investigating police corruption.

> Maybe in terms of where the police are seriously at fault a team of investigative journalists may be the people with the best chance if they've got the right connections or the right support from editors and proprietors to disclose serious corruption and the case handler or whatever they're called in the CCRC might not be able to do it (Runciman, 2013).

If he sees a way ahead for investigative journalists, then this is it: looking into the issue of police corruption. It is a reasonable suggestion, but it is a little more complex than it appears on first reading for two reasons. Firstly, because it suggests that police corruption is something which can exist separately to a miscarriage, but what the Irish cases illustrated beyond doubt was that police corruption was more than incidental; it was one of the key reasons that the miscarriages had happened. Secondly, Lord Runciman was keen to underline the fact that the police were outside the terms of reference, stated plainly, the most in-depth investigation into the causes of miscarriages of justice explicitly decided not to look at police corruption as a factor in wrongful convictions. Therefore, to suggest that investigative journalists should look at police corruption surely only underlines Lord Runciman's view that the role of the journalist has been so diminished by the CCRC that they should be looking at issues that his commission hadn't deemed important enough to consider themselves.

3.5 Professor Michael Zander

Professor Michael Zander is recognized as one of the leading legal academics in the UK and was one of the commissioners on the Royal Commission. His book, *Cases and Materials on the English Legal System*, is one of the key introductory texts for students embarking on a legal career. As a legal expert, and a royal commissioner his definition of the commission and the CCRC are a useful starting point to understand Professor Zander's approach.

On the Royal Commission:

> The Runciman Commission's recommendations on the machinery for dealing with miscarriages of justice cases were unanimous. The main recommendation was that the

> responsibility for dealing with these cases should be taken from the Home Office and given instead to a new body independent of government (Zander, 2007: 723).

On the need for the CCRC to be adequately funded:

> There would need to be adequate arrangements for granting legal aid to convicted persons after they had lost their appeals to enable them to make representations to the Commission (Zander, M, 2007, 725).

On the effect the CCRC had on the role of the journalist:

> The setting up of the CCRC led to a marked reduction in public concern about wrongful convictions. Justice gave up that part of its work. The media stopped investigating such cases. Miscarriages of justice were now being handled by the CCRC (Zander, 2009: xvii).

Professor Zander (QC, FBA of the London School of Economics) was the leading academic on the commission and wrote a dissenting note that was included in the published report. The interview with Brian Thornton took place in his home in London on 7th June 2013. The interview was audio recorded and transcribed. As a legal expert, Professor Zander said he watched developments surrounding the Irish terrorism cases of the 1970s and 80s very closely, and concluded, "something was seriously amiss".

> I thought there was probably a mixture of human wickedness, police wickedness, and then all sorts of other likely failings of the system. But I thought there were a lot of chickens coming home to roost. Obviously it was desirable that something should be done about it (Zander, 2013).

The "chickens", he explains later, were the mistakes produced by a flawed structure, such as police procedures before the Police and Criminal Evidence Act 1984. It is interesting that, even though he admits that something needed to be done, when he was approached by Lord Runciman to join the commission he initially refused. It was only when Lord Runciman persisted that Zander was won over:

> He [Lord Runciman] put it very strongly. He said, 'It's your responsibility. If you are the person that I think you are in terms of your possible contribution to this exercise then you jolly well ought to be doing it. And I think you'll enjoy it.' I think he said something like that, 'We'll benefit and I think you'll benefit'. So, I think I took it on as public responsibility (Zander, 2013).

His approach to the terms of reference is very telling, in that it is markedly different from Lord Runciman's. While Lord Runciman saw the terms of reference as a fait accompli and as such didn't directly consider them, Zander is openly critical of them, saying they were "badly drafted": "The terms of reference were a bit inept" (Zander, 2013). Despite this, he thinks that the report produced by the commission was very strong:

> I thought it was a good report. I thought the whole thing has been worthwhile: 352 recommendations. Only a tiny number of them caused any problem at all. The overwhelming majority of people just ignored them because they were uncontroversial. People said, yes of course, absolutely, no problem. And then a few of them caused a rumpus, a very few (Zander, 2013).

His reaction to the subsequent criticism that was leveled against the Commission was also in contrast to that of Lord Runciman. While the chairman thought that his role was completed when he handed over the report, Professor Zander believed he needed to defend the recommendations against the critics publicly, usually in print:

> I was happy to engage. I'm a competitive kind of individual, I like a bit of to-ing and fro-ing. We'd spent a lot of time doing what I thought was a sensible job, and here are some people saying you didn't do a good job, so obviously I was going to defend it (Zander, 2013).

Here Zander was referring to his fiery exchanges with Professors McConville and Mirsky during 1993.

> There was, perhaps understandably, a very widespread belief that the commission's remit was to look at the system from that perspective [miscarriages of justice]. In fact, however

> our terms of reference were quite different. They required us to 'examine the effectiveness of the criminal justice system in England and Wales in securing the conviction of those guilty of criminal offences and the acquittal of those who are innocent, having regard to the efficient use of resources'. The remit therefore had three distinct component elements, the need to convict the guilty, the need not to convict the innocent and due economy (Zander, 1993: 1338).

He defended criticism that the commission hadn't been radical enough:

> As is well known, the high-profile miscarriages of justice were in the main the result of human factors, such as police officers who fabricated evidence, scientists who made mistakes or suppressed evidence. No system is or could ever be fully proof against human error or human wickedness, although of course one should do what one can to set up checks and balances and controls to reduce the risk as much as is practicable (Zander, 1993: 1341).

The defence of the Commission and the attacks by McConville and Mirsky played out over a number of months in the pages of the New Law Journal:

> We want to be clear about the import of the Commission's recommendations in terms of the burden of proof and the presumption of innocence and the right to have the state's evidence tested in serious cases by an impartial jury: these recommendations are totally unprincipled (McConville and Mirsky, 1993: 1579).

This old-fashioned academic skirmish eventually petered out, but Zander's appetite to defend the work of the Commission did not. He has done so again and again, in print, on radio and TV and in lectures. While he may have been the most publicly visible defender of the findings of the Royal Commission, that did not prevent him being the main antagonist amongst his fellow commissioners. His dissenting note was included in the face of strong opposition from the chairman, Lord Runciman:

> That's why Gary was unhappy of course. He was worried about that, and very reasonably as Chairman. He tried to persuade me not to do it; but I said, "No, I'm sorry, I can't" (Zander, 2013).

Importantly while Professor Zander believed it was important that the Commission's position "didn't go unchallenged", he doesn't believe that his dissenting note in any way blunted or fragmented the impact of the report. Or as he puts it, he doesn't think that his dissenting note had "much practical result", and that ultimately the report was highly influential:

> If one looks at all the 352 recommendations and what happened to them, I would guess that most of them were implemented one way or another (Zander, 2013).

In Zander's analysis, the reason for the success of the report, in terms of number of recommendations implemented, which Lord Runciman claims was the most by any Royal Commission since the war, was due to the approach taken in the drafting of the report by the commissioners:

> Because a lot of them [recommendations] were minor things which everyone could agree to; and that was good. The fact that they were minor doesn't mean that were not worth doing. In fact, if you get a great pile of minor things, minor improvements you may actually end up with a quite significant result. We were looking in every direction for things that could change. And I think one of the disappointments for some of the critics was that there was no magisterial theme; no great amazing change that we were recommending which could be turned into and translated into some effective remedy against miscarriages of justice, which we didn't find any as such. There wasn't one as far as we were concerned. There was no magic solution to these problems; and certainly no way of ending miscarriages of justice. It's a ridiculous idea to say we can end them by laying down new rules (Zander, 2013).

It was certainly true that given the media coverage of the miscarriages which had created the need for the Royal Commission there was an appetite for clear, dramatic reform, rather than the important, but minor, housekeeping task which Professor Zander refers to:

> After toying with radical changes the commission has decided to back the traditional adversarial system of court conduct. There will be no independent investigator to supervise the police or a nationalised law service charged with defending the poor, as exists in the United States. 'It is basically going to be a moderate report,' said a senior criminal barrister last week. 'The emphasis will be on strengthening, rather than replacing, the existing system.' (Macintyre, 1993: 67).

As one of the leading academic experts on PACE, Professor Zander admitted he was more sensitive to the role that lack of proper adherence to correct police procedure might play in miscarriages of justice. This view is clearly apparent in his highly critical attitude to retrials:

> It's not a good thing to have a second run. Retrials are bloody useless for everyone, not least for the defendants (Zander, 2013).

As my questioning clarified, retrials in themselves are not the problem: it is simply that they are based on the original, possibly flawed, police investigation.

> **Brian Thornton**: This is my reading of what you said: your concern seems to be that if the investigation is wrong initially, even if the trial process is absolutely right, there's no way that this can possibly be a safe conviction. But this doesn't seem to be an argument that you won with the other commissioners; and it seems to be an argument that isn't generally acknowledged now.
>
> **Michael Zander**: I think that's right (Zander, 2013).

Zander is clearly keen to directly address the role of the police in his exploration of possible causes of miscarriages. It is worth recalling what the chairman of the commission, Lord Runciman, said about the same situation: "I do not know how you ensure that the police anywhere in the world behave as they should." (Runciman, 2013)

Professor Zander has an answer to Lord Runciman's resigned tone, the Police and Criminal Evidence Act. PACE is how you ensure that police act as they should, and how you can avoid having "bloody

useless" retrials, according to Zander. "Bloody useless" because they are based on flawed investigations. Adherence to PACE makes for more effective and transparent investigators, in Zander's opinion. But as the Commission discovered during its evidence gathering, simply having an Act like PACE on the statue books does not ensure that police act as they should. For example, the case of the Cardiff Three, which happened post-PACE:

> [The Cardiff Three case] was for sheer wickedness; police wickedness beyond belief, I think (Zander, 2013).

Such a case raises the issue of how to enforce PACE, and this is a key question for Professor Zander. Though one might naturally look to the Independent Police Complaints Commission (IPCC) to enforce police procedure, Professor Zander does not think so.:

> They [the IPCC] had no resources. They had difficulties even in doing what they're supposed to do: investigating killings by police officers etc (Zander, 2013).

But if the IPCC is not the proper body to enforce PACE, what is?

> That has to be the Court of Appeal. If it's not the Court of Appeal it's no one (Zander, 2013).

But while the CACD may consider if there have been breaches of PACE when it is considering quashing a conviction, there are limitations to this oversight, in Zander's opinion. To begin with, it is difficult to work out beforehand what the Court will consider a significant enough breach to warrant overturning a conviction.

> It's interesting; the Court of Appeal is very muddled in its approach to this. Sometimes they quash a conviction because there have been breaches of PACE. And one says, okay there were breaches of PACE, but were they serious? No, not particularly serious. And did they have any result? No, they didn't have any particular result; but they were definitely breaches of PACE and they quashed the conviction. Others cases they say, well there were breaches of PACE but didn't affect the integrity of the prosecution at all, and the defendant knew his

> rights, he was an experienced criminal and so on and so forth; or he had his lawyer there present at the time. So, they're erratic in their enforcement (Zander, 2013).

One of the key writers to have analyzed bureaucratic systems, Max Weber, believed that predictability, and an objective application of the rules, were fundamental traits. A Weberian analysis of the situation that Zander describes is more akin to that of a Charismatic Authority, subjective and unpredictable. Zander appears to be arguing that the unpredictable and inconsistent nature of the Appeal Court judgments represent a departure from legal-rational authority (Weber, 1922). But, even though it may be a flawed oversight, it is an oversight that the police must at least consider now:

> The police know that there are cases where breaches of PACE will result in the conviction being quashed or evidence not being allowed in. So, there is a culture the police are aware of that they were not aware of pre-PACE; I mean, they had no reason to worry about it; pre-PACE the judges paid no attention at all to breaches of the Judges's Rules, it was just nothing. Whereas now all you can say is it may or may not be penalised by the Court of Appeal or by the trial judge refusing to admit evidence. Sometimes yes, sometimes no, it's completely unpredictable (Zander, 2013).

In terms of the landmark recommendation, to create an independent authority to investigate possible miscarriages, he believes that the reality of the CCRC was a good representation of what had been detailed in the commission's report:

> I'm trying to think whether I had any severe reservations about the way they were setting it up. I don't remember any. I thought obviously there was a bit of tinkering around the edges, which we hadn't gone in for at all, and various things, but I thought it was pretty much what we recommended (Zander, 2013).

Zander also believes that the CCRC has applied itself well to the task it had been set:

> On the whole I think they've been doing quite well, given their resources, given all the shortcomings of life (Zander, 2013).

Interestingly, when it is put to Professor Zander, what would he do if he was running the CCRC, he doesn't recommend a different approach or any structural or policy change. In fact, apart from emphasizing the need for the body to be properly funded, he doesn't dwell on the CCRC at all but harkens back to the pre-CCRC days:

> Certainly I'd give as much money as I could. But if I were chairman, what would I do? I think I would see whether there wasn't a case where I could put a strong argument to the Home Secretary to say the Court of Appeal have refused to budge on this one, but I think something has got to be done about it; this is somebody where we feel there's a terrible miscarriage of justice case. If the Court of Appeal won't budge, please do something (Zander, 2013).

It is certainly worthy of note that one of the main architects of the CCRC, a body explicitly created to be independent from external pressures, is arguing for the continued need for an additional safety net, one on which pressure can be exerted:

> And that was one of the things that was possible before the CCRC; which has proved to be less possible now because of the CCRC, which is a kind of irony/ paradox. You set up a system in order to get away from the Home Secretary, but actually you need the Home Secretary as a backstop for cases where the combination of CCRC and Court of Appeal still don't do the job, and there are such cases unfortunately. I do wish that they would use that possibility of putting a case to the Home Secretary and saying please, the system has got to do something about this individual. But that's a very rare case where it's really screaming for that kind of attention; but there are such cases, terrible cases (Zander, 2013).

Here Zander is acknowledging the existence of cases which are not adequately resolved by either the CCRC or the CACD, and suggesting that a final recourse to the Home Secretary as in the C3 Division days, is preferable to the intractable endgame experienced by cases such as Tony Stock. Stock was sentenced to 10 years in connection with a violent armed robbery in Leeds. He claimed to

have been framed by corrupt police officers. His case was supported by figures including Laurie Elks, one of the original CCRC commissioners, Michael Mansfield QC, Tom Sargant, the first secretary of the human rights group Justice and Ralph Barrington, a former head of Essex CID who went on to advise the Criminal Cases Review Commission for 13 years. The Labour MP for Huddersfield Barry Sheerman said the case was "one of the most outrageous miscarriages of justice in modern times". Despite Stock's death in 2012, his case was taken up by investigative journalist Jon Robins. His book, *The First Miscarriage of Justice*, was published as an attempt to force a reconsideration of the case. The Stock case provides a perfect example of Zander's 'intractable case'. It was knocked back by the CACD four times, leading to Paul Foot to write in Private Eye in 1996:

> If anyone seriously believes the Court of Appeal has reformed itself since the dark days of the Birmingham 6 and Guildford 4, they should study the unreported and amazing case of Tony Stock (Foot, 1996).

The case actually made legal history when it became the first to be referred twice to the CACD by the CCRC. Zander argues that in cases like this, one possible answer is to refer cases to the Secretary of State for application of the Royal Prerogative of Mercy (using section 16 of the 1995 Act to bypass the CACD). In the context of the C3 Division, the pressure exerted on the Home Secretary invariably came from the media, but the investigation of miscarriages of justice by media organisations has waned. What did Zander consider were the factors behind this?

> People think the topic has moved on because CCRC is there and they should do it; Justice took the view. I mean, Tom Sargant et al did a great job, and were happy to hand it on to the CCRC. I think they thought rightly and understandably we're amateurs by comparison with this big organisation which is now set up. It's not C3 any longer, three men and a dog in the Home Office; it's a proper organisation, lots of people, nice new shiny building and so on. So, they bowed out. Now, the newspapers sell newspapers by the stories that they write, so you'd think that if there's any mileage in miscarriage stories selling newspapers why wouldn't they go on doing it. David Jessel, for example, went from being a journalist to being a commissioner (Zander, 2013).

While Zander does believe that there has been a reduction in the number of journalists covering potential miscarriages of justice, he is adamant that there remains a need for journalists to stay in the field, that these types of investigations still have merit.

> If there are journalists doing some brilliant work that helps; even if it's only just to feed the CCRC with stuff that otherwise they wouldn't have known. And I would have thought from a newspaper editor's point of view it's interesting material. If you can get a good story about a miscarriage, it's great; that's a good story (Zander, 2013).

Though he sees the "combination of PACE and the CCRC" as a significant response to the issue of wrongful convictions, he admits that there has been a trade-off in creating a body like the CCRC. Making independence a central tenet of its creation has inevitably closed the door to other methods of prisoners and their supporters seeking justice.

> It's easier in a way to influence the Home Office than it is to influence the CCRC because you can lobby, you can shout, you can yell, you can do all sorts of things with the Home Office and Home Secretary, ask questions in parliament etc. You can't do any of that with the CCRC. So, you win some, you lose some. There's a big gain and some loss in having the target being the CCRC as opposed to the Home Office (Zander, 2013).

3.6 Establishment of CCRC

In 2007, Laurie Elks, one of the original CCRC commissioners, wrote a book reflecting on the development of the body over its first ten years. He described how when the CCRC started on 1 April 1997 it took over 300 files from the Home Office, many of them considered 'too difficult' to be processed by the existing procedures in the C3 Division (Elks, 2008). The CCRC was now, as ex-commissioner John Weeden described it, "the last chance saloon":

> The only way their case can return before the appeal court for a second time is if the CCRC refers it. Any Innocence Project or other group that has been working on a case must, therefore, seek to persuade the Commission to refer it (Weeden, 2012: 197).

Richard Foster, chair of the CCRC, in a presentation to the CCRC Stakeholders Conference in November 2014 described it a little differently. He says that "284 cases arrived in a white van on 31 March 1997" and the commission got started using "two PCs that had been bought from Currys". He recalls that the staff even had to chip in to buy stamps in order to send a letter to the Home

Office to let it know that the organization was now operational (Foster, 2014). Faced with these 284 cases, and the thousands of cases that would follow, the body, despite the humble beginnings described by Foster, has some very impressive new powers at its disposal. These powers (which will be outlined below) had been established, or at least recommended, by the Royal Commission. These new powers helped the commission tackle, or at least properly assess, these apparently intractable cases. One of the cases that arrived in that white van to the CCRC offices in Birmingham was that of James Hanratty. This was a cause célèbre with many in the legal profession, the media and, according to Foster, even many of the staff at the CCRC, who were certain that a great injustice had been done. Weeks before the CCRC became operational, *the Independent* reported that the Home Office thought that Hanratty had been a victim of a miscarriage of justice:

> Home Office officials are understood to have concluded that Hanratty was innocent. This follows an unpublished police inquiry which concluded last year that he was the victim of a miscarriage of justice and that the murder was probably part of a wider conspiracy. Michael Howard, the Home Secretary, is expected to announce within the next few weeks that he is to refer the case to the Court of Appeal, where the conviction is expected to be quashed (Bennetto, 1997).

But *the Independent* story was preemptive and, ultimately, incorrect. Using its new powers, the CCRC exhumed the body of Hanratty and examined the remains using new forensic techniques. The investigation discovered that Hanratty's DNA matched other DNA that had been found on a handkerchief that had been wrapped around the murder weapon:

> Did James Hanratty really commit one of the most notorious crimes of the 20th Century? Modern science was employed to answer this question and it delivered what appears to be a definitive "yes". The damning DNA evidence that ties Hanratty to the murder of Michael Gregsten and the rape and shooting of his mistress, Valerie Storie, was discovered on two exhibits (BBC News, 2002).

Though this was a surprise, and disappointment, for many of those who had rallied behind the Hanratty campaign. Even they had to admit that the CCRC had dealt effectively with what had appeared to be an intractable case. The case also enabled the CCRC to emphasize its role as independent truth-seeker rather than campaigning organization. The first case that the CCRC referred to the CACD that resulted in a conviction being quashed was that of Mahmood Mattan (*R v*

Mattan [1998] EWCA Crim 676). The case was referred on 23 September 1997 and the CACD overturned the conviction on 24 February 1998. The case itself was not very well known, certainly not as well-known as some of the other "impossible cases" like Hanratty or Ruth Ellis. Known as the Man in Black case, it resulted in the execution of Mahmood Mattan in 1952. He was the last person to be hanged in Wales. The case was referred and quashed on the basis that the key witness who identified Mahmood Mattan was unreliable. Reflecting on this Richard Foster drew a comparison between the two cases, Hanratty that had commanded so much attention and Mattan which had attraction little or none:

> Some of the worst miscarriages command little or no public or media attention (Foster, 2014).

The implication was clear: media attention had no bearing on the work of the CCRC. Neutrality, being independent, and being seen to be independent, was central to the CCRC's approach according to Foster:

> We were born out of campaigning, but we are not campaigners (Foster, 2014).

The powers that allowed the CCRC to bring these cases to a conclusion, or at least progress them to a more satisfactory footing, were impressive. Set out in the Criminal Appeal Act 1995, they are:

Sections 9 to 12 of the Act give the CCRC the power to refer convictions or sentences (in England, Wales and Northern Ireland) to the CACD. The powers of investigation are enshrined in section 17 and 19. Section 17 allows the CCRC to call for material from any public body. This power is less impressive now than it was when it was first used in 1997 because of the tendency for previously publicly owned bodies to be privatized. The closure of the Forensic Science Service and the privatization of forensic provision has put this erosion of Section 17 into sharp focus and led the CCRC to call for this part of Criminal Appeal Act 1995 to be reviewed (it is interesting to note that there is no prohibition for the Scottish CCRC accessing documents from private bodies. I will deal with the specific question of privately held information and Section 17 in Chapter 7).

As Elks discusses, there was initially reluctance from the Home Office for the CCRC to have access to information gathered as part of the Regulation of Investigatory Powers Act 2000 (RIPA):

> The Home Office has now indicated that it accepts that the Commission's section 17 powers extend to the provision of such information (Elks, 2008, 21).

A Section 17 investigation is essentially an office based, in-house analysis of documents and other material, pejoratively described as a "desktop review" by critics. On the other hand, a Section 19 investigation could be described as in-the-field. Section 19 allows the CCRC to appoint an Investigating Officer (IO). As Elks (2008) explains, the grounds for using Section 19 are:

1 Due to the scale and nature of the inquiry.

2 When police expertise is needed.

3 When it is suspected that a police officers or other person involved in the investigation or prosecution of an offence has committed an offence.

4 When it is suspected that someone else has committed an offence.

Points 3 and 4 clearly call for a police officer due to the need to interview people under caution and possibly gather evidence that may lead to a prosecution. Points 1 and 2, scale and necessary expertise, certainly leads one to consider a police officer as the IO, but it is at least arguable that there are some specific circumstances where an IO who is not a police officer would be more appropriate. A case in point is where documents from a case go missing and it is possible that an administrator/ civil servant familiar with historic filing techniques would be a more effective IO. The missing 227 boxes of evidence in the Lynette White case illustrates this argument:

> Now 227 boxes of papers, relating to a police corruption case which collapsed in 2011, have been discovered. Boxes of documents have been found in a police warehouse at RAF St Athan in the Vale of Glamorgan (*Daily Mirror*, 2014).

It is worthy of note that the Royal Commission recommendations which underpin the creation of Section 17 and Section 19 powers is sketched in very general terms. In fact, the powers enshrined in Section 17 are not explicitly dealt with in the Royal Commission's report. Recommendation 347 and 348 are the basis of the powers, later given a statutory footing under Section 19:

> 347: The Authority should have powers to direct investigations, including deciding which lines of inquiry need to be pursued and to order an investigation be carried out by a police force different from the one that investigated the original offence.
>
> 348: The possibility of the Authority, or police officers undertaking investigations under its direction, being given additional powers should be kept under review. (The Royal Commission on Criminal Justice, 1993)

It is these two powers (Section 17 and Section 19) that enabled the CCRC to deal with the historic 'difficult' cases it inherited in 1997, along with the hundreds of applications it receives every year. According to supporters like former CCRC commissioner John Weeden, these new powers are the reason for the impressive figures (relative to C3) in terms of referrals:

> The Commission will not only look at the submissions an applicant makes but will also consider the papers generally. It has regularly found referral grounds that applicants never knew they had, sometimes because the Commission has been able to obtain documents that the defence were not able or allowed to see at the trial (Weeden, 2012: 200).

Hamer also thought that the CCRC was a profound improvement to the appeals system:

> The English CCRC is a highly effective post-appeal mechanism for addressing wrongful convictions, but this is not to say that it manages to identify all wrongful convictions (Hamer, 2014: 275).

The Justice Committee (2009) was keen to have some hard data on how the handling of miscarriages had improved since C3. Richard Foster, chair of the CCRC, was eager to show the improvements:

> If you had asked me a couple of years ago the backlog would have been about 220 or 230 cases not allocated. As of today it is around 78. If you look at serious cases for a minute, the generality of cases, the most serious cases would be waiting around three or four months to be allocated, compared with 20 months a couple of years ago. The average to resolve cases is 12 months to resolve about 85% of cases, 18 months to resolve 90% and that, again, is a reduction on previous times. So we have reduced the backlogs, allocating cases quicker and processing them more rapidly while at the same time getting roughly the same number of

> referrals and the same level of outcomes that we have in the past (Foster quoted in Justice Committee (2009) *The work of the Criminal Cases Review Commission*: 2).

In Foster's evidence it is clear that he considered that the problems the CCRC had inherited from C3 were beginning to be resolved but other problems were taking their place:

> The main trend that you see is that the classic historic miscarriage cases, that would be cases arising from improprieties in police procedures, the sort of things that were on pre-PACE, have largely, if not entirely, disappeared now (the sort of verballing of suspects and so on). What you see a lot more of nowadays is cases that become problematic because of issues around scientific evidence. This is quite a pronounced trend. We continue to see a large number of miscarriages that are around non-disclosure of evidence, and then, in domestic violence, sex cases, we see quite high number of cases which become problematic because of issues about reliability of witnesses. I think those would be the main trends (Foster quoted in Justice Committee (2009) *The work of the Criminal Cases Review Commission*: 2).

The Justice Committee was also eager to explore the issue of the number, or rate, of referrals:

> **Richard Foster**: We get between 800 and 1,000 cases a year and historically we have referred around 4%, and of the 4% we have referred there has been a 70% 'success', that is to say the court has quashed the conviction or changed the sentence.
>
> **Andrew Tyrie [Chair of the Justice Committee]**: If you have got a 70% success rate at the current level of referrals, if you take the next tranche down, we are talking about a spectrum, and presumably you will have a hit rate not of zero success rate, but of somewhere between zero and 70%, probably quite near 70%. Why have you alighted upon 70% being roughly the right figure?
>
> **Richard Foster**: This is the subject of some debate and soul-searching within the organization at the moment. Some would say that it is not the case that what we have is a spectrum of increasingly marginal cases that we are looking at. All I can say, on the basis of just a few months in post, is this. I have walked into an organization of 80 staff and 11 commissioners, all of whom are absolutely passionate about miscarriages of justice and whose one aim in life is to identify those cases and having identified them, to submit them.

> So I do not think there is any institutional reluctance to submit in the marginal case. That said, I remain at least a little worried that we may be erring on the side of caution rather than boldness (Justice Committee (2009) *The work of the Criminal Cases Review Commission*: 2).

Foster raised the issue the Commission faced in relation to its Section 17 powers:

> The Commission has very broad powers under section 17 of the Criminal Appeal Act 1995 to secure material from public bodies for the purposes of review. There is, however, no corresponding power in respect of private bodies or persons. While many organizations and individuals do co-operate with the Commission, the absence of such a power can inhibit our work. The Commission contributed to the work of a multi-agency working group led by the Office for Criminal Justice Reform and looking into the issue of third party disclosure. The group produced a report of its findings which is being considered by the government (Foster quoted in Justice Committee (2009) *The work of the Criminal Cases Review Commission*: 7).

Looking to the future, Foster and the CCRC, said that improvements were needed, particularly in ways that applicants could contact the Commission:

> We have been looking at whether or not we can modernize the way that people approach us at the moment. To put it honestly, you can approach us in any way that you like providing you send us a letter, as it were, and I think it would be better if we could do more over the internet, if we could do more face-to-face. So there is a range of things that we would want to do to make it easier for people who are amongst the most helpless people in our society to approach us more readily (Foster quoted in Justice Committee (2009) *The work of the Criminal Cases Review Commission*: 7).

Writing about some of these issues in an article for *the Guardian* in 2013, my research showed that in the previous year the CCRC received 1,625 applications, a 64% increase. As a result, the body received a 10% budget increase from the Ministry of Justice. The CCRC claimed that the dramatic rise in applications was due to a change in the way that prisoners could apply to the commission. The new application form, which was advertised in all prisons — included pictures and simpler language so that prisoners with even the most basic reading and writing skills could complete it. Richard Foster, chairman of the commission, commented:

> This is not about some sudden upsurge in miscarriages of justice. It is about the commission making itself much more accessible to those who may most need its help and allowing people to make applications in ways which best suit them personally. We all know the pressure on public finances. Ministers would not have increased our funding if they did not recognise both the work the commission has done to make itself as efficient and effective as it can and the importance of identifying, and remedying, miscarriages of justice whenever and wherever they occur (Foster quoted in *The Guardian*, 2013).

A Ministry of Justice spokeswoman added:

> The Criminal Cases Review Commission is an integral part of our justice system. Over the past year they received a 64% increase in applications so we have granted them a small increase in their budget to deal with the workload and they have allocated more resources to processing applications to reduce delays (Ministry of Justice quoted in *The Guardian*, 2013).

Throughout its existence, the CCRC has enjoyed consistent political support, as Hamer explains:

> In June 2013 the Commission passed its first Triennial Review with 'flying colours'. Eighty-three per cent of respondents to the Review, including senior judiciary, individuals and legal bodies, agreed that the Commission was 'necessary', [98% of them 'emphatically]'. The Law Commission said that the CCRC was 'essential ... A functioning and developed criminal justice system needs an effective mechanism for the identification and review of potential errors.' And the Commission received a significantly increased budget for 2013-14, a very notable outcome given that the triennial review process was intended to save the government money (Hamer, 2014: 301).

When contacted, Professor Zander was keen to praise the organisation for making itself more accessible:

> On the whole I think they've being doing quite well, given their resources. The admirable attempt to make their message better known to prisoners has resulted in them being deluged by even more applications. The increased funding is definitely a vote of confidence

> [in the CCRC] because everything has been going downhill and for anything to get more resources at the moment is remarkable. So that's a triumph, or it may be a recognition that they've been shortchanged over quite a long time and it's now got to a point where even this government has to do something about it, which I applaud. They need all the help they can get in terms of resources (Zander quoted in *The Guardian*, 2013).

But, as always, there was a note of caution, from those dealing directly with those claiming to be victims of miscarriages. Maslen Merchant, a lawyer who specialises in miscarriage of justice cases, said:

> I think the CCRC sometimes forgets who they're dealing with and also the effect that delays can have. It once took a year for the CCRC to publish a decision it had made on a case. The prisoner, who had served 16 years already — was on suicide watch while he awaited his decision. They need to meet the prisoners and the families so that they understand what's at stake. Otherwise it's just another file, just another name (Merchant quoted in *The Guardian*, 2013).

Solicitor Glyn Maddocks, who worked for more than 12 years to get the conviction of Paul Blackburn quashed, agreed:

> If the CCRC uses the money to properly and effectively investigate cases rather than doing desktop reviews as they have been doing in recent years, then I would applaud it (Maddocks quoted in *The Guardian*, 2013).

3.7 David Jessel

Investigative journalist David Jessel was the presenter of programmes such as *Dispatches*, *Rough Justice* and *Trial and Error* in the 1980s and 1990s, and was a commissioner at the CCRC between 2000, 2010. I interviewed him in 2013 in London. The interview was filmed. Jessel was interviewed because of his unique experience: he was an investigative journalist before the creation of the CCRC, then became a CCRC commissioner and when he left the commission he continued to be involved with miscarriage cases, notably the campaign to exonerate Eddie Gilfoyle. I asked him to consider what role journalists could play now:

> Having worked on both sides, I feel that the CCRC with its vast caseload lacks the one thing that journalism can bring to the party, which is a fervent, focused and financially underwritten investigative element. The CCRC does do some investigative work but a lot of it is analysis. There is always a tension between the two roles of the CCRC, between the analysis of a case and the investigation of a case. The tilt is much more now towards analysis: you look at the papers, go through them, see if there are any weak links, see if there's anything that you could possibly follow up and really if there isn't, you sign it off and leave it at that. There's a great reluctance to go and re-interview witnesses and in my experience the only way you break through these cases is by going back to the scene of the crime. The CCRC hardly ever goes back to the scenes and looks around. There is this emphasis on trying to do everything through the bundles, through the papers and I'm not saying they're not conscientious, they're wonderfully conscientious and I'm not saying that I was brilliant at the CCRC at going out and investigating things myself. I tried to get the caseworkers to go out and investigate where they could. I'm not one of those who say the CCRC is just a tick-box exercise, but it thinks the answers lie in the bundles of evidence. They may, they sometimes do but you've got to go beyond the paper. You have to go out and talk to experts, talk to witnesses (Jessel, 2013).

This concern about the quality of CCRC investigations is something that is echoed in the criticisms of leading figures in miscarriage of justice organisations:

> What our statutory provision for appeal do not seem to do, even with the addition of the CCRC, is to offer general guarantees of the truth-finding integrity and reliability of the state investigation into the facts (Field and Eady, 2017: 306).

For Jessel it is vital for the CCRC to remain engaged with journalism, both within its internal organisational culture and its public-facing interactions on criminal justice issues. Jessel argues that the journalistic instinct to investigate needs to be embedded in the CCRC's approach in order to mitigate against the default analytical approach. Jessel describes a specific example to illustrate the point:

> One of the things that sticks in my mind of one of the cases I did, it was the abduction and murder of a little boy who was found drowned in a reservoir. There was one piece of evidence, a statement from the perfect witness. He had a digital clock, which in those days

> was quite rare. He looked out of his window because he heard screaming from the boy. The witness lived on the route that the boy would have been taken to his death. With his timing with his digital clock, it put our man, who subsequently had his conviction quashed, it would have put him in the clear. But it was never used. I looked into it and the lawyers had all agreed that he had said in his statement that he had heard this screaming from "the banking". The house was about a mile and a half away from the reservoir. So everybody said, well he couldn't possibly have heard from over a mile away from the bank of the reservoir. I went to see this man and I asked "why wasn't your statement used?" The man opened the window and said "that's the banking", it was a disused railway embankment that was known as "the banking", along which the child had been taken along to his death at a time that put our man absolutely in the clear. It's little things like that, it still makes me cold to remember it. The keys that unlock cases are to do with going out and talking to people, looking around and asking questions. And that's what journalism can do (Jessel, 2013).

In this specific example, it's clear how a journalistic approach managed to uncover a key piece of evidence that pure legalistic reasoning had missed. But is it realistic to expect the CCRC to take such a comprehensive approach to every case, given that the CCRC now receives over 1,500 cases a year?

> Those of us who worked on *Rough Justice* and *Trial and Error* on C4, we weren't bad at our job or particularly lazy, but it would take us a good nine months to really get under the skin of a case and worry it around. You can't do that with the amount of people-power that there is at the CCRC. Mind you a good number of those 1,600 cases are pretty good dross, people trying it on and so forth. But in this game you never know what nuggets of gold are hidden under the dross. Whenever I say this people shoot me down as a terribly restrictive person but things are rationed in this country, for example I'm not going to get a liver transplant because I'm over 60, even if I'm dying. Justice, I'm afraid to say, needs to be rationed too, there just isn't the money around. It would be wonderful if there was the money, but it's utopian to hope that the CCRC could do full justice, *full investigative justice*, to all these cases, on the amount that it has (Jessel, 2013).

Jessel is effectively advocating that the CCRC take a more utilitarian, NHS-style, approach in which the most serious cases are prioritized. He spells out some of the "cruel decisions" that he would be willing to make:

> I would not deal with any cases that deal with magistrates' courts. Now that's desperately unfair because people who stole a milk bottle in Merthyr Tydfil 50 years ago still can't get a visa to go to the US because they have a criminal record. I'm exaggerating but it can have a devastating effect on your life. Maybe the people who are serving less than five years should make way for the people who are banged up for longer. But to just open the gates and have the stuff come in and then process it and push it out, however conscientiously they do it and I believe they do do it conscientiously, I think the stuff has got to be rationed, I think they have to make some hard decisions about what cases they're going to look at. I would certainly chuck out all those cases that deal with what are called "legal technicalities", deficiencies in the summing up and so forth, you should put that to another section of the court of appeal. Why should you have a bunch of people up in Birmingham combing through the small print of a slightly deficient formulation of some direction by some judge? The trouble is that the CCRC rather likes those sort of things, because they are so many of them lawyers themselves (Jessel, 2013).

Jessel is arguing that minor convictions, sentences of under five years and applications based on "legal technicalities" should either be ignored by the CCRC or relegated in favour of more serious convictions. This argument is something that the Ministry of Justice's 2012 Triennial Review also highlighted:

> In the analysis of the call for evidence responses set out above there are some suggestions that the CCRC should prioritise its workload to deal with the more serious custodial offences more quickly than it currently achieves. It is not for this review to impinge on matters which are for the CCRC to determine in line with sponsorship arrangements set out in the Framework Document between the MoJ and the CCRC, although the CCRC may wish to consider these matters further when conducting its own internal reviews of practice (Triennial Review: The Criminal Cases Review Commission: 13).

There is strong empirical evidence for prioritizing cases. Dr Stephen Heaton's in-depth study of CCRC procedures found that nine out of 10 applications to the CCRC had no prospect of being investigated.

> Of the total number of applications [Heaton analyzed], some 3.5% were referred to the Court of Appeal. The academic focused on 147 such cases where the CCRC did not refer and

> identified 26 where there was concern of a potential miscarriage of justice. Of that number, Dr Heaton came to the conclusion that the CCRC was right not to refer them based on the current statutory test (Robins, 2017).

So far the CCRC has chosen not to take the approach to cases that Jessel suggests, but he has one more suggestion to make about transforming the culture of the institution. He believes that the CCRC has become almost entirely dominated by lawyers, and he sees this as a backward step.

> When the CCRC was set up, only a third of the commissioners needed to be lawyers, now they're all lawyers. And the reason why people like Chris Mullin MP and the Houses of Parliament set up the CCRC like that [requiring only a third of commissioners be lawyers] was because lawyers hadn't covered themselves with glory with the miscarriage of justice cases. It was journalists and politicians, lay people who had highlighted these cases. Lay people, with their lack of deference towards the law, with their lack of deference towards the judicial institutions, curiosity and mischief and a slight streak of anarchy (Jessel, 2013).

3.8 Criticisms of CCRC

Criticism of the CCRC can be grouped into four main themes:

A. Reliance on the 'Real Possibility Test'
B. The CCRC's subordinate position in relation to the CACD
C. Its independence/ neutrality
D. Increase in cases/ cuts in funding

Each of these positions will be evaluated in turn, but before this it is important to highlight a position which falls outside these four areas but has the potential to be the greatest challenge of all to the CCRC. The four issues outlined above are largely about reforming/ improving the working of the CCRC, but no major figure in the field is seriously suggesting that the CCRC be completely dismantled, except the highly respected investigative journalist Bob Woffinden, who died in 2018. In an essay for the Justice Gap magazine, Woffinden argued that the body needed to be shelved immediately. He freely admitted that the CCRC has been an improvement:

> The CCRC has referred hundreds of convictions to appeal, a significant proportion of which have been overturned. The vast majority of these would not have been referred under the pre-existing system of internal inquiries at the Home Office (Woffinden, 2015: 68).

But, for Woffinden this wasn't a measure of success, it is the actual problem.

> The most obvious problem with the CCRC is that it institutionalises miscarriages of justice. It is as though we have created a situation in which the authorities can afford not only to be complacent about the judicial system's failings, but can even exacerbate them; the CCRC will be there to clear up the resulting mess (Woffinden, 2015: 68).

Woffinden argued that far from resolving the issue of miscarriages of justice, the CCRC had actually made it worse. He claimsedthat creation of the CCRC meant that the other parts of the systems, such as the CACD, were able to avoid being reformed:

> The existence of the CCRC, brought into being by the Criminal Appeal Act 1995, has served to allay what might otherwise have been serious administrative anxieties about a poorly-performing criminal justice system. It seems as if the mere creation of the CCRC was sufficient to release the political and judicial authorities from any obligation even to attempt to remedy a demonstrably defective criminal justice system (Woffinden, 2015: 70).

Woffinden also claimed that putting in the extra safeguard of the CCRC has had the same impact on juries as the abolition of capital punishment.

> The conviction rate in murder cases was about 45% at the start of the 1960s. By the end of the decade [after the end of capital punishment], it was over 90%. This appears to demonstrate that juries will bring in guilty verdicts more readily when they know their decisions are not going to be irreversible (Woffinden, 2015: 70).

For these reasons the CCRC "should be scrapped at the earliest opportunity" according to the veteran journalist, "to ensure the trial process functions efficaciously at first instance". Woffinden's was the most extreme criticism the CCRC faced, and is by no means the mainstream view as the Justice Select Committee in 2015 noted in their conclusions:

> We received very little evidence advocating its abolition, and even its strongest critics have said that they simply want it to improve (Justice Committee, 2015, Conclusions and recommendations).

The main issues that these critics have raised are:

A. The Real Possibility Test

The basis for referring a case is set out in Section 13 of *Criminal Appeal Act 1995*. The primary criterion is that "there is a real possibility that the conviction, verdict, finding or sentence would not be upheld". In considering if there is a "real possibility" that a conviction is unsafe the CCRC evaluates if there is "an argument or evidence not raised in the proceedings [previous trials or appeals]".

> The CCRC is a creature of statute, and the test it has to apply when deciding whether or not to refer a case back to the Court of Appeal involves a series of statutory hurdles set out in the Act which established it. There normally has to have been an unsuccessful first appeal. If a reference is to be made, the Commission has to conclude that there is a "real possibility" that the conviction or sentence will not be upheld by the appeal court (Weeden, 2012: 197).

Effectively what it means is that the CCRC must establish that there is new evidence or a new argument not previously considered that would have a "real possibility" of convincing the appeal court judges that the conviction was unsafe. It is a high bar, certainly, but Section 13 (2) gives the CCRC the power to make the reference regardless if these criteria have been established if the commission believes "there are exceptional circumstances which justify making it". The so-called "real possibility test" is clearly key to understanding the methodology of the CCRC and has exercised some critics, such as Michael Naughton of the Innocence Network UK (INUK), but I will deal with his position separately when I address some of the criticism that has been leveled at the CCRC. Given the criticism leveled at C3 it is unsurprising that the CCRC should focus on "fresh evidence" rather than considering the case holistically. The new evidence, by definition, had not been considered by the jury, therefore any decision made on this new evidence would not in any way contradict or undermine the jury's decision. As argued in another chapter, the criminal justice system has very good reasons for protecting the pre-eminence of jury decisions.

> Some critics have expressed disapproval of the "real possibility" test. However, approaching the matter from an objective perspective, would it not be completely unrealistic if the Commission were able to refer convictions to appeal courts where there was no real possibility that those convictions would be quashed? In any event, any change to the requirement for the Commission to apply the real possibility test can only come from amendment of the Criminal Appeal Act 1995, which is a matter for parliament (Weeden, 2012: 199).

In the words of Lord Bingham CJ:

> The exercise of the power to refer accordingly is entrusted to the Commission and to no one else, the threshold is imprecise but plainly denotes a contingency which, in the Commission's judgment, is more than an outside chance or a bare possibility, but which may be less than a probability or a likelihood or a racing certainty (Bingham quoted in Memorandum submitted by the Criminal Cases Review Commission to Justice Committee 2009).

And because the CACD will only overturn convictions it believes to be "unsafe", the CCRC concerns itself with safety or unsafety rather than guilt or innocence (Criminal Appeal Act 1968, section 2). It is this that has attracted the greatest heat in the debate over reform. Naughton, said the "real possibility test" means that the CCRC concerns itself with "'technical' miscarriages of justice", meaning "the official test of a miscarriage of justice relates to prevailing procedures of due process, not whether appellants are innocent" (Naughton, 2007: 2). Many of these criticisms were addressed when senior figures from the CCRC were called to give evidence to House of Commons Justice Committee in 2009. Of course, "the real possibility test" was one of the first issues to be raised. Richard Foster admitted it was a something that was uppermost in the minds of everyone at the Commission:

> Our key role is to review alleged or suspected miscarriages of justice with a view to possible referral to an appeal court if it is the Commission's view that there is a 'real possibility' (statutory test) that a conviction, verdict, finding or sentence would not now be upheld. The Commission has accordingly had to tread a careful line between not, automatically, referring all but the most threadbare cases (so as not to burden the courts with a mass of hopeless

> appeals) and not being so cautious as to refer only those cases where it judges the applicants prospect of success on appeal is more or less assured (Foster quoted in Justice Committee (2009) *The work of the Criminal Cases Review Commission*: 7).

It is possible that the adherence to the 'real possibility test' may result in a more conservative approach in terms of referrals:

> Perhaps the Commission could be criticised for playing it too safe with referrals, achieving a success rate of almost 70%. But, given that this is a subsequent appeal, the finality principle arguably demands that the Commission aim for a success rate higher than the one applying to ordinary appeal, around 40 to 50% (Hamer, 2014: 302).

But from the perspective of those working in the criminal justice system, it is understandable they would wish for the CCRC to be entirely integrated into the system as a whole rather than a body with its own agency:

The principles involved were perhaps best set out in the judgment in the case of Hickey (*R v Hickey & Ors* [1997] EWCA Crim 2028), the year in which the CCRC opened its doors for business. The Court of Appeal declared what its own focus and concerns were: this court is not concerned with guilt or innocence of the appellants, but only with the safety of their convictions. This may, at first sight, appear an unsatisfactory state of affairs, until it is remembered that the integrity of the criminal process is the most important consideration for courts which have to hear appeals against conviction. Both the innocent and the guilty are entitled to fair trials. If the trial process is not fair, if it is distracted by deceit or by material breaches of the rules of evidence or procedure, then the liberties of all are threatened (Weeden, 2012: 198).

And any suggestion that the CCRC should use its powers of referral as a weapon to force the CACD to reform was rejected, by one of the most fervent campaigners for reform, Paul May.

> I am baffled by those who urge that the Commission should adopt a more campaigning/combative stance particularly in relation to the Court of Appeal. Such a role was never envisaged for the CCRC by either the Royal Commission on Criminal Justice or Parliament. The Commission's task is to investigate, and where appropriate refer to the courts, claims of wrongful conviction. A situation where the Commission and Court of

> Appeal were locked in permanent conflict would be unedifying and of no assistance to those who have been wrongly convicted. The job of campaigning to reform the courts and other parts of the criminal justice system can best be performed by campaigners (May, 2012: 90).

B. CACD

The criticism leveled at the 'real possibility test' can be seen essentially as a proxy war, a shadow play for the real conflict, which is still the CACD. The CCRC is explicit in its belief about its independence, but because the statutory instruments used to create it chose to fuse it with the CACD it is forced into a position of "second-guessing the CACD" (Naughton, 2014). While the creation of the CCRC in 1997 was heralded as a major reform of the appeals system, critics believed the reform was piecemeal because the Court of Appeal remained largely unchanged.

> Although the Court of Criminal Appeal was established to remedy wrongful convictions of the factually innocent, it has often been opined that it has never fulfilled the function intended for it. Difficulties have stemmed from its function in deciding appeals on factual error grounds where the appellant is arguing he or she did not commit the crime, necessarily forcing the Court of Appeal to trespass on the role of the jury (McCartney & Roberts, 2012: 1336).

McCartney and Roberts claim that the criticism of the CACD can be grouped into three main approaches:

> Too much deference has been shown to the jury verdict; that there has been undue reverence to the principle of finality; and that the court is motivated by the fear that "opening the floodgates" to a deluge of appellants would see the court flounder, ensnared by tight resource and budgetary constrictions (McCartney & Roberts, 2012: 1336).

Supporters of the CCRC don't necessarily accept these criticisms, for example Hamer says:

> The Commission, in making it easier to challenge and correct wrongful convictions, clearly reduces finality. Jury deference is diminished, closure delayed, and increased demands are placed on the public purse, both for the new body and the additional appeals (Hamer, 2014: 298).

C. CCRC's Independence

The architecture of the Commission was problematic, according to Professor Mike McConville. Not content with debating the issue in print with Professor Zander, McConville's (and Bridge's) book, *Criminal Justice in Crisis*, laid out what they believed to be the errors in the foundation of the CCRC. In the foreword, they argue:

> The Runciman Commission has therefore helped to effect a dramatic reversal in the political climate over criminal justice, from a situation of crisis engendered by miscarriages of justice to one of triumphal 'law-and-orderism' (McConville and Bridges, 1994: xv).

The authors contended that the weakness of the Royal Commission, and therefore the CCRC were due to the "political context" in which it existed.

> It was set up when Margaret Thatcher was still prime Minister (the only Royal Commission appointed during her over 12 years in office) and Kenneth Baker the Home Secretary, as an immediate, damage limitation exercise following the release of the Guildford 4 and Birmingham 6 from long terms of imprisonment after their convictions for terrorist bombings in the 1970s had finally been overturned by the Court of Appeal (McConville and Bridges, 1994: 3).

As McConville and Bridges point out, miscarriages of justice would continue even while the commission was sitting, Maguires, Judith Ward, Stefan Kiszko, the Tottenham 3, the Darvell brothers, the Cardiff 3, the Taylor Sisters, Ivan Fergus (McConville & Bridges, 1994). Some of these cases came after the Police and Criminal Evidence Act 1984 (PACE), which had come out of the Royal Commission on Criminal Procedure (the Philips Commission) just over a decade earlier.

> The miscarriages of justice therefore cast significant doubt on the reforms of police practice and procedures represented by PACE (McConville & Bridges, 1994: 4).

The most relevant criticism by McConville & Bridges is that the independence of the new body may not be as attractive as it first appears. This distance may damage the links with the stakeholders that had brought the issue of miscarriages to a head in the first place.

> This is not to say that the proposal is entirely unproblematic. Generally, there is a danger that such a body will lead to a 'depoliticisation' of miscarriages of justice, removing them from the ambit of family and community campaigning and dedicated legal and investigative work on the part of lawyers, the press and pressure groups which has been so vital to exposing cases of injustice in the past (McConville & Bridges, 1994: 22).

Nobles & Schiff point out that there were other potential benefits to a system that was susceptible to outside pressure:

> Home Secretaries have responded in the past to high-profile campaigns on behalf of particular prisoners by referring cases that fell well short of the standards of the Court. One of the best examples was that of the Luton Post Office murder case ***R v Cooper and McMahon*** [2003] EWCA Crim 2257, referred four times to an increasingly exasperated Court of Appeal. Some practitioners have also suggested that the vulnerability of the Home Office to political pressure (through campaigns etc) could obtain more resources than are provided by the Commission, more quickly, for the kind of intensive investigation required to get around the usual standards of the Court of Appeal (Nobles & Schiff, 2001: 297).

This concern over the amputation of the new body from its natural support system was also held by those involved with trying to practically assist those who claimed they were victims of a miscarriage. Michael Naughton, founder of the Innocence Network UK, believed this detachment was a mistake. Zander, who wrote the foreword to Naughton's book *The Criminal Cases Review Commission: Hope for the Innocent*, echoed Naughton's view:

> The setting up of the CCRC led to a marked reduction in public concern about wrongful convictions. Justice gave up that part of its work. The media stopped investigating such cases. Miscarriages of justice were now being handled by the CCRC (Zander, 2009: xvii).

D. Increase in applications and cuts in funding

According to McCartney and Roberts (2012) the CCRC received 800 to 1000 applications annually and refers around 4% of completed cases to appeal, i.e. about 40 a year. Griffin (2009) points out that internationally the fact that the CACD reverses convictions in more than two-thirds of the cases referred by the CCRC would be seen as a success.

> A U.S. observer would probably characterize this as a broad and effective corrective process (Griffin, 2009: 107).

In purely numerical terms this is clearly a huge improvement on the C3 years:

> It is clear that the Commission is referring far more cases than the Home Office, which referred 67 cases between 1980 and 1993, but this is to be expected given the increased budget and manpower. If the Commission's referral rate were not significantly better than the Home Office, then serious questions would have to be asked about its competence (McCartney and Roberts, 2012: 1348).

Unfortunately for the CCRC this question of competence has now become relevant after it revealed in its annual report 2016/ 2017 that its referral rate had fallen to 0.7%; C3 typically referred 1% of cases. Nobles and Schiff research in 2006-2007, found that the Commission made a contribution of 0.058% to the total successful appeals against conviction and sentence, a figure which McCartney and Roberts describe as “insignificant”. But before an applicant even knows whether they are going to be referred to the CACD, they face months or even years of waiting, as campaigners for Sam Hallam explain:

> Because Sam’s case has been classified as class C, the most complicated of the CCRC’s three categories, he will be expected to wait an average of 29 months for a decision. Paul May a longstanding campaigner on miscarriage of justice cases who volunteers for the Sam Hallam Campaign, is not convinced. He believes the CCRC is struggling to meet its caseload, pointing out that the number of case review managers has dropped from 50 to 39 in just five years. ‘The CCRC is overwhelmed with work and the Ministry of Justice continues to cut its budget every year.’ The average caseworker has between eight and 10 cases and further cuts may be under way (Davis, 2010: 16).

Chairman of the Justice Committee, Sir Alan Beith, was keen to know how the CCRC was dealing with the reduced funding (in the wake of the 2008 financial crash):

> **Sir Alan Beith**: You are in a very difficult position financially over the next few years. You have calculated that your budget has been reduced by £300,000 in real terms, you have got a corporate planned policy of not replacing staff unless absolutely necessary and you have

stayed in budget by doing that and you are looking to natural wastage and some cost savings.

Richard Foster: We have been facing reducing budget now for several years and that continues throughout the current SR [Spending Review] period to the end. We have calculated that the gap by the end of that period will be of the order of £1.8m though that obviously depends on the suppositions about the rate of inflation which may or may not turn out to be entirely correct.
(Justice Committee (2009) *The work of the Criminal Cases Review Commission*: 1)

And it is not just the CCRC that is facing funding cuts; legal aid has been eroded repeatedly in a series of government cuts:

> The lack of legal aid funding for appeals makes it difficult for lawyers to take on miscarriage of justice cases, and consequently those who are wrongly convicted find it very difficult to find lawyers to take their case (Roberts, 2009: 61).

3.9 Justice Select Committee Inquiry 2014-15

On 17 October 2014 the House of Commons Justice Select Committee began an inquiry into the CCRC in order to find out:

- Whether the CCRC has fulfilled the expectations and remit which accompanied it at its establishment following the 1993 Report of the Royal Commission on Criminal Justice;
- Whether the CCRC has in general appropriate and sufficient (i) statutory powers and (ii) resources to carry out its functions effectively, both in terms of investigating cases and in the wider role of promoting confidence in the criminal justice system;
- Whether the 'real possibility' test for reference of a case to the CACD under section 13(1) of the Criminal Appeal Act 1995 is appropriate and has been applied appropriately by the CCRC;
- Whether any changes to the role, work and remit of the CCRC are needed and, if so, what those changes should be. (Justice Committee, 2015)

It published its findings in March 2015, and these addressed directly most of the criticisms raised against the CCRC (and outlined above). In its “Conclusions and recommendations” it detailed the changes it would like to see adopted:

> **Point 3:** We recommend that the CCRC be less cautious in its approach to the 'real possibility' test, and reduce the targeted success rate in its Key Performance Indicators accordingly.
>
> **Point 5:** We recommend that the Law Commission review the Court of Appeal's grounds for allowing appeals. This review should include consideration of the benefits and dangers of a statutory change to allow and encourage the Court of Appeal to quash a conviction where it has a serious doubt about the verdict, even without fresh evidence or fresh legal argument. If any such change is made, it should be accompanied by a review of its effects on the CCRC and of the continuing appropriateness of the 'real possibility' test.
>
> **Point 8:** We recommend that the CCRC should, as a matter of urgency, be granted the additional £1 million of annual funding that it has requested until it has reduced its backlog. Furthermore, the Ministry should engage with the CCRC in longer term budgetary planning so that the Commission can properly plan ahead and recruit efficiently, with a view to restoring it to a level of funding which enables it to eliminate lengthy delays in handling cases.
>
> **Point 14:** It should be a matter of great urgency and priority for the next Government to bring forward legislation to implement the extension of the CCRC's powers so that it can compel material necessary for it to carry out investigations from private bodies through an application to the courts.
>
> **Point 18:** We recommend that the CCRC should develop a formal system for regularly feeding back into all areas of the criminal justice system, from the police and Crown Prosecution Service through to the courts and the Ministry of Justice, on its understanding of the issues which are continuing to cause miscarriages of justice. (House of Commons Justice Committee Criminal Cases Review Commission Twelfth Report of Session 2014–15)

The committee ultimately concludes that "the level of successful referrals from the CCRC shows that it remains as necessary a body now as when it was set up". But many critics pointed to the lack of political action when it came to responding to the committee's recommendations:

> The Select Committee to recommend that the CCRC be less cautious in its approach to the criteria for referral and the consideration of a broader statutory test for quashing convictions to encourage the Court of Appeal to include cases in which no fresh evidence or argument is identified. But the government declined to implement their recommendation on the advice of the court itself (Field and Eady, 2017: 293).

3.10 Conclusion

Once a prisoner, who was maintaining his innocence, had exhausted all legal avenues, he had no choice but to look beyond the court system for redress. The options that face a prisoner have changed over time. For most of the 20th Century the 'last chance saloon' was located right in the heart of government, in the Home Office. In a scenario reminiscent of the US, where a state governor can grant a reprieve to a death row prisoner, the Home Secretary had the power to send a case to the CACD 'if he saw fit'. Unsurprisingly these referrals by the Home Secretary became very political affairs, never more so than when they related to the Irish terrorism cases. Any politically charged decision is always fertile ground for journalistic intervention, and Home Office referrals were certainly no exception. Given the poor standard of investigations carried out by the C3 division of the Home Office, prisoners very quickly realized that journalists might hold the key to getting a referral. It meant that many of the letters from prisoners asking for help during this period went, not to lawyers or politicians, but to investigative journalists. And it was their investigations that so often led to the political pressure that forced an often reluctant Home Secretary to refer the case. If the situation had remained unchanged this research would almost certainly have been looking in great detail at the complex relationship between politicians and journalists in the context of the appeal process. But in 1997, following a crisis in confidence brought about by some high profile miscarriages of justice, the political and legal landscape was fundamentally altered. The Runciman Commission and the CCRC that followed were essentially politically motivated responses aimed at creating an appeal system which, if not impervious to external pressure, was certainly more insulated than C3 ever was:

> The CCRC's success in maintaining public confidence is based on trust, or more particularly, on the media's perception (and those MPs who might otherwise raise miscarriage cases with the media) that it is a body to be trusted with getting these matters right (Nobles & Schiff, 2001: 298).

The creation of the CCRC had the effect of removing the hot potato of referrals from the Home Office and placing it in an organization which was very explicitly neutral and apolitical. Overnight the hitherto crucial relationship between the politicians and journalists was profoundly devalued. As the key architect of the CCRC, Lord Runciman, explained:

> I would be very disappointed to be told that there were still people in the media who were sufficiently confident that the CCRC was not doing a good job that they thought it worthwhile to mount a whole long expensive investigation of their own into a suspected miscarriage of justice (Runciman, 2013).

The implication in Runciman's quote is that if the CCRC is investigating cases properly then it is doing "a good job". But others argue that this is only part of its role, it must also be an agent of reform in the appeals system, as investigative journalism had been before 1997. Sato *et al* (2017), argue that the fact that the CCRC sees itself as "fundamentally a caseworking organisation" (CCRC, 2016) is largely due to the historical context of its establishment. It was created to respond to certain problematic cases, Birmingham Six and Guildford Four, rather than what the establishment saw as a systemic problem. Young and Sanders (1994: 436) argue that the Royal Commission understood that the "fundamentals of the system were sound, and that what was needed was fine tuning in certain key areas". For them, cases such as the Birmingham Six were outliers, "occasional products of a special set of circumstances" (Young and Sanders, 1994: 447). Sato *et al* claim that if this approach is correct, "the CCRC may be right to see itself as a casework organisation without the need to correct systemic practices of other criminal justice agencies" (Sato, Hoyle, Speechley, 2017:119). What undermines this argument is the CCRC's own commitment in its 2015/16 Annual Report to "feed back to the criminal justice system". So while the body is keen to define itself as a "caseworking organisation" and there is some evidence that casework has been prioritised in its blueprint, in its actual operations it occasionally contradicts this principle by actively campaigning for change within the criminal justice system. An obvious example of when the CCRC went beyond a purely casework approach was in case of the wrongful convictions of asylum seekers and refugees:

> For the CCRC, going beyond casework, in asylum cases, meant engaging directly in critical dialogue with other criminal justice agencies (Sato, Hoyle, Speechley, 2017:119).

It made its view clear in its official reports, stating in its Annual Report 2013/14 that the wrongful convictions in asylum cases represented "a failure of all of those involved, police, UKBA, prosecutors, defence lawyers, and the courts, to understand and apply the criminal law correctly" (CCRC, 2014: 7). The CCRC, in the form of its media team, made it clear to journalists (including myself) that it was very keen for stories to be done on this issue. CCRC Chairman Richard Foster spoke to *the Telegraph* in January 2016:

> Revealed: Government body helps asylum seekers quash convictions for illegal entry to Britain (Gilligan, 2016).

He even followed up with a letter to the paper, which was published a week later, in which he said:

> Our job at the CCRC is to help uphold the laws laid down by Parliament and we make no apologies for that (Foster, 2016).

From this example it is clear that the CCRC, when it sees fit, is more than happy to move beyond its caseworking remit to actively campaign about issues that it believes need to be resolved. As I have shown, this lobbying extends beyond the 'official channels' to include explicit campaigning in the media. But for many this reforming approach is used too rarely:

> The House of Commons Justice Select Committee recently pointed out that the CCRC is not using its unique position sufficiently to feed back into criminal justice system (Sato, Hoyle, Speechley, 2017: 118).

The main purposes of this chapter are to offer a detailed examination of the CCRC and critically evaluate its transformative role for both the appeals system and investigative journalism. The chapter firmly establishes the CCRC right at the heart of this body of research and justifies the

description of it as a watershed that crucially changed the relationship between the key players: politicians, prisoners, the legal system and journalists. It also systematically prepares the theoretical framework for the primary research that will be carried out to examine, via content analysis and discourse analysis, the actual impact that the creation of the CCRC had on the level of reporting of miscarriages of justice.

CHAPTER 4: METHODOLOGY

4.1 Introduction

This study has utilized both primary and secondary sources. The primary material is derived principally from interviews, content analysis and critical discourse analysis. The primary source material is informed by the use of secondary material, including books, academic journals and journalistic articles relating to the criminal justice system, history, miscarriages of justice and journalism. These primary and secondary sources considered as part of this research were used to underpin a philosophical, historical, and conceptual framework and to defend the central argument of the thesis. All quotes and works specifically referred to during the research are displayed in the bibliography at the end of the thesis. The research was grounded in a diverse range of academic specialisms, although the study obviously emphasized law and journalism. As discussed in Chapter 2, the research sees investigative journalism as a key participant in the 'public sphere'. As such it plays a significant role in "shaping the democratic administration of society" (Greer, 2009: 11). The interpretation of the 'public sphere' here is informed by Habermas' ideal form: "It is made up of private people gathered together as a public and articulating the needs of a society with the state" (Habermas, 1989: 176).

This chapter presents the arguments and justification for the choice of the research paradigm and the specific investigative approaches used during the study. While the reasons for doing primary research are clearly crucial, so too is a systematic consideration of the methods that the researcher intends to employ. As Krippendorff points out:

> The purpose of methodology is to describe and to examine the logic of composition of research methods and techniques, to reveal their powers and limitations, to generalize successes and failures, to find domains of appropriate application and to predict possible contributions to knowledge (Krippendorff, 1980: 10).

This chapter is split into three distinct sections in which the fundamental structural issues are addressed in detail. Firstly, I will evaluate the decision to place the CCRC, and therefore the Runciman Commission, at the core of the thesis. It will be the function of this section to argue that the focus on the CCRC is justified due to the Janus-like quality of the Commission which allows for the relationship between journalism and the issue of miscarriages of justice to be evaluated prior

and post reform. Placing the CCRC so centrally meant that focusing on the origins of the commission became a logical imperative; thus, the analysis of the Runciman Commission, and the two central figures, Lord Runciman and Professor Michael Zander. This section will address the examination of the published recommendations of the Royal Commission, along with the use of interview as a research instrument.

The second section will appraise the use of quantitative and qualitative methods to examine the impact (or contrary) that the CCRC has had on the level of reporting on miscarriages of justice. This section anticipates Chapter 5, where a study was carried out on English national newspapers between 1992- 2007. The fulcrum point of 1997 (1 January) has been chosen because it is the date on which the CCRC was established. The Newsbank and Lexis Nexis databases will be used to sample the articles based on the key phrase: miscarriage of justice. This section will detail exact methodologies used to sample the documents and will describe a pilot study to illustrate how the larger study will function. This section will also discuss the research methods that were chosen, namely content analysis (CA) and critical discourse analysis (CDA). The two methods are chosen due to the potential for their respective methodological strengths to complement each other, i.e. the sample identified by the CA provides the corpus for the CDA.

The third section will address the use of CA to assess the relationship between the media and the courts. This relationship is being focused on because I argue that if the reporters become disengaged from the criminal justice system, how will wrongful convictions become known to them? And even if a journalist becomes aware of a prisoner's claim of innocence and decides to investigate it, he or she may find themselves without a record of the trial because no court reporter recorded it and the transcripts have been destroyed. Digital recordings of crown court hearings are only held for seven years under government guidelines. It means that any dis-engagement by the media with the court processes have both a theoretical and practical effect on the issue of rectifying miscarriages of justice.

4.2 Criminal Cases Review Commission as thesis keystone

The CCRC: A short summary

The Criminal Cases Review Commission (CCRC), as it explains on its website, is independent of government, the courts, the Crown Prosecution Service and the defence. It does not act for the

defence (i.e. the appellant). It is funded by the ministry of justice (between £5m, £6m per year). Before the establishment of the CCRC in 1997, anyone who had exhausted the appeal process could apply to the Home Secretary under Section 17 of the Criminal Appeal Act 1968. The C3 department of the Home Office was the section responsible for looking into these claims of innocence. Following an investigation by the C3 department, the Home Secretary could then refer the whole case or aspects of the case to the CACD, "as he thought fit". Research by Laurie Elks, one of the founding commissioners of the CCRC, reveals that C3 typically referred 10 cases a year, while the CCRC has referred on average about 35 cases a year (Elks, 2008). But as David Jessel, among others, points out, the CCRC rejects 96% of cases (Jessel, 2012). The CCRC admitted that it only refers about 3.5% of its cases while giving its evidence to the Justice Select Committee. Dr Steve Heaton, of University of East Anglia, carried out a detailed study of the number of referrals made by the CCRC. He found that for various reasons, such as repeat applications, about 95% of cases "had no chance" of referral (Robins, 2015).

The CCRC is a very rare type of organization, it is one of only three such national bodies in the world, the others currently being in Scotland and Norway. For this and for many other reasons it is a body that deserves special attention, but in the context of this research it is the relationship it has with the media that is of particular interest. I have argued in Chapter 2 and 3 that investigative journalism played a pivotal role in creating the circumstances that led to the creation of the CCRC. But any approaches that suggest links between the media and the 'real world', such as Cohen's Moral Panics (2002) or the hypodermic syringe model (Demont-Heinrich, 2011), must engage with the fierce criticism this contested area attracts. For example, McQuail (2000) argues that media influence is not constant:

> The important if obvious point that the media are not constant as a potential influence, over time and between places, is often overlooked in the search for generalization (McQuail, 2000: 423).

In terms of categorizing the influence the media had on the establishment of the CCRC, in terms of McQuail's (2000) schema it would fall into "agenda-setting" and "cultural change". This phenomena of media influence, "media waves", was explored by Vasterman:

> Inevitably, this growing news wave will stimulate all kinds of reactions in society, which in turn will fan the flames in the public arena (Vasterman, 2005: 515).

Explicitly influenced by Cohen's (2002) ideas on moral panics, Critcher sees Vasterman's "news waves" as often resulting in statutory change:

> The reaction of the media, moral entrepreneurs and experts contain ideas about the required measures. Current powers are exploited but if deemed insufficient, demands for legal reform will follow (Critcher 2003: 19).

Vasterman (2005) goes further arguing that media reporting not only affects short term social perceptions, but it also fundamentally influences the world we inhabit:

> As messengers and managers of the public arena, the media play an important role in the process of social construction (Vasterman, 2005: 516).

This influence was admitted by CCRC Chief Executive Richard Foster during a CCRC stakeholders event in November 2012:

> We are born out of campaigning. But we are not campaigners. We weren't set up on that basis. That is the paradox (Foster, 2012).

It is for this reason that the CCRC was chosen as the keystone in this thesis. Examining the media's relationship, before 1997 and afterwards, to the CCRC allows one to interrogate what Foster calls this "paradox". Foster's phrase actually provides an interesting reframing of the focus of this thesis. His choice of words, "campaigning" obviously needs a little unpacking. Investigative journalism is not campaigning, but certainly has the potential to stimulate a debate that could develop into a campaign. Investigative journalists are sometimes accused of campaigning, the word being used in a pejorative sense, and that may be because investigative journalists often go "off diary" in order find stories. Off diary stories are ones that the journalist has generated themselves, effectively stories or angles that the mainstream media or public are unaware of. A good example of this tendency would be the thalidomide scandal uncovered by the *Sunday Times* (Evans, 1983). Because the selection of these stories or angles is subjective by their nature, critics will often try to portray investigative journalists as subjective in their reporting (Glater, 2016). But while the discovery of the story may be subjective, the reporting must be objective, for legal reasons if for no other. Therefore Foster's phrase is ambiguous, possibly intentionally. But I agree with Foster's proposition that there is a

paradox, because the CCRC was created partly because of investigative journalism but the creation of the body presents a real challenge to mounting similar investigations.

The central role that journalists played in the establishment of the CCRC is explained in detail in Chapter 3 and Chapter 5 and 6 examine the impact the establishing of the CCRC had on the media. I will discuss media influence in more detail in a moment in the context of discourse analysis.

The views of the central figures of Lord Runciman and Professor Zander provide a very useful insight into "the paradox", i.e. different roles that journalists are thought to occupy before and after the establishment of the CCRC:

Brian Thornton: So do you think essentially there's no need now [for journalistic investigations]?

Gary Runciman: Maybe in terms of where the police are seriously at fault, a team of investigative journalists may be the people with the best chance if they've got the right connections or the right support from editors and proprietors to disclose serious corruption and the case handler or whatever they're called in the CCRC might not be able to do it. But I would certainly hope that the chances of that being the case are much less than they were. There are cover ups going on every day of the week in all walks of life. Of things that ought to come to trial and result in a conviction, which the prosecution will never achieve. I mean, if every bent solicitor or if every dodgy stockbroker could be caught and suitably disciplined, it would be a better world. And it's never, never going to happen, is it?

Brian Thornton: And when miscarriages of justice were wrapped up in the Home Office and the C3 Division, there was an appetite, possibly because editors knew that they could exert pressure on a politician, and the politician would react in a political way, and possibly refer. So the lever was there. But when the operations of investigating miscarriages of justice were separated out into this independent body, it de-politicised the process. So that the journalists don't have that lever any more.

Gary Runciman: But it seems that the trade-off was overwhelmingly in favour of the benefits of the independent body, as against the very occasional cases where for short term political reasons pressure could be exercised from within C3. Which was woefully inadequate. In terms of doing what ought to have been done to give a fair hearing to people who were in prison and had reason to think that they oughtn't to be. It just illustrates what I was saying earlier about how you have to recognise that the media, the editors and their proprietors, they have their own agenda. They will work the system to what will help them sell newspapers, raise the profile or whatever (Runciman, 2013).

Professor Zander's opinion was starkly different:

Brian Thornton: Gary Runciman said, when I was interviewing him, that he would be very disappointed if any investigative journalist felt the need to look into any miscarriage of justice cases anymore.

Michael Zander: I wouldn't take that view at all.

Brian Thornton: Do you think there is still a need?

Michael Zander: Bound to be, yes, bound to be. I mean, there's bound to be a need because all institutions fail; the best institutions succeed sometimes, or even a lot of the time. Maybe the CCRC is a good institution; I think it is an okay institution as institutions go. But institutions are by definition, not quite by definition, but by experience they always fail. So, there's going to be, bound to be always some cases, maybe a lot of cases, maybe a few cases, and people will have different opinions about how many, where more work needs to be done. And the more the merrier. If there are journalists doing some brilliant work that helps; even if it's only just to feed the CCRC with stuff that otherwise they wouldn't have known. And I would have thought from a newspaper editor's point of view it's interesting material. If you can get a good story about a miscarriage, it's great; that's a good story.

Brian Thornton: Because there's very little reported on this area in the press anymore do you think that people just feel that that problem has now been sorted, it was a 1980s problem?

Michael Zander: It could be, yes, it could be. A combination of PACE, CCRC, generally more sensitivity to these issues and so on, the problem has gone away, maybe, I don't know. On the other hand, you read the report to the CCRC and the number of applications you might take a different view.

Brian Thornton: Some people think that when the miscarriages of justice were in the Home Office C3 division, when journalists would write these stories they would build pressure, and the pressure would be directed at an elected representative. While you have a CCRC now whose stated aim is to be independent, independent even of the media, there's a possibly at least that the media now no longer have that lever to pull.

Michael Zander: I'm sure that's right. I mean, that's true not only for the media; that's true for everyone. It's easier in a way to influence the Home Office than it is to influence the CCRC because you can lobby, you can shout, you can yell, you can do all sorts of things with the Home Office and Home Secretary, ask questions in parliament etc. You can't do any of that with the CCRC. So, you win some, you lose some. There's a big gain and some loss in having the target being the CCRC as opposed to the Home Office.

Brian Thornton: But in the old days if *Rough Justice* covered a case and there was enough public interest then the government or the Home Office would feel they needed to respond, even if it was a bland statement. But if this was to happen now the CCRC would not respond.

Michael Zander: No. I mean, they'd take note, they'd watch the programme; but they wouldn't feel it necessary to respond directly, no.

Brian Thornton: That's possibly a reason why the editors don't invest the time now because there are no results at the end.

Michael Zander: Yes, that could well be. There clearly would be a result if a newspaper discovered that somebody who was convicted shouldn't have been convicted and the evidence is staring you in the face, definitely solid evidence, the CCRC would do what had to be done and the Court of Appeal would do what had to be done; but it would be way down the line. Journalists may still be interested; editors perhaps less so (Zander, 2013).

The comments of Runciman and Zander put "the paradox" in sharp focus and support the decision to focus on the CCRC in the context of investigative journalism. To put the question as straightforwardly as possible: If journalists were the agents of reform that helped to create the need for the CCRC, where does the call for reform come from now that those investigative journalists have moved onto other areas?

Runciman and Zander interviews

Runciman and Zander were carefully selected as interview subjects due to the pivotal role they played in the Royal Commission. Lord Runciman is a highly respected academic, a Fellow of Trinity College in Cambridge University. He has written numerous books on social theory and social justice. He was seen as politically independent and sat on the cross benches in the House of Lords. As chairman of the Royal Commission he was in a unique position to steer the project. He had the ability to accept or reject the terms of reference and also chose who would sit on the commission. Michael Zander is a Professor of Law at the London School of Economics. He is also an honorary Queen's Counsel and Senior Fellow of the British Academy. He carried out the Commission's main research project, *The Crown Court Study*, the biggest study ever carried out in the English courts. He's the author of numerous books, two of which -*The Law Making Process* and *Cases and Materials on the English Legal System*, are prescribed books in most law degree courses. In fact, most judges, police officers and legal practitioners rely on his book on PACE, *The Police and Criminal Evidence Act*. Professor Zander is seen as the leading legal academic in the country. For 25 years he was also Legal Correspondent of *The Guardian*, writing more than two thousand articles. As well as being the leading academic on the commission, Professor Zander was also the only commissioner to write the dissenting note that Lord Runciman reluctantly agreed to include.

As mentioned, both interviewees were contacted by email initially and both agreed to be interviewed in person. Both agreed for the interviews to be audio recorded. In terms of the interviews, Runciman and Zander were interviewed in their homes by Brian Thornton. He asked the questions and they responded, they were not given the questions in advance. After transcriptions were completed they were sent to Runciman and Zander to check if they wanted to add or clarify anything. Both said that they were happy with the accuracy of the transcription.

In terms of the theoretical underpinning for using interviews as a research tool, there are a number of positions that need to be considered. Firstly, the positivists' aim to create pure interviews in carefully controlled conditions in order to access a clear reflection of reality (Kenno, McCracken &

Salterio, 2017). This approach is consistent with the positivists' concern with replication. The method has recently been the subject of heavy criticism by writers such as Silverman in his book, *Interpreting Qualitative Data* (2014). As Miller & Glassner (2011) point out, there is a real question over the authenticity of these accounts. While the social constructionists may question the value of the interview due to the fact that its content is entirely specific and related to the interaction between interviewer and interviewee. They argue that interview data is a product of social interaction in the same way as all social research. To regard this kind of data as socially constructed is not to dismiss its value but it does challenge positivistic epistemologies. Relying on the work of Harding (1987) and Latour (1993), Miller & Glassner argue that interviews do provide an opportunity to learn about the social world:

> Interviews reveal evidence of the nature of the phenomena under investigation, including the contexts and situations in which it emerges, as well as insights into the cultural frames people use to make sense of these experiences and their social worlds (Miller & Glassner, 2011: 131).

My approach in gathering data from face-to-face interviews is clearly a qualitative method. The approach certainly has its benefits, as Kvale pointed out:

> If you want to know how people understand their world and their life, why not talk to them? (Kvale, 1996: 1)

Obviously there was a need to carefully consider the interview protocol before the engaging with the subjects. In a large survey, researchers will often use a predefined set of questions (known as a research protocol). However, in a qualitative interview the approach is more informal and the questioning informed by the interaction with the subject:

> Usually the interviewer will have a prepared set of questions but these are used only as a guide, and departures from the guidelines are not seen as a problem (as would be the case in surveys) but are often encouraged (Silverman, 2009: 194).

While interviews are certainly a crucial qualitative research tool for this thesis, there was a recognition that other research methods would be needed to fully address the issues raised in the study. I tend to agree with Silverman when he says:

> Qualitative researchers' almost Pavlovian tendency to identify research design with interviews has blinkered them to the possible gains of other kinds of data (Silverman, 2009: 306).

4.3 Analysis of English national newspapers between 1992 and 2007

In Chapter 3, I explicitly addressed the role that investigative journalism had on the establishing of the CCRC. In Chapter 5, I will assess the level of reporting of miscarriages of justice in national newspapers in the five years before and the 10 years after the creation of the CCRC. I will also carry out a discourse analysis of the news articles in the sample to examine the modulating meaning embedded in the term "miscarriage of justice". I will address these two approaches in turn.

Quantitative content analysis

The method chosen to evaluate the level of reporting of miscarriages of justice was quantitative content analysis. The technique is a long established technique for interrogating printed material and is defined as:

> A research method that uses a set of procedures to make valid inferences from text (Weber, 1990: 9).

The robustness of the method is empahsised by many experts:

> Content analysis is a research technique for making replicative and valid inferences from data to their context (Krippendorff, 1980: 21).

The method has obvious advantages when it comes to analyzing large amounts of material in order to find patterns. This ability to reduce large amounts of data into valid results is recognized by Riffe:

> Quantitative content analysis is reductionist, with sampling and operational or measurement procedures that reduce communication phenomena to manageable data (e.g. numbers) from which inferences may be drawn about the phenomena themselves (Riffe, 2005: 24).

Ericson *et al* (1991) recognize that quantitative content analysis "assumes repetition is the most valuable indicator of significance" but despite such "limitations" they feel it is a powerful tool for media research:

> Quantitative content analysis is a valuable means of revealing patterns in news content, and making evident previously unarticulated assumptions about how the news is structured and presented (Ericson, 1991: 222).

Berelson's (1952: 45) definition: "Content analysis is a research technique for the objective, systematic and quantitative description of the manifest content of communication,", holds within it the fundamental conditions of the method, namely; objectivity, a systematic approach and a focus on the manifest content. Objectivity of course, is not the preserve of quantitative content analysis, but it is certainly at the core of this approach. As Wimmer and Dominick (2003) point out, a researcher's "personal idiosyncrasies and biases" should not be allowed to influence the study or the findings. But all researchers recognize that eliminating personal biases is difficult, perhaps impossible:

> The social and cultural environment in which one operates as an investigator contributes to how one views research problems, data sources, and methodological approaches (Altheide, 1996: 4).

Quantitative content analysis, in common with a scientific method should be defined by "objectivity and reproducibility or replicability" (Riffe, 2005: 26). The key to achieving this is a systematic, critical approach which embeds objectivity in the research design, as Riffe explains:

> The researcher requires generalizable empirical and not just anecdotal evidence. Explanations of phenomena, relationships, assumptions, and presumptions are not accepted uncritically but are subjected to a system of observation and empirical verification (Riffe, 2005: 25).

By "manifest content" he means the shared meaning rather than what might be described as the concealed or latent meaning:

> Quantitative content analysis deals with manifest content, by definition, and makes no claims beyond that (Riffe, 2005: 38).

Quantitative content analysis is not typically the technique used to evaluate latent meaning as Altheide explains:

> The approach to examining single documents (e.g. a movie, a novel, or a McDonald's restaurant) is called semiotics, or the study of signs. Such studies focus on depth, and unlike the kind of document analysis I deal with, the critical emphasis is on trying to unravel the author's assumptions, motives, and intended consequences as revealed by analysis of the document (Altheide, 1996: 7).

This approach is grounded in the qualitative school, but it would be a mistake to think that the techniques are mutually exclusive. Holsti (1969) in fact recommended using quantitative and qualitative methods in content analysis "to supplement each other". Manning & Cullum-Swan (1994) certainly put a strong case for the benefits of a qualitative approach:

> Adequate criticism should enable others to 'penetrate' the author's intent and the tenor of the times within which the text existed, to strip away lies and stylistic obfuscations, and to discover therefore the deeper or 'real' meaning of a written product (Manning & Cullum-Swan, 1994: 468).

While the method of quantitative content analysis is widely respected it doesn't of course entirely escape criticism. Primary among the criticism is that "the method puts too much emphasis on comparative frequency of different symbols' appearance" (Riffe, 2005: 36). Essentially critics claim that quantitative analysis can potentially lead to trivialization due to researchers focusing on certain questions because they are quantifiable, or at least binary:

> The major tact of QCA is to verify or confirm hypothesized relationships rather than discover new or emergent patterns (Altheide, 1996: 16).

But supporters claim that the criticism is circular:

> Superficiality of research focus is more a reflection of the researchers using content analysis than a weakness of the method. Trivial research is trivial research whether it involves quantitative content analysis, experimental research or qualitative research (Riffe, 2005: 36).

Another criticism of quantitative content analysis surrounds the division between latent and manifest content. Basically manifest content supposes that the meaning is obvious and on the surface, i.e. 'what you see is what you get'. While, according to Holsti (1969), latent analysis is reading between the lines. There are many theorists who argue in favour of focusing on the latent material in content analysis:

> Originating in positivistic assumptions about objectivity, quantitative content analysis provided a way of obtaining data to measure the frequency and extent if not meaning of messages (Altheide, 1996: 15).

This perceived lack of subtlety of quantitative content analysis was defined by Starosta:

> Content analysis translates frequency of occurrence of certain symbols into summary judgments and comparisons of content of the discourse… whatever 'means' will presumably take up space and/ or time; hence, the greater that space and/ or time, the greater the meaning's significance (Starosta, 1984: 185).

Far from being a criticism, this is in fact a strength of quantitative content analysis because it bases its findings on messages or symbols that have consensual accord, while examinations of latent content face the challenge of avoiding the pitfall of unscientific subjectivity:

> Manifest content involves denotative meaning, the meaning most people share and apply to given symbols. Given that 'shared' dimension, to suggest that analysis of manifest content is somehow inappropriate is curious. Latent meaning by contrast, is the individual meaning given by individuals to symbols (Riffe, 2005: 36).

However, it is worth noting that the difference between latent and manifest meaning is not as absolute as it first appears. The meaning of words or symbols in a living language will obviously change over a period of time. Something that had one meaning 200 years ago, might have a very different meaning now; for example words such as gay, fantastic and awful. As Riffe points out:

> Researchers need to be careful of the changing nature of symbols when designing content analysis research (Riffe, 2005: 36).

Once one has decided on the research technique to be used, the next question to be addressed is the design of the study. When considering research design, it is crucial to make it very clear whether the purpose of the study is establishing or demonstrating correlation or causation. As researchers are often reminded: correlation is not causation. Very simply, correlation means that one variable is associated with another, while in contrast, a causal relationship is one in which one variable is actually the cause of the other. Riffe (2005: 48) argues there are three conditions needed to demonstrate a causal relationship:

- The alleged or hypothesized cause should precede the effect.
- The variables must be correlated; when one observes that values of one change, values of the other must also change.
- The researcher must address the question "what are rival explanations?

One way to address this final point is to try to control as many factors as possible that might influence the results. For example, in this study, newspapers with different ownership and different political allegiances were chosen and the sampling included all days of the week and all months of the year. This is why the design of the study is so vital, because a well-designed research project ensures that "evidence is not capable of a dozen alternative interpretations" (Stouffer, 1977: 27). A good project, according to Kerlinger (1973), achieves the following: it enables the research question to be answered, it controls independent variables and produces results that have generalizable. Wimmer and Dominick, put it even more straightforwardly:

> The ideal design collects a maximum amount of information with a minimal expenditure of time and resources (Wimmer and Dominick, 1991: 24-25).

Because of these considerations, it was decided that Riffe's (2005) general model for content analysis would be utilized in this study. Riffe set out the template procedure like this:

1. Conceptualization and purpose [content analysis phase]:

Identify the problem

Review theory and research

Pose specific research questions

2. Design

Define relevant content

Specify formal design

Specify population and sampling plans

Pretest and establish reliability procedures

3. Analysis

Process data

Apply statistical procedures

Interpret and report results

(Riffe, 2005: 48)

Therefore, to follow Riffe's design, the first section [Conceptualization and purpose] is dealt with in Chapter One and Two. Section Three [Analysis] will be outlined in this chapter but will be dealt with in Chapter Four. I will deal with Section Two [Design] now.

Define relevant content

The content that is to be studied is English national newspapers between 1992 - 2007. They will grouped into three samples, (1992-1997, 1997-2002, 2002-2007). The national newspapers that were considered were:

The Daily Mail; The Mail on Sunday; The Daily Mirror; The Sunday Mirror; The Daily Telegraph; The Sunday Telegraph; The Express; The Express on Sunday; Financial Times; The Guardian; The Observer; The Independent; The I; The Independent on Sunday; The News of The World, The Sun on Sunday; The People; The Sun, The Times, The Sunday Times.

There were a total of 20 possible newspapers on which the study could have focused. But due to the research that had already been carried out as part of this project, combined with the experience and

subject knowledge I had gained as a professional journalist over 15 years I decided that I would eliminate some of the publications. Such pragmatism is a key part of content analysis:

> Part of the task of informed document analysis is to be familiar enough with the publication(s) providing research materials and the major terms and concepts used so that few articles will be missed (Altheide, 1996: 50).

The *I* and the *Sun on Sunday* were eliminated immediately because neither existed during the sample period [1992-2007]. *The Financial Times* was eliminated because it had the potential to distort the results due to its emphasis on business and finance. The *FT* is essentially a trade newspaper for those working in the financial sector, it is eliminated for the same reasons that the *Racing Post* would be eliminated, because the focus is too narrow. There was perhaps an argument to be made to include the *Financial Times* if there was a way to counterbalance its focus, i.e. if there was a paper which entirely ignored financial matters but in reality that was no possible.

Whether to include the Sunday papers was given careful consideration. They present a problem because they are published once a week and so are very different from the daily papers. They are often different even from their sister publications (i.e. *The Guardian* and *The Observer).* Ultimately it was decided to include the Sunday papers, mainly because they have been traditionally the ones that emphasized investigative journalism (*The Sunday Times* in particular had a proud tradition due to the work of its now defunct *Insight Team*). There are various reasons for this but the main one is the most obvious: they simply have more time (a week) to mount investigations and are less wedded to the daily news agenda. This latter point has been accentuated by the advent of social media, where the audience no longer expects to learn about breaking news events in newspapers. Having eliminated the *I, the Sun on Sunday* and the *Financial Times*, 17 newspapers remained:

The Daily Mail; The Mail on Sunday; The Daily Mirror; The Sunday Mirror; The Daily Telegraph; The Sunday Telegraph; The Express; The Express on Sunday; The Guardian; The Observer; The Independent; The Independent on Sunday; The News of the World; The People; The Sun, The Times, The Sunday Times.

It is worth noting that there were some papers that weren't considered because, even though they may have existed during this period, they went out of business before the end of the same period. The papers include*: Today, The European, Sunday Correspondent,* and *the News on Sunday*. The

issue of miscarriages of justice is most often placed in the category of crime. If one of the newspapers had been inspired to follow the news broadcaster Martyn Lewis's (Gibson, 1999) plea to only cover positive news, there would be strong justification to eliminate the publication but as Altheide points out, that was very unlikely to happen:

> Crime news, of course, is the staple of local news organizations; indeed, a survey of virtually any local newspaper or TV newscast will show that there is little local news except for crime (Altheide, 1996: 50).

This may be slightly overstating the relationship between news reporting and crime, with Greer's explanation providing a more accurate interpretation:

> The systematic analysis of news content is a crucial part of the analytical process, and a requirement of understanding the construction of crime and deviance as a news product (Greer, 2009: 108).

This left a total of 17 newspapers in the sample:

The Daily Mirror; The Sunday Mirror; The Daily Telegraph; The Sunday Telegraph; The Express; The Express on Sunday; The Guardian; The Observer; The Independent; The Independent on Sunday; The News of the World; The People; The Sun, The Times, The Sunday Times.

Once the newspapers had been selected, the next decision was to choose the unit of analysis. When considering this question, Altheide's advice was instructive:

> The research problem helps inform the appropriate unit of analysis, or which portion or segment of relevant documents will actually be investigated (Altheide, 1996: 24).

The thesis is:

Media reporting on miscarriages of justice in England and Wales fundamentally changed after the creation of the Criminal Cases Review Commission resulting in a decline in coverage, a reduction in investigative journalism and a radically altered usage of the term "miscarriage of justice".

"Coverage" is clearly the unit that needs to be analyzed. In the environment of newspapers, the unit of coverage that both journalists and readers would recognize is an article. As Altheide describes:

> The problem to be investigated helps clarify the unit or level of analysis (Altheide, 1996: 25).

What this thesis investigates is the level of reporting, so clearly the units to be analyzed are articles appearing in one of the 17 newspapers listed above in the years between 1992 and 2007. With the unit of analysis identified the next issue to be addressed is the sampling plans and the pretest to establish reliability. To sample the articles the Newsbank database was used. This database provides only the text of the articles and therefore the analysis of the role of visual imagery, that is to say photo essays, wouldn't be possible. In some cases the text caption describing the pictures was included in the articles, which made it possible for a broad inference about the nature of the pictures to be made but the lack of consistency meant that it wasn't possible to analyze the visual content systematically. A pilot study was carried out to test the viability of the study. The search term: "miscarriage of justice" was inputted for the 17 newspapers for the years 1992 - 2002.

This returned 1,443 results. This broke down to 334 articles from 1992 - 1997 and 1,109 between 1997 and 2002. This appears to directly contradict the research question. The initial results suggested that there had been an increase in the reporting of miscarriages of justice. But it was considered a possibility that some of the results for 1997 - 2002 may simply be related to the setting up of the CCRC and might therefore be given a false impression of the level of reporting. In order to address this possibility, the search term was modified using logical (Boolean) search techniques. As the Newsbank help facility explains:

> Use any of the following logical (or Boolean) operators to connect search terms and control how your search is processed. You may also use proximity operators in creating your search strategies.
>
> - AND
> - OR
> - NOT
>
> Excluding nuclear from this search makes it likely that items retrieved will be about motor vehicle accelerators rather than nuclear accelerators. NOT is also highly useful when you are trying to eliminate a specific type of article from your results, such as recipes, letters to the editor, etc (Newsbank. [Accessed 06 January 16]).

The modified search term: “miscarriage of justice NOT commission” returned 1,208 results. This meant there were 278 articles between 1992 - 1997 and 930 articles between 1997 - 2002. The use of the Boolean “NOT commission” therefore reduced the number of articles between 1997- 2002 by 179. This pilot study highlighted a number of points:

The sample size will potentially be large, almost certainly more than 1,000.

The technique is certainly viable as shown by large results and the ability to modify the search term using Boolean logical search terms.

The rather surprising initial finding that there were more than three times more articles found in the five years after the CCRC was set up compared with the five years before.

The need to carefully consider valid screening methods or criteria to eliminate articles which are clearly nothing to do with miscarriages of justice (in the context of this thesis). For example, this article from the *Independent* on 25th September 1992 was included in the results:

Boxing: Pundits under pressure

The first sentence reads: “CONTROVERSY is nothing new in professional boxing, so it was no surprise to find Henry Wharton's narrow points verdict over Fidel Castro at Elland Road, Leeds, on Wednesday night greeted either as an excellent decision or a shocking **miscarriage of justice**, depending on which side **of** the ring you were seated.”
It seems unlikely that such articles could be eliminated purely through enhanced Boolean search terms and therefore will have to be eliminated during the analysis stage.

The content analysis section of this thesis is aimed at specifically testing this claim, i.e. checking whether the media did in fact leave the field as Poyser described:

> The investigative journalists packed up their bags in 1997 and the circus moved on (Poyser, 2012: 47).

In the initial phases I believe it is prudent to remind oneself constantly of the purpose of the research in order to stay focused, as McCombs argued:

> Those who start out to look at everything in general and nothing in particular seldom find anything at all (McCombs, 1972: 5).

As I have already described, the database I proposed to use was Newsbank. It is the preferred news archive resource at the University of Winchester and is accessible to both staff and students. The library at the University of Winchester informs researchers that Newsbank gives access to UK national broadsheets, tabloid and regional newspapers from 1988 to now. One of the key reasons I chose Newsbank for my newspaper content analysis was that it covered the dates I required; 1992 - 2007. Unfortunately, when I embarked on my content analysis I discovered that the Newsbank wasn't as extensive as had been stated. I began to notice that there were effectively black holes in my sample, dates and newspapers that were failing to return any results at all. Working through the sample systematically I detected the following issues:

> There were no results at all for *The Daily Mail* or *Mail on Sunday* for the period 1992 - 2002
>
> The results for the *Sun* between 1992 - 2002 were incomplete
>
> The results for the *Guardian* between 1992 - 2002 were incomplete
>
> There were no results for the *Daily Telegraph, Sunday Telegraph, Daily Express Express on Sunday*, and the *Sun* between 1992 - 1997
>
> There were no results for *Express on Sunday* and *Sunday Telegraph* between 1997 - 2002

Through Google searches I found a number of *Daily Mail* stories that contained the phrase "miscarriage of justice" between the years 1992 - 2002. This led me to conclude that the Newsbank may not be as wide-ranging as I had been led to believe. I contacted the university library in early September 2016 in an effort to clarify the extent of the Newsbank resource. I was told that: "Not all

editions of newspapers are available digitally yet, Newsbank provides access to a wide range but our access generally is from 1998 onwards."

This was a significant setback to my research because I didn't believe that my sample size would be truly representative without the inclusion of all 17 newspapers. The exclusion of the *Daily Mail* (the second best-selling daily) and the *Guardian* (known for its campaigning on injustice) in particular would, I believed, fatally weaken the research.

Despite conducting extensive research online I failed to find any resource that would fill the gaps in the sample. The only archive service that would certainly be able to address the shortfall in the sample was Lexis Nexis. This service contains an archive with 15,000 sources that stretch back to 1789, but unfortunately the university has taken the decision not to pay the £9,000 a year subscription. I decided to contact Lexis Nexis personally to ask for individual access to the archive. It took a month of negotiations via email/ phone but eventually Lexis Nexis agreed to give me free temporary access to the database. While this was a great relief, I was also conscious of the dangers of using different databases for the same sample. Due to the situation that I have described, my content analysis sample was going to be a mix of results from Newsbank and Lexis Nexis. Having acknowledged the potential risk, I sought to address it by analyzing the results for the same newspapers for Newsbank and Lexis Nexis. I chose the *Daily Mirror* and the *People* for comparison purposes because as far as I could establish Newsbank had a complete archive for both newspapers in the period 1992 - 2002. The results for the *Daily Mirror* and the *People* turned out to be exactly the same in Newsbank as in Lexis Nexis. This was sufficient grounds, in my opinion, to be confident that the results from both databases could be used in the same sample. This conclusion was further supported by the rather surprising results from Lexis Nexis (that agreed with Newsbank), that there were no results for "miscarriages of justice" in:
The Daily Telegraph, Sunday Telegraph, Daily Express, Express on Sunday, and the *Sun* between 1992 - 1997, and *Express on Sunday* and *Sunday Telegraph* between 1997 - 2002. All of these results pointed very powerfully to the compatibility of the Newsbank and Lexis Nexis results. I therefore used the temporary access to the Lexis Nexis database to complete the gaps in the sample, namely: *The Daily Mail* and *Mail on Sunday* for the period 1992 - 2002, the *Sun* between 1992 - 2002 and *The Guardian* between 1992 - 2002.

Discourse Analysis

During the earlier discussion on content analysis, I highlighted different points of view on how this method should be utilized. I identified a contested issue over whether researchers should concern themselves with the "manifest" or "latent" content. My approach to analyzing the newspaper articles in the previous section was clearly based on assessing the manifest content, namely the occurrence of the "miscarriage of justice" term in the articles. The application of this method provided some very valuable findings, but it also identified a highly significant trend which the purely manifest values failed to adequately explain. As will be outlined in detail in Chapter 5, there was a dramatic fall in left wing press coverage of miscarriages of justice, which was mirrored in a dramatic increase in coverage in the right wing press. There was nothing in the quantitative content analysis findings that rationized these shifts. There was clearly something happening at a subtler level than the purely numerical, and an additional level of analysis was needed.

> In order to discover social representations, attitudes and ideologies of social actors, the connection between the structure of discourse and the structure of society should be viewed (Ramanathan & Tan Bee, 2015:60).

It was because of this that it was decided to take a discourse analysis approach to the articles in an effort to research these underlying trends. This situation highlights the effectiveness of using content analysis (CA) and discourse analysis (DA) together, particularly when applied in this order. This quantitative and qualitative approach (CA and DA) allows the researcher to address the inadequacies of each method, allowing a more rounded perspective, or what Bryman (1992: 60) called a "general picture", to emerge. For example, DA allows the researcher to more fully investigate the political and social relationships of actors:

> Discursive practices may have major ideological effects, that is, they can help produce and reproduce unequal power relations (Fairclough and Wodak 1997: 258).

Discourse analysis complements content analysis because of its ability to address these latent meanings:

> The media are not a neutral, common-sense[d], or rational mediator of social events, but essentially help reproduce pre-formulated ideologies (van Dijk, 1988, 11).

One of the key issues I sought to analyze was whether the social construction of the term "miscarriage of justice" and the associated meanings had altered from before the creation the CCRC to the period after its creation in 1997. The mass media has been a highly significant agent through which the cultural meaning of miscarriage of justice has been disseminated. Newspaper representations are highlighted because they construct and normalise meanings around innocence and the criminal justice system.

The method of discourse analysis has been applied from many different theoretical perspectives within various disciplines (van Dijk, 1991; Fairclough, 1990, Parker, 1992; Potter & Wetherell, 1987). Schreier (2013) identifies two main traditions in discourse analysis. The first focuses on linguistics, for example social linguistic analysis (Dijk, 1997). The other, critical discourse analysis, is usually situated in the social sciences and influenced by Foucault.

> Critical discourse analysis examines (and often criticises) the values that are transported by the dominant discourse and the ways in which the discourse shapes our perception of a given phenomenon (Schreier, 2013: 46).

The method I will be using is critical discourse analysis (CDA). This method is grounded on Foucaultian poststructuralist theories (Foucault, 1972, 1977, 1979). Because of the diversity of perspectives, there is no singular approach to CDA (McGannon, Berry, Rodgers and Spence, 2016), as Ramanathan & Tan Bee explain:

> CDA is characterised as an interdisciplinary multi-methodical approach rather than an isolated discipline on its own (Ramanathan & Tan Bee, 2015: 58).

As I have discussed in Chapter 3, the CCRC was created in an attempt to depoliticize miscarriages of justice and also be a moderating agent between the competing powers of the media, the legal system and the political establishment. This formulation means that the CCRC (and therefore miscarriages of justice) has a very complex relationship with power. The approach taken by CDA therefore seemed very appropriate in this context:

> The criticality is designated specifically to the issue of power, hegemony and resistance in various fields of language (Ramanathan & Tan Bee, 2015: 57).

As Wodak and Meyer point out, "the functioning of ideologies in everyday life" is at the heart of CDA (2016: 9). The CDA approach chosen for this study was the 'dialectical-relational' Fairclough model (Fairclough, 1989, 1995). I favoured Fairclough's approach over alternatives such as Wetherell and Potter's (1992) social psychological method, the discourse-historic approach (Wodak and Meyer, 2016) and van Dijk's (2011) social-cognitive model. The rationale behind choosing Fairclough's model in particular was due to its suitability to historical analysis because of its focus on the interplay between discursive and social practices. Essentially, Fairclough's model argues that "texts are good indicators of social change" (Titscher et al, 2000: 152). This is important to this study because I am looking into the changing meaning of the term "miscarriage of justice" over a certain period. The dichotomous approach of Fairclough's model, which emphasizes an acknowledgement of political interaction, also mirrors the approach taken in this thesis. For example, in Chapter 2, I discussed Manning's (1999) "power networks", Foucauldian themes of power and Habermas's "public spheres". The chemistry that underpins the shifting discourse on miscarriages of justice is elucidated by Fairclough's model because of its recognition of relational complexity. As Youssefi *et al* explain, the relationship between the elites, the media and society is what frames the discourse for advocates of CDA like Fairclough:

> The dominant groups in society (i.e. those in power), fully aware of the potential of the persuasive media and its powerful medium, the language, subtly imprint their views on widespread discursive practices by having privileged access to and control over public discourse via the media and its language. In turn, discourse contributes to supporting and legitimizing those views as part of a consensus which is unwittingly accepted and taken as natural' by the majority in society; and this may cause social problems, inequality and injustice in societies, to be more precise (Youssefi, Baghban Kanani and Shojaei, 2013: 1343).

Using assumptions embedded in the 'dialectical relational' Fairclough model, I was able to trace the use of textual approaches in the corpus over a period to show the progress of ideological assumptions surrounding miscarriages of justices situated within discursive and social practices. Fairclough (1989) identifies three stages to his analysis/ model, although he acknowledged that each mode was not mutually exclusive:

> **Description** of textual features
> **Interpretation** of the features

> **Explanation** of the relationship between the discursive and social practices. Chouliaraki and Fairclough (1999) explain that identifying ideological motivations for the choice of specific words would be an example of the explanation phase.

The approach I have taken, namely using CDA to complement CA, means that the analysis will not be conducted rigidly in stages but will alternate between description and interpretation. I will take a position in terms of explanations when social practices are evident. This is entirely consistent with Fairclough's (2007) advice to favour "oscillation". He and Chouliaraki advocate "a purposefully porous and integrationist orientation to research methodology" (2010: 1218). In my CDA I will focus specifically on headlines and first lines/ paragraphs. As Bell explains, headlines are "part of news rhetoric whose function it is to attract the reader" (1991: 189). Conboy describes them as "the lowest common denominator of the news, the entry portal" (2010: 13). After the headline comes the top line, also known as the top paragraph or lead. The function of this section of the newspaper is described plainly by Conboy:

> The lead, in a news story, is the opening burst of language which summarizes the main story which follows. Leads are complex, linguistically and ideologically, but they are also brief. They succinctly and subtly condense the values and viewpoints of the newspaper (2010: 17).

The belief that the structure and ordering of the headline and top line provide vital insights is supported by Fairclough:

> Ordering in newspaper articles is based upon importance or newsworthiness, with the headline and first paragraph in particular giving what are regarded as the most important parts, and the gist, of the story (Fairclough, 1989 :137).

Of course the phrase "what are regarded as the most important parts" is central to the analysis. Van Dijk (2011) argues that the "outlook" of a newspaper is its ideology, meaning that the subject choices made by journalists in headlines and first lines readily give an insight into a newspaper's ideology and political agenda. Essentially an analysis of these elements offers the possibility of learning about the reality of a situation and a newspaper's presentation of that reality, and crucially, the difference between the two:

> The news and information we pick up through the media, including newspapers, might not

> reflect the sound realities. They might be politically or ideologically biased and manipulated (Youssefi, Baghban Kanani and Shojaei, 2013: 1343).

An example of the approach is my analysis of the coverage of the Tony Martin case. The farmer who shot and killed an intruder became something of a cause célèbre for the right wing tabloids. The same thing happened again in 2018 in the case of Richard Osborn-Brooks. This "outlook" was clearly apparent in the sympathetic coverage Martin received in the Sun and the People. The papers used techniques such as portraying him as a family man (Richardson, 2007; Clark, 1992) to encourage their readers to look favourably on his case.

> **Family tells of joy over verdict outcry,** *the Sun* April 22, 2000

> **I fear I'll die without seeing my innocent son Tony again,** *the People* in April 15*, 2001*

The approach contrasts sharply with the approach taken by the right wing papers to other prisoners who were claimed they had suffered an injustice:

> **Fury as murderer who raped then strangled girl wins right to appeal,** *Daily Mail* June 11, 2001
> **Campaigners brand ruling 'crazy' as sex case teacher wins appeal,** *The Express*, June 28, 2001

The papers declared that he was a victim of a miscarriage of justice, even though he never claimed he was innocent, illustrating the semiotic shift in the term.

4.4 An examination of the relationship between media and the courts

Chapter 6 will examine the relationship between the media and the courts by looking explicitly at a specialized type of journalist: the court reporter. The purpose of focusing on the court reporter in particular is largely for three reasons.

Firstly, because the court reporter straddles two systems, the media and the courts, he/ she fulfils the definition of being (in Teubner's terms) 'a linkage institution' or at least the role has a 'linkage

function'. The directing of research energies at such 'linkage institutions' is entirely consistent with the approach of this project. The main 'linkage institution' of which this study concerns itself, the Criminal Cases Review Commission, was chosen as the central organization for my research largely due to this characteristic. As I described earlier, CCRC is the keystone in this research project, and equally, albeit in to a less significant extent, court reporters too are keystones. There are of course different degrees of interaction between linkage institutions, as Moran points out:

> The Leveson Inquiry's investigation certainly reveals that close and complex relations are the norm between senior politicians and the media in successive governments and between the media and the police. The lack of any reference to relations between the media, courts and the judiciary in that inquiry might suggest that these still operate in a rather different arms-length manner (Moran, 2014: 152).

The unique position of the court reporter means that he or she interacts and is influenced by two systems simultaneously. As veteran crime reporter Duncan Campbell describes it:

> A day in magistrates' court provides as illuminating a snapshot as any lengthy think-tank report or ministerial briefing on the state of education, immigration, unemployment, drug use, alcoholism, mental health and popular culture, not to mention policing, the criminal justice system and the failures or successes of government policies (Campbell, 2015: xii).

This is echoed by another illustrious reporter, who has now become journalism's most vocal critic, Nick Davies:

> The courts are the most productive single source of stories in the country, not just of human interest but of all the unseen tensions in a community's life which come bubbling up through crime and civil actions (Davies, 2008: 77).

Secondly, the court reporter can act effectively as a 'canary in the mine' in terms of analysing the media's interaction with the criminal justice system. One reason for this is down to the idiosyncratic structure of court reporting. There are strict laws governing the reporting of court cases. The *Contempt of Court Act 1981* imposes a strict liability rule on any court reports, meaning that a reporter will be prosecuted for any breaches regardless of intention. There is no need for the Crown to establish *mens rea,* and there is no mitigation. It is defined in section 2(2) of the 1981 Act:

> The strict liability rule applies only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced (Contempt of Court Act 1981).

Reports enjoy privilege and are protected if, as you will often hear in most newsrooms, they are 'fast, accurate and fair'. Or, more specifically, as the Act puts it:

> A person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith (*Contempt of Court Act 1981*).

Because of these exacting limitations one can be extremely confident that any court report appearing in the press has almost certainly been written by a court reporter, and that that court reporter has actually been in court because otherwise their story would not be covered by privilege. It is clear therefore that inherent in any published court report is a great deal of other, latent, information that can be unpacked by the researcher. For the purposes of this study there are two main strands: firstly, there is a direct correlation between court reports and court reporters because of the specialized skills required to do the job; secondly, due to the requirement to be physically present in the court, a published court report also exposes to what extent the media and criminal justice system are sharing the same empirical space that is how often the media's portrayal of the law is based on primary research. The act of contrasting the level of court reporting therefore illustrates a great deal more than simply how many news articles were written at any one time about court proceedings. It is for this reason that a comparative analysis of court reporting in newspapers, using Professor Moran's methodology, will be carried out.

It may seem to be stating the obvious, but all miscarriages of justice begin in magistrates' courts and are played out in crown courts. The justice system is organized in such a way that the evidence in a case will only ever be heard once, at trial. This is because the transcripts of trials are routinely destroyed after seven years. It means that if you did not hear the evidence at the trial you will probably never be able to access it in a complete form ever again. The court reporter's story may be all that future miscarriage of justice investigators will have to go on. The argument is that if the media is interacting less with the courts, then it makes it more unlikely that journalists will spot and then investigate miscarriages of justice. It also means that thanks to the policy of destroying court

transcripts, the only accurate record of a trial may be the notes of a court reporter. But if there are fewer court reporters covering fewer trials, then there is a growing number of trials which are vanishing down the memory hole envisaged by Orwell. There will be no document to say what went on, what was said, what evidence was put forward. This poses significant difficulties for prisoners trying to maintain their innocence, but also raises profound questions about the principle that justice must not just be done, it must be seen to be done.

In order to gain a clear picture of how these two communities, the media and the law, are interacting I will carry out a comparative quantitative content analysis study of the number of court reports written in national and regional newspapers on the 16th February in 2012 and 2016. The original study in 2012 into the level of court reporting was carried out by Professor Les Moran. I contacted Professor Moran and he agreed to give me his raw data from that study so that I could accurately compare and contrast my sample to his. In order to make the two samples (2012 & 2016) compatible, I used Professor Moran's sampling structure. The regional and national newspapers were analysed via Newsbank.

Moran argued there was currently "little research" into the level of coverage of court proceedings in the national and regional press:

> Of particular interest for the purposes of this paper is the lack of research examining the representations of court and judicial activity in news reports (Moran, 2014: 145).

Moran points to two main approaches in this context: "research on Press representations of particular trials" and research that "examines Press representations in general" (Moran, 2014: 147).

> The preoccupations of this large literature are, in general, not courts and the judiciary, but the representations of crime, criminality, policing and relations between the media and the police (Moran, 2014: 148):

In his research Moran analysised a sample of newspapers on a specific day: 16 February 2012. The sample included 24 daily newspapers, 10 national and 14 regional. The national newspapers were: *The Daily Express, the Daily Mail, the Daily Mirror, the Daily Telegraph, the Financial Times, The Guardian, The Independent, the Daily Star, The Sun* and *the Times*. The regional papers were: *The Birmingham Mail, the Lancashire Telegraph, the London Metro, the London Evening Standard, the Manchester Evening News, Newcastle's Journal, The Newcastle Evening Chronicle, the Sheffield Star,*

York's Press, the Yorkshire Post and the Yorkshire Evening Post, the South Wales Argus, the South Wales Echo and *the Western Mail.*

There is of course recognition within the research that this "snapshot" methodology has its limitations, as Moran reflects:

> While there is a need to be cautious about drawing conclusions from a one-day sample, there is little evidence in the 181 news reports about the courts and the judiciary in England and Wales on this particular day of media criticism of the judiciary or hostility being expressed towards members of the judicial family. When the work of the judiciary is referred to in Press reports, the approach is, overwhelmingly, brief, benign description (Moran, 2014: 165).

The sample produced a data set made up of 205 newspaper reports. As Moran explains:

> The modest goal of this paper is to offer an analysis of this snapshot of the representation of the courts and the judiciary in news reports in the Press in England and Wales (Moran, 2014: 146).

The key focus of Moran's research is the "representations" of the courts in the media. His qualitative analysis considered questions such as:

How are judges identified?
What areas of judicial work are represented?
Are the reports generally sympathetic or critical and hostile of the judiciary?

This focus is too broad for my purposes and as such I will only be considering volume of reports, between Moran's findings in 2012 and my only results from 2016, from a quantitative perspective.

> Every newspaper in the sample reported some court and judicial activity. The 205 reports in the day sample cover a wide variety of courts in both domestic and other jurisdictions. From the total sample, 11% (24 reports) referred to courts and judges in jurisdictions other than England and Wales (Moran, 2014: 153)

Moran found that of the 205 reports in his snapshot, 181 referred to court activities in England and Wales. He found that: "While there is variety in the courts represented, news reports about criminal courts dominate. The majority, 129 reports (69%), deal with the work of the criminal courts." (Moran, 2014: 155)

Interestingly, purely on a quantitative basis, Moran finds that the coverage of the courts is comparable across publications that serve different audiences and have different political allegiances:

> There is little in this day sample to suggest that between the national tabloid and the quality Press there is necessarily a difference when it comes to either the number of reports or the range of courts covered in those reports (Moran, 2014: 156).

He found that in his sample, *The Times, The Daily Mail* and *the Sun* had a similar number of reports "touching on the work of the courts", 11, 11 and 13 reports respectively.

Two of his conclusions chime closely with the issues that have already been discussed:

> The vast majority of the court and judicial activity taking place at any one moment of time will not be subject to media scrutiny. The cases reported are exceptions to that general rule. The analysis also suggests that Press reports will cluster around particular courts, the criminal trial courts, while courts and tribunals dealing with civil and public law will attract less media attention. They will also cluster around particular moments in the courtroom process (Moran, 2014: 165).

In order to address the issue of whether there had been a reduction in reporting of court stories I mirrored the research approach of Professor Moran thereby enabling me to compare my result against his. His snapshot took place on 16 February 2012; mine on the 16 February 2016. I compared the results across eight national papers:

Daily Express, Daily Mirror, Daily Telegraph, Financial Times, Guardian, Independent, Sun and *Times*.

And five regional papers:

Birmingham Mail, London Evening Standard, Manchester Evening News, South Wales Echo, Western Mail.

While it is obvious that in order for the samples to be comparable the newspapers chosen must be the same, what must not be forgotten is that an equivalence in methodology is also crucial. That is to say that the method that Professor Moran used must be replicated as much as possible in the sample taken in 2016. While Professor Moran relied almost entirely on the hard copies of the newspapers, I have relied entirely on the digital copy available on the Newsbank database. There was clearly a concern that there was a danger of comparing apples and oranges if the methodology was different. It was for this reason that I analyzed the Newsbank results for two of the newspapers, the Guardian and South Wales Echo, that Professor Moran had sampled. The reason for doing this was to calibrate my search terms to return the same results as Moran had identified in his earlier study.

In 2012, Professor Moran had found that the Guardian had three court stories:

'Teenager denies attack on Malaysian student
'Murder Charge after girl, 13 found stabbed'
'Wife jailed for retracting rape claims over conviction'

Searching on Newsbank under the parameters:

Date: 16/02/16
Publication: Guardian
Search term: court

Found:

'Wife jailed for retracting rape claims over conviction'
'Teenager denies attack on Malaysian student

Searching on Newsbank under the parameters:

Date: 16/02/16

Publication: Guardian
Search term: charged

Found:
'Murder Charge after girl, 13 found stabbed'

Therefore, search terms of "court" and "charged" found the same results for the Guardian as Professor Moran had in 2012.

In the South Wales Echo, Professor Moran's sample had six stories, but I decided to reduce that to five because one of the stories, "Girl 13, stabbed to death in park" (73 words), did not have any court content. It was essentially a crime story and shouldn't have been included.

'Accused: I had sex with Nikitta' (390 words)
'Musician spared jail after attack on ex' (355 words)
'Man glassed stranger hours after jail release' (410 words)
NIBs (263 words)
'Call to remove council prayers' (392 words)

Searching on Newsbank under the parameters:

Date: 16/02/16
Publication: South Wales Echo
Search term: court

Found:
'Accused: I had sex with Nikitta' (390 words)
'Musician spared jail after attack on ex' (355 words)
'Man glassed stranger hours after jail release' (410 words)
NIBs (263 words)
'Call to remove council prayers' (392 words)

Therefore, by using the search terms "court" and "charged" in the Newsbank database one was able to achieve the same results as Professor Moran. While it appeared to be satisfactory to rely on these

two search terms it was decided to expand the terms so that I could have a high degree of confidence that there weren't any "court stories" slipping through the net. When gathering the 2016 sample, each of the 13 was searched using the terms: "court" "charged" "jailed" "judge".

4.5 Use of case studies

This thesis has used a case study approach to interrogate the detailed implications of certain arguments. In Chapter 2, the investigations of Chris Mullin and Don Hale were explored in order to illustrate how structural frameworks impact on individual cases. In his interview, David Jessel used the specific case of a murdered schoolboy to demonstrate the importance of a journalistic approach to miscarriage investigations. In Chapter 7 the issues are related to specific real-world situations: Section 17, compensation and court transcripts. The decision to focus on specific examples is an attempt to narrow the focus of the research and to "provide a greater 'depth of field' revealing in some detail many aspects of the phenomena of at the same time as well as the context in which they are found" (King & Wincup, 2008: 28). In the case study approach, the focus on a specific aspect enables the researcher "to deal with the subtleties and intricacies of complex social situations" and "to grapple with relationships and social processes" (Denscombe 2003: 38). This approach is most appropriate to explore the levels of investigative journalism since the creation of the CCRC, because as Stake explains:

> They [case studies] may be epistemologically in harmony with the reader's experience and thus to that person a natural basis for generalization (Stake, 2000: 19).

But generalization has always been a s potential weakness of the case study method, as Gomm *et al* described:

> Case study research has often been criticized on the grounds that its findings are not generalizable, especially by comparison with those of survey research (Gomm *et al*, 2000: 98).

The authors point out that to address this problem most researchers highlight the relevance of their case study in order to establish the value of their study. The example they use illustrates the approach used in this section:

> The case investigated is a microcosm of some larger system or of a whole society: that what is found there is in some sense symptomatic of what is going on generally (Gomm *et al*, 2000: 99).

This is essentially what Flick was referring to in his description of an 'instrumental case study':

> The use of the single case to understand some bigger issue beyond the particular issue (Flick, 2015: 98).

Flick suggests a checklist of considerations which a researcher should reflect on when using the case study method:

> What does the case represent and what do you intend to show by analyzing it? What were the criteria for selecting this specific case, for the data collection, for the analysis and for the presentation? (Flick, 2015: 193)

These criteria were used as a useful guide to focus the specific case study used in this thesis in order to address issues of relevance and generalization.

CHAPTER 5: MISCARRIAGES OF JUSTICE: A REDUCTION IN COVERAGE AND A MODIFIED FOCUS

"Man acts as though he were the shaper and master of language, while in fact language remains the master of men."

(Heidegger, 1951: 2000)

5.1 Introduction

This chapter addresses the press's attitude to wrongful convictions by analysing quantitative patterns of the occurrence of the phrase "miscarriage of justice", along with the temporal semiotic development of the phrase between 1992 and 2007 in national English newspapers. In Chapter 3 I discussed my methodological approach. I explained that in this chapter I would be using both quantitative content analysis (CA) and critical discourse analysis (CDA) to examine newspaper coverage of miscarriages of justice before and after the creation of the Criminal Cases Review Commission (CCRC). The methods I have chosen are complimentary, particularly when used sequentially. This chapter will therefore have broadly two aspects, beginning with a quantitative approach which informs the qualitative method which follows. First, via content analysis, the frequency and depth of coverage of miscarriages in the sampled newspapers will be examined. Second, using Fairclough's CDA model and the corpus identified by the initial CA approach, the miscarriage of justice discourse will be investigated.

The context of the sample period is an important consideration. Between 1992-1996 the C3 department of the Home Office was responsible for considering and investigating claims of innocence by individuals convicted of criminal offences in the UK. What this meant in practice was that anyone wishing to be granted an appeal wrote to the Home Secretary and it was then within his/her gift to refer the case to the CACD if he/she saw fit, or could also recommend the Queen grant a pardon (Criminal Appeal Act 1968, section 2). As has been argued elsewhere, this structure which placed such challenging legal dilemmas in the heart of government, specifically in the hands of a directly elected politician, had profound implications for the role of the journalist. For newspapers and the broadcast media, it meant that any investigation or campaign had a particular target: the Home Secretary. It therefore followed that all reporting on miscarriages of justice was inevitably political. The bleed between the two professions is perfectly illustrated by the figure of Chris Mullin. He was both a journalist and a politician. Having a foot in both camps meant that his campaign for the Birmingham Six was especially effective. I have argued that the positioning of miscarriage of justice decisions in a government department created the perfect condition for someone like Mullin

to rise to prominence, and means that since the creation of the CCRC it is highly unlikely that such an individual could ever again hold such influence (in the context of miscarriages of justice).

The disbanding of the C3 department permanently fractured the relationship between the press and the political elite in the criminal appeal framework. It has been my contention throughout this thesis that there was a greater interest among journalists and editors in miscarriages during the years of the C3 department because they had, and regularly exercised, a powerful influence on the decision-making of the Home Secretary in terms of his/ her powers of referral. Post-1997, with the creation of the CCRC, this influence greatly diminished. This was the price of the new body's neutrality, and it was something that the new chair, Richard Foster, wholeheartedly welcomed. In his view the CCRC was not in the business of campaigning, and would remain entirely unmoved by any lobbying or campaigning by the media or anyone else. Lord Runciman's (2013) view was that this "trade-off" was ultimately to be welcomed because even though political pressure may have occasionally paid dividends with C3, the department's handling of miscarriage cases was overall "woefully inadequate" (Runciman, 2013). What this structural change meant in practice was that miscarriages of justice became a lot less appealing to journalists and editors after 1997. This argument is supported by investigative journalist David Jessel. Jessel was the presenter of *Rough Justice* and *Trial and Error* in the 1980s and 1990s, and later went on to be a commissioner at the CCRC for 10 years. I interviewed him in 2013 in London:

Brian Thornton: You have a unique insight; you were an investigative reporter looking at miscarriages then you went to the CCRC. Knowing what you know now, what role do you think the investigative journalist has in the area of miscarriages?

David Jessel: When they first set up the Criminal Cases Review Commission, before I ever joined it, this was at a press conference after the Royal Commission on Criminal Justice. After all the scandals of the Irish trials and so forth, they announced that this CCRC was going to be set up. I went to that press conference as a journalist and investigative reporter and I thought to myself, 'this is probably the end of us', because there's a state body, independent, but a state body with 100 investigators and lawyers and commissioners, with enormous power, powers that a journalist could only dream about, like snapping your fingers and saying 'give me the disciplinary records of those policemen' or 'give me the special branch surveillance logs'. The wonderful

> powers they had, what could we do as journalists? Mostly we were just re-interviewing witnesses and scratching our heads and trying to put two and two together. We were often quite right, luckily, but I really felt we couldn't compete against the CCRC with all its firepower and I thought the writing was on the wall for television then (Jessel, 2013).

What Jessel said was borne out by how his career, and his programmes, developed. Jessel presented *Rough Justice* from 1987 - 1992. He then moved onto *Trial and Error*, with the first episode being broadcast in 1993 but Channel Four cancelled the programme in 1999. Jessel then joined the CCRC in 2000. There can be no more clear-cut illustration of how the creation of the CCRC impacted on the media than the decision of the most prominent investigative journalist in the UK to walk away from television and join the new organization. It was clear that he believed that journalists "could no longer compete" with the CCRC investigations. In order to empirically examine this narrative, in the first section I will use content analysis to quantify the level of coverage of miscarriages of justice in English national newspapers during this period.

Underpinning this narrative was a subtler but arguably more significant change; namely, a developing discourse that de-emphasized innocence and instead focused on guilt. There is no more clear-cut example of this transformation than Prime Minister Tony Blair's 2002 speech in which he declared that "the biggest miscarriage of justice in today's system is when the guilty walk away unpunished". This realignment was perhaps understandable when one understands how the narrative of miscarriages had been portrayed in the media. Research by Nobles & Schiff (2001) is highly instructive in this regard. In the period 1992 - 1997 there was a sense that the criminal justice system was experiencing a serious challenge:

> Our research leads us to the conclusion that the 'loss of public confidence' in the criminal justice system, which led to the creation of the Commission was something generated by, and existing within, the media (Nobles & Schiff, 2001: 295).

Whether the crisis was real or existing just within the media, the government felt compelled to act, creating the CCRC.

> The establishment of the Commission has reduced the sense of crisis about miscarriages of justice that had previously built up in the media (Nobles & Schiff, 2001: 296).

The fact that the Home Office C3 department had been so universally lambasted, even by authority

figures like Runciman and Zander, meant that the CCRC was almost assured of being a success, even just purely in relation to its predecessor.

> The 'success' of the Commission in enhancing confidence was tied up, from its beginning, in its ability to achieve more than its predecessor: to investigate more cases, more fully, and make more referrals (Nobles & Schiff, 2001: 296).

So when Blair said that miscarriages of justice were when the guilty went unpunished he was speaking in a post-crisis, post-reform context (at least from his perspective). Underlying his argument was this implicit narrative: the media's reporting of high profile miscarriages had created a crisis of confidence, the politicians had responded with structural reform and now the crisis had dissipated. Essentially what was being assumed was that the "innocence crisis" had been dealt with and energies should now be focused on other areas where the criminal justice was misfiring; namely, in the effective punishment of the guilty. The second section, using CDA, will focus on this development.

5.2 Content Analysis

The databases (Lexis Nexis & Newsbank) were searched for the term "miscarriage of justice" specifically in the 17 newspapers I have outlined in Chapter 4 on Methodology. I excluded items from the letters page because this wasn't the work of journalists and so fell outside the remit of the study. I included articles from news, features and editorial. The results were separated into results for individual newspapers and for three time periods:

SAMPLE A: [01/01/1992, 31/12/96]

SAMPLE B: [01/01/1997, 31/12/2001]

SAMPLE C: 01/01/2002, 31/12/2007]

In total the sample contained 513 news reports. There were a total of 191 news reports in SAMPLE A, 165 news reports in SAMPLE B and 157 news reports in SAMPLE C.

SAMPLE A v SAMPLE B: Before and after the CCRC

I will begin by focusing on the five years before and the five years after the creation of the CCRC. I will then examine SAMPLE C to establish whether trends that I have identified continued after 2002. In terms of the total number of newspapers articles, there was a 14% fall between SAMPLE A and SAMPLE B.

Before CCRC: SAMPLE A: (01/01/1992, 31/12/96)	After CCRC: SAMPLE B: (01/01/997, 31/12/2001)
191 newspaper reports	**165 newspaper reports**

Table 1.1 Comparison of news reports on miscarriages of justice before and after the creation of CCRC

The most prolific newspaper in terms of miscarriage of justice stories was *The Guardian*. The paper ran 68 stories in the five years before 1997, more than all the stories in *The Sun*, *Telegraph*, *Daily Mirror*, *Sunday Mirror*, *Express*, *Independent on Sunday*, *News of the World*, *Observer*, *The People*, *Sunday Times*, *Daily Mail*, *Mail on Sunday*, *Express on Sunday* and *Sunday Telegraph*. In the sample before 1997, *The Guardian* was responsible for 36% of all miscarriage stories. But in the sample between 1997 - 2002, *The Guardian*'s miscarriage stories fell dramatically to 25 (a 63% fall). In this sample *The Guardian* represented only 15% of the total. The second most prolific paper was *The Independent*. It had 47 miscarriage stories before 1997, but that fell to 35 post-1997. This represents a 26% fall. The third largest contributor to the total was *The Times*. Its total of stories fell from a high of 33 before 1997 to 27, a fall of 18%.

These three newspapers, *Times*, *Guardian*, *Independent*, were by far the most dominant source of stories related to miscarriages. Before 1997 these three papers ran 148 miscarriage stories, which was 78% of the total number of stories in this five-year period. All three papers recorded dramatic falls in their coverage of the issue (*Guardian* 63%, *Independent* 26%, *Times* 18%), but the overall decrease between the two periods was only 14%. This begs the question, what was happening in the other newspapers that masked such significant decreases in the principle sources of miscarriage stories?

Newspaper	(1992-1996)	(1997-2001)
The Guardian	68	25
The Independent	47	35
The Times	33	27
Total	148	87

Table 1.2 Comparison of the three most prolific newspapers in terms of miscarriage of justice reporting before and after the creation of CCRC

The figures show an interesting trend, where some newspapers that had shown moderate or no interest in the subject in the five years before 1997 had begun to write a significant number of miscarriage articles after 1997. These papers were: *The Sun*, *The Daily Mirror*, *Express* and *Daily Mail*. As a group these papers only contributed 15 stories to the total of 191 in the pre-1997 sample, representing 8%. However, in the five years after 1997 these four papers amassed a total of 56 miscarriage stories, out of a total of 165. This represented a total of 34%. Put another way, this was a 373% increase in the number of miscarriage of justice stories appearing in *The Sun*, *The Daily Mirror*, *Express* and *Daily Mail* after 1997.

Newspaper	(1992-1996)	(1997-2001)
The Sun	0	9
The Daily Mirror	10	27
The Express	0	6
The Daily Mail	5	14
Total	15	56

Table 1.3 Comparison of the three least prolific daily newspapers in terms of miscarriage of justice reporting before and after the creation of CCRC

It was the dramatic increase in these four newspapers that blunted the impact of the decrease in the stories in *The Guardian*, *Times* and *Independent* after 1997. These trends will be addressed in detail in the next section.

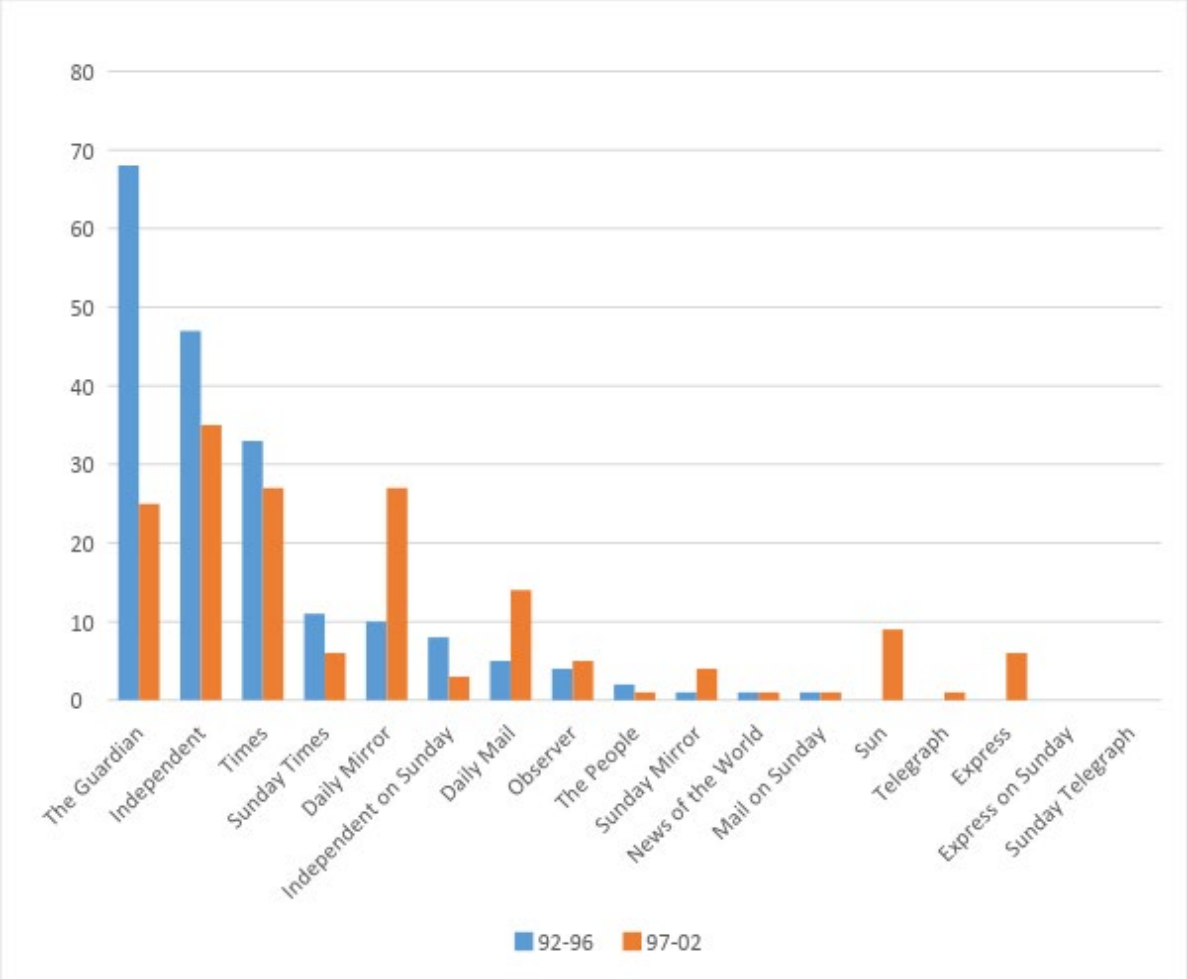

Figure 1.1 Analysis of the number of miscarriage of justice stories featured in each of the newspapers for the five years before and after the creation of the CCRC

One notable feature of the sample was the very low level of reporting of miscarriages that was present in The Sunday papers. In the pre-1997 sample the biggest contributors were *The Independent on Sunday* and *The Sunday Times*, with eight and 11 stories respectively. The other five Sunday papers (*Sunday Mirror*, *Observer*, *Mail on Sunday* and *Sunday Telegraph*, *News of the World*) had a total of only seven stories. Altogether The Sunday papers had 26 stories, which represented 13% of the pre-1997 total. There was a marked decline after 1997, with all seven Sunday papers only contributing 20 stories. This represented 12% of the total number of stories (165).

Newspaper	(1992-1996)	(1997-2001)
Sunday Mirror	1	4
Independent on Sunday	8	3
News of the World	1	1

The Observer	4	5
The Sunday Times	11	6
Mail on Sunday	1	1
Express on Sunday	0	0
Sunday Telegraph	0	0
Total	26	20

Table 1.4 Comparison of the eight Sunday newspapers in terms of miscarriage of justice reporting before and after the creation of CCRC

An unexpected feature of the sample was the contrasting focus that the tabloid and the broadsheets displayed. For the purposes of comparison, the tabloids were: *The Sun*, *Daily Mirror*, *Sunday Mirror*, *Express*, *News of the World*, *The People*, *Daily Mail*, *Mail on Sunday*, *Express on Sunday*. The broadsheets were: *The Telegraph*, *The Sunday Telegraph*, *The Guardian*, *The Independent*, *Independent on Sunday*, *Observer*, *Sunday Times*, *The Times*. In the pre-1997 sample, the total number of miscarriage stories in the tabloids was 20. The total number in the broadsheets was 171. This meant that the broadsheets represented 90% of the total (tabloids 10%). In the post-1997 sample, the tabloids had 53 miscarriage stories while the broadsheets had 112. In percentage terms, the tabloids were 32% of the post-1997 total, and the broadsheets were 68%. The trend can be seen even more starkly when the different outputs are contrasted before and after 1997. In the five years after 1997, the number of miscarriage stories had increased by 265% in the tabloids compared with the previous five years. But a similar trend had happened, in reverse, to the broadsheets. The number of miscarriage stories in the broadsheets fell by 35% after 1997. What was behind such dramatically contrasting trends?

Newspaper type	(1992-1996)	(1997-2001)	Total
Broadsheets	171	112	283
Tabloids	20	53	73

Table 1.5 Analysis of the difference in terms of miscarriage of justice reporting before and after the creation of CCRC in the broadsheets and the tabloids

The overall coverage of miscarriage of justice stories had fallen across all newspapers by 14% after 1997. While the total decrease may have been 14%, this didn't accurately represent the wild variations across individual newspapers and newspaper types.

The most dramatic falls were seen in the most prolific newspapers (*The Guardian*, *Independent* and *Times*). All of these are broadsheets. There was a significant fall in the broadsheet coverage, and a dramatic uplift in the tabloid coverage. In general terms, the newspapers that had displayed a muted interest in the subject before 1997, became very engaged and the papers that had been focused on the topic began to lose interest after the creation of the CCRC (1997).

These contrasting fortunes, tabloids v broadsheets, was an intriguing and potentially significant finding. An analysis of the figures brought the issue into sharp focus, but it didn't adequately explain what has happening behind these figures. In order to address the issue, I embarked on a quantitative analysis of the actual newspaper articles. I began looking at two newspapers, *The Guardian* and *The Sun*. I chose these two because they were the most extreme examples of the general trend. *The Guardian*'s coverage of miscarriage stories had fallen by 63%, while *The Sun*'s coverage had increased by 900%. By analyzing the individual stories, I hoped to gain a deeper understanding of what was behind the contrasting trends.

The Sun

In the period 1992 - 1997 *The Sun* did not run a single story that contained the phrase "miscarriage of justice". This was such a surprising finding that I checked the result in both Newsbank and Lexis Nexis. The answer was the same in both databases. However, in the period 1997 - 2002 *The Sun* printed nine stories that contained the phrase "miscarriage of justice". Here are the headlines from the nine stories:

May 1, 2001: **Making a victim out of a criminal**

April 18, 2001: **My girls can clear me of Billie-Jo rap**

April 3, 2001: **DNA shows Hanratty was killer**

February 19, 2001: **Who really did kill the Bakewell tart?, News special on a terrible miscarriage of justice**

February 19, 2001: **£8M for the man who spent 27 long years in jail for murder he didn't commit, News special on a terrible miscarriage of justice**

February 8, 2001: **Pounds 2 million for 27 lost years**

April 22, 2000: **Family tells of joy over verdict outcry, The Martin backlash**

October 16, 1999: **An insult to my Keith, Fury at Pounds 50,000 Silcott payout**

February 22, 1997: **Now I want a woman, Bridgewater 3 go free**

Of the nine stories, two are about Tony Martin, the farmer who shot dead an intruder at his Norfolk farm. His case became something of a cause célèbre for the right wing press. For some commentators it perfectly illustrated the mistaken priorities of the criminal justice system. As *The Sun* declares in its article on 1st May 2001:

> Tony Martin is a political prisoner. He is a symbol of everything rotten about so-called British justice. If the public had been consulted, he would never have been sent to prison.

The case certainly raised some very interesting issues. The central point is that Tony Martin was not a victim of a miscarriage of justice, as defined in this thesis. That is to say he was not innocent of the crime, he admitted that he shot and killed the intruder. While the debate over what was the appropriate punishment is certainly valid, his admission of guilty excludes him from the category of being a victim of a miscarriage of justice. I will return to the Martin case (*R v Martin* [2002] 2 WLR 1) when I discuss the language used by the right and left wing press.

Three of the stories were not so much concerned with innocent people being convicted as by the amount of compensation they had received:

October 16, 1999: **An insult to my Keith, Fury at Pounds 50,000 Silcott payout**
February 19, 2001: **£8M for the man who spent 27 long years in jail**
February 8, 2001: **Pounds 2 million for 27 lost years**
Only four of the stories could genuinely be described as being concerned with a possible miscarriage of justice:
April 18, 2001: **My girls can clear me of Billie-Jo rap**
April 3, 2001: **DNA shows Hanratty was killer**
February 19, 2001: **Who really did kill the Bakewell tart?, News special on a terrible miscarriage of justice**
February 22, 1997: **Now I want a woman, Bridgewater 3 go free**

In the period 1992 - 1997, *The Guardian* ran 68 stories containing the phrase “miscarriage of justice”. The stories can broadly organized into groups:

Reports on the issue of miscarriages of justice
Reports on individual cases

Reports on compensation for wrongfully convicted individuals

A good example of a report on the issue of miscarriages of justice is Duncan Campbell's story from 31st December 1993:

Headline: **YEAR IN YEAR OUT?**
Strapline: More than 100 prisoners in alleged miscarriage of justice cases notch up another year in jail tonight. All hope their cases will be re-examined in 1994.

There were a total of 31 reports of this kind in *The Guardian* during this period.

An example of a report on an individual case is another story by Duncan Campbell on 29th February in 1992:

Headline: **MOTHER SERVING LIFE FREED**
Strapline: Court quashes murder conviction in latest 'disputed confession' appeal

There were a total of 36 stories of this kind.

There was only one example of a report on compensation:

May 12, 1992
Headline: **PAYOUT COULD REACH £250,000**
Strapline: JUDITH Ward could be in line for record compensation of up to pounds 250,000 as the longest serving prisoner in a miscarriage of justice case.

In the period 1997 - 2002, the number of miscarriage reports in *The Guardian* fell to 25. If we group them again in the three main categories, we find that there were 10 stories dealing with the issue of miscarriages, 14 about individual cases and one about compensation for miscarriage victims.

An example of a report dealing with the issue is Bob Woffinden's report from 24th February 1997:

Headline: **PAPERS OF PROOF**
Strapline: Bob Woffinden worries that under a new law nobody will keep the kind of documentary

evidence which freed the Bridgewater Four

An example of a report on an individual case is from 13th June 1998 from Duncan Campbell:

Headline: **INNOCENT, AFTER 23 YEARS IN JAIL**
Strapline: A MAN who spent 23 years in jail for a "murder" that never happened was cleared by the Court of Appeal yesterday.

Again there was only one example of a story about compensation:

October 16, 1999
Headline: **CLEARED SILCOTT GETS £50,000**
Strapline: Scotland Yard have agreed to pay £50,000 in compensation to Winston Silcott, who was wrongly convicted of murdering a police officer during the 1985 Broadwater Farm riots.

This analysis shows that although the decline in *The Guardian's* coverage was dramatic, from 68 to 25, the fall was uniform and was not isolated to a particular type of miscarriage story. Stories that dealt with issue of miscarriage of justice made up 46% of sample before 1997, and 40% after 1997. Stories about individual cases before 1997 were 53% of the total and 56% after 1997.

If we use the same model on *The Sun*'s reports it reveals a very different story. Of the seven stories after 1997, three of them were about compensation, four were about individual cases and there wasn't any about the general issue of miscarriages of justice. In percentage terms it means that 43% of *The Sun*'s stories were about compensation and 57% about individual cases.

It is reasonable to argue that *The Guardian*'s coverage changed as a result of the creation of the CCRC, given the dramatic difference in the number of miscarriage reports. In contrast *The Sun* has increased its coverage, but much of the increase appears to be driven by an obsession on the level of compensation the wrongfully convicted are receiving.

To investigate whether this was a general trend among those newspapers who had moved from very low levels of reporting before 1997 to dramatically higher levels I will analysis the samples from *The Daily Mail*. The *Mail* published five stories containing the phrase "miscarriage of justice" in the period 1992- 1997, this increased to 14 between 1997 - 2002. The five stories in the first sample

were:

April 23, 1996
Headline: **This £400,000 insult by Birmingham Six**

August 3, 1994
Headline: **AS THE STORM GROWS, HOME OFFICE ASSESSOR INSISTS KILLER'S £10,000 PAYOUT IS NOT**

July 16, 1993, Friday
Headline: **Let the jury really judge**
Strapline: The misguided principles behind the court decision which shook Britain's faith in the legal system

July 7, 1993, Wednesday
Headline: **Crime and injustice**
Strapline: WRONGFUL conviction of the Guildford Four plus the Birmingham Six added up to spectacular miscarriage of justice.

October 14, 1992, Wednesday
Headline: **HELP THE INNOCENT TOO, POLICE WARNED**
Strapline: MISCARRIAGES of justice have brought the police close to disaster, Britain's top policeman said yesterday.

What this means is that two of the stories were about compensation, two about the issue generally and one about an individual case. These are the stories from the sample after 1997:

December 14, 2001
Headline: **DANDO'S KILLER GRANTED APPEAL**

July 4, 2001
Headline: **Why I pray the jury is right**
Strapline: One of the country's leading experts on the **miscarriage of justice** assesses the Dando case

and reaches a disturbing conclusion

June 11, 2001

Headline: **Fury as murderer who raped then strangled girl wins right to appeal**

April 4, 2001

Headline: **Hanratty: Will the innocence industry ever give up?**

April 3, 2001

Headline: **HANRATTY WAS GUILTY;**

Tests that proved Hanratty was guilty

June 6, 2000

Headline: **I am so sorry you were jailed, Blair tells the Guildford Four**

Bomb victims' families angered by another apology from the Premier

April 8, 2000

Headline: **15 YEARS FOR A RAPE THAT NEVER TOOK PLACE**

December 14, 1999

Headline: **Portrait of Winston Silcott, convicted murderer turned model prisoner**

FIRST RULE: NO QUESTIONS ABOUT BROADWATER FARM

May 23, 1999

Headline: **BENTLEY'S RELATIVES IN LINE FOR GBP 1 MILLION PAYOUT**

October 5, 1998

Headline: **No greater injustice**

March 11, 1998

Headline: **HANRATTY DNA SHOCK WAS HE GUILTY AFTER ALL?**

November 19, 1997

Headline: **Corrupt police 'are escaping prosecution'**

DAME BARBARA ACCUSED OF A 'SHOCKING RECORD'

July 31, 1997
Headline: **Bridgewater men's 'tainted' triumph**
APPEAL JUDGES SEND CARL CASE FILE TO THE DPP

July 22, 1997
Headline: **SILCOTT'S REBUFF IN MURDER CASE FIGHT**
Appeal is 'unlikely' on killing of boxer

Two of the reports could not be considered miscarriage of justice stories at all:

June 11, 2001
Headline: **Fury as murderer who raped then strangled girl wins right to appeal**
April 4, 2001
Headline: **Hanratty: Will the innocence industry ever give up?**

This is not to say that they are invalid in any way, it is just that they could not in any way be seen to be identifying a situation where someone was potentially innocent of a crime that he or she had been convicted of. Of the other 12 stories, two are about the general issue of miscarriages of justice, eight are about individual cases and two about compensation. In percentage terms this means that after 1997; 16.6% of the stories were about compensation, 16.6% about the issue and 66.6% about individual cases. The figure on compensation isn't as high as *The Sun*'s but it certainly is higher than that of *The Guardian*. It is fair to say that the issue of compensation is an obsession of the tabloids. It is not just how much victims are receiving, it's also whether they are deserving of the payouts. For example, the *Mail*'s article from April 23, 1996:

Headline: **This £400,000 insult by Birmingham Six**

This obsession can be seen most clearly in the treatment of the Silcott case. In 1991 Winston Silcott was cleared of the murder of Pc Keith Blakelock who was killed during the Broadwater Farm riots in London in 1985. Silcott was awarded £17,000 compensation. In 1999 he received a further £50,000 from the police. It was this payout from the police that really seemed to irk the tabloids. About 8% of all the miscarriage of justice stories published after 1997 by the tabloids were about the payout to

Winston Silcott. In the broadsheets post-97, Silcott stories only made up less than 3% of the total.

Another story that starkly illustrates the different approaches across the tabloids and the broadsheets is that of Tony Martin. As has been discussed earlier, Mr Martin's case is not a miscarriage of justice. The debate is entirely about the appropriateness of the sentence. Nevertheless, the tabloids regularly used the phrase "miscarriage of justice" when reporting on Mr Martin's case. Stories about Tony Martin were 9% of the total number of stories published by the tabloids in the period 1997 - 2002. There wasn't a single story about Tony Martin that included the phrase "miscarriage of justice" in the broadsheets.

If we exclude the stories from the tabloids that are actually working against the concept of miscarriages of justice in the criminal justice system:

***Daily Mail*, June** 11, 2001
Headline: **Fury as murderer who raped then strangled girl wins right to appeal**

***Daily Mail*, April** 4, 2001
Headline: **Hanratty: Will the innocence industry ever give up?**

***Express*, June** 28, 2001
Headline: **CAMPAIGNERS BRAND RULING 'CRAZY' AS SEX CASE TEACHER WINS APPEAL; ABUSER'S JAIL TERM CUT**

If we also exclude the stories about Tony Martin (5) and stories where the tabloids were criticizing the level of compensation Silcott had received (4) the total figure for the tabloids for the sample 1997 - 2002 is then 41. This means that the total fall in reporting would be 20%, rather than 14%.

Another aspect of the study that requires investigation is the difference in coverage between the right and left wings of the media. While individual papers will usually resist such labelling, due to issues to do with principles of impartiality and also access to advertising revenue, there is broad agreement on this demarcation. On the left are: *The Daily Mirror*, *Sunday Mirror*, *The Guardian*, *The Independent*, *Independent on Sunday*, and *The Observer*. On the right are: *The Sun*, *The Telegraph*, *The Express*, *News of the World*, *The People*, *Sunday Times*, *Times*, *Daily Mail*, *Mail on Sunday*, *Express on Sunday* and *Sunday Telegraph*.

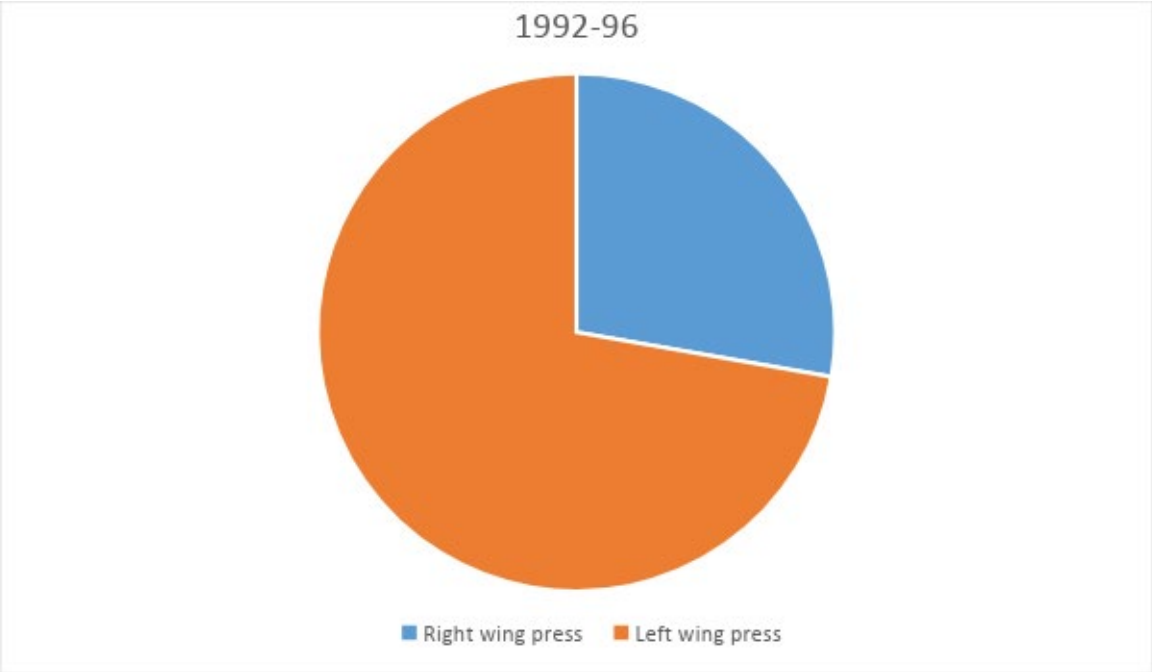

Figure 1.2 Comparison in the coverage of miscarriages of justice between the left and right wing press in the five years before the creation of the CCRC

In the sample before 1997, 138 of the total number of stories came from the left wing press. In percentage terms this was 72%, with the right wing press contributing 28%.

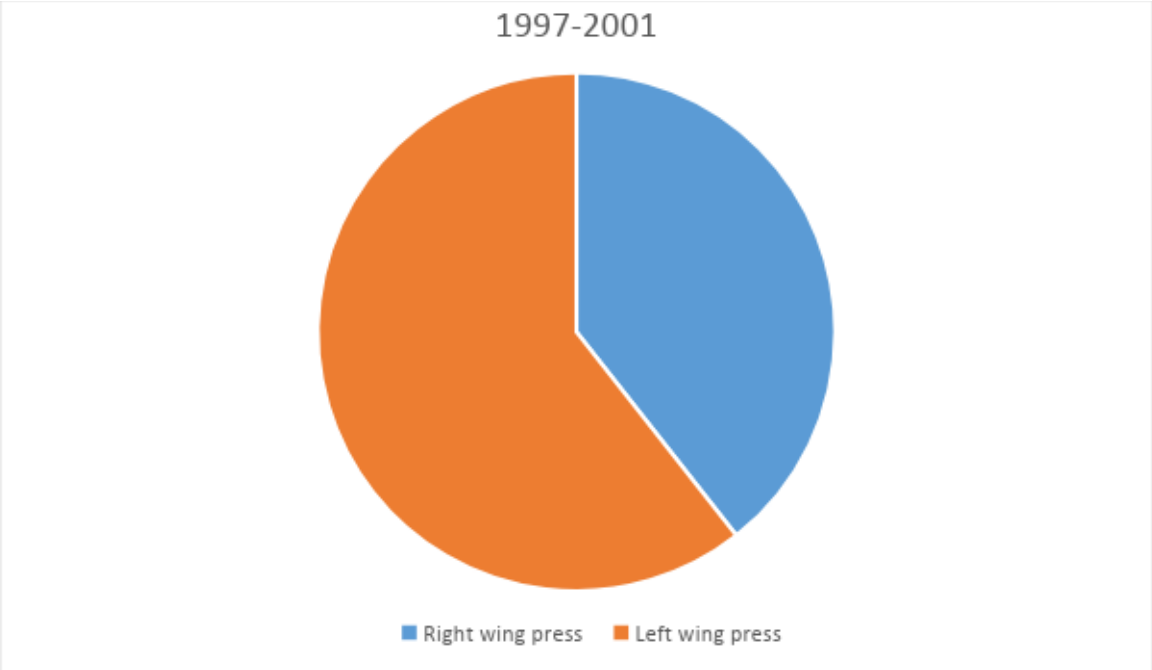

Figure 1.3 Comparison in the coverage of miscarriages of justice between the left and right wing

press in the five years after the creation of the CCRC

After 1997, the left wing newspapers' contribution was down to 60% (100 stories), with the right wing increasing their contribution to 40%. But even if the newspapers covered the same stories, they often took very different approaches. While *The Guardian* might do an in-depth interview with the Birmingham Six:

March 14, 1992
Headline: **CHANGED WORLD MAKES SIX PAY A HIGH PRICE FOR FREEDOM**
Strapline: David Pallister talks to the six who were left to fend for themselves after being transformed from mass murderers into wronged men

The Daily Mail will be very critical of the same group's apparent ingratitude:

April 23, 1996
Headline: **This £400,000 insult by Birmingham Six**

The contrast between *The Daily Mirror* and *The Sun* perfectly illustrates this contrasting focus. The Mirror and Sun are direct competitors targeting the same demographic, social classes C2, D and E. They tend to emphasize the same type of topics: football, celebrity, television. They look visually very similar and are of comparable price (pricing fluctuates). The main distinguishing feature of the two papers is their respective political allegiances. *The Sun* is strongly identified with the right, the Mirror with the left. So while the angles they take on political stories will be opposing, the rest of their stories tend to have a similar focus. This isn't surprising given that they are targeting largely the same audience. But in terms of their coverage of miscarriages of justice, they take completely different approaches. The analysis above illustrates the emphasis that *The Sun* placed on stories like that of Tony Martin and the compensation paid to miscarriage victims. In contrast, an analysis of the Mirror's output shows a campaigning fervour as strong or stronger than any other paper. The paper did 10 stories in the period 1992 - 97:

July 27, 1996: **Justice is back in the dock: 264**
July 27, 1996: **VICTORY FOR *DAILY MIRROR* READERS, Paper led fight to clear the 4**
June 18, 1996: **Cop-charge author is bailed**
August 2, 1994: **YOU MUST GIVE ME MORE SAYS SILCOTT, Police fury over killer's TV vow**

July 9, 1994: **JOE SEES RED OVER REPORT**

July 1, 1994: **WHITEWASH ROW OVER GUILDFORD FOUR PROBE**

May 12, 1994: **Fatal flaw**

July 7, 1993: **Guilty of neglect**

June 3, 1993: **Carl verdict 'was wrong'**

February 4, 1993: **Mothers in tears at Carl murder decision**

While there was one story about the controversy about the payout to Silcott, the remainder of the stories covered the same territory as was being covered by the broadsheets during this period, for example the Guildford Four and the Birmingham Six. What is notable however is the emphasis the paper places on the case of the Bridgewater Four case. The story from the 27th July 1996 is remarkable in many ways:

Headline: **VICTORY FOR *DAILY MIRROR* READERS**

Strapline: Paper led fight to clear the 4

"The Bridgewater Four appeal was hailed as a victory for *Daily Mirror* readers yesterday. Former Mirrorman Paul Foot, who consistently campaigned in the paper for the men's release, told how vital information from readers helped convince him the Four were innocent."

This was a rare example of a newspaper mounting a campaign for prisoners before it had been established in the courts that there had in fact been a miscarriage of justice. There are numerous examples in the sample of newspapers discussing cases after the convictions have been quashed, but few journalists and even fewer newspapers are willing to risk exposing themselves to ridicule or worse, by instigating a campaign even before an appeal hearing has been granted. What is even more noteworthy is the way that the *Mirror* identifies the readers, their audience, with the campaign. The only time that *The Sun* takes a similar tone in this context is when it deals with the case of Tony Martin. The writing of the story clearly assumes an unquestioning consensus between the paper and the audience, a manifestation of shared values. This is exactly the same tone that the *Mirror* takes, which is remarkable given that at the time that the story was written these men were convicted child murderers.

What gave the *Mirror* the confidence to champion such a group as the Bridgewater Four was obviously the work of their former investigative journalist Paul Foot. The evidence he uncovered gave the paper editorial confidence to go out on a limb and make the news, rather than just report on it. There is also another important factor at play in the case of the Bridgewater Four. Because the

Mirror had invested time in investigating the case and had run a number of stories about it, the paper felt an ownership over the case. This territorialism is a trait of journalists, particularly of investigative journalists, but it is usually grounded in good practical and professional motives.

During long investigations journalists will often build up contacts related to the story. These sources, particularly in highly sensitive investigations, will only offer information on the basis of anonymity. The relationship between the journalist and the source is built on trust and the journalist is bound by a code of ethics to never identify a source [NUJ Code of Conduct, Point 7]. For these practical reasons, when a newspaper has taken the lead in a story, it is seen to "own the story" and will even go out of its way to make it difficult for other newspapers to get access to key information or key individuals. Such a stance is usually not even necessary because other newspapers will either avoid the story or be very conservative in their reporting because they will not have the same level of evidence. This is a key consideration in libel actions if a media organization is relying on a defence of truth, because it is not enough for something to be true, you have to be able to prove it. But this proved to be a high water mark, and the *Mirror* never really achieved this level of campaigning zeal again. Williams claims that the loss of Paul Foot was to blame:

> The resignation of Paul Foot in 1993 brought to an end the Daily Mirror's tradition of hard-hitting, political investigations (1997: 250).

In the sample after the creation of the CCRC the *Mirror* reported on the outcomes of some of the notable cases investigated by the CCRC (Hanratty, Downing, Cardiff Three) but never directly spoke to its readers with the conviction it had shown during its reporting of the Bridgewater. Between 1992 - 97, the *Mirror* had a total of 10 miscarriage of justice stories and three of them were about the Bridgewater Four; that's a third of its coverage devoted to one story. To put this in perspective in terms of the different political wings of the press: there were a total of 18 stories about the Bridgewater Four in the sample before 1997 and 83% of them were in the left wing press. On the right, only *The Times* covered the case. The Bridgewater Four were exonerated during the period 1997 - 2002. *The Mirror* wrote another four stories about the case, and in total there were 19 stories written across all the newspapers. While the leftwing press had been willing to cover the story long before it was legally established that a miscarriage had taken place, the right wing press were much more reluctant. However, when the men were exonerated the right wing press became more interested, writing five stories. It means that of the 19 stories, the right wing press (*Mail, Sun* and *Times*) contributed 26%. In the sample before 1997 it was 17%.

To analyse this trend in more detail I will examine two newspapers who were on opposite sides of the trend, *The Daily Mail* and *The Guardian*. Looking firstly at the *Mail*, it went from writing five stories in the sample before the creation of the CCRC, to writing 14, an almost three-fold increase in coverage of miscarriages of justice. I will be only looking at the headlines and first paragraph of the stories because of the journalistic convention to distil the most important parts of a news story into the headline and first sentence (known as 'the top line'). The 'pyramid method', as described by journalists such as Evans (2000), is a rigid formula for writing news and has been the standard approach used in journalism training for generations. The almost slavish adherence to the method means that the headline and first sentence of a news story are the most significant, and most carefully constructed, part of the article.

> Most journalists, certainly when I was trained, were taught how to structure a story. It is the 'inverted triangle', with all the essential information squat at the top, and the less relevant stuff dribbling down towards the end-point (Marr, 2005: 59).

The 14 stories from the *Mail* in the five years after the creation of the CCRC were:

DANDO'S KILLER GRANTED APPEAL
JILL DANDO'S killer has been granted leave to appeal against his conviction.
Barry George got the go-ahead for a full Appeal Court hearing less than six months after he was jailed for shooting the BBC Crimewatch presenter on her doorstep.

Why I pray the jury is right;
One of the country's leading experts on the miscarriage of justice assesses the Dando case and reaches a disturbing conclusion A SURGE of national relief can be felt whenever a high-profile murder case is completed and the guilty man is led to prison to begin his life sentence.

Fury as murderer who raped then strangled girl wins right to appeal
A MURDERER who raped and strangled a schoolgirl triggered outrage yesterday when it emerged he has won the right to appeal against his conviction.

Hanratty: Will the innocence industry ever give up?
THE INNOCENCE industry had a setback yesterday. The news that DNA evidence finally proves James

Hanratty committed the A6 murder for which he was hanged in 1962 was, however hard they try to pretend otherwise, a grievous blow for those who make a career out of attacking our justice system.

Tests that proved Hanratty was guilty

JAMES HANRATTY was guilty of the notorious A6 murder for which he was hanged, sensational scientific evidence has revealed.

I am so sorry you were jailed, Blair tells the Guildford Four; Bomb victims' families angered by another apology from the Premier

TONY BLAIR has apologised to the Guildford Four, who spent 15 years in jail after being wrongfully convicted of IRA bomb attacks, The Prime Minister said he was 'very sorry indeed' there had been a miscarriage of justice.

15 YEARS FOR A RAPE THAT NEVER TOOK PLACE

ONE of the most haunting miscarriages of justice on record was finally corrected yesterday.
A man was cleared after spending nearly 15 years in jail for a 'brutal rape' which a senior Appeal Court judge said had almost certainly never happened.

Portrait of Winston Silcott, convicted murderer turned model prisoner;

FIRST RULE: NO QUESTIONS ABOUT BROADWATER FARM
THE gap-toothed smile conveys the image of a man who poses no threat to society.

BENTLEY'S RELATIVES IN LINE FOR GBP 1 MILLION PAYOUT

THE two surviving relatives of Derek Bentley are likely to receive more than GBP 1 million in compensation for his wrongful execution 45 years ago for the murder of a policeman.

No greater injustice

MISCARRIAGES of justice, and the realisation that the innocent have been wrongly imprisoned for years on end, are guaranteed to make people feel uncomfortable. My reactions to such events are mixed.

HANRATTY DNA SHOCK WAS HE GUILTY AFTER ALL?

THE 36-YEAR campaign to prove James Hanratty was wrongly hanged for murder suffered a dramatic blow last night.

Corrupt police 'are escaping prosecution'; DAME BARBARA ACCUSED OF A 'SHOCKING RECORD'
THE Director of Public Prosecutions was accused of not doing enough to root out bad police officers yesterday.

Bridgewater men's 'tainted' triumph;
APPEAL JUDGES SEND CARL CASE FILE TO THE DPP
THE surviving members of the Bridgewater Four finally had their convictions for murder quashed yesterday.

SILCOTT'S REBUFF IN MURDER CASE FIGHT; Appeal is 'unlikely' on killing of boxer
WINSTON SILCOTT is unlikely to have his second murder conviction referred to the Appeal Court, in London, it emerged yesterday.

The 14 stories ostensibly may be dealing with miscarriages of justice but there is a clear agenda, even prejudice, underpinning the reporting. In fact, it would be reasonable to argue that seven of the stories actually take a position which is opposed to the idea of victims of miscarriages of justice being entirely innocent:

Jill Dando's killer has been granted leave to appeal.
Fury as murderer who raped then strangled girl wins right to appeal
Bomb victims' families angered by another apology from the Premier
Portrait of Winston Silcott, convicted murderer
Bridgewater men's 'tainted' triumph;
Silcott's rebuff in murder case fight

One of the stories explicitly sets out the agenda:

> Miscarriages of justice, and the realisation that the innocent have been wrongly imprisoned for years on end, are guaranteed to make people feel uncomfortable. My reactions to such events are mixed.

It is certainly the case that the *Mail* is reporting on stories that pertain to miscarriages of justice, but its attitude is highly skeptical about claims of innocence. This is apparent in the *Mail*'s coverage of

the Hanratty case:

Hanratty: Will the innocence industry ever give up?

Tests that proved Hanratty was guilty

Hanratty DNA shock: was he guilty after all?

James Hanratty was hanged in 1962 for murder. A campaign to prove his innocence attracted high profile supporters such as Ludovic Kennedy, Bob Woffinden and Paul Foot but investigations carried out by the CCRC identified new evidence that further proved his guilt. After the successes that people like Kennedy, Woffinden and Foot had had in the 1980s and 1990s, this was a painful reversal. It seemed, according to the newly uncovered evidence, that they had been for years supporting a guilty man. Right wing papers like the *Mail* were keen to point out this embarrassing position. In his article, Simon Heffer refers dismissively to the "innocence industry", going on to say that: "The campaign to clear Hanratty's name has been one of the industry's most enduring product lines." It is a telling fact that stories about Hanratty make up 25% of the *Mail*'s coverage of miscarriages of justice.

The contrast with *The Guardian* coverage is very marked:

JUSTICE: 18 YEARS TOO LATE;

Bridgewater Four to be cleared today after court accepts confession was forged. Campaigners rejoice at final triumph. THREE men who have spent more than 18 years in jail for a crime they did not commit, the murder of newspaper boy Carl Bridgewater, will be freed today because of a forged confession.

PAPERS OF PROOF;

Bob Woffinden worries that under a new law nobody will keep the kind of documentary evidence which freed the Bridgewater Four

CRIMEWATCH 'IN REVERSE' AIMS TO FREE INNOCENT

CHANNEL 4 is to screen an edition of Crimewatch "in reverse" to help free prisoners who are victims of miscarriages of justice. A live version of Trial and Error, presented by David Jessel, will attempt to do for the wrongly convicted what BBC1's Crimewatch UK does for the victims of crime.

SECRET AGENDA;

From today control of trial evidence will be handed to police and prosecution. How will this prevent further miscarriages of justice?

POLITICS KEEPS THE A6 MURDER IN THE SLOW LANE

MICHAEL HOWARD parades himself as the hard man of the Tory right, the best possible successor to wimps like John Major. His performance over the case of James Hanratty, who was hanged in 1962 for the A6 murder, proves that under the Home Secretary's Neanderthal prejudices lurks a wimp to beat all wimps.

SYSTEM 'FAILED BRIDGEWATER FOUR'

'Infected' case was wholesale miscarriage of justice, judges told as appeal closes

THE Court of Appeal must ensure that a miscarriage of justice on the scale of the Bridgewater Four case never happens again, three appeal judges were told by counsel for one of the men convicted of the killing of newspaper boy Carl Bridgewater in 1978.

ON BROADCASTING: JUSTICE BY TELEVISION: IS THE LAW LISTENING AT LAST?

At a party around the time the Bridgewater Three were released I fell into arguing with a fellow guest, a barrister who declared that 'all the legal profession knows the Guildford Four and Birmingham Six were really guilty, it was all got up by the media'.

STRAW 'SORRY' TO BIRMINGHAM 6

THE Home Secretary has apologised to the Birmingham Six for the miscarriage of justice they suffered.

The Bridgewater Appeal: Judges attack 'deceit' that led to jail

THE actions of a group of police officers involved in the Carl Bridgewater murder case are to be referred to the Director of Public Prosecutions, the Court of Appeal announced yesterday. The court formally quashed the convictions of the four men jailed for life in 1979 and expressed regret at the ''deceit'' which led to their imprisonment.

Executed Hanratty 'finally exonerated' ;

Court of Appeal expected to quash guilty verdict against man hanged for notorious A6 murder.

JAMES Hanratty, one of the last men in Britain to hang, may finally be cleared 35 years after he was executed for the notorious A6 murder.

Injury upon injury;

A man is pushed out into the world after 25 years in prison.

ANDREW Evans, his conviction quashed, is now being released from prison, at 42, into a world he left as a psychologically fragile 17-year- old.

Law: Inadmissible evidence;

Miscarriages of justice are becoming more likely as prosecutors invoke public interest immunity. This keeps crucial facts from juries, say John Wadham and Mary Cunneen

On the night of December 15, 1988 three masked men conducted a series of violent attacks in Surrey. One man was murdered, and another wounded. Two houses were robbed and four cars stolen.

Media eye on rough justice;

Duncan Campbell on a television series which will attempt to reopen controversial cases CAN television do for victims of miscarriages of justice what Crimewatch does for the police? An experimental series which starts this Sunday is intended to find evidence which could lead to controversial cases being reopened.

Innocent, after 23 years in jail

A MAN who spent 23 years in jail for a "murder" that never happened was cleared by the Court of Appeal yesterday. His case was described last night as one of the gravest ever miscarriages of justice.

Guilty until proved innocent;

Analysis Miscarriages of justice;

WITH the quashing of Derek Bentley's conviction, the review of the case of James Hanratty, and the launch of an official video telling prisoners what steps to take to get their cases reviewed, miscarriages of justice are back on the agenda.

'New evidence' for IRA bomb appeal;

Rory Carroll on campaigners' claims of a miscarriage of justice over the 1982 Hyde Park bombing

A MAN jailed for the IRA's 1982 Hyde Park bombing launches an appeal next week which campaigners predict will reveal dramatic new evidence to quash his conviction, making it one of the final miscarriages of justice from the Irish troubles.

No, you can't see. It might help your client;

A law which allows police to withhold evidence from the defence damages the reputation of the criminal justice system, writes Bob Woffinden

On 14 April 1997, Jong Rhee and his wife Natalie stayed at a guest-house in Snowdonia. When a fire broke out in the night, they were trapped in their first-floor room. Rhee said he would jump first so that he could catch his wife at the bottom. Natalie never jumped.

Freedom fighter;

Earlier this year, Annette Hewins was cleared of an arson attack that killed three people. On the fourth anniversary of that crime, Yvonne Roberts reveals why her struggle for justice continues

Four years ago, Annette Hewins did her niece, Donna Clarke, a favour: she gave her a lift to a local garage to buy a token for the electricity meter. What happened as a result of that trip has fractured the lives of both women and their families. And it has allowed a killer to remain free.

Cleared Silcott gets pounds 50,000

Scotland Yard have agreed to pay pounds 50,000 in compensation to Winston Silcott, who was wrongly convicted of murdering a police officer during the 1985 Broadwater Farm riots.

Blair's apology to Guildford four

Twenty-five years after four young people were wrongfully convicted of the Guildford pub bombings in 1974, Tony Blair has become the first person in authority to apologise for the miscarriage of justice.

Torso murders case goes to appeal court: Miscarriage of justice to be investigated over 1974 gangland killings

One of Britain's longest running and most controversial alleged miscarriage of justice cases is to be referred to the court of appeal, it was revealed yesterday.

Hope of freedom after 27 years in prison: Miscarriage of justice suspected over cemetery murder as doubts are raised about confession to police by man with learning difficulties

Stephen Downing was 17 when he was convicted of murdering Wendy Sewell, a secretary, in a village cemetery. He said he was innocent when he was first jailed and has been saying it ever since.

'Evil' family killer granted appeal: Bamber relies on 'forensic issue' to overturn 1986 conviction
The case of Jeremy Bamber, one of the most notorious killers of the last 20 years, is being referred to the court of appeal, it emerged last night.

Innocent 'dumped like sacks of garbage': Victims of miscarriages of justice given help to cope with life outside
When John Kamara walked out of the appeal court last March he had six clear plastic prison bags full of his belongings, a pounds 46 discharge grant and a travel warrant that expired at 8pm that night.

The tone of *The Guardian* articles contrast dramatically with those of the *Mail*. The paper focuses on certain cases, many of the same cases as the *Mail*, but it also reports on the need for reforming the system, something that is almost entirely absent from the *Mail's* coverage.

Of the 25 articles written by *The Guardian* in the five years after the creation of the CCRC, 10 are articles which argue for the criminal justice system to be reformed. Of the 14 *Mail* articles, only one could be said to be advocating any kind of reform:

Corrupt police 'are escaping prosecution'; DAME BARBARA ACCUSED OF A 'SHOCKING RECORD'

(Interestingly, the story is based on something Labour MP Chris Mullin had said.) What this means is that while 40% of *The Guardian*'s coverage was campaigning for reforms that would reduce the number of miscarriages of justice, only 8% of the *Mail*'s stories had this focus.
Throughout this thesis, I have made the argument that the media's involvement in miscarriages of justice has a dual role. Firstly, investigative journalists can establish that people were wrongly convicted by uncovering fresh evidence in individual cases. Secondly, because of the evidence that they have uncovered in various cases, journalists have been able to lobby very powerfully for specific reforms to the system. To use a medical analogy, their role is both treatment and prevention. Without reforms, i.e. prevention, the system will relentlessly churn out the same results. The fact that the *Mail* is largely ignoring the reform agenda clearly illustrates its bias, 'a few bad apples' rather than systemic failure. But is this focus common across the right and left wing media? An analysis of the figures is striking:

	Total number of stories 1997 - 2002	Number of reform stories
Right wing media	65	4
Left wing media	100	24

Table 1.6 Analysis of the number of reform stories written by the Left wing and Right wing media in Sample B (1997-2002)

This shows that while the left wing newspapers were spending 24% of their time arguing for reforming the system, only 6% of the articles in the right wing newspapers were calling for reform. The right wing papers actually spend more time writing about the Hanratty and Martin cases than they did lobbying for reform.

SAMPLE C

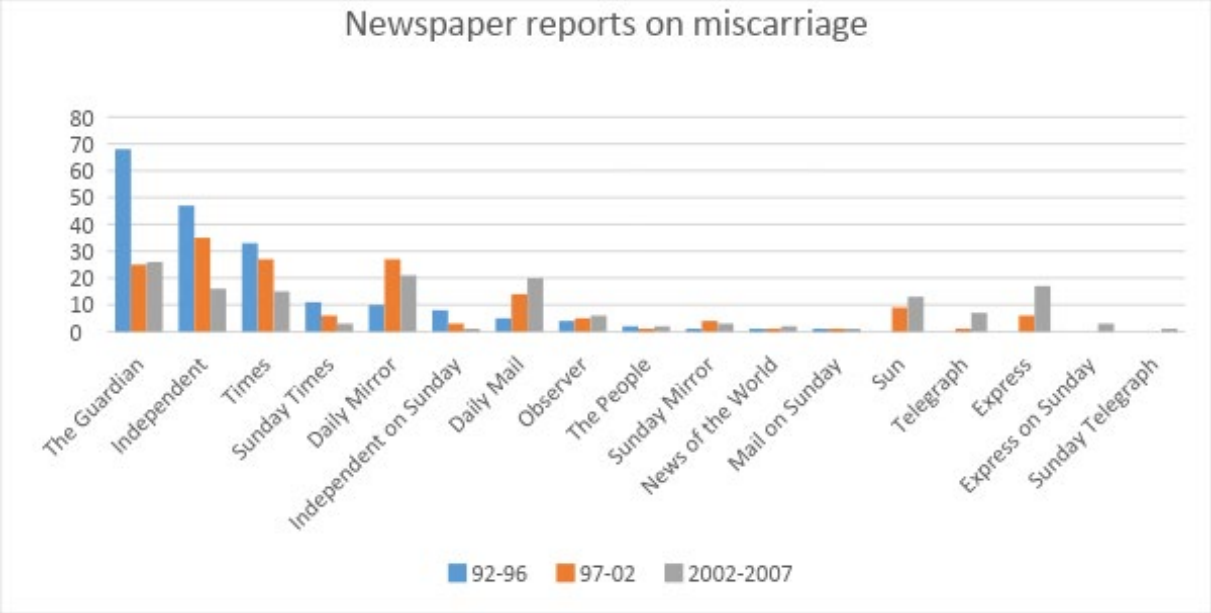

Figure 1.4 Coverage of miscarriages of justice by national newspapers between 1992 - 2007

Figure 1.4 shows the general trend of a fall in reporting of miscarriages in the left wing press and an increase in the right wing press continued in SAMPLE C (2002-07). In total there were 157 stories written about miscarriages of justice in the 17 national newspapers between 2002 and 2007.

SAMPLE A	SAMPLE B	SAMPLE C
191	165	157

Table 1.7 Number of miscarriage of justice stories in SAMPLES A, B & C

This represents an 18% fall from the level of coverage before the CCRC (SAMPLE A), and a 5% fall compared to SAMPLE B (1997-2002). The figures show that the while the level of coverage has continued to fall, the rate of the decrease has slowed. As has been described in the analysis of SAMPLE B, the overall figures mask some dramatic shifts in the level of coverage across different sections of the press. The coverage in six newspapers fell (*Independent, Times, Sunday Times, Mirror, Independent on Sunday, Sunday Mirror*), four were stable (*Guardian, Observer, Mail on Sunday, Sunday Telegraph*) and six recorded increases (*Daily Mail, The People, News of the World, Sun, Telegraph, Express, Express on Sunday*). All the newspapers that had increased coverage were right wing. This is a continuation of the trend described during the analysis of SAMPLE B.

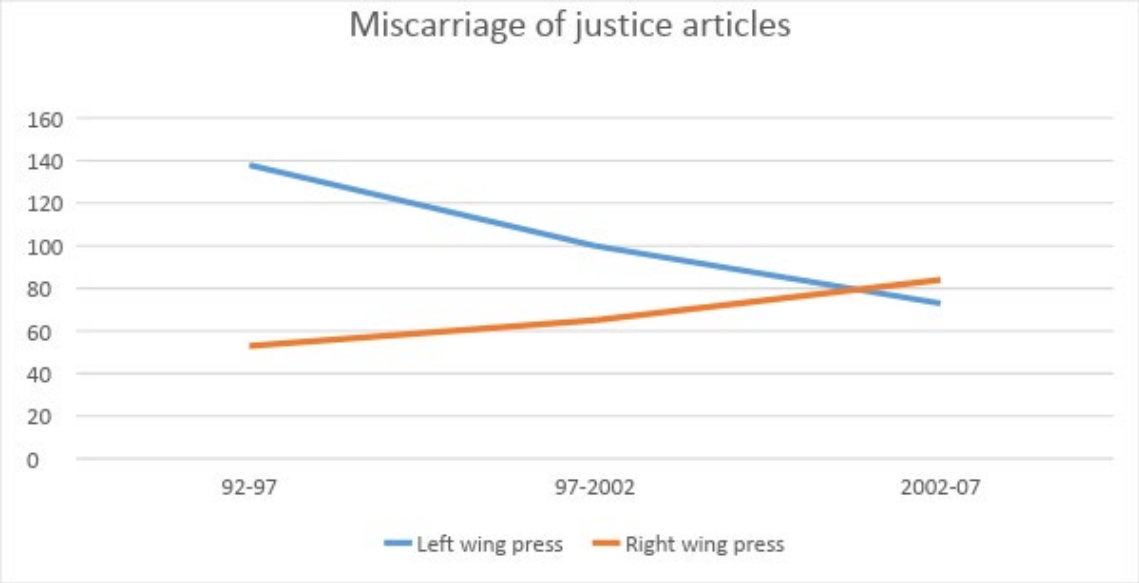

Figure 1.5 Comparison of the coverage of miscarriages of justice in the Right and Left wing media

The decline in coverage of miscarriages in the left wing press has been dramatic. Before the creation of the CCRC (SAMPLE A) the left wing press published 138 articles but in SAMPLE C (2002-07) these newspapers (*Guardian, Independent, Mirror, Independent on Sunday, Observer, Sunday Mirror*) only published 73 articles, a 47% drop. But completely the opposite trend was observed in the right wing press. In SAMPLE A, the newspapers (*Times, Sunday Times, Mail, People, News of the World, Mail on Sunday, Sun, Telegraph, Express, Express on Sunday, Sunday Telegraph*) only published 53 stories about miscarriages but between 2002 - 2007 (SAMPLE C) these right wing papers featured 84 articles, a 59% increase. Essentially the coverage in the left wing press halved, while it doubled in the right wing press. Figure 1.5 shows that for the first time the right wing press was writing more stories about miscarriages of justice than the left wing press. The reasons behind this trend is

discussed in detail in the next section on critical discourse analysis, but more detailed analysis of the figures frames the issue with real clarity. An examination of the articles written by the right wing press in SAMPLE C reveals that 22 of them (26%) are not about innocence at all, but instead about guilt. The coverage by *The Sun* in this period illustrates the point. The paper featured 13 stories about miscarriages of justice between 2002 and 2007, but 8 of them (62%) were about guilt:

New war on killer motorists, *The Sun,* September 11, 2006
Killer motorists will face longer jail sentences after law chiefs ordered prosecutors to get tough.

Outrage as Beeb backs Jill killer, *The Sun*, September 5, 2006
The BBC is under fire after claiming it has new evidence that may clear Barry George of murdering Jill Dando.

Paedo chaos, *The Sun* Charter for Justice, *The Sun*, July 11, 2006
The mum whose toddler was attacked by evil pervert Craig Sweeney erupted in fury last night after the Government's law chief refused to challenge his soft sentence.

New 'not proven' court verdict, *The Sun*, April 20, 2006
A new court verdict of "not proven" is being introduced to stop criminals who get off on a technicality suing for millions in compensation.

Tony Martin is still in jail, *The Sun*, January 21, 2003
Tony Martin is still in jail because he wouldn't grovel to an arrogant probation officer.

Storm as dad gets 5yrs for killing raider, *The Sun*, October 19, 2002
A Scots dad who stabbed to death a violent burglar was jailed for five years yesterday.

Five years for killing raider, *The Sun*, October 18, 2002
A dad of two who stabbed to death a violent burglar was jailed for five years yesterday.

Horror sex attack by a freed rapist, *The Sun*, June 3, 2002
A serial rapist sentenced to six life terms attacked another woman -months after being freed early by appeal judges.

Another two of *The Sun*'s stories featured people who were maintaining their innocence, but their claim was framed in a very negative light:

King: I'm like Jesus, *The Sun,* December 30, 2005
Child sex pervert Jonathan King has compared himself to Jesus on his sick website.

Alex best visits paedo ex in jail, *The Sun***,** September 12, 2005
Telly beauty Alex Best has been making secret visits to see paedophile businessman Howard Kruger in jail, *The Sun* can reveal.

It meant that of the 13 stories that *The Sun* feature between 2002 and 2007, 10 of them (77%) were actually dismissive or undermining of the concept of innocence.

5.3 Critical Discourse Analysis

As has been explained in Chapter 3, I have chosen to use critical discourse analysis (CDA) to interrogate the corpus identified by the content analysis (CA) described above. CDA is "a tool for deconstructing the ideologies of the mass media and other elite groups and for identifying and defining social, economic, and historical power relations between dominant and subordinate groups" (Henry and Tator, 2002: 72). The purpose of this approach is to access the underlying functions latent within the articles, or to put it another way, to recognize the dialectic process taking place:

> One of the most basic assumptions underlying discourse analysis is that language does not represent reality, but it contributes to the construction of reality and to the construction of social reality in particular (Schreier, 2013: 45).

What has been described in the section on CA has highlighted some very interesting trends in the coverage of miscarriages of justice, but the findings have their limitations:

> QCA, with its implicit realist assumptions, is concerned with describing what is there (Schreier, 2013: 47).

But using CDA addresses these limitations:

> Qualitative content analysis (QCA), unlike discourse analysis, does not make any assumption about the nature of language, social reality, and how the two are related; at least, it does not do so explicitly. If you use discourse analysis, you will do so under the assumption that language shapes social reality (Schreier, 2013: 47).

In terms of investigating this process, textual analysis plays a key role (Fairclough, 1995). He recommends looking both at the "smaller units" and "above the sentence" (Fairclough, 1995: 57). In terms of "smaller units", i.e. vocabulary choices, there are few terms as provocative as "innocence" when it comes to the discourse on miscarriage of justice. The use of the word is something of a shibboleth, "a cant or slogan that distinguishes any group" (O'Donnell, 1990: 222). The CACD or the Criminal Cases Review Commission don't engage with the idea of innocence, they discuss convictions as to whether they are safe or unsafe. For newspapers the word is unusually associated with a campaign or an investigation. Given the different approach to the reform agenda across the right and left wing media, it raises the question: how do the two engage with the idea of innocence? The analysis of the newspapers in the sample is again very stark. In the period after the creation of the CCRC, the left wing media wrote 100 stories about miscarriages of justice. In 23 of those stories the word innocent was used. In contrast the right wing wrote 65 stories in this period, and used innocent in seven stories.

	Total number of stories 1997 - 2002	Number of stories mentioning innocence
Right wing media	65	7
Left wing media	100	23

Table 1.8 Frequency of the term "innocence" in the SAMPLE B

In percentage terms, this means that 23% of the left wing stories included the idea of innocence, while only 11% of the right wing stories included the word innocent. It is perhaps an obvious point, but worth making nevertheless, that the right wing newspapers managed to avoid mentioning the word innocent in almost 90% of their stories about miscarriages of justice. This matters because the words that are used in newspapers have, as Richardson points out, a real-world impact:

> Language use is not just talk; language use should be regarded as an activity or as a social action (Richardson, 2007: 12).

While the use of words like innocence are certainly indicative of a news organisation's agenda, an even more subtle insight is provided by the choice of words that newspapers use to describe the subject of their stories, Richardson highlights:

> The manner in which social actors are named identifies not only the group(s) that they are associated with (or at least the groups that the speaker/ writer wants them to be associated with) it can also signal the relationship between the namer and the named (Richardson, 2007: 49).

The choice of name used by journalists, described by Reisigl and Wodak (2001) as a text's "referential strategies"- is therefore highly significant. Richardson points out that significant differences between the explicit (denoted) and implicit (connoted) meanings of the identifiers used by journalists:

> Words convey the imprint of society and of value judgements in particular, they convey connoted as well as denoted meanings (Richardson, 2007: 47).

The work of Kate Clark perfectly illustrates this point. Clark (1992) examined the way that sexual violence was portrayed in *The Sun* newspaper. She found that the newspaper used the connoted meaning of the identifier to show where, in its opinion, the blame lay in a particular case. So when men were to blame they were a 'sex fiend', 'monster' or 'beast', but when the woman was seen to be at fault they were described as a 'busty divorcee', 'unmarried mum' or 'Lolita'. When the woman was perceived to be innocent, she was a 'mum', 'daughter' or 'bride'. And when the man was innocent he was a 'hubby' or 'family man'. As Richardson points out:

> In the discourse of *The Sun*, 'busty divorcees' are never attacked by fiends; instead, the men who attack 'busty divorcees' are represented as blameless and are described by name or using respectable terms, like 'family man' or proximate colloquial terms like 'hubby' (Richardson, 2007: 51).

Applying this principle to the way the right wing press reported on miscarriages of justice is revealing. *The Daily Mail* describes Barry George, the man later found to have been wrongly convicted, as "Dando's Killer":

Dando's Killer Granted Appeal, *The Daily Mail*, December 14, 2001

Another man, Raymond Gilmour, who was also later found to have been wrongly convicted, is described in these terms:

> A murderer who raped and strangled a schoolgirl triggered outrage yesterday when it emerged he has won the right to appeal against his conviction (*The Daily Mail*, June 11, 2001).

It could be argued that the *Mail* could not know when it was publishing these articles that these two men, Barry George and Raymond Gilmour, were actually innocent of these crimes. But this is precisely the point, because it illustrates that the right wing press was dismissive of claims of innocence. These men quite rightly appealed, knowing they were innocent, and instead of reserving judgement, papers like the *Mail* just reminded their readers about the terrible crimes of which they had been convicted. The right wing papers often failed to countenance any doubts about the soundness of a conviction, unless of course it fitted their political agenda, as in the case of Tony Martin. So while some prisoners who were appealing their convictions are described as killers and rapists, Tony Martin's case was painted in the most sympathetic manner:

TONY MARTIN is a political prisoner. *The Sun*, May 1, 2001

The right wing papers repeatedly referred to Martin's mother and his family, perfectly echoing Kate Clark's research which found that papers used such techniques when they wanted to humanize the social actor who was most consistent with their agenda. An article in *The Sun* April 22, 2000 illustrates the point:

Family tells of joy over verdict outcry, The Martin backlash: 187
"MARTIN'S mum said yesterday she was amazed at the support flooding in for her son. Hilary Martin, 86, declared: "I can't thank people enough."

And from *The People* in April 15, 2001:

I fear I'll die without seeing my innocent son Tony again..., Easter anguish of jailed farmer's heartbroken mother

"Here his widowed mother Hilary, 87, pours out her heart to KATY WEITZ about her fears, and hopes, in an exclusive interview..."

Neither *The Sun* nor *The People* go out of their way to remind their readers about the young man Tony Martin shot dead. Instead their coverage has the effect of humanizing Martin by emphasizing his strong family connections. Another convicted killer, Barry-Lee Hastings, also received the 'Tony Martin treatment' from *The Sun*:

Storm as dad gets 5yrs for killing raider, *The Sun*, October 18, 2002
A dad of two who stabbed to death a violent burglar was jailed for five years yesterday. Supporters gasped in disbelief as Barry-Lee Hastings, 25, was sentenced, and relatives shouted "wrong, wrong". Hastings' lawyer branded his manslaughter conviction a miscarriage of justice and vowed to appeal.

Hastings is described as a "dad" in the headline and "a dad-of-two" in the lead. The heralding of people like Tony Martin and Barry-Lee Hastings and the vilification of people like Barry George and Raymond Gilmour is significant because of the message it sends to society:

> News matters because it purports to tell us the truth about the world beyond our immediate experience. Crime matters because it generates the moral boundaries within which state and subject are orientated, it marks the normal from the deviant (Wykes, 2000: 194).

Another area to consider in the context of the difference between the left and right wing press approaches is the grammatical style they use. For example, predicational strategies are evaluations used to describe qualities or attributes, and it is through these that:

> Persons are specified and characterized with respect of quality, quantity, space, time and so on. Among other things, predicational strategies are mainly realized by specific forms of reference (based on explicit denotation as well as on more of less implicit connotation), by attributes (in the form of adjectives, appositions, prepositional phrases, relative clauses, conjunctional clauses, infinitive clauses and participial clauses or groups) (Reisigl and Wodak, 2001: 54).

One of the striking similarities with predicational strategies is the tendency to remove the definitive article (as in sex fiend, rather than *the* sex fiend). This may seem a minor omission but is highly significant because of the difference it makes to the description. Removing the definitive article, what Bell (1991) calls determiner deletion, gives the noun phrase "titleness":

> It elevates a description to the rank of a quasi-title, implying that this person belongs to a class as exclusive as heads of state or the nobility (Bell, 1991: 196).

Such negative predicational strategies lay bare the editorial position of the particular publication. Bell found that the removal of the definitive article was much more prevalent in tabloid newspapers:

> The four 'popular' papers delete most of the determiners, between 73% for *The Daily Mail* and 89% for *The Sun* (Bell, 1991: 109).

The tendency to remove determiners when writing about individuals claiming to be innocent can be seen in the right wing papers:

Fury as murderer who raped then strangled girl wins right to appeal (*Mail*)
Sex case teacher wins appeal (*Express*)

But there aren't the same examples in the left wing press. Again the example of Tony Martin is instructive in this context. It's arguable that someone convicted of murder like Martin would be described as "shotgun killer" or something similar and as Bell discovered, the determiner would be removed to heighten the semantic impact. But Martin was never described in these terms in the right wing press, in fact it was quite the opposite. *The Sun's* readers are told he is "a political prisoner" and in *The People* he is "innocent son Tony". Interestingly, *the Mirror* describes him as "killer farmer Tony Martin" in its article on April 20, 2000.

The final area I will look at is the use of the phrase "miscarriage of justice" across the right and left wing newspapers. This analysis is particularly important given the findings of the content analysis showed a marked increase in the level of articles about miscarriages of justice in the right wing press and a decline in the left wing press. In the articles before the creation of the CCRC (1992 - 97) there is a consensus across the right and left wings of the media about what a miscarriage of justice was:

Daily Mirror, July 27, 1996

Justice is back in the dock:

Like the Guildford Four and Birmingham Six, the Bridgewater case is yet another sad stain on the reputation of British justice.

Daily Mail, July 7, 1993

Crime and injustice

Wrongful conviction of the Guildford Four plus the Birmingham Six added up to spectacular miscarriage of justice.

The Guardian, February 19, 1992

MAN CLEARED AFTER 16 YEARS IN JAIL

Police yesterday launched a fresh investigation into the murder of a schoolgirl more than 16 years ago, as the man convicted of the crime was freed by the Court of Appeal.

The Independent, June 22, 1993

Stabbing case boy cleared in landmark ruling: Appeal court's declaration of innocence deals fresh blow to criminal justice system:

A schoolboy, who at 13 became a victim of a serious miscarriage of justice, won an unprecedented declaration of innocence by Court of Appeal judges yesterday.

The Times, November 21, 1995

Man who served 7 years for murder is cleared, Sam Hill

"LAWYERS acting for a man who was cleared of murder yesterday after serving seven years of a life sentence are to seek compensation from the Home Office for a miscarriage of justice."

The only significant break from this consensus was in coverage of Winston Silcott. Silcott had received compensation after being wrongly convicted of the murder of PC Keith Blakelock. The right wing press in particular were very exercised about the payments to Silcott, given that he had been (correctly) convicted of another murder. *The Daily Mail,* reported the awarding of compensation in these terms*:*

AS THE STORM GROWS, HOME OFFICE ASSESSOR INSISTS KILLER'S £10,000 PAYOUT IS NOT UNUSUAL, August 3, 1994

The Times was subtler, selectively quoting Silcott to cast him a negative light:

Silcott describes £10,000 injustice award as a joke, August 2, 1994
Winston Silcott said yesterday that the £10,000 he had been awarded for wrongful conviction in the PC Keith Blakelock case was “a joke”.

There is a sense within these articles that the awarding of compensation to Silcott is a greater mistake, a greater miscarriage, than his wrongful conviction. This is an early example of a tendency to remove innocence from the discourse and replace it with a concept of a system malfunctioning and producing perverse results. This trend becomes much more apparent after the establishment of the CCRC in 1997. At first it was focused around the Tony Martin case:

The People, April 15, 2001:
I fear I'll die without seeing my innocent son Tony again..., Easter anguish of jailed farmer's heartbroken mother

The Sun, May 1, 2001:
Making a victim out of a criminal
Tony Martin is a political prisoner. He is a symbol of everything rotten about so-called British justice.

I examined the Martin in a different context earlier, but the case is significant here too as it is another incremental point in the temporal development of the meaning of the phrase “miscarriage of justice”. What *The People* and *The Sun* are doing is realigning the term so that their readers interpret it as indicating a situation where the legal system is running contrary to “common sense”. This new alignment does not include considerations about innocence. An important consideration in this discussion is Fairclough’s (2016) “dialectical-relational” approach. He argues that it is important to consider elements of the social process holistically, what he describes as the “cultural political economy” (2016: 87). He sees elements as being different but not discrete because of the relationship between them (2016).

> Social relations, power, institutions, beliefs and cultural values are in part semiotic, they ‘internalize’ semiosis without being reducible to it (Fairclough, 2016: 87).

A practical application of the approach is the idea of recontextualizaton (Fairclough, 2001), which is essentially a mixing of different discourses:

> Discourses that originate in some particular social field or institution may be recontextualized in others (Fairclough, 2016: 89).

This shifting from one context to another "entails transformation" (Fairclough, 2001: 133) because there is a need for the concept to be compatible with the new context and discourse. Fairclough argues that if textually constructed meanings are "domesticated" via recontextualizaton in different types of discourse the "drip-effect" means that they are much more likely to be seen as "simple facts to which there is no alternative" (Fairclough, 2001, 132). The speech given by Prime Minister Tony Blair on reforming the criminal justice system in June 2002 is a good example of Fairclough's recontextualizaton. While, as I have shown, right wing newspapers were beginning to encourage a semiotic shift, the embedding of this new meaning in the political discourse helped to establish a new understanding of "miscarriages of justice". An acknowledgment of this type of "dialectical-relational" dialogue is a key element of Fairclough's CDA model. The speech by Blair has the usual political rhetorical features, meaning that it emphasizes more what should be done and the current situation. He uses the language of reform: "overhaul", "root and branch", "transform" (Blair, 2002). He saves his most dramatic reform for his conclusion; he declares that he will "re-balance" the criminal justice system in favour of the victim. To explain what this means in practical terms, he focuses on miscarriages of justice:

> It's a miscarriage of justice when the police see their hard work and bravery thrown away by courts who let a mugger out on bail for the seventh or eighth time to offend again; or when courts don't have the secure places to put people. And it's perhaps the biggest miscarriage of justice in today's system when the guilty walk away unpunished (Blair, 2002).

This was a moment of huge significance. A Labour Prime Minister with a commanding parliamentary majority was redefining what was meant by "a miscarriage of justice". In the 1970s, 80s and 90s miscarriages were about innocence, even in the media:

> When the media reports what it accepts has been a miscarriage of justice, it claims to reverse the meaning which the media formerly attached to the conviction: the person convicted did not do what he was accused of and is therefore innocent (Nobles & Schiff, 1995: 312).

Blair's new definition, that a miscarriage was when the guilty went unpunished, went even further than what the right wing press was suggesting at the time. The recontextualizaton of the discourse had fundamentally altered how miscarriages of justice were seen. The media discourse changed significantly after Blair's intervention. *The Mail* was one of the first to embrace the new approach:

Rapist freed as 'no danger' struck again, *Daily Mail*: June 3rd 2002
A serial rapist freed early by judges because he was 'not a long-term danger to women' subjected another woman to a horrific sex ordeal. A senior police officer called the decision to speed his release: 'A travesty, a real miscarriage of justice'.

This is Blair's new definition in practice: the release of a rapist (the guilty unpunished) is "a miscarriage of justice". This new definition proved to be very popular with the right wing press. For example, there were no stories in *The Express* about miscarriages between 1992 - 1997 when the phrase emphasized the concept of innocence but the new calibration was much more conducive to the paper's agenda:

Rapist who was free to strike again, *The Express, June 3, 2002*
SERIAL rapist Errol Henry is set to be jailed for life after being released by the Appeal Court and carrying out another attack. Detective Chief Superintendent John Parr said: This is a travesty, a real miscarriage of justice.

The law must see we are shielded from murderers, *The Express,* September 20, 2004
How does Lord Woolf, the Lord Chief Justice, react to this terrible spate of killings across the country? He announces that some murderers should serve a term of just seven years. These proposals represent not only a monstrous miscarriage of justice but a risk of allowing dangerous people out into the community. They must be quashed right now.

Don't let them get away with murder, *The Express, December 21, 2005*
FAMILIES of murder victims last night slammed as "a slap in the face" proposals that would see murderers spend less time in jail. David Hines, chairman of the North of England Victims' Association, whose daughter Marie, 23, was murdered 12 years ago, said the plans were the "biggest miscarriage of justice we have seen".

Crackdown on legal loopholes that let the guilty escape justice, *The Express,* April 20, 2006
CONVICTED criminals may soon no longer be able to walk free just because of a legal technicality. Under radical plans to toughen up the Court of Appeal, Home Secretary Charles Clarke yesterday announced an urgent review of the legal test for quashing convictions, which will make it harder for offenders to argue a miscarriage of justice.

The Sun was the same as *The Express*, it had failed to cover any miscarriage of justice stories in the five years before 1997, but after 1997 the reporting increased due to the new meaning attributed to the term. Like all the other right wing papers, it covered the case of Errol Henry:

Horror sex attack by a freed rapist, *The Sun* June 3, 2002

It also identified a new case, similar to that of Tony Martin, on which to focus:

Five years for killing raider, *The Sun*, *October 18, 2002*
A DAD of two who stabbed to death a violent burglar was jailed for five years yesterday. Hastings' lawyer branded his manslaughter conviction a **miscarriage of justice** and vowed to appeal.

The Sun had led the campaign for Tony Martin so it was unsurprising that it sought to highlight a case that it saw as similar. Away from *The Sun*'s particular obsession Tony Martin, a dimension of what Fairclough (2001) would call its particular "institutional character", the newspaper wholeheartedly embraced the new semiotic construction which focused on the guilty rather than the innocent. But it was not content with highlighting examples when the guilty had gone unpunished; it actually mounted high-profile campaigns aimed at ensuring that when the guilty did get caught, they were adequately punished.

Paedo chaos, *The Sun* Charter for Justice, *The Sun,* July 11, 2006
THE mum whose toddler was attacked by evil pervert Craig Sweeney erupted in fury last night after the Government's law chief refused to challenge his soft sentence.

At the end of the article *The Sun* asks its readers:

> DO you know about a miscarriage of justice? Call us on 020 7782 4104.

The discourse has developed to such an extent that *The Sun* does not need to explain what it means by "miscarriage of justice", its readers understand exactly what is meant. The paper is looking for tales of "evil perverts" and "crooks" who get "soft sentences" to use in its "Justice campaign to have lenient judges turfed out".
But it wasn't just concerned with paedos and crooks, it also had "killer motorists" in its sights:

New war on killer motorists, *The Sun,* September 11, 2006
In a victory for *The Sun*, Director of Public Prosecutions Ken Macdonald said motorists who cause death by dangerous driving must be charged with that offence, which carries up to 14 years jail. Mr Macdonald said this is a "miscarriage of justice". He added: "We need to make sure if it's dangerous driving, we charge it as dangerous driving. Then we have some hope of appropriate punishment."

The Sun's campaigns illustrated how far the meaning had altered, miscarriages of justice weren't about innocence, they were about situations when the guilty weren't punished, or, if they were punished, the punishment was far too lenient. It is worth noting that research indicates that after Blair's 2002 speech, judges were more inclined to hand our harsher sentences. Hough and colleagues found that many judges felt they could not sentence criminals in the way they found appropriate due to "social and political pressures" (2003: 63). Newburn agrees that the judiciary in England is not as insulated from pressure as many suppose:

> Given the general political mood in the last decade or more—one of largely un- relieved populist punitiveness—there can be little surprise that decision making in the courts has progressively resulted in ever-harsher treatment of offenders (Newburn, 2007: 460).

5.4 Conclusion

Herbert argued that reporters are very much products of their environment:

> The journalism practiced in any country is deeply embedded in national culture and history (Herbert, 1999: 7).

This is really just the other side of the coin of the critical approach that I have described in the analysis above, we learn a great deal about society by studying the media, and we learn a great deal

about the media by studying society. Fairclough, in his approach, encourages us to remember the various influences on both sides:

> Journalists are embedded in networks of actors that include news sources, public relations practitioners, spokespersons, journalists at other outlets, business managers, and audiences (Carlson, 2016: 354).

But this interaction is something cynically framed:

> According to what tends to be referred to as the liberal theory of press freedom, the public gets the press it both desires and deserves (Cole and Harcup, 2009: 169).

Such an approach glosses over a key consideration, the importance of language to the press and the media. The press needs to speak the same language as the public in order to remain relevant. Equally the public uses the press to access the public sphere, thereby internalising some of the lexicon they consume. This interaction, along with a myriad of other influences from other agents, creates a discourse:

> Language represents and contributes to the production and reproduction of social reality (Richardson, 2007: 26).

This chapter has attempted to analyse this process by focusing on the use of the phrase "miscarriage of justice" in the national media. The content analysis showed that there had been a steady decline in the coverage of miscarriages of justice in the national newspapers since the creation of the CCRC. Closer analysis of this trend uncovered something even more interesting. The decline in reporting was not universal across the press; in fact different sections of the press had diametrically opposed positions in terms of coverage trends. The right wing press was increasing its coverage while the left wing press was cutting back. These contrasting approaches were examined using discourse analysis. As Schreier explains, discourse analysis does not deal with texts "in and of themselves" but considers "the ways in which language and social reality are interrelated" (2013: 45). Essentially this means taking into account the *who*, as well as the *what*:

> Of course it is not 'language' that does anything, but those who use language who engage in producing and in disseminating texts. Power therefore rests with those who are in a position

> to produce and distribute texts which carry a certain authority in society. These texts and the ways in which they refer to each other and reinforce each other's 'message' constitute what has been called the 'dominant discourse' on a given topic (Schreier, 2013: 46).

What the critical discourse analysis revealed was that the "dominant discourse" had begun to focus on guilt rather than innocence. Glater (2016) argues that even with the best of intentions, journalists can find themselves in a position where they are "serving the interests of the powerful and justifying acts that exploit the weak".

> Stories told about the application of the law matter because they shape perceptions of state authority and legitimacy. The organizations that produce reporting play a critical role in forming, reinforcing, and occasionally undermining widely shared beliefs (Glater, 2016: 507).

The right wing press became engaged with the issue because the phrase "miscarriage of justice" had enlarged to incorporate the need for adequate punishment of the guilty. This approach was consistent with a new obsession on crime, exemplified by Blair's "tough on crime, tough on the causes of crimes" mantra.

> The neoconservative preoccupation with security, social control and reinforcement of discipline so as to preempt crime, deviance and terrorism (Alvares and Dahlgren, 2016: 47).

The analysis shows that "miscarriage of justice" as a concept had been appropriated by the populist right wing press and politicians. The phrase gained gravitas in the 1990s due to its repeated use in relation to cases like the Birmingham Six and Guildford Four, and it appears that papers like the *Sun*, *Mail* and *Express* were keen to use its potent resonance to aid their agendas. Alternatives like "unfair" or "unjust" just didn't have the same legacy. The shifting meaning of "miscarriage of justice" was a clear indication of how far the crime and justice discourse had moved.

> The media play an essential role in political discourse by making salient certain actors and topics over time, promulgating certain interpretations of issues over others, and cueing the public to think about certain actors and issues and in certain ways (Sheets, Bos, and Boomgaarden, 2015: 311).

The significance of a right wing discourse on miscarriages of justice can only really be appreciated

when one recalls how utterly dominant the right is in the UK media.

> UK newspapers are highly partisan, with the overwhelming majority leaning towards the political right (Reeves and de Vries, 2016: 284).

Research (Wring and Deacon 2010) found that only 15% of all newspaper circulation in the UK in 2010 supported the Labour Party. It means that newspaper readers are "frequently exposed to right-leaning arguments and attitudes" (Reeves and de Vries, 2016: 284).

There is also a final, more prosaic reason for the media moving away from a position where newspapers were regularly calling into question the validity of convictions and the legitimacy of the judiciary. In Chapter 6 the importance of the crime and the courts to journalism will be explored, but the basic point is that convictions make good copy and it is ultimately counterproductive to constantly undermine this valuable source of news.

> Remedied miscarriages of justice provide a regular source of a particular kind of news: individual human tragedy. But the media rarely unite such stories into a general theme of systemic failure. Indeed, such a theme of systemic failure, taken seriously, threatens the media's ability to continue with their usual relationship to the legal system, which is as a cheap and accessible source of stories about violence, greed, evil, etc. Such stories depend on a conviction representing the truth of a person's guilt (Nobles & Schiff, 2001: 298).

CHAPTER 6: INTERACTION BETWEEN JOURNALISM AND THE COURTS

"This appetite of the mind for particulars of great crimes and criminals has been stigmatized as vulgar. It is only vulgar in so far as it is universal, the common attribute of every age, people and clime."

(*Daily Telegraph*, 1881)

6.1 Introduction

This chapter will discuss and analyse the relationship between the media and the courts, looking specifically at a specialized type of media practitioner: the court reporter. The court reporter has a long history, co-existing with the courts since their modern inception and have a very important role:

> Public scrutiny of the courts is an essential means by which we ensure... public confidence in the courts and the law (Neuberger, 2011).

I will sketch out this history in broad terms in order to illustrate the changing nature of the role but since this is not the primary focus of this research, the outline isn't, and was never intended to be, an exhaustive historical account of the position of the court reporter. For such a detailed account I would recommend Duncan Campbell's *We'll all be murdered in our beds!*, Steve Chibnall's *Law and order news*, Rob Mawby's *Policing Images* and Richard Ericson's *Negotiating Control*.

As I described in Chapter 3, there are three main reasons why I have chosen to focus on the court reporter:

- The role has a crucial 'linkage function' between the media and the legal system
- The exclusive access that court reporters enjoy means that they assume the role of "the canary in the mine", they are a key indicator and their work has a wide and deep significance to both the media and the criminal justice system
- The level of interaction that the media has with the legal system has a direct and practical impact on miscarriages of justice

6.2 Historical context

Stephens, in *A History of News*, argues that the first newspapers began in the 17th Century.

> This journalism had taken root in England by September 24th 1621, the date of the oldest surviving issue of an English coranto actually printed in England: Corante, or weekely newes from Italy, Germany, Hungary, Poland, Bohemia, France and the Low Countreys (Stephens, 2006: 144).

But while he claims that written journalism began to flourish in the 17th Century, the public's obsession with crime was sated much earlier:

> The first English publication about a murder found by Matthias Shaaber is dated 1557. And in England, after 1575 most interesting homicides appear to have been recorded in print (Stephens, 2006: 97).

Black's analysis of the early English press supports this point that crime was one of the key drivers of sales for publications:

> Some papers, such as Applebee's Original Weekly Journal in the 1720s, were renowned for their crime reporting, and there was much in the cheap London press of the second quarter of the 18th Century (2001: 55).

Seasoned crime reporter Duncan Campbell claims to have identified the first, or at least one of the first, practitioners of his profession. Pointing towards the 1747 painting by William Hogarth, called *The Idle 'Prentice Executed at Tyburn*, Campbell locates "a bewigged figure" sitting in the carriage beside the condemned man:

> This is the Ordinary of Newgate, the chaplain of the prison where the condemned men and women spend their last days. He will have already interviewed the miscreant about his life and sins and he is on his way to the scaffold to report on his end. He will then publish his account which will be bought in its thousands by the growing number of literate Londoners, many of whom would read it out loud to those who couldn't. He could claim to be the first professional crime reporter (Campbell, 2015: 2).

The reports by these "Ordinaries" ran from the end of the 17th Century and most of the 18th Century and was one of the key sources for information about the criminal justice system of that period. One of the first reports dated from May 1676. Campbell (2015) points out that the Ordinary made a very good living from this work (roughly equivalent to about £30,000 a year). The reports were in fact so lucrative that some Ordinaries were not above paying prisoners to tell them their stories, an early type of "chequebook journalism", something that would later so concern Lord Leveson. But it could be said that the Ordinaries' actions, however moral or immoral, were driven by demand. Peter Linebaugh (1977) pointed out in his essay, *Crime in England 1550-1800*, that the Ordinaries' accounts "enjoyed one of the widest markets that printed prose narratives could obtain in the 18th Century". Jeremy Black in his book on the early English Press agrees that "crime was a major draw in the press" (2001: 54).

> Accounts of the actions of criminal not only served to excite readers, but also provided warnings to people fearful of attack, while those who might break the law either deliberately or inadvertently, could be warned of the consequences (Black, 2001: 54).

It is clear that in these early days the judiciary did not attempt to prohibit the publication of criminal matters, particularly if the focus was on punishment:

> In the courts, privilege was extended to correct reports of a trial, and had been so since the 1790s. The great political trials in 1820 of Henry Hunt and associates for conspiracy after Peterloo, and of Thistlewood and the Cato Street conspirators, were published without interference, by radical printers in what appear to be verbatim editions. Police court reporting had been the staple ingredient of the mass circulation Sunday papers since their first establishment (Brown, 1985: 147).

The early editors were keen businessmen, they learned what sold and duly sent their reporters out to get some more. As Stephens observed: "Crime news is prime news" (2006: 97). As one might expect, Punch (in an 1842 edition), put it most astutely:

> We are a trading community, a commercial people. Murder is, doubtless, a very shocking offence; nevertheless, as what is done is not to be undone, let us make our money out of it.

Black too found ample evidence to suggest that there was a healthy appetite for crime reporting among the reading public in this period:

> When Britain was at war, the Leeds Intelligencer of 10th April 1781 could still devote nearly two columns to a York murder trial. Even minor crimes were frequently reported; crime tended to share with accidents the local news section of early provincial papers. The lives of villains were frequently discussed, there were regular reports on assizes and executions and causes celebres were discussed at length (Black, 2001: 55).

There are other reasons apart from circulation that make trials significance to journalists. In a world of opposing arguments and opinions, they offer the reporter some welcome surety:

> One must not forget the media's commitment to conviction. Within the media, conviction provides a rare occasion to tell an 'objective truth'. Objectivity for the media is ordinarily constructed through structures of balance of information, knowledge and opinion. But a conviction, when reported, takes the form of an authoritative narrative of the commission of the crime in question by the convicted person. Convictions represent an occasion when there is no alternative 'authority' offering a contrary view of events. There is therefore nothing to 'balance'. A reported conviction is official confirmation of action, creating a fixed point of reference for the media's narratives (Nobles & Schiff, 1995: 313).

The emphasis on crime in the media inevitably brought reporters and the police into close contact. This relationship was fraught with danger for both sides from the very beginning, but there were enough potential rewards, particularly on the media's side, for reporters to work hard on cultivating the relationship:

> The forerunner of the modern crime reporter was not so much a court correspondent as a 'leg man' who used to tour London police stations searching for scraps of information for the use of more senior colleagues (Chibnall, 1977: 49).

In an attempt to formalise the relationship between the press and police, the Scotland Yard Press Bureau was set up in the 1920s, but as Chibnall points out, the press was not satisfied with the twice daily updates offered to them by the Bureau.

> Fleet Street's solution to this problem was to intensify specialization. Journalists were selected to work with the police on a regular basis in the hope that the barriers of suspicion and hostility could be broken down by frequent interaction with individual journalists who could prove themselves trustworthy and sympathetic (Chibnall, 1977: 50).

This strategy appears to have borne fruit, with the police taking a very different approach in the post-war period.

> This new, more open, policy, while far from satisfying most journalists, ushered in a new era of crime reporting which was to reach its heyday during the fifties when money and resources for crime stories were relatively freely available (Chibnall, 1977: 51).

In the mid-19th Century when there was some debate about whether a magistrate should be allowed to hold proceedings in his own home, the Morning Herald in 1843 argued that such private hearings were not advantageous and that justice needed to be seen to be done in public. From the very beginning, as Black notes, there was a move towards greater transparency in relation to the courts:

> A report in the Leeds Intelligencer of 28th November 1786 on convictions at Wakefield for false weights and measures was followed by an editorial comment: 'Would it not be right to have the names of these offenders published?' (Black, 2001: 54)

This campaign by the press was understandable, as Tunstall points out, because the emphasis in the 19th Century in crime reporting was on the coverage of court cases and post-trial developments (Tunstall, 1971a: 92). Flanders (2011), in *The Invention of Murder*, points out that the major newspapers in the 19th Century, *the Morning Chronicle, The Times, the Morning Herald* and *the Observer*, gave over a huge amount of space to crime every day.

> *The Morning Chronicle* gave the majority of its editorial space to crime on a regular basis, continuing a long tradition of prurient upper-middle class love of crime: *The Gentleman's Magazine* had, between 1731 and 1818 reported on 1,172 murders, over one a month for nearly a century (Flanders, 2011: 28).

Campbell (2015) identifies James Curtis of *the Times* as the first star court reporter. His lightning quick shorthand skills had enabled him to build his reputation covering a vast number of Old Bailey

trials, but it was his covering of the notorious "Red Barn murder" in 1828 that set him apart. His book, *An Authentic and Faithful History of the Mysterious Murder of Maria Marten*, proved to be a sensation and provided a prototype for the likes of Truman Capote who would follow. Flanders (2011) credits a murderer called John Thurtell in 1823 with being the subject of the first 'trial by newspaper'. Flanders points out that after his conviction, *the Observer* published a special execution edition that was twice the size and twice the price of the normal paper. Such circulation success led to a growth in skilled professionals in the James Curtis mould:

> Reporters in the gallery [of parliament] were finally permitted to take notes in 1783, and a knowledge of shorthand replaced an exceptional memory as a qualification for a job as a full time reporter. With their technique honed and their power made manifest in the gallery of Parliament, London reporters also began training their gaze, and their stenographic abilities, upon other aspects of public life in London. The courts provided and obvious target (Stephens, 2006: 223).

But while the public, even the upper classes, might be keen to read about the gory details of these trials, the association between journalism and the seedier side of society had negative implications:

> Even as late as the 1820s, journalism was regarded as neither a dignified nor a reputable profession (Aspinall, 2016: 1945).

The introduction of so-called "taxes on knowledge" had a dramatic impact on journalism in the 18th Century (Williams, 1997). Newspapers had to significantly alter their business model. The soaring sales taxes forced the press to change how it gathered news, what it published, and even the physical shape of the newspapers.

> Through a combination of bribes, subsidies, the provision of exclusive information and the channelling of official advertising to friendly newspapers, the State was able to exert considerable influence over the content of the 18th Century press (Williams, 1997: 25).

The repeal of the duties on newspapers in the mid-19th Century "was the breakthrough moment" for the press (Marr, 2005: 14) and it was only after that that the newspapers began to expand again.

> The second half of the 19th Century saw the emergence of a mass circulation popular press in this country. These newspapers established the press as a medium of mass communication (Williams, 1997: 48).

Curran & Seaton see this period as a "big bang" moment for the British press:

> There was a substantial increase in the number of national daily and Sunday papers, mostly founded between 1880 and 1918 which catered either for mass, middle-market audiences or small elite audiences (1997: 37).

Some have argued that the relaxing of government restrictions was down to the opposition created by progressives (Williams, 1957), while others claim it was the growing power of a middle class made rich by the industrial revolution that repelled attempts to control the flow of information by the political classes (Harris, 1996). In 1851 when the Times criticised the French Prime Minister Prince Louis Napoleon, he demanded that the British government do something. His ambassador explained that there was nothing that could be done:

> Although less than in France, political men in England are sufficiently anxious about newspaper criticism to have tried often to buy an organ so widely circulated as the Times: but they have always failed (quoted in Cranfield, 1978: 160).

If the press was influential in the 19th Century, its power would only increase in the 20th Century as circulation boomed:

> This growth in the number of publications was accompanied by an enormous expansion in newspaper consumption. Annual newspaper sales rose from 85 million in 1851 to 5,604 million in 1920 (Curran & Seaton, 1997: 37).

Reflecting on the rapid transformation of the media in this period, Andrew Marr identified four key factors that caused the rapid expansion of the press:

> To put it crudely, the Victorians did four things which made Britain the newspaper-mad nation it remains even today. They cut the taxes and lifted the legal restraints which had stopped papers being profitable; they introduced machinery to produce them in large

> numbers, they educated a population to read them; and they developed the mass democracy that made them relevant (Marr, 2005: 13).

This 'new journalism' of the late 19th Century and early 20th Century marked a significant change with the journalism of the past. Emblematic of this transformation was *The Daily Mail*. Founded by Alfred Harmsworth in 1896, it represented a step change in the approach to journalism in this county. The approach taken by Harmsworth, later Lord Northcliffe, was dramatically different to much of the staid, passionless reporting of the late Victorian press. He believed news should be "interesting, short and always told form a human angle" (Marr, 2005: 78). The stories were extreme and often shocking, with the aim of eliciting an almost physical response in the reader. As Marr (2005) explains, the paper was full of rapes, murders and gang violence. His mantra was: "Explain, simplify, clarify!" (Taylor, 1996)

Moving into the 20th Century there were two main developments that profoundly affected the coverage of courts in the media; advances in broadcast technology and the abolition of capital punishment. The first technological development that posed a challenge to the relationship between the judiciary and the press was the advent of the still photograph. In 1904 *the Daily Mirror*, consistent with Lord Northcliffe's pictorial vision for the paper, became the first newspaper in the world to use photographs on a regular basis. Almost inevitably, this new technology was eventually used in the courts:

> On March 15 [1912] *The Mirror* published a sensational photograph of the scene at the Old Bailey the previous day when Bucknill J. passed a sentence of death on Frederick Seddon for the murder of Eliza Barrow (Dockray, 1988: 595).

Dockray (1988) persuasively argues, via an analysis of parliamentary debates, that there was a "direct link" between the enactment of the Criminal Justice Act 1925 which prohibits the taking of pictures in court and the Seddon photograph.

> The statute therefore aimed to protect judges, jurors, litigants and witnesses against this unnecessary, tasteless and undignified activity (Dockray, 1988: 597).

This outlawing of photographs and video recording held firm for more than 80 years, but in 2009 the first cracks appeared when the Supreme Court began broadcasting its proceedings. There appears to be slow, tentative steps being made to reverse the 1925 Act. In 2016 it was announced that a pilot would be carried out in which the sentencing remarks at eight courts would be filmed, but not broadcast. Stepniak argues that recent high profile televised cases such as OJ Simpson and Louise Woodward have weakened rather than strengthened the argument for the introduction of cameras in the British courts:

> [These cases] have served to reinforce two widely held views regarding this issue: first, that it is a conflict between the apparently incompatible and irreconcilable interests of the media and of the administration of justice; and second, that the televising of courts is an American aberration, for which reasons alone it must be opposed (Stepniak, 2003: 254).

The most profound challenge to broadcasting trials will not be the practical difficulties but the dramatically different reactions that the legal systems and media has to the concept. While the media sees it as adding transparency, the judiciary see it potentially as a hindrance to justice. It is an obstacle to be expected when trying to negotiate between different systems with their own internal logic. As Nobles & Schiff identified, a system's unique terms of reference provide the system with a way of defining itself:

> The ability of a system to differentiate itself from another area of social life is problematic and, ultimately, self-referential (Nobles & Schiff, 1995: 319).

For cameras to be allowed to be into the courts in England and Wales, the argument for access must be made in terms that are understandable to the legal system, so that it can incorporate it into its self-referential logic:

> When judges permit courtroom televising, not on the basis of whether the inconvenience and disturbance are likely to be minimal, but because the particular circumstances suggest that it is in the interest of the administration of justice to do so, broadcasting of proceedings will indeed enhance open justice (Stepniak, 2003: 275).

But in the 20th Century (and 21st), with the 1925 Act firmly in place and television stymied, it was radio that innovated. Campbell said that "Edgar Lustgarten could claim with some justification to be

the man who took crime reporting from the printed page to the airwaves and the screen". (Campbell, 2015: 83). His 1952 "*Prisoner at the Bar*" radio programme was groundbreaking. The show, which dealt with well-known trials, was a huge success. At his peak, the one-time barrister was broadcasting to over six million people on his radio shows. Even given that limitations placed on the reporting of court cases outlawed the recording of audio or video in the courtroom, broadcasters found the courts a very fruitful topic. As Moore points out in her analysis of the relationship between crime and the media there was something instinctively newsworthy about courtroom dramas:

> Journalists and news broadcasters are simply seizing upon the courtroom's potential as a place of performance. Courtrooms are, after all, often organised as auditoriums, and judges and lawyers dress for their parts (most evident, of course within the British system where legal representatives wear robes and wigs) (Moore, 2014: 261).

In the terminology of 21st Century media analysis, these new platforms (television & radio) provided huge new markets for the work of the court reporter because even though audiences could now consume the stories in the new broadcast mediums, the raw material was still coming almost exclusively from the shorthand notebooks of court reporters. But for many commentators this period, the latter part of the 20th Century, was the high water mark for court reporting and court reporters. Campbell identifies it as the zenith of his profession:

> What is often described as the golden age of crime reporting ran from the end of the Second World War to the abolition of capital punishment in 1965. Newspapers were in their heyday. Circulations were enormous: no fewer than 31 million Sunday newspapers were bought each week in Britain in 1950, an extraordinary average of two per household, compared to 9.9 million sixty years later (Campbell, 2015: 91).

Andrew Marr also identifies this as an age of great journalism:

> After the war, the news values of most British papers were more serious and comprehensive than at any time before or since. The communist threat, the withdrawal from empire, and the building of the welfare state provided a stream of hugely important stories that touched, potentially, every reader of a newspaper (Marr, 2005: 92).

But while Marr argues that the seriousness of the times required a serious response from the media, there was also some overt influence from the government:

> It was censorship, rather than a lack of interest in sex stories, that kept the British press relatively 'clean' during the middle of the 20th Century (Marr, 2005: 102).

But even during this period of serious-minded news, editors were keen to build circulation, and there were few better selling points for newspapers than executions:

> One correspondent thought that, in the days of capital punishment back in the 1950s and 1960s, murder cases had been the subject that sold newspapers (Schlesinger and Tumber, 1995: 144).

Historically, while the press may have given the public a crucial insight into the workings of the courts, the punishments meted out by the judges needed no moderation or amplification. The executions of prisoners were enormously popular public events, comparable to modern-day festivals or sporting events. When a valet (Francois Courvoisier) was hanged in 1840, an estimated 40,000 people turned out to see the spectacle. Dickens was one of the throng, but was appalled by the experience, as he explained in a letter to the *Daily News* in 1846:

> Nothing but ribaldry, debauchery, levity, drunkenness and flaunting vice in fifty other shapes. I should have deemed it impossible that I could have ever felt any large assemblage of my fellow creatures to be so odious.

Such public events ended in 1868, but executions continued on but it was left solely to journalists to describe the condemned prisoner's final moments. This wasn't the setback it first appeared. What the media lost in the theatrical set piece of the public execution, it gained in the exclusivity: enjoying privileged access to these events. This state of affairs lasted for nearly 100 years before such punishments were ended.

> The abolition of capital punishment in 1965 has had a significant effect on the news value of a murder, lessening its impact considerably (Schlesinger and Tumber, 1995: 144).

Setting aside the morality, one way or another, of stopping executions, the impact of the decision was felt keenly by the media. Alfred Draper, a former senior reporter at the *Daily Express* said that "the end of capital punishment may have been enlightened but it had knocked the drama out of murder" (quoted in Snoddy, 1992: 25). While Victor Davis, a reporter for *Express* and *Mail on Sunday*, lamented:

> When hanging was abolished in 1969, much of the buzz went out of crime reporting. The swinging Sixties swung a little less (Davis, 2004: 56).

And it wasn't just the drama that was missing, it appeared that much of the appetite for the reporting of trials began to ebb away too after this judicial landmark decision.

> The abolition of the death penalty in 1965 was blamed by at least one Fleet Street editor for the subsequent decline in the sales of evening papers (Campbell, 2015: xii).

According to Chibnall, the decline in the reporting of murder trials was the result of two main factors:

> Crime correspondents point to an apparent falling off in public interest: 'In the early days you could spin out a murder for three weeks. Now it will only last a few days. There are no queues at the Old Bailey anymore now the death penalty has been abolished and you no longer have the ritual of the black cap' (crime correspondent: popular daily). Some journalists argue that the public have become desensitized and bored through over-exposure. Second, the decline of public interest has been accompanied by a decrease in newspaper resources devoted to murder reporting (Chibnall, 1977: 66).

As Chibnall suggests, there were other trends happening in society and the media that would have an impact on crime reporting, quite apart from the abolition of capital punishment. Marr argues that papers had begun to focus on other areas in an attempt to bring in more readers:

> Lacking the torrent of mundane horror available in the 1890s, tabloid editors use sexual excitement and one-sided politics to stir their readers (Marr, 2005: 82).

Williams (1997) in *Get me a murder a day!* charts what he sees as the falling-off in serious news in the second half of the century:

> There has been a general decline in political, economic and social news since the mid-1930s. By 1976 public affairs news took up less space than sport in the popular press (Williams, 1997: 225).

Williams argues that in 1950s and 60s *the Mirror*, the dominant paper of the period, "made serious efforts to include material to enlighten people" (1997: 224) but this approach changed with the rise in popularity of *the Sun*, which was in direct competition with *the Mirror*. Rupert Murdoch bought *the Sun* in 1969 and changed it into a tabloid. Four years later its circulation was three million and by 1978 it had overtaken *the Mirror*:

> The circulation wars saw the steady erosion of the values of popular journalism as papers moved further down market to compete with *the Sun* and attract readers (Williams, 1997: 224).

Marr agrees that the arrival of *the Sun* was a paradigm shift in the press in the UK:

> It was undeniably the arrival of Murdoch's *Sun* that produced the modern sex revolution in British news (Marr, 2005: 103).

The competition between the tabloids was made all the shaper by the fact that they were competing for a declining readership. Tabloid circulation fell from 12 million in 1961 to 10 million in 1986 (McNair, 1994). One result of the circulation war was that all the popular papers had gone tabloid by 1977. Research by Curran & Seaton found that there had been "marked reduction in the amount of public affairs news and analysis" (1997: 117). Marr argues that the focus on sex and celebrity created a whole new media industry, giving people like Max Clifford huge influence (Horrie & Nathan, 1999):

> As newspapers began to pay higher and higher fees to mistresses, rent boys, prostitutes, the word spread and a market developed (Marr, 2005: 105).

This resulted in a move away from traditional investigative journalism:

> When papers find it so easy to get sex stories, the impulse to mount expensive and legally risky investigations into people who might bite back recedes (Marr, 2005: 105).

This change in emphasis in the press, where newspapers started to move away from the more 'serious' topics in favour of more celebrity/ human interest articles, what Marr calls "the fusion of sexually explicit coverage and celebrity coverage" (2005: 104), can be seen in the reduction in the level of court reporting:

> In 19th Century England the emphasis in crime reporting was on court cases, with verbatim transcripts or long accounts published in newspapers. In the late 20th Century the courts are given minimal attention in broadcast journalism. Print journalists report on only a tiny fraction of cases, almost never attend the entire hearing of the cases they do cover and reduce a complex matter into a few column-inches (Ericson, Baranek and Chan, 2011: 35).

But organisations like the Chartered Institute of Journalists (2012) claim that this is just part of a cyclical process that will eventually see newspapers eventually return to quality journalism, even if it is just for financial reasons:

> Those publications that cut back their journalism content quickly find their circulation figures drop, which in turn puts off advertisers. These are the market forces which drive the inclusion of journalism in a publication (quoted in Select Committee on Communication, 2012: 10).

But "market forces" may in fact be one of the key factors making a re-focusing on "quality journalism" more unlikely.

> The late 1970s and early 1980s saw the re-emergence of the 'press barons' style of newspaper management. The highly personalised nature of newspaper ownership was characterised by the feud between Rupert Murdoch and Robert Maxwell (Williams, 1997: 231).

By 1988 60% of the national newspapers were owned by the three leading chains (Williams, 1997), that figure is now 70% (NUJ). But there is a lack of consensus on the impact that this concentration of ownership has on the content of newspapers. Williams identified three main interpretations:

pluralist, instrumentalist and structuralist (Williams, 1997). According to Williams, the pluralist approach sees the competitive nature of newspapers as prohibiting the imposition of the owner's agenda, while instrumentalists argue that journalists must "only operate within the framework laid down by the owner" (Williams, 1997: 229). In contrast, the structuralist approach emphasises the influence that factors such as competition, market pressures and the pursuit of advertisers have on the tone and content of the newspaper.

6.3 Current perspectives

Mulcahy's analysis highlighted that since the beginning of the 20th Century, attendance at court proceedings by ordinary members of the public has been in decline, even to the point that the physical size of the public gallery has been shrinking as courts have been built and redesigned (Mulcahy, 2011). As Moran argues, this doesn't necessarily show a lack of interest among the public:

> While the decline of 'live' public encounters with courts and judges need not necessarily reduce the level or intensity of the scrutiny, it does impact on the form that it takes. As Lord Judge explains, the 'presence' of the public is now the presence of the media (Moran, 2014: 144).

Moran was referring to a speech made by Lord Judge, Lord Chief Justice of England and Wales in 2011 on "*The judiciary and the media*". In it Lord Judge argued that since the media are the eyes and ears of the public, there should be improved access for the media to report in court. Ericson *et al*, also highlight the fact that the media acts as a filter on what the public hears:

> The 'public' aspect of court hearings is defaulted to journalists, and their selection of what cases and what details the public should know (Ericson, Baranek and Chan, 2011: 35).

Frances Queen, in his legal guide for journalists, argues that because of the role that journalists have assumed transparency within court proceedings is now fundamental to a properly functioning society:

> One of the basic standards for a just and fair court system is that the workings and decisions of the courts should be open for the public to see. The idea behind this principle is that in

> order to do its job, a court system has to command the respect of the society it serves, and it is more likely to do this if the system is open and clear, than if decisions are made behind closed doors and the reasons for them not revealed (Queen, 2007: 61).

But as Queen (2007) later points out, the right to report on court is not unrestricted. There are in fact three main types of restriction.

> Contempt of court. This prevents the publication that would affect the workings of the law.
>
> Restriction on access. Some court hearings are actually held in private and the media is excluded from them.
>
> Reporting restrictions. The Contempt of Court Act 1981 gives courts discretionary powers to restrict or ban reporting of a case, or certain aspects of a case.

Any protection that court reporters enjoy is provided by "privilege":

> There is one circumstance where journalist's reports are covered by absolute privilege, and that is court reports. The reason for this is fairly obvious: by their very nature, court proceedings tend to involve people making serious allegations against others, some of them may be untrue. It would not be possible for papers to report court proceedings if they could be sued for repeating those allegations, and since there is clearly a public interest in people knowing what goes on in the courts, absolute privilege makes this possible (Queen, 2007: 202).

But to qualify for absolute privilege the report must be fair, accurate and contemporaneous. A glaring omission from the rules of privilege are any provisions for broadcasting court proceedings:

> The slow progress towards removing the ban on cameras in court in England and Wales, in contrast to the now well-established presence of cameras in Parliament and the ubiquitous televised ministerial interview, comment and so on is further evidence that relations between the media and the judicial branch of government are different from media relations with the legislature and the executive (Moran, 2014: 152).

For Moran, if the media does in fact mediate the interactions between the courts and the public, then there are two clear implications:

> The first is that media reports are and ought to aspire to be objective and accurate. The second is that there is not only an audience for these reports, but an attentive audience (Moran, 2014: 144).

These two points, the role of objectivity and audience, raised by Moran are certainly worthy of careful consideration. Firstly, taking objectivity, it must be understood that this is something of a pained topic and attracts as much debate in everyday conversation as it does in academia. Fundamentally it comes down to the question: is such a thing as objectivity possible at all? For many academics, subjectivity, even at the point of selecting the ingredients of a story, is unavoidable:

> The reporter does not go out gathering news, picking up stories as if they were fallen apples, he creates news stories by selecting fragments of information from the mass of raw data he receives and organizing them in a conventional journalistic form (Chibnall, 1977: 6).

So-called event-orientated news often appears to encourage what Barthes described as "the miraculous evaporation of history" from these events (Barthes, 1972: 151). As Chibnall explains:

> When cast as news stories events tend to be denuded of the historical context and history of the development which give them meaning for their participants (Chibnall, 1977: 24).

While Hall would recognize the difficulty of the term, he would certainly question Chibnall's position regarding the denudation of historical context:

> The broadcasting institutions exercise a wide measure of editorial autonomy in their programmes: but ultimately they operate within the mode of reality of the state, their programme content is, in the last instance, governed by the dominant ideological perspective and is oriented within its hegemony (Hall, 1972:1).

Central to any debate on objectivity is the idea of sources, i.e. where are you getting your information from? The power of sources was reflected in the concept of "primary definition" put

forward by Stuart Hall *et al* in their analysis of the "social production of news" (Hall, 1978). As Tumber and Schlesinger point out:

> The media is analysed by Hall *et al* in terms of a theory of ideological power underpinned by a Gramscian conception of the struggle for hegemony between dominant and subordinate classes in capitalist societies (Tumber, 2000: 257).

Some argue that the selection and treatment of stories is simply an unavoidable process that occurs when journalists try to make institution-specific data understandable to non-experts:

> News transforms the specialized knowledge of the legal institution into common sense. Far from omission, selection and distortion being problems for the news, they are fundamental to the news process of envisaging order and influencing change (Ericson, Baranek and Chan, 2011: 90).

Of course "common sense" is not a neutral phrase. In terms of Foucault "common sense" is a shifting discourse representing competing perspectives, something that Hall recognized:

> It is this structured relationship, between the media and its 'powerful' sources, which begins to open up the neglected question of the ideological role of the media. It is this which begins to give substance and specificity to Marx's basic proposition that 'the ruling ideas of any age are the ideas of its ruling class' (Hall, 1978: 258).

However, Tumber and Schlesinger were eager to highlight what they saw as weaknesses in the idea of "primary definers". They claim that authority does not necessarily speak with one voice:

> In cases of dispute, say, amongst members of the same government over a key question of policy, who is the primary definer? Or, it goes against the very logic of the concept, can there be more than one? (Schlesinger and Tumber, 1995: 18)

The writers also object to the "atemporal model" (Schlesinger and Tumber, 1995) proposed by Hall, which fails to adequately consider the emergence of new forces. The most relevant concern, in the context of this thesis, raised by Schlesinger and Tumber is the overstating of the "passivity of the

media as recipients of information from news sources" (Schlesinger and Tumber, 1995). They argue that Hall *et al* failed to account for the moments when the media challenged the primary definers:

> Relevant examples would be cases of investigative journalism dealing with scandals inside the state apparatus or in the world of big business or when leaks by dissident figures force out undesired and unintended official responses (Schlesinger and Tumber, 1995: 20).

It could be argued that the "ideological role of the media" can be seen most explicitly in the way that those who commit crimes are portrayed:

> In 1898 the Attorney General could assure members of parliament that everyone, prisoners included, had confidence in the administration of justice in England. A consequence of this, at least in part, was that criminals could be portrayed as a separate class, outside consensual society and making a war upon it (Emsley, 2010: 9).

It is a lesson that one would be foolish to ignore, court reporting, along with all aspects of the media, contains embedded values, as Manning points out:

> Crime news is never simply an account of the reality of crime but a product of highly complex choices based upon professional, political and moral values of journalists (Manning, 2014: 20).

Even if a report manages to achieve the "fairness" required by statute to enjoy privilege it may not be as objective as it appears. Chibnall, in his analysis of crime reporting, underlines the need for caution:

> This potential power to define reality makes it extremely important that we subject media representations to close, systematic, and critical analysis, and that we understand the interests and considerations which influence their production (Chibnall, 1977: 226).

The second issue raised by Moran is the question of audience. Setting aside for a moment, if one can, the expectations that the audience has in terms of subjectivity/ objectivity it is key to consider the appetite that the current audience has for the fruits of the court reporter's work. As has been discussed earlier, newspapers once considered court cases (and executions) as drivers of sales and as such gave them due prominence. But as experts have suggested earlier, the abolition of capital

punishment may have altered forever the relationship between court reporting and the public. There is now strong support for the position that the role of the court reporter has been much diminished:

> The days when national papers had an Old Bailey correspondent are now past: current practice is to send reporters for each individual trial that is covered, rather than have someone based there permanently (Schlesinger, 1994: 160).

This reduction in resources could be seen in very down-to-earth ways, as Emsley points out:

> Paradoxically, in spite of the obsessive interest in crime towards the end of the [20th] century, the various agencies providing information was reduced. Local newspapers declined and so too did their crime reporters. The specialised agencies that reported from the courts also cut back on their coverage; most notable here was the Press Association which drastically reduced its staff at the Central Criminal Court in the last 20 years of the century and had virtually no one to cover the 82 regional Crown courts, the more than 200 county courts and more than 350 magistrates' courts. As a result, crime news was London-focused and picked up major and sensational cases only (Emsley, 2011: 119).

Emsley's figures are supported by research carried out by Nick Davies for his book *Flat Earth News*:

> At the central criminal court at the Old Bailey, the once comprehensive PA staff, which covered 18 courtrooms hosting some of the most serious and revealing crimes in Britain, has now been cut back to just two. Many cases there now pass entirely unreported (Davies, 2008: 78).

It means that such cases are now lost entirely to the public, and also to future reporters who may be looking for trends or patterns that could possibly inform lawmakers.

> Many of the crime correspondents, whilst researching the background to court cases, rely on agency material and full transcripts for the details. They rarely attend every day, usually turning up for the opening and returning for the judge's summing up (Schlesinger, 1994: 159).

But if there was no report done in the first place there is nothing to research, as Campbell explains:

> Major trials, with a very few exceptions, are no longer covered in detail. When they are, reporters are expected to tweet details from the court, constantly under pressure to update, whereas in the past there was time to talk to the detectives, lawyers, witnesses, defendants. Deadlines come by the minute rather than by the day. Much of the writing on crime comes now from a commentariat, selectively picking second-hand details of cases to reinforce an argument or fuel a panic (Campbell, 2015: xvii).

It means that there is an emphasis on the remarkable/ bizarre over a more holistic approach which inevitably colours the way the courts are portrayed and thereby viewed.

> A disproportionate amount of Press time and effort is expended on reporting extraordinary and exceptional proceedings and events within those proceedings. The regularity of these reports turns them into the most common portraits of court and judicial activity that are consumed on a regular, if not daily, basis. News tends to make the extraordinary seem like everyday (Moran, 2014: 152).

Haltom (1998) argued that news reports in this context tended to group around certain points in the court process. Moran's research supported this position:

> Verdicts (mainly, but not exclusively, of guilt) and sentencing decisions account for 78% (verdicts 33% and sentencing 45%) of the reports dealing with the Crown Court in the national Press (Moran, 2014: 162).

Working journalists would not be surprised by this figure. My personal experience as a journalist certainly supports this, and may provide an explanation as to why the media focuses so much on the conclusion of court cases. While working for BBC News Online (2001-2007) it was normal practice to cover crime stories, typically murders, assaults, robberies. The initial crime and any subsequent arrest would be reported on as a matter of course. When reporting on an arrest, the suspect would not be named because the police would not usually release the individual's name. If the person was then charged, the story was not automatically written because there was a crucial editorial decision to be made because at this point the police normally release the person's name. As a journalist, and later an editor on BBC News Online, I had a number of options. I could write a report that said a

person had been charged for the crime, but not name them. This was the easiest option for me and my organisation, but it wasn't very satisfactory for the reader who would either be left in the dark about the person's identity due to my self-censorship or be left having to search via other media outlets for the identity.

The other option was not to report on the person being charged at all, meaning that the chain of the story would be: report on crime, report on arrest, nothing more. In practice, this was the most usual approach. In some rare circumstances we would decide to name the person who had been charged. This was obviously a good result for the reader because they were now in full possession of the facts, or at least all of the facts that were in the public domain. But for us as a media organisation it placed a heavy responsibility on us to follow the case through to its conclusion because if we didn't there was a danger that we could be sued by the individual we had named.

For example, if we had written a story about John Smith being charged with a sexual assault but never reported on the fact that he had been acquitted, then he would have a very strong case against the BBC for defamation. In order to respond to this risk, the BBC put in place a system called "Court Watch". It took the form of a grid embedded in the ENPS system used by the BBC for all its broadcast output. The grid is accessible to everyone in the BBC who has an ENPS login. Each section of the BBC will have its own Court Watch grid. For example, BBC South which broadcast area includes Hampshire, Sussex, Dorset and Berkshire has a grid for court cases happening in its area. The system is very simple and works like this: when it has been decided to name someone who has been charged with an offence, the person's name is entered into a new row of the grid. The case is then followed through each stage of the court process. For example, when the police issue a press release about someone being charged, they also give an indication of what will happen next, such as, the person will appear before magistrates on 10th August.

The BBC usually won't send anyone to this plea and directions hearing at the magistrates court, known as "an up and down" by journalists, but on 10th August a journalist will call the court to find out if the appearance went ahead and check when the next appearance is. The date of the next appearance is added into the grid and on that date it will be the responsibility of a journalist in that newsroom, normally the person on the newsgathering shift, to contact the court to check on the progress of the case. There are so many potential twists and turns to cases that many continue on for years. It is a huge commitment on the part of the BBC to cover these cases right through to their conclusions. It is for this reason that most journalists and editors will pause before embarking on

such a responsibility. The issue is even more acute now that it is so easy to check news reports on search engines such as Google. This has even led to the "right to be forgotten" legislation. Moran's research found a similar trend:

> Overall, the sample indicates that on any one day, a variety of moments in the courtroom processes and a range of judicial activities are reported in the Press. However, some events and activities, such as sentencing decision, will be more frequently reported than others (Moran, 2014: 163).

Fishman (1980) argues that the focus on verdicts, sentencing decisions and final judgements are key for journalists because they are concluding phase recognised by the public and they are also the final opportunity to report on the case:

> The disposition of the case provides the news worker with a readymade scheme of relevance (Fishman, 1980: 70).

6.4 Analyzing court reports

The study carried out by Professor Moran in 2012 found that there was a total of 82 court stories in both the national and regional newspapers in 2012. My analysis in 2016 found that there were 57 court stories in these papers, a fall of 25 stories (30%). Nearly every one of the newspapers had fewer court stories in 2016 than 2012, with the exception of *the Express, Financial Times* and *London Evening Standard*.

The word count for the 82 stories in 2012 was 27,225, but that fell to 18,954 in 2016, a decrease of 30% which exactly reflected the absolute fall in stories. This indicates that even though the newspapers were covering fewer stories, the stories tended to be of the same length. The average number of words per story in Professor Moran's sample was 332, in the 2016 sample it was exactly the same: 332. An exception to this trend was *the Guardian*. In the 2012 sample it had three stories, which contained 834 words. In the 2016 sample it had one story, but it was 788 words long.

16/02/12

Teenager denies attack on Malaysian student (119 words)

Murder Charge after girl, 13 found stabbed (284 words)
Wife jailed for retracting rape claims over conviction (431 words)
Lawyer calls for five-year sentence for Berlusconi (109 words)

16/02/16
Girl tells Adam Johnson trial she was called 'a liar and a slag' (788 words)

While a fall of 30% (in number of stories and word count) is very dramatic, the figure masks an even greater fall in the regional papers. While the number of court stories in the national papers fell from 52 to 39 (25%), the decrease in the regional papers was 40% (from 30 to 18). This trend is illustrated in the *Western Mail*, which had eight court stories in 2012 but only three in 2016.

16/02/12
Nikitta accused claims boyfriend invited him to have sex with her (700 words)
Evicted activists take over another empty site (360 words)
Sexual predator jailed after abduction bid (320 words)
Man denies abduction... (66 words)
Fatally stabbed girl 13 rang for the police (320 words)
Murder accused appears in court (58 words)
Retracted rape claim woman appeals conviction (372)
Soldier killed in base "accident (90 words)
Jogger faces court action over false pay-out claim (258 words)

16/02/16
Court told alleged rapist 'was preying on single drunk females' (484 words)
Council worker guilty of stealing £35,000 from unit (271 words)
Mother accidentally killed son, 3, first time she used car (255 words)

The samples from the *Western Mail* also provide a useful illustration of the methodology used in this comparative study. Although Moran's research was used as a benchmark and a starting point for my subsequent research, his results were not accepted uncritically. This can be seen from the way I analyzed his *Western Mail* results. He had found that there was a total of 11 court stories on 16th February 2012, but in my analysis I've only included nine. I rejected two of the results:

£250k payout to Polish workers (80 words)
Sun sea and a 10-minute divorce, yours for £4,500 (630 words)

The story about the financial payment to Polish workers in Uskmouth related to an employment tribunal. I chose to ignore this story because employment tribunals are outside the criminal justice system. The other story about couples getting divorced in the Dominican Republic is essentially a feature discussing a new trend and does not relate to any particular court case. I carefully considered these stories but eventually I concluded that including them would not be appropriate as it would be inconsistent with the rules applied to the rest of the samples and as such may give inaccurate conclusions. To underline this point, it is worth looking at how this approach also impacted on the results from the *Western Mail* in 2016. Two of the stories included in the raw sample were:

How death of a Supreme Court judge brought US to a standstill (897 words)
Nurse caught with child abuse images struck off (518 words)

I decided to reject the first story on the basis that it was a feature looking at the political implications of appointing a new US Supreme Court judge; it did not focus on any particular case. The other story, relating to a nurse previously of Wrexham Maelor Hospital, originated from a disciplinary panel of the Nursing and Midwifery Council. It was not based on any proceedings in the criminal justice system. I concluded that these two stories did not fit the criteria that I wished to measure. It is worth adding however, that it would certainly be a very worthwhile study to address the frequency of media reports on tribunals and disciplinary hearings, but the issue unfortunately falls outside the remit of this research.

There are of course good reasons to be cautious about these results. The comparison is between two days, and it is possible that those days were uncharacteristically busy or quiet and not truly representative. The prima facie sense is that this isn't the case that these days were unremarkable, but it is true to say that one would be more confident interpreting this data if it was based on a larger sample, i.e. a large number of papers over a series of weeks or months. Certainly it is hope that such a research project will be attempted in the future.

Even with these caveats in place, it would be equally foolish to ignore the strong indications contained in this analysis. It is impossible to escape the conclusion that the number of court stories

in both national and regional newspapers is falling. If indeed this is the case it raises some very significant issues about the legal system in general, but specifically about the lack of oversight that the courts are subject to.

6.5 Conclusion

From the comparative study of the level of court reporting in the local and national press, it seems clear that there has been a reduction in the level of court reporting. In terms of number of court stories and the space given over to such stories, there has been a dramatic fall. This fall is seen most clearly in the local papers, where there was a reduction of 40% in the number of court reports. These results are absolutely in line with what media experts have been saying for the last decade. David Banks (2010), co-author of *McNae's Essential Law for Journalists*, describes court reporting as a "dying art". He believes the expense is one key reason:

> The art of court reporting is learned by spending time in the magistrates and crown courts watching cases, writing them up day after day and improving by practice. Financial pressures and court closures mean fewer journalists are getting that practice (Banks, 2010: 56).

Bank's co-author (of *McNae's*), Mark Hanna, said that court reporting was "facing alarming threats to its future", and called for research into the causes:

> Research is urgently needed to discover the extent and all causes of the decline in court reporting (Hanna, quoted in NCTJ, 2009).

Guy Toyn, director of the UK's only specialist court news agency, said the state of court reporting was a "tragedy" for the democratic process. Toyn, head of Court News UK, even questioned the purpose of having newspapers that didn't report properly on the courts:

> You have to really ask yourself: what is the function of these local newspapers if they can't keep people properly informed? (quoted in Sharman, 2016)

In the context of the relationship between journalists and the subject of miscarriages of justice, these results are particularly significant for a number of reasons. Firstly, the fact that the media is

engaging less and less with the everyday workings of the criminal justice system means that journalists are increasingly unaware of what actually happens in such important settings as crown courts or coroner's courts. I would argue that this ignorance is dangerous because it means that it spreads to the public, i.e. if the public aren't being informed about what's happening in courts, how can they be expected to know what's going on? Secondly, the fact that fewer and fewer court proceedings are being observed by anyone outside the legal profession means that there is virtually no oversight, no-one to highlight problems or malpractice. If no one is noticing when things go wrong, where does the impetus for reform come from? This is particularly relevant to miscarriage of justice cases. If the reporters are increasingly disengaged with the criminal justice system, how will they know about any potential wrongful convictions? If they do hear about them, how will they have the relevant level of contacts in the legal system to seek to investigate or resolve these cases? Thirdly, and most practically relevant for any journalist hoping to investigate a potential miscarriage of justice: a record of the trial. The first thing that a reporter will do when he/she wants to look into a case is retrieve the relevant court reports/ transcripts. Because transcripts are routinely destroyed a few years after the conclusion of a trial, the only record that will exist of the trial is the one written by the court reporter and published, often in a local newspaper. But if newspapers are reducing the number of court reporters, along with reducing the number of stories they cover, then there is a growing number of cases that will be lost completely to the collective memory. Hundreds and hundreds of cases each year will go unrecorded, bizarrely becoming, in retrospect, essentially secret trials. A case worker at the Criminal Cases Review Commission once told me that the first thing he did when he received a new application was to look at what media reports there were about the case. He said such reports could prove crucial if the courts transcripts had been destroyed. Unfortunately, on the basis of the findings of this research, it appears that the work of case workers at the CCRC is set to become even more difficult. Not only will they not have the court transcripts, it's becoming increasingly likely that they may not even have any newspaper reports on which to base their investigations.

A summary of these findings were outlined in an article I wrote for Proof (the magazine of the Justice Gap) entitled: *The mysterious case of the vanishing court reporter.* The article generated quite a bit of interest in the media. Former *Daily Mirror* editor Roy Greenslade contacted me to say he wanted to write an article in *the Guardian* based on the research. His article on 28th October 2016 was entitled:

New studies suggest continuing decrease in court reporting

> One of the recurring concerns in recent years has been about whether local newspapers are carrying out one of their key public service functions: the coverage of courts. Now come two small studies, reported in outline on The Justice Gap site, which indicate that the situation has anything but improved. They were conducted by Brian Thornton, a former BBC2 Newsnight producer who now lectures in journalism at Winchester University (Greenslade, *The Guardian*, 28 October 2016).

And it wasn't just *the Guardian* that was interested; the research was also covered by:

> *The Press Gazette*: More than half of regional editors agree UK courts 'not being properly reported', survey shows
>
> *HoldTheFrontPage:* Courts not covered properly' admit more than half of editors

The research also generated a large response on social media; all of the commentators below retweeted the link to the Greenslade article in *the Guardian* before adding:

John Baron, Journalism and digital media lecturer, tweeted:

> Local court reporting been in decline for 20 years due to closure of local mags and lack of resources.

Philippa Budgen, BBC journalist and now criminal justice media consultant, tweeted:

> Remember well scribbling away in Coventry courts as cub reporter. Everyone loses out: open justice + media.

David Lewis, magistrate for over 30 years, tweeted:

> Haven't seen a reporter in court for years. Sad as I believe they played an important role.

David Banks, journalist and media law trainer, tweeted:

> And this is why prosecuting agencies are producing their own reports, not because they want to, but because often they have no choice...

John Hyde, deputy news editor for Law Society Gazette, tweeted:

> Happy memories of covering old Colchester Mags Court. Always produced decent copy. Local papers missing a trick.

David Anderson QC, UK Independent Reviewer of Terrorism Legislation, tweeted:

> Decline of court reporting points up the need for other information sources, e.g. Crown Court sentencing remarks made available online.

From this snapshot of the responses to the research it is clear that it had struck a nerve, and not just with the media; many of those retweeting or commenting on the research were senior figures in the criminal justice system. If there was one concept that united all the responses it was that court reporting *matters*. It matters to the media and it matters to legal system. And the fact that the study clearly indicates that there has been a decline in the level of coverage of the courts, and an undermining of the role of the court reporter means that many are now beginning to consider the implications on the media and the law. My argument is that the trend represents a profound challenge to the role of the journalist in the arena of miscarriage of justice investigations. The impact is felt in individual cases in practical ways such as the lack of any record of trial proceedings but also in the erosion of the appetite for the reform agenda.

CHAPTER 7: CONCLUSION

7.1 Introduction

This thesis has been concerned to research specific ways in which the press's engagement with the issue of miscarriage of justice has changed since the creation of the Criminal Cases Review Commission (CCRC). Chapter 2 explored how the journalistic, legal and political hinterlands have informed the current structural reality of the appeal process. Chapter 3 looked at the appeal system specifically in the context of the Runciman Commission and the creation of the CCRC. Chapters 2 and 3 established the theoretical areas on which the thesis would focus. The importance of the relationship between journalists and the appeal system was highlighted, using Richard Foster's "paradox" as a focal point for discussions. The role of the journalist as an agent of reform was also carefully considered. In Chapter 4 the methods used in the thesis were critically appraised. Content analysis and critical discourse analysis were discussed and their roles in providing qualitative and quantitative breadth and depth to the analysis outlined. Chapter 5 sought to apply these methods to an analysis of the coverage of miscarriages of justice in the media. Chapter 6 considered the relationship between the press and the courts, firstly through an evaluation of the relevant literature and then via a comparative analysis of court reports in local and national newspapers. I will now evaluate the major findings of the thesis and then discuss their implications.

7.2 Summary of findings

The content analysis, using the robust approach described in Chapter 4, established that there had been an 18% fall in reporting of miscarriages of justice in the national press between 1992 - 2007. It's a trend that experts in the area have noticed since the creation of the CCRC:

> When the CCRC was created there was a general feeling that less campaigning would now be required, as organizations such as Justice who had been so critical previously, were no longer investigating miscarriages of justice. The last 10 years or so has also seen miscarriages of justice disappear from the media agenda, and it has become more difficult to generate publicity about particular cases (Roberts & Weathered, 2009: 68).

An analysis of the figures found contrasting trends between the left and right wing media. The coverage in the left wing newspapers (*Guardian, Independent, Mirror, Independent on Sunday, Observer, Sunday Mirror)* fell by 47%, while the right wing newspapers *(Times, Sunday Times, Mail, People, News of the World, Mail on Sunday, Sun, Telegraph, Express, Express on Sunday, Sunday Telegraph)* recorded a 59% increase. In Sample C (2002-2007) the right wing press was actually

writing more stories about miscarriages of justice than the left wing press. The biggest selling paper in the sample, and in the UK, illustrates this trend. *The Sun* had no stories in SAMPLE A (1992- 1997), nine in SAMPLE B (1997 - 2002) and 13 in SAMPLE C. *The Independent* by contrast had 47 in SAMPLE A, 35 in SAMPLE B and 16 in SAMPLE C. The other biggest selling right wing tabloids all saw the same level of growth in coverage:

Newspaper	Growth in coverage
Sun	44%
Mail	43%
Express	183%

Figure 1.6 Percentage growth of miscarriage of justice coverage in the *Sun, Mail* and *Express* in the 10 years after the creation of the CCRC

Critical discourse analysis was applied to the corpus identified by the content analysis to identify the factors that were contributing to such distinctive and contrasting trends in the press. This qualitative approach established that a change in the discourse surrounding miscarriages of justice was at the heart of the surge in coverage in the right wing press. Tony Blair's speech on the criminal justice system in 2002 was identified as an example of Fairclough's recontextualizaton in this context. Blair's new definition provided a concrete example of how far the discourse had developed:

> The biggest miscarriage of justice in today's system is when the guilty walk away unpunished (Blair, 2002).

What was fuelling the growth in right wing coverage was the repeated examples of instances when the guilty went unpunished:

Rapist freed as 'no danger' struck again, *Daily Mail*: June 3rd 2002
The law must see we are shielded from murderers, *The Express,* September 20, 2004
Don't let them get away with murder, *The Express, December 21, 2005*
Crackdown on legal loopholes that let the guilty escape justice, *The Express,* April 20, 2006
Paedo chaos, *The Sun* Charter for Justice, *The Sun,* July 11, 2006
New war on killer motorists, *The Sun,* September 11, 2006

An appeal by *the Sun* in 2006 crystallized the new approach. The paper asked readers:

> DO you know about a miscarriage of justice? Call us on 020 7782 4104 (*The Sun,* July 11, 2006)

If this appeal had been published in the early 1990s it might have attracted calls (or letters) from the likes of Sally Clark, the Bridgewater Four or the Cardiff Newsagent Three because in that period miscarriages of justice meant that an innocent person had been wrongly convicted. But in 2006 no one who believed they had been wrongly imprisoned would respond to *the Sun's* appeal because it was clear that the paper was looking for examples of where the guilty had either not been punished, or been punished too leniently. *The Sun* no longer saw any connection between miscarriages of justice and innocence. The critical content analysis showed that this shift in emphasis from innocence to notions of guilt and punishment was instrumental in stimulating a growth in coverage in the right wing media. In this context it is worth recalling that the Runciman Commission, which envisioned the CCRC, was not solely about tackling miscarriages of justice, as Zander pointed out:

> There was, perhaps understandably, a very widespread belief that the commission's remit was to look at the system from that perspective [miscarriages of justice]. In fact, however our terms of reference were quite different. They required us to 'examine the effectiveness of the criminal justice system in England Wales in securing the conviction of those guilty of criminal offences and the acquittal of those who are innocent, having regard to the efficient use of resources'. The remit therefore had three distinct component elements, the need to convict the guilty, the need not to convict the innocent and due economy (Zander, 1993: 1338).

Chapter 6 examined the reduction in media coverage of the courts using quantitative content analysis. In contrast to Chapter 5, the analysis in Chapter 6 also included local newspapers. The study examined the different levels of coverage between a single day in 2012 and a single day in 2016. The The 2012 study, carried out by Professor Moran, found that there were 82 stories in the national and local newspapers on 16th February 2002. My analysis in 2016 found that there were 57 court stories in these papers, a fall of 25 stories (30%). The word count for the 82 stories in 2012 was 27,225, but that fell to 18,954 in 2016, a decrease of 30% which exactly reflected the absolute fall in stories. The analysis found that while there was an overall fall of 30%, the figure masked an even greater fall in the regional papers.

Newspaper type	Decrease in court stories
National	25%
Regional	40%

Figure 1.7 Percentage decline in court stories in the national and regional press between 2012, 2016

While the number of court stories in the national papers fell from 52 to 39 (25%), the decrease in the regional papers was 40% (from 30 to 18). This trend is demonstrated in the *Western Mail*, which had eight court stories in 2012 but only three in 2016. These figures are important in themselves, but the fact that the regional press is declining more quickly than the national press is highly significant. Because of the way in which journalistic careers tend to develop, from regional press to national press, this trend in the regional papers strongly suggests that similar falls will be replicated in the national press. The implications of both the fall in coverage of miscarriages and court stories will now be addressed.

7.3 Implications of fall in media coverage

What the research has shown is that there was a significant fall in the coverage of miscarriage of justice stories after 1997 and that the stories had started to have a much stronger right wing focus after the creation of the CCRC. While it is very difficult to identify how the interest, or lack of interest, has affected individual cases, it is much easier to assess how these trends impacted on criminal justice reform. As has been described in Chapter 2 and 3, the journalistic investigations of the 1980s and 1990s had a direct impact on statutory reform (creation of the CCRC). But if there was a drop in interest in the media in the subject and a stronger right wing agenda, what does that mean for the reforming role that the media had held prior to 1997? In order to evaluate this by looking at the issue from three perspectives:

- **Journalists and statutory reform:** The fractured connection between the press and government
- **Right wing agenda:** A new focus on guilt
- **Disengagement with the criminal justice system**

Journalists and statutory reform

In Chapter 2 and 3, the close relationship between journalists and the government in the days of the C3 Department was highlighted. The importance of these interlocking networks, media, politics, legal system, was discussed in the context of the reform agenda. I have argued that that the creation of the CCRC represented a break in this connection. This has resulted in a situation where the media is largely disengaged with the reform agenda. To illustrate how this impacts on the real world, I'll examine the issue of CCRC reform. As is the case with all organisations, the progression of time necessitates changes to its rules and regulations. The CCRC is no different; it needs to change occasionally to meet the demands of a changing world. What would have happened in the past was that those pushing a reform agenda would try to galvanise political pressure by enlisting the press in their agenda. As I will show, the CCRC attempted to do this, but because the press is now so disengaged from the issue, no media interest (much less any campaign) was forthcoming. There is also the issue of neutrality for the CCRC, and it only very rarely deviates from what it sees as its main objective:

> The Commission is fundamentally a caseworking organisation which seeks first and foremost to deal with cases in a fair and timely manner (CCRC, 2016: 34).

Section 17 of the Criminal Appeal Act 1995 provides the CCRC with the power to obtain material (documents, information, exhibits) from any public body, as long as it is material "which may assist the commission in the exercise of its functions". Crucially, until recently, these powers did not extend to private bodies. This limitation was something that had concerned senior figures at the CCRC for many years but it was thrown into sharp focus when the coalition government announced in December 2010 that it was closing the Forensic Science Service and allowing private firms to carry out the work which had been previously done by the public body. The change meant that all forensic testing in criminal cases would now be carried out by private companies and that in a few years the CCRC could have found it much more difficult to get full access to this information during its investigations. The news was announced by in the Commons by Crime Reduction Minister James Brokenshire in December 2010:

> We have therefore decided to support the wind-down of the FSS, transferring or selling off as much of its operations as possible (BBC News, 2010).

There was some concern over the privatization of the service, and in 2017 many of these concerns were realized when it was discovered that a private laboratory had manipulated forensic test results:

Scores of convictions in doubt amid forensic test manipulation claims (*Guardian*, 2017)

The CCRC was so concerned about the disbanding of the FSS that its Chief Executive, Richard Foster, told the Justice Select Committee that being unable to access information held by private companies was a serious problem:

> You can be confident that there are miscarriages of justice that have gone unremedied because of the lack of that power (House of Commons: Justice Committee, 2015. Criminal Cases Review Commission: Twelfth Report of Session 2014-15).

In a speech to the Innocence Network UK, two years earlier, in November 2013, David Robinson, the CCRC's sole legal advisor, explained the importance of Section 17:

> The Commission's main tool for investigating miscarriages of justice is the power of Section 17 of the Criminal Appeal Act 1995. This section gives us the power to obtain material from public bodies. It literally means we can get anything that we believe we might need from any public body from MI5 to the NHS. It covers everything from the basic undisclosed case material in the hands of the police and the CPS, to social services records and the secret products of covert human intelligence sources. It is an invaluable power and it is one which we use hundreds of times a year, typically several times for each and every case we review (Robinson, 2013).

But while he was eager to highlight the reach of the Section 17 powers, he was equally keen to underline its limitations:

> We do not, for instance, have the power to obtain whatever we like from private sector organisations, although we are lobbying government for that power. We can only obtain material in relation to cases we are working on, and, furthermore, it has to be reasonable for us to require that material (Robinson, 2013).

Four years earlier the exact same issues had been raised by CCRC Commissioner John Weeden at a

conference held in February 2009 at Garden Court North Chambers in Manchester. The title of the conference was: *The challenges of historic allegations of past sexual abuse.*

> A vital part of our armory is the wide power to obtain material as part of our investigations under Section 17 of the Act. We have the right to obtain any document held by a public body. We cannot yet obtain information held by private bodies, such as private companies, but we are hoping in due course to obtain the legal right to do so (Weeden, 2009).

Weeden's hope in 2009 that the issue would be resolved remained unrealised more than eight years later. The issues raised around Section 17 are part of a wider debate on the accessing of material post-conviction. The regime for disclosure (the handing over of prosecution/ police documents to the defence team) is based on the rules established in the Criminal Procedure and Investigation Act 1996 (CPIA 1996). A landmark judgment based on CPIA declared that the drafters had clearly intended that the fruits of a police investigation should not be used to secure a conviction but "to ensure that justice is done" [R v Mills [1998] AC 382]. But post-conviction disclosure is less well defined, or at least it was, until the judgment in Nunn (***Nunn v Chief Constable of Suffolk Constabulary* [2014] UKSC 37**). Kevin Nunn had sought access to forensic material to challenge his murder conviction. But in a decision that has subsequently been used extensively by police forces to refuse further disclosure in cases similar to Nunn, the court ruled that:

> What is essentially sought by the claimant is access to material to enable the case to be re-investigated and re-examined. The time for that investigation and examination was the trial (Nunn v Chief Constable of Suffolk Constabulary [2014]).

Because of the Nunn judgment, the only realistic avenue for prisoners or other bodies involved in appeal work such as Innocence Projects for additional disclosure is via a Criminal Cases Review Commission investigation. It's worth pointing out that the police and the CPS can also voluntarily release such evidence without the CCRC involvement, but this rarely if ever happens. Using its powers under Section 17 of the Criminal Appeal Act 1995, the CCRC has the ability to require the CPS / police to produce any document or other material in its possession which may assist the CCRC's investigation. Prior to the Nunn judgment prisoners or their legal representatives had been able to ask the police directly for material (post-conviction disclosure) with a fair degree of success. For example, in the case of Sean Hodgson, who served 27 years in prison for a crime he didn't commit,

the miscarriage of justice only came to light after his solicitors made enquiries about some forensic exhibits from the crime scene.

The Nunn judgment means that in future prisoners and solicitors will be aware that it is highly unlikely that the police will assist them with post-conviction disclosure; they will have to ask the CCRC to use their Section 17 powers to access the material. The Nunn judgment has intentionally or unintentionally channeled all post-conviction disclosure through Section 17, meaning that the CCRC is the one and only body that can access additional material after someone has been convicted. This is a noteworthy departure from the previous system, and places a significant responsibility on the CCRC because almost every miscarriage of justice in England and Wales has been uncovered because of post-conviction disclosure (Guildford Four, Birmingham Six, Bridgewater Four, Cardiff Three, Sean Hodgson, Sam Hallam, Victor Nealon). The new paradigm also accentuates the blind spot in the Section 17 powers because all post-conviction disclosure is being funneled through the CCRC at a time when more and more parts of the public sector are being privatized and therefore moving outside the sphere of influence of the commission.

Despite many assurances over the years from ministers to look into rectifying the discrepancy, there was no government attempt to reform the Criminal Appeal Act 1995. It was left to a first-time MP to put forward a Private Members' Bill (Ballot Bill) in order to address the problem in late 2015. Backbencher William Wragg, MP for Hazel Grove, sponsored the Criminal Cases Review Commission (Information) Bill 2015-16 on 24th June 2015. Presenting the bill at the Second Reading, Mr Wragg outlined the proposed changes:

> In essence, it would allow the CCRC to obtain such information from a person other than one serving in a public body, as it is currently restricted to doing. This new measure would apply to private-sector organisations, persons employed by, or serving in, private companies, and private individuals. If passed, it would strengthen the CCRC's ability to overturn wrongful convictions and miscarriages of justice, and improve further our system of law and order, which is rightly the envy of the world (Criminal Cases Review Commission (Information) Bill 2015-16, 2nd reading: House of Commons 4 December, 2015).

He went onto explain where the pressure for the changes was coming from:

> The impetus behind the legislation comes directly from recommendations of the Committee's report from the inquiry, which was published in March 2015. I am grateful to have the support of several current and previous members of the Justice Committee (Criminal Cases Review Commission (Information) Bill 2015-16, 2nd reading: House of Commons 4 December, 2015).

In agreement with Mr Wragg, The Parliamentary Under-Secretary of State for Justice (Andrew Selous) identified a number of examples of where the limitation on accessing documents from private organisations had hindered investigations. Taking this all together, the silence of the media over the obvious anomaly of Section 17 is certainly noteworthy. A search of the Newsbank database using the search term "Section 17" failed to find a single newspaper article highlighting the issue. The search covered all British national newspapers back until 1998. This is one of the implications of a break in the connection between the press and the political system, a fundamentally weakening of the reform agenda. Even though there was evidence that innocent people were being locked up due to the weakness of one of the CCRC's key investigative powers, none of the newspapers were willing to highlight the issue, much less campaign for it. The result was that successive governments never felt under any pressure to address the issue, and a much needed reform took much longer that it should, had it enjoyed media support. When Wragg's bill finally received Royal Assent on 12th May 2016 not one media organisation reported on it. The powers to access material held by private bodies finally came into effect in July 2017, enshrined in Section 18A.

Right wing agenda

Another issue which is relevant to the reform agenda is the subject of compensation for victims of miscarriages of justice. Recent statutory changes mean that it is now much more difficult for victims to access compensation:

> The government's amendment to section 133 of the Criminal Justice Act 1988 would redefine the compensation test for a miscarriage of justice, limiting it to 'if and only if the new or newly discovered fact shows beyond reasonable doubt that the person was innocent of the offence' (*The Guardian*, 2013).

Critics claimed that none of the Birmingham Six or Guildford Four would have been granted compensation under the government's reforms that aim to narrow the test for compensation. The test case for the new approach was Barry George. In January 2013 George, who had spent eight

years in prison after being wrongly convicted of the murder of TV presenter Jill Dando, applied for £500,000 in compensation. The High Court rejected his case, saying he was "not innocent enough to be compensated" (quoted in *The Independent*, 2013). Michael Turner QC, chairman of the Criminal Bar Association, was highly critical of the decision:

> What this is about is a change of the law making it harder for people who have suffered miscarriages of justice to get money out of the Government. It is about giving people in these cases the least amount of money and shutting down this stream of compensation. As far as Mr George is concerned this is not fair, because no one now thinks that he is guilty of this crime (quoted in *The Independent*, 2013).

The new rule has subsequently ensnared numerous miscarriage of justice victims. The two most high-profile, Sam Hallam and Victor Nealon (*R on app of Hallam & Nealon v SSJD* [2015] EWHC 1565), have sought to challenge rulings that refused to them compensation. While their campaign has had some coverage in *the Guardian* and *Independent*, the biggest selling (right wing) newspapers have either ignored the issue, or actively sought to undermine their claims. For example, *The Sun* claimed Nealon had been convicted for a similar offence previously:

EXCLUSIVE: FREED MAN'S CONVICTION, *The Sun,* December 21, 2013
Officials dramatically released him from jail last week when his attempted rape conviction was quashed after 17 years. The 53-year-old is to seek damages after new DNA evidence cast doubt on his conviction in Britain. But as he looks for UK compo, the Sun can reveal Nealon previously struck in Ireland.

The following day *the Sun* chose Nealon for their “Villain of the week” feature.

Previously, *the Sun* had highlighted what it called “crazy compo” by reporting on the £706,000 payout to Colin Stagg as an example of what was wrong with the system (before the reform of the Criminal Justice Act 1988).

> Many will be asking today whether the enormous sums given out in miscarriage of-justice cases should dwarf so spectacularly those for people left enduring a lifetime of physical and mental agony [victims of terrorist atrocities] (*The Sun*, 2008).

The Times, reacting to challenges to the reforms by campaigners like Nealon and Hallam declared:

Rules on compensation for wrongful conviction are fair, *The Times,* May 5, 2016

What the tightening of compensation regulations, along with the reaction to these reform, show is how dominant the right wing agenda has become. In the aftermath of cases like the Birmingham Six and Guildford Four cases, there were political apologies and substantial payouts. The compensation didn't come automatically, the victims had to apply for it, but it did eventually come and was largely welcomed by the press. Now the right wing press welcomed the fact that the exonerated are being excluded from compensation. The response from the left wing press has been largely muted. The fact that the issue was highlighted to the justice select committee only underlines the point:

> We have received some evidence highlighting the effects of both the existing provisions regarding the admissibility of fresh evidence to the Court of Appeal, which generally requires it not to have been available at trial, and of the requirements necessary for a victim of a miscarriage of justice to obtain compensation, under which the person must prove beyond reasonable doubt that they did not commit the offence. Both of these issues fall outside the terms of reference of this inquiry, but it has been drawn to our attention that there is widespread concern that they are having an unjust effect. There may therefore be some benefit in these being reviewed by our successor Committee in the next Parliament (House of Commons: Justice Committee, 2015. Criminal Cases Review Commission: Twelfth Report of Session 2014-15).

Disengagement with the criminal justice system

As has been discussed in Chapter 6, there has been a significant decrease in the coverage of the courts in recent years. The democratic and journalistic ramifications have been discussed but one issue that needs to be emphasized is the impact this disengagement will have miscarriage of justice investigations. There are two aspects to this issue. Firstly, the practical problem of the lack of court transcripts, and secondly the reform agenda.

Chapter 6 highlighted the growing shortage of court reporters. A shortage of court reporters means that there is a shortage of court reports in newspapers. The impact of this on miscarriage of justice investigations is only apparent when you understand the handling of court transcripts in the UK. In accordance with Ministry of Justice guidelines recordings of trials are routinely destroyed after seven years. These transcripts can be requested by the prisoner during these seven years but because

private companies control the court transcription market the expense of obtaining these records can be prohibitive, easily running into many thousands of pounds. And because the process of challenging a conviction is inherently very slow, it is often many years before the CCRC will make a request for trial transcripts. When it is discovered that the transcripts have been destroyed the only remaining record of the trial will be what the court reporter wrote in his or her shorthand notebook. But because of the disengagement with the criminal justice system that was highlighted in Chapter 6, there are fewer and fewer court reporters in existence. It is a problem that is widely recognized by individuals and organisations investigating miscarriages of justice. Emily Bolton, of the Centre for Criminal Appeals, made her objections clear:

> In the course of trying to identify who has been wrongfully convicted and who has not, we've been continually frustrated at the lack of transparency in the British justice system. It is a complete roadblock to investigating miscarriages of justice. What is the British system afraid of? It's a public trial, and there should be an accessible record of it (quoted in *the Guardian*, 2017)

In January 2017, Justice Gap Editor Jon Robins and I interviewed Dean Strang, the lawyer who represented *Making a Murderer's* Steven Avery. He found the policy of destroying transcripts difficult to understand.

> That the Ministry of Justice would destroy court transcripts at all, let alone after a period as short seven years, should deeply disturb all Britons. When you have lost the transcript of trial proceedings you have made it, if not impossible, then a damned sight harder for anyone to review the safety or reliability of that conviction. I find that unacceptably haphazard. There is no excuse for the courts to not store them forever, at least as long as the defendant is alive (Strang, 2017).

Those involved in supporting individuals who claim they have been wrongly convicted have combined to create a campaign to highlight the problem. The Open Justice Charter is supported by organisations including Innocence Projects across the UK, Inside Justice and the Centre For Criminal Appeals. These organisations have actively tried to engage with the media, inviting journalists to the launch of the charter in the House of Commons. But the press hasn't joined this campaign for reform, so far only one newspaper article has been written about the charter:

Destruction of court records 'hampers miscarriage of justice inquiries', *The Guardian*, 31 January 2017

This article only appeared online, it wasn't published in *the Guardian* paper. It seems clear that a media that is becoming disengaged with the criminal justice system will be much less likely to support a campaign that may appear too obscure, even if there are a myriad of well-placed figures calling for greater exposure of the issue.

7.4 Future research

While the methodological approach and the data in this study have provided an extensive and detailed analysis of miscarriages of justice and the media, a number of areas of further research on this topic remain:

An in-depth study looking into the number reporters attending magistrates and crown courts across England and Wales. This would involve actual quantitative data from a large sample of courts, supported by qualitative interviews with judges and editors.

An exploration of a possible collaboration between the media and the CCRC. While researching this thesis I have spoken to many senior figures in the media and in the CCRC and what became obvious was that each side showed real interest in cooperating but struggled to create a structure for such a partnership to flourish. For most of its existence the CCRC has been so eager to emphasise its independence that it finds it institutionally difficult to reach out to the media. For the press, what mounting a large scale investigation into a what miscarriage of justice entails has been lost from the collective memory. A study that set out a blueprint by which future collaborations could happen would be a very valuable project, benefiting investigative journalism, and the CCRC and most especially innocent people who have been wrongly imprisoned. This is something that David Jessel recognised when he said:

> The keys that unlock cases are to do with going out and talking to people, looking around and asking questions. And that's what journalism can do (Jessel, 2013).

Glossary of Terms

Holmes:	The Home Office Large Major Enquiry System is an IT system used by British police forces for major investigations.
Pace:	The Police and Criminal Evidence Act 1984 (PACE) was introduced to create a unified code of practice for the police. It covers core operational policing such as stop and search powers, along with procedures for the detention, treatment and questioning of people by the police.
Justice:	Justice is a law reform and human rights organization created in 1957. Under the early leadership of Tom Sargant the organization concentrated on miscarriages of justice. Sargant was also instrumental in the creation of the BBC's *Rough Justice* programme.
Innocence Project:	Innocence Projects (IP) began in America. The first IP was in Yeshiva University in New York in 1992. In 2004 the Innocence Network was established in the US. The purpose of the projects was to investigate potential miscarriages of justice. The model was transferred to the UK in the form of the Innocence Network UK (INUK) in 2005. This has since been disbanded, although individual projects such as the Cardiff Law School Innocence Project have continued.
CACD:	The Court of Appeal (Criminal Division) deals with the legal safety of criminal convictions.

BIBLIOGRAPHY

Adut, A. (2012) *A Theory of the Public Sphere*. *Sociological Theory,* 30(4), 238-262

Allen, R. (1999) *The moving pageant*. 1st ed. London: Routledge.

Altheide, D. (1996) *Qualitative Media Analysis* (Sage Publications London)

Alvares, C. and Dahlgren, P. (2016) *Populism, extremism and media: Mapping an uncertain terrain*, European Journal of Communication, 31(1), pp. 46–57.

Aspinall, A. (1945) *The Social Status of Journalists at the Beginning of the Nineteenth Century*, The Review of English Studies, 21(83), 216-232

Ayerst, D. (1971) *The Manchester Guardian*. 1st ed. Ithaca (N.Y.): Cornell University Press.

Baker, J.H., (2002) *An Introduction to the English Legal System* (Oxford University Press)

Banks, D. (2012) *Trial by Twitter*, The Guardian

Banks, D. (2010) *Court reporting is a dying art, and lawyers should be worried*, The Guardian. [online] Available at: https://www.theguardian.com/law/2010/oct/19/court-reporting-dying-art-lawyers [Accessed 7 Mar. 2017]

Barnett, S. (1992) *Ducking the issues,* Impact No. 5, pp 14, 17 (London: PACT)

Barthes, R. (1972) Mythologies (London: Cape)

BBC News. (2002). *Hanratty: The damning DNA*. Available: http://news.bbc.co.uk/1/hi/wales/1980731.stm. Last accessed 11th Nov2014.

BBC News. 2010. *Forensic Science Service to be wound up*. [ONLINE] Available at: http://www.bbc.co.uk/news/uk-11989225. [Accessed 12 May 2017].

Becker, H. (1967) *Whose side are we on?* (Social Problems, 14: 239-47)

Bell, A. (1991) *The Language of News Media (Language in Society)* Wiley-Blackwell

Bennetto, J. (1997). *Wrongly hanged: Hanratty is found innocent.* Available: http://www.independent.co.uk/news/wrongly-hanged-hanratty-is-found-innocent-1285402.html. Last accessed 11th Nov 2014.

Berelson, B. R. (1952) *Content analysis in communication research* (New York: Free Press)

Berlins, M. (2009) *Loss Of Court Reporters Is A Blow To Open Justice*, The Guardian

Bindman, J. (2013). *Eddie Gilfoyle: Miscarriage of justice: Jacob Bindman on the tragic suicide which inexplicably became a murder.* Socialist Lawyer*,* (65), 18-19

Black, J. (2001) *The English Press 1621-1861* (Sutton Publishing)

Blair, T. (2002). Tony Blair's speech on reforming the criminal justice system. The Guardian

Bloom, M. & Horgan, J. (2008) *Missing Their Mark: The IRA's Proxy Bomb Campaign*, Social Research, 75, 2, pp. 579-614

Bordon, D., Hillyard, P. & Pantazis, C. (1999) *Introduction to Zemia and Zemiology. Paper presented at the Zemiology Beyond Criminology conference Dartington, England* (February).

Bos L. and Brants K. (2014) *Populist rhetoric in politics and media: A longitudinal study of the Netherlands*, European Journal of Communication 29(6): 703–719

Bowcott, O. (2013) The Guardian. [ONLINE] Available at: http://www.theguardian.com/law/2013/oct/14/criminal-compensation-reforms-miscarriages-justice. [Accessed 07 January 16]

Brighton, P. and Foy, D. (2007) *News values*, London: Sage Publications.

Bromley, M. (2008) *Investigative Journalism and Scholarship*. In: de Burgh, H. (2008) *Investigative Journalism* (Routledge) 174-184

Bromley, M. (2005) *Subterfuge as public service: investigative journalism as idealized journalism*, In: S. Allan, *Journalism: Critical Issues*. Open University, 313-27

Brooke, H., (2012) *The Revolution Will be Digitised,* Windmill Books.

Campbell, D, (2015) *We'll All Be Murdered In Our Beds!: The Shocking History*, (Elliott & Thompson)

Campbell, D. (2017) *Rough Justice,* New Statesman, Volume 146, Issue 5355, 34- 38

Brown, L. (1985) *Victorian News and Newspapers*, (Oxford University Press)

Claims of Innocence (2009) *41 University of Toledo Law Review* [107, 144.]

Bryman, A. (1992). *Quantitative and Qualitative Research: Further Reflections on their Integration*, In J. Brannen (Ed.) *Mixing Methods: Qualitative and Quantitative Research*. Aldershot: Avebury.

Campbell, D. (2014). *Hacks in the dock*, New Statesman, (5220), 32-36

Carlson, M. (2016), *Metajournalistic Discourse and the Meanings of Journalism: Definitional Control, Boundary Work, and Legitimation*, Communication Theory, 26: 349–368.

Chibnall, S. (1977) *Law and Order News: Analysis of Crime Reporting in the British Press (Social Science Paperbacks)* (Law Book Co of Australasia)

Chouliaraki, L., & Fairclough, N. (1999). *Discourse in Late Modernity,* Edinburgh University Press.

Chouliaraki, L., & Fairclough, N. (2010) *Critical discourse analysis in organizational studies: Towards an integrationist methodology*, Journal of Management Studies, 47: 1213-18

Clark, K. (1992) *The linguistics of blame*, in M. Toolan (ed.) *Language, Text, and Context*, pp. 208-224, London: Routledge.

Cobbett, W. (1963) *Rural Rides* (English Library) (Penguin Classics)

Cohen, S., (2002) *Folk devils and moral panics: the creation of the Mods and Rockers* (London: Routledge)

Cohen, N. (2000) *Cruel Britannia*. London: Verso.

Cole, P. and Harcup, T. (2009) *Newspaper journalism*. Los Angeles, CA: SAGE Publications.

Conboy, M. (2010). *The language of the news*. 1st ed. Milton Park, Abington, Oxon: Routledge

Conlon, G. (1994) *Proved Innocent: The Story of Gerry Conlon of the Guildford Four* (Penguin Books)

Cranfield, J. (1978) *The Press and Society*. London: Longman

Criminal Case Review Commissions and Ministerial Post-Conviction Review [editorial]Criminal Law Quarterly, Vol. 58, Issue 2 (February 2012), pp. 135-13658 Crim. L.Q. 135 (2011-2012)

Criminal Cases Review Commission (2016) *Annual Report 2015/2016*

Criminal Cases Review Commission (2014) *Annual Report 2013/2014*

Critcher, C., (2003) *Moral Panics and the Media*. (Open University Press)

Curran, J. and Seaton, J. (1997). *Power without responsibility*. 1st ed. London: Routledge

Dahlgren, P. and Sparks, C. (1991) *Communication and Citizenship* (Routledge)

Daily Mirror. 2014. *Missing prostitute murder files found in police warehouse after tip-off from retired officer*. [ONLINE] Available at: http://www.mirror.co.uk/news/uk-news/lynette-white-prostitute-murder-missing-3244678. [Accessed 09 November 15].

Davies, C. (2016). *Mazher Mahmood: 'Fake Sheikh' jailed for 15 months*. The Guardian

Davies, N. (2008) *Flat Earth News* (Chatto & Windus, London)

Davies, N. (2017). *The decline of the court reporter*, [online] Nickdavies.net. Available at: http://www.nickdavies.net/1998/11/01/the-decline-of-the-court-reporter/ [Accessed 7 Mar. 2017]

Davis, R. (2010) *'ROUGH JUSTICE', Children & Young People Now* (Haymarket Business Publications Ltd), pp. 16-17

Davis, V. (2004) *Murder, we wrote,* British Journalism Review vol.15 no.1

Deazley, R., (2006). *Rethinking copyright: history, theory, language.* (Edward Elgar Publishing)

de Burgh, H. (2008) *Investigative Journalism* (Routledge)

Denscombe, M. (2003) *The Good Research Guide* (2nd Ed) (Buckingham: Open University Press)

Demont-Heinrich, C (2011) *Cultural Imperialism Versus Globalization of Culture: Riding the Structure-Agency Dialectic in Global Communication and Media Studies*, Sociology Compass, 5, 8, pp. 666-678

Devlin, Lord (1976) *Report to the Secretary of State for the Home Department of the Departmental Committee on Evidence of Identification in Criminal Cases* (Her Majesty's Stationery Office, printed 26th April 1976)

Dickens, C. (2015) *Hard Times* (CreateSpace Independent Publishing Platform)

Ditton, J., & Duffy, J. (1983). *BIAS IN THE NEWSPAPER REPORTING OF CRIME NEWS*, The British Journal of Criminology*, 23*(2), 159-165

Dockray, M. (1988). *Courts on Television*, The Modern Law Review*,* 51(5), 593-604

Doig, A. (1997) *The decline of investigatory journalism*. In M. Bromley and T. O' Malley (eds) *A Journalism Reader*. London: Routledge

Doyle, A.C. (2009) *The cases of Edalji and Slater* (Newcastle: CSP Classic Texts)

Drohan, M. *(2016) Spotlight and Investigative Journalism: How the Film Reinforces the Essential Role of a Free, Professional Press in a Democracy.* Serials Librarian, **Volume** 71, **Issue** 3/4, 212, 221

Duff, P., (2009) *Straddling Two Worlds: Reflections of a Retired Criminal Cases Review Commissioner*, (MODERN LAW REVIEW, 2009 VOL 72, NUMB 5, 693-722)

Earle, P. (1963) *Enter the blackmail syndicate*, News of the world, 23 June 1963

Elks, L. (2008) *Righting Miscarriages of Justice? Ten years of the Criminal Cases Review Commission* (Justice)

ELLIS, Carolyn; ADAMS, Tony E.; BOCHNER, Arthur P. (2010) *Autoethnography: An Overview.* Forum Qualitative Sozialforschung / Forum: Qualitative Social Research, [S.l.], v. 12, n. 1, nov. 2010. ISSN 1438-5627. Available at: <http://www.qualitative-research.net/index.php/fqs/article/view/1589/3095>. Date accessed: 02 nov. 2016.

Emsley, C. (2010) *Crime and Society in England: 1750, 1900 (Themes In British Social History)* (Routledge)

Emsley, C. (2011) *Crime and Society in Twentieth Century England* (Routledge)

Ericson, R. (1991) The British Journal of Criminology. [ONLINE] Available at: http://bjc.oxfordjournals.org/content/31/3/219.full.pdf. [Accessed 08 January 16].

Ericson, R.V., Baranek, P.M. and Chan, J.B.L. (2011) *Negotiating control: A study of news sources*. (University of Toronto Press)

Evans, H. (2000) *Essential English: For journalists, editors and writers*, London: Pimlico

Evans, H. (1983) *Good Times, Bad Times*, London: Weidenfeld and Nicolson.

Fairclough, N. (1989) *Language and Power*. London: Longman.

Fairclough, N. (1992) *Discourse and Social Change*, Cambridge: Polity Press.

Fairclough, N. (1995) *Critical Discourse Analysis: The Critical Study of Language*, London: Longman.

Fairclough, N. (2003). *Analysing Discourse: Textual analysis for social research*, London: Routledge.

Fairclough, N. (2016) *Critical discourse analysis as a method in social scientific research*. In: Wodak, R. and Meyer, M. *Methods of critical discourse analysis*. 1st ed. Los Angeles [et al.]: Sage.

Faulkner, D. (1991) *Continuity and Change in the Home Office* [Online] [Accessed 18th August, 2015] Available: http://www.watersidepress.co.uk/acatalog/CCHO_paper.pdf

Feldstein, Mark (2017) *Democracy's Detectives: The Economics of Investigative Journalism***.** Journal of Communication, Volume 67, Issue 2, E7-3

Fenton, N. (2010) *New Media, Old News*, (Sage)

Field, S. and Eady, D. (2017) *Truth-finding and the Adversarial Tradition: The Experience of the Cardiff Law School Innocence Project*, Criminal Law Review, 2017 (1). pp. 292-306

Fishman, M., (1980) *Manufacturing the News* (Austin: University of Texas Press)

Flanders, J. (2011) *The Invention of Murder: How the Victorians Revelled in Death and Detection and Created Modern Crime* (Harper)

Flick, U., (2015) *Introducing Research Methodology* (SAGE Publications, London)

Foot, P. (1999) *The slow death of investigative journalism*. In: Glover, S. *The Penguin Book of Journalism: Secrets of the Press.* London: Penguin, 79-89

Former Boys And Girls Abused of Quarriers Homes. 2015. FBGA. [ONLINE] Available at: http://fbga.redguitars.co.uk/historicalAbuseConferencePaperByJohn%20Weeden16_02_09.pdf. [Accessed 07 January 16].

Foster, R. (2014) CCRC Stakeholders Conference in November

Foster, R. (2016). *Asylum laws.* The Daily Telegraph.

Frankel, G. (1989). British Court Overturns Convictions in IRA Case. *The Washington Post*. [online] Available at: http://www.washingtonpost.com/wp-srv/inatl/longterm/nireland/stories/timeline891020.htm [Accessed 24 Mar. 2017].

Gibb, F. (1991) *Criminal Justice system under scrutiny again, Royal Commission,* The Times (London), March 15

Gibson, J. (1999). *And now the bad news for Martyn Lewis*, The Guardian

Giles, R. (2010) *An Emergent Neo-journalism: The Decline and Renewal of News Media,* Harvard International Review 32.3 (2010): 36–40

Gilligan, A. (2016). *Revealed: Government body helps asylum seekers quash convictions for illegal entry to Britain,* The Daily Telegraph

Glater, JD (2016) *When a Reporter Enters a Bamboo Grove: Reflections on Serial.* Ohio State Journal Of Criminal Law, 13, 2, pp. 503-520

Gomm, R., Hammersley, M., & Foster, P., (2000) *Case Study Method: Key Issues, Key Texts*. (SAGE Publications Ltd)

Green, D. (1983) *Great Cobbett*. London: Hodder and Stoughton

Greenwald, M. And Bernt, J (eds) (2000) *The Big Chill: Investigative Reporting in the Current Media Environment*. Ames: Iowa State University Press

Greer, C., and McLaughlin, E., (2012) *This is not justice: Ian Tomlinson, institutional failure and the press politics of outrage*, (British Journal of Criminology 2012, 52(2), 274-293)

Greer, C. (2009) *Crime and Media: A Reader* (Routledge Student Readers)

Greer, C. (2003) *Sex crime and the media: press representations in Northern Ireland*. In: Mason, P., (2003) *Criminal Visions* (Willan Publishing, 2003)

Grey, T. (2016) *Julian Barnes Composes a Shostakovich Novel*, Wall Street Journal, Online Edition, 6 May

Griffin, L. *'Correcting Injustice: Studying How the United Kingdom* and (United States Review)

Griffith, J.A.G., (1997) *The Politics of the Judiciary* (Fontana Press)

Griffiths, D (ed) (1992) *The Encyclopedia of the British Press, 1492-1992*. London: Macmillian

The Guardian (2009) *Judge upholds journalist Suzanne Breen's right to withhold IRA details.* [ONLINE] Available at: http://www.theguardian.com/media/2009/jun/18/suzanne-breen-ira. [Accessed 22 March 2016]

The Guardian. 2017. *Scores of convictions in doubt amid forensic test manipulation claims*. [ONLINE] Available at: https://www.theguardian.com/uk-news/2017/may/09/6000-forensic-samples-re-examined-in-inquiry-into-manchester-lab. [Accessed 12 May 2017].

Habermas, J. (1989) *The Structural Transformation of the Public Sphere*, T. Burger and F. Lawrence (trans.) Cambridge, MA: MIT Press [German, 1962]

Hale, D, 2002. *Town without pity*. (London: Century)

Hall, S., Clarke, J., Critcher, C., Jefferson, T., & Roberts, B. (1978) *Policing the Crisis* (London: Macmillan)

Haltom, W., (1998) *Reporting the Courts: How the Mass Media Cover Judicial Actions* (Chicago: Nelson Hall)

Hamer, D. (2014) *Wrongful Convictions, Appeals, and the Finality Principle: The Need for a Criminal Cases Review Commission* [article] University of New South Wales Law Journal, Vol. 37, Issue 1 pp. 270-311

Hankinson, A. (1983). *Man of wars, William Howard Russell of The Times*, London: Heinemann

Hanna, M. (2005) *Investigative Journalism*, In: Franklin, B., Hamer, M., Hanna, M., Kinsey, M., and Richardson, J.E., *Key Concepts in Journalism Studies*. London: Sage, 122-4

Hanna, M., (2012) *Irreconcilable Differences: The Attempts to Increase Media Coverage of Family Courts in England and Wales*, Journal of Media Law, 4:2, 274-301

Harding, A. (1973) *The Law Courts of Medieval England* (Alden & Mowbray Ltd, Oxford)

Harding, S. (1987) *Feminism and Methodology* (Bloomington: Indiana University Press)

Harris, B. (1996) *Politics and the Rise of the Press*. London: Routledge

Harris, R., (2010) *The Man on Devil's Island, Alfred Dreyfus and the Affair that divided France* (Allen Lane)

Harrison, J. (2005) *News*. New York: Taylor & Francis.

Haxton, N. (2002) *The death of investigative journalism*, In Tanner, S. *Journalism: Investigation and Research*. Frenchs Forest, NSW: Longman, 20-36

Heaton, S. (2014) *'FINALITY OR FAIRNESS?',* Cambridge Law Journal, 73, 3, pp. 477-480

Heidegger, M. (1951, 2000). *Bauen, wohnen, denken. On Bauen und Wohnen = Building and dwelling: Martin Heidegger's foundation of a phenomenology of architecture*, Münster: Waxmann.

Heidensohn, F., (1989) *Crime and Society* (MacMillian Education, 1989)

Henry, F., & Tator, C. (2002). *Discourse of domination: Racial bias in the Canadian English-language press*. Toronto: University of Toronto Press.

Herbert, J.D. (1999) *Journalism in the digital age: Theory and practice for broadcast, print and on-line media*. Oxford: Elsevier Science.

Higgins-Dobney, C., and Sussman, G., (2013) *The growth of TV news, the demise of the journalism profession. Media, Culture & Society*. Vol 35, Issue 7, pp. 847, 863

HL Deb (1974) *The case of Mr Luke Dougherty*, Available at: http://hansard.millbanksystems.com/lords/1974/mar/27/the-case-of-mr-luke-dougherty [Accessed 2nd May 2017]

Hill, P. (2012). *The Criminal Case Unit of the C3 Division of the Home Office*. Rough Justice TV.

Holsti, O. R. (1969) *Content analysis for social sciences and humanities* (Reading, MA: Addison-Wesley)

Home Affairs Committee of the House of Commons (1982) *Miscarriages of Justice* (– h c 421)

Horrie, C. (2008) *Investigative Journalism and English Law*. In: de Burgh, H. (2008) *Investigative Journalism* (Routledge) 114-122

Horrie, C. and Nathan, A. (1999). *Live TV*, London: Simon & Schuster.

Hough, Michael, Jessica Jacobson, and Andrew Millie. (2003) *The Decision to Imprison: Sentencing and the Prison Population*. London: Prison Reform Trust

House of Commons, Justice Committee (10 March 2009) *The work of the Criminal Cases Review Commission: Oral and written evidence* (The Stationery Office Ltd, London)

House of Commons , Justice Committee, 2015. *Criminal Cases Review Commission. Twelfth Report of Session*, 2014-15, 1

House of Lords, Select Committee on Communications (2012), *The future of investigative journalism*, 3rd Report of Session 2010-12

Hume, D. (1748) *An Enquiry Concerning Human Understanding*

Izadi, F., and Saghaye-Biria, H. (2007) *A Discourse Analysis of Elite American Newspaper Editorials,* Journal of Communication Inquiry Volume 31 Number 2 April 2007 140-165

Jackson, A. (2014) *Post-conviction Disclosure and the Duty of the State*, Journal Of Criminal Law, 78, 5, pp. 383-386

Jennings, A. (2012) *Journalists? They're media masseurs,* British Journalism Review, Vol. 23, No. 2, 2012, pages 25-31

Jessel, D. (2012) Investigative journalist [interview by B. Thornton] 14 October 2013

Jessel, D. (2012) *Time to reconnect*. In: Robins, J. *Wrongly accused: Who is responsible for investigating miscarriages of justice?* (The Justice Gap) 17- 20

Justice (1989) *Miscarriages of Justice: A report by Justice* (E & E Plumridge Ltd of Linton, Cambridge, England)

Justice (2015) Justice. [ONLINE] Available at: http://justice.org.uk/about-us/history-achievements/. [Accessed 09 October 15]

Keating, P. (1991) *The Haunted Study* (London: Fontana)

Kee, R., (1986) *Trial and Error: The Maguires, the Guildford Pub Bombings and British Justice* (Penguin Books)

Kennedy, L. (1991) *Truth to Tell: Collected Writings of Ludovic Kennedy*. London: Bantam Books

Kenno, S., McCracken, S., & Salterio, S, (2017) *Financial Reporting Interview-Based Research: A Field Research Primer with an Illustrative Example*, Behavioral Research In Accounting, 29, 1, pp. 77-102

King, N & Horrocks, C. (2010) *Interviews in Qualitative Research* (Sage Publications 2010)

King, R. & Wincup, E. (2008) *Doing Research on Crime and Justice* (Oxford University Press)

Kirk, D., (2009) *Round up the usual suspects*, (J. Crim. L. 2009, 73(2), 115-117)

Kipperman, M. (2012). *Rethinking Regency Literature: The Case of William Cobbett*. Keats-Shelley Journal, 61, 82-89

Kopple, J. (2016) *Ten Days a Madwoman: The Daring Life and Turbulent Times of the Original "Girl" Reporter Nellie Bly*, School Library Journal. Volume 62, Issue 12, 74

Krajicek, D. (1998) *Scooped: Media Miss Real Story on Crime While Chasing Sex, Sleaze and Celebrities*, New York: Columbia University Press

Krippendorff, K. (1980) *Content analysis: An introduction to its methodology* (Thousand Oaks, CA: Sage)

Kvale, S. (1996) *Interviews: An Introduction to Qualitative Research Interviewing* (Sage Publications)

Langer, J. (1998) *Tabloid Television*. London: Routledge

Latour, B. (1993) *We have never been modern* (Cambridge, MA: Harvard University Press)

Leapman, M. (1992*) Treacherous Estate*. London: Hodder and Stoughton

Leigh D. (2000) *British Journalism Review*, 2000; VOL 11, PART 1 ; Page(s): 71-73

Leigh, D. and Vulliamy, E. (1997) *Sleaze: The Corruption of Parliament*. London: Fourth Estate

Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report [Leveson] (House of Commons Papers)*. (TSO)

Linebaugh, P. (1997) *The Ordinary of Newgate and his Account*, in Cockburn, J. S. (ed.) *Crime in England 1550-1800* (London: Meuthen)

Loader, I. (1997) *Policing and the Social: Questions of Symbolic Power,* British Journal of Sociology, 48(1), March 1-18

Lockyer, S., (2006) *A Two-Pronged Attack?* (Journalism Studies, Vol. 7, Iss. 5, 2006)

Logan, A., (1993) *A sewer runs through it* (London Review of Books, Vol 15, No 21)

Lord, E. (2010) *Hell-Fire clubs : sex, satanism and secret societies,* Yale University Press

Lord Judge, Lord Chief Justice of England and Wales, *The judiciary and the media* (London: Judiciary of England and Wales and Tribunal Judiciary, 2011) available at: http://www.bfhu.org/images/download/lcj-speech-judiciary-and-the-media.pdf (accessed 4th August 2016)

Lord Neuberger (2011) *Open justice unbound?* Judicial Studies Board Annual Lecture

Lord Neuberger (2014) *The Judicial Committee of the Privy Council in the 21st Century*, Cambridge Journal of International and Comparative Law, **Volume** 3, **Issue** 1, 30-36

Lynch, L. (2010) *We're going to crack the world open:* http://www.tandfonline.com/doi/abs/10.1080/17512781003640752*Journalism Practice,* Vol. 4, Iss. 3, 2010

Macintyre, D. & Sage, A. (1993) *'Runciman shies from sweeping changes'* The Independent on Sunday (London), July 4

Macintyre, D. (1993). *Accused must reveal defence, says report*. The Independent

Manning, P., (2001) *News and News Sources: A Critical Introduction* (2001, Sage Publications)

Manning, P., (1999) *Media Culture Society* vol 21 (3)313-337

Manning, P, & Cullum-Swan, B. (1994) *Narrative, content and semiotic analysis*. In N. K. Denzin & Y. S. Lincoln (Eds) *Handbook of qualitative research* (pp 463-484) (Newbury Park, CA: Sage)

Mansfield, M. (1993) *Presumed Guilty: British Legal System Exposed* (Heinemann)

Marks, O. (2017). *A Day in the Life of One of the UK's Last Stubborn Court Reporters, VICE*. [online] Vice. Available at: https://www.vice.com/en_us/article/court-news-uk-courtroom-reporting [Accessed 7 Mar. 2017]

Marr, A. (2005) *My trade*, London: Pan books

Mason, P. (2003) *Criminal Visions* (Willan Publishing, 2003)

May, P. (2012) *Triennial Review of the Criminal Cases Review Commission Response by Paul May to Ministry of Justice*. Available: http://thejusticegap.com/wp-content/uploads/2012/12/CCRC-review-response-Paul-May.pdf. Last accessed 6th Nov 2015

Mawby, R.C. (2002) *Policing images: Policing, communication and legitimacy*. Portland, Or: Willan Publishing

Mcnair, B., (1998) *The Sociology of Journalism*, (London: Arnold)

Miller J. and Glassner B. (2011) *The 'inside' and the 'outside': finding realities in interviews*. In: Silverman, D., *Qualitative Research* (Sage Publications)

Milmo, C. (2013) *Eight years in prison, but Barry George is refused compensation, High Court rejects claim for £500,000 as judges set new benchmark for miscarriages of justice*, *Independent,* 25 Jan

Miscarriages of justice: sixth report from the Home Affairs Committee, Session 1981-82, London: HMSO

Moore, S. (2014) *Crime and the Media* (Palgrave Macmillan)

Moran, L. J. (2014) *Mass-mediated 'open justice': court and judicial reports in the Press in England and Wales,* Legal Studies (Soc Leg Scholars), 34: 143–166

Morrell, J., (1999) *No Smoke Without Fire*, (out of print but online version available from United Against Injustice)

McCombs, M. E. (1972) *Mass media in the marketplace* (Journalism Monographs, 24)

McCartney, C. and Roberts, S. (2012) *Building institutions to address miscarriages of justice in England and Wales: "mission accomplished"?* University of Cincinnati Law Review, 80 (4). Art 13

McConville M., Bridges L., (1994) *Criminal Justice in Crisis* (Edward Elgar Publishing Ltd.)

McConville, M., & Wilson, G., (2002) *The Criminal Justice Process* (Oxford University Press)

McConville, M, & Mirsky, C, 1993*). Balancing acts and constitutionalism.* New Law Journal. September (1), 1579-1583

McQuail, D. (2000) *Mass Communication Theory*, SAGE Publications Ltd

Mulcahy, L. (2011) *Legal Architecture: Justice, Due Process and the Place of Law* (Abingdon: Routledge)

Mullin, C., (1990) *Error of Judgment* (Poolbeg, 1990)

Murphy, D. (1991) *The Stalker Affair and the Press*, (London: Unwin Hyman)

Naughton, M. (2007) *Rethinking Miscarriages of Justice* (Palgrave, Macmillian 2007)

Naughton, M. (2010) *Claims of Innocence* (University of Bristol)

Naughton, M. (2009) *The Criminal Cases Review Commission: Hope for the Innocent* (Palgrave Macmillan)

Naughton, M. (2014) *Comments on the work of the CCRC*. [ONLINE] Available at: http://www.parliament.uk/documents/commons-committees/Justice/02%20A%20Michael%20Naughton%20letter.pdf. [Accessed 10 November 15]

Nctj.com. (2017). *Reporting restrictions tackled by new edition of McNae*. [online] Available at: http://www.nctj.com/latestnews/ReportingrestrictionstackledbyneweditionofMcNae [Accessed 7 Mar. 2017]

Newburn, T. (2007) *Tough on Crime: Penal Policy in England and Wales*, Crime and Justice, 36(1), 425-470

Newsbank. 2016. LOGICAL (BOOLEAN) SEARCH OPERATORS. [ONLINE] Available at: http://infoweb.newsbank.com.winchester.idm.oclc.org/iw-search/we/InfoWeb/?p_product=UKNB&p_action=main&p_theme=help&f_id=logical_operators. [Accessed 06 January 16]

Nobles, R. and Schiff D. (2000) *Understanding Miscarriages of Justice* (Oxford University Press, 2000)

Nobles, R., & Schiff, D. (2001). *The Criminal Cases Review Commission: Reporting Success?* The Modern Law Review, 64(2), 280-299.

Nobles, R., & Schiff, D. (1995). *Miscarriages of Justice: A Systems Approach*. The Modern Law Review, 58(3), 299-320.

O'Brien, M., (2008) *The Death of Justice: Guilty Until Proven Innocent* (Y Lolfa)

O'Donnell, J.D. (1990) *Wordgloss: Words and concepts you need to know, where they come from, what they mean*, Dublin: Institute of Public Administration

Oktar, L. (2001) *The ideological organization of representational processes in the presentation of us and them*, Discourse & Society, *12*(3), 313-346

Oldham, J. (2011) *FROM THE TWELVE JUDGES TO THE COURT FOR CROWN CASES RESERVED: Informal Lawmaking in England by the Twelve Judges in the Late Eighteenth and Early Nineteenth Centuries*, Law and History Review, vol. 29, p. 181

Oputu, E. (2014) *Passing the stunt journalism torch to a new generation*. Columbia Journalism Review Volume 52, Issue 7, 15

Outhwaite, W. (1994) *Habermas: A Critical Introduction* (Polity Press)

Packer, H. (1968) *The Limits of the Criminal Sanction* (Stanford University Press)

Parliamentary Debates, HC vol 164, col 666 (21 Dec, 1989, Weekly Hansard)

Paroissien, D., (2015) *William Cobbett, the Press and Rural England: Radicalism and the Fourth Estate, 1792–1835 by James Grande (review)*. Dickens Quarterly, Volume 32, Issue 2, 165-168

Peirce, G. (2012) *Justice Gap debate on miscarriages of justice at College of Law*

Peters, J.D., (1993) *Distrust of representation: Habermas on the public sphere* (Media Culture Society, 15: 541-71)

Pattenden, R. (1994) *English Criminal Appeals 1844-1994: Appeals Against Conviction and Sentence in England and Wales (Oxford Monographs on Criminal Law and Justice)*. (Oxford University Press)

Patterson, L.R., and Lindberg, S.W. (1991) *The Nature of Copyright: The Law of User's Right*s, University of Georgia Press

Pilger, J. (2005) *Tell Me No Lies: Investigative Journalism and its Triumphs* (Vintage, 2005)

Poyser, S. (2012) *Calling for renewed media interest*, In: Robins, J. *Wrongly accused: Who is responsible for investigating miscarriages of justice?* (The Justice Gap) 46-50

Queen, F. (2007) *Law for Journalists* (Longman)

Quirk, H. (2007) *Identifying Miscarriages of Justice: Why Innocence in the UK Is Not the Answer*, The Modern Law Review, 5, p. 759

R (on the application of Nunn) (Appellant) v Chief Constable of Suffolk Constabulary [2014] UKSC 37 (The Supreme Court).

Ramanathan, R. & Tan Bee, H. (2015) *Application of Critical Discourse Analysis in Media Discourse Studies*, 3L: Southeast Asian Journal Of English Language Studies, 21, 3, pp. 57-68

Ramsay, G. and Moore, M. (2017). *Monopolising local news*. [online] King's College London. Available at: https://www.kcl.ac.uk/sspp/policy-institute/CMCP/local-news.pdf [Accessed 7 Mar. 2017]

Reeves, A. and de Vries, R. (2016) *Does media coverage influence public attitudes towards welfare recipients? The impact of the 2011 English riots,* The British Journal of Sociology, 67: 281–306

Reiner, R., (2003) *Policing and the Media,* in T. Newburn (ed.), *Handbook of Policing*, 259–82, Cullompton, Devon: Willan

Reisigl M. and Wodak, R. (2001) *Discourse and Discrimination: Rhetorics of Racism and Anti-Semitism*. London: Routledge

Richardson, J.E. (2007) *Analysing newspapers: An approach from critical discourse analysis*. 2nd edn. London: Palgrave Macmillan.

Riffe, D. (2005) *Analyzing Media Messages: Using Quantitative Content Analysis in Research* (Lea Communication Series) (Routledge)

Roberts, S. (2009) *Assisting the factually innocent: the contradictions and compatibility of innocence projects and the Criminal Cases Review Commission* (Oxford Journal of Legal Studies, 2009, 29(1), 43-70)

Roberts S. and Weathered, L. (2009) *The Contradictions and Compatibility of Innocence Projects and*

the Criminal Cases Review Commission (OXFORD J. LEGAL STUDIES)

Robins, J. (2012) The Guardian. [ONLINE] Available at: http://www.theguardian.com/law/2012/may/15/miscarriages-justice-susan-may. [Accessed 02 December 15].

Robins, J. (2014) The JusticeGap. [ONLINE] Available at: http://thejusticegap.com/2014/07/cash-strapped-ccrc-predicts-lengthening-queues-miscarriages-left-unaddressed/. [Accessed 07 January 16].

Robins, J. (2014) The JusticeGap. [ONLINE] Available at: http://thejusticegap.com/2014/01/ccrc-austerity-came-early-us/. [Accessed 07 January 16].

Robins, J. (2014) The JusticeGap. [ONLINE] Available at: http://thejusticegap.com/2015/01/problem-lies-court-appeal-always/. [Accessed 07 January 16].

Robins, J. (2013) The JusticeGap. [ONLINE] Available at: http://thejusticegap.com/2013/11/compensation-cut-loss-cant-remedied/. [Accessed 07 January 16].

Robins, J. (2015) The JusticeGap. [ONLINE] Available at: http://thejusticegap.com/2015/03/green-light-miscarriage-justice-compensation-test-case/. [Accessed 07 January 16].

Robins, J. (2015) The JusticeGap. [ONLINE] Available at: http://thejusticegap.com/2015/01/problem-lies-court-appeal-always/ [Accessed 07 January 16].

Robins, J. (2015) The Independent. [ONLINE] Available at: http://www.independent.co.uk/news/uk/crime/sam-hallam-the-man-who-spent-over-seven-years-in-jail-for-a-murder-he-did-not-commit-10238824.html. [Accessed 07 January 16].

Robins, J. (2015) The Independent on Sunday. [ONLINE] Available at: http://www.independent.co.uk/news/uk/home-news/wrongly-convicted-men-launch-new-case-against-the-justice-secretary-9985773.html. [Accessed 07 January 16].

Robins, J, (2012) *Wrongly accused: Who is responsible for investigating miscarriages of justice?* (The Justice Gap)

Robins, J. (2014) *The First Miscarriage of Justice: The 'Unreported and Amazing' Case of Tony Stock* (Waterside Press: Winchester)

Robins, J. (2017) *Losing its appeal? 20 years of the CCRC*. The Justice Gap

Robinson, W. (2013). *Muckraker*, Robson Press

Robinson, D. (2013) Speech to INUK Conference

Rolston, B., (1990) *Justice*, The Linen Hall Review, Vol. 7, No. 3/4 (Winter, 1990), pp. 24-28

Rose, D., (1996) *In The Name Of The Law* (Vintage)

Rough Justice TV (2009) [Online] [Accessed 18th August 2014] Available:

http://www.roughjusticetv.co.uk/st20.htm

Rozenberg, J. (2017) *Why newspapers lack interest in court reporting*. [online] Law Society Gazette. Available at: https://www.lawgazette.co.uk/analysis/why-newspapers-lack-interest-in-court-reporting-/53266.article [Accessed 7 Mar. 2017]

Rubin, H & Rubin I. (1995) *Qualitative Interviewing, The art of hearing data* (Sage Publications)

Runciman, G. (2013) Chairman of Royal Commission on Criminal Justice [interview by B. Thornton] 21 May 2013

Sargant, T. (1985) In *More Rough Justice*, Hill, P., Young, M. and Sargant, T. London: Penguin

Sato, M., Hoyle, C. and Speechley, N.-E. (2017) *Wrongful convictions of refugees and asylum seekers: responses by the Criminal Cases Review Commission.* Criminal Law Review, 2017 (2). pp. 106-122

Schlesinger, P. and Tumber, H. (1995). *Reporting crime*. 1st ed. Oxford: Clarendon Press

Schlesinger, P. (1994) *Reporting Crime: The Media Politics of Criminal Justice (*Clarendon Studies in Criminology*)*. Oxford University Press

Schlesinger, P., (1978) *Putting 'reality' together* (Constable, London, 1978)

Schreier, M. (2013). *Qualitative content analysis in practice*, London: Sage

Schultz, J. (1998) *Reviving the Fourth Estate: democracy, accountability and the media*, (Cambridge University Press)

Sharman, D. (2017) *'What is the point of local newspapers?' says court news agency chief*. [online] HoldTheFrontPage. Available at: http://www.holdthefrontpage.co.uk/2016/news/court-news-chief-questions-point-of-local-papers-which-dont-cover-case/ [Accessed 7 Mar. 2017]

Sheets, P., Bos, L., Hajo G. (2015) *Media Cues and Citizen Support for Right-Wing Populist Parties.* Int J Public Opin Res 2015; 28 (3): 307-330

Sheridan, M. (2000) *A letter to Veronica*, Dublin: Poolbeg.

Silverman, D. (2014) *Interpreting Qualitative Data* (Sage Publications)

Silverman, D. (2011) *Qualitative Research* (Sage Publications)

Silverman, D. (2009) *Doing Qualitative Research* (SAGE Publications Ltd)

Snoddy, R. (1993) *The Good, the Bad and the Unacceptable: Hard News About the British Press*, (Faber and Faber)

Sparks, C. & Tulloch, J. (2000) *Tabloid Tales: global debates over media standards*, (Rowman & Littlefield Publishers)

Spark, D. (1999) *Investigative Reporting: A study in technique* (Focal Press, 1999)

Strang (2017) Steven Avery's legal representation [interview by Brian Thornton] 31 January 2017

Starks, H. & Brown Trinidad, S. (2007) *Choose Your Method: A Comparison of Phenomenology, Discourse Analysis, and Grounded Theory*. Qualitative Health Research, Volume 17 Number 10

December 2007 1372-1380
Starosta, W.J. (1984) *Qualitative content analysis: A Burkean perspective*. In W. B. Gudykunst & Y. Y. Kim (Eds.) *Methods for intercultural communication* (pp 185-194) (Beverly Hills, CA: Sage)
Stephens, M. (2006) *A History of News* (Oxford University Press)

Stepniak, D. (2003) *British Justice: Not suitable for public viewing?* In: Mason, P., (2003) *Criminal Visions* (Willan Publishing, 2003)
Stevenson, K., (2012), *Case Comment "It is what "girls of indifferent character" do..." Complications concerning the legal age of consent in the light of R. v C* (2011) (Journal of Criminal Law, 2012, 76(2), 130-139)
Stevens, R., (1993) *The Independence of the Judiciary* (Oxford University Press)
Stouffer, S. A. (1977) *Some observations on study design*. In D. C. Miller (Ed) *Handbook of research design and social measurement* (3rd ed, pp 27-31) (New York: McKay)
Sykes, M. (1985). *Discrimination in discourse*, in T. A. van Dijk (Ed.), *Handbook of discourse analysis* (Vol. 4, pp. 83-101). Amsterdam: University of Amsterdam Press.
Taylor, SJ. (1996) *The Great Outsiders* (Weidenfeld and Nicolson)
Tam, Lisa (2016) *Global public relations and the crisis of unethical journalism in the United Kingdom*. Romanian Journal of Sociological Studies, 2016(1), pp. 29-42
Teubner G., Nobles R., and Schiff D. (2002) *'The Autonomy of Law: An Introduction to Legal Autopoiesis'* in J Penner, D Schiff and R Nobles (eds), *Jurisprudence & Legal Theory* (Butterworths, London 2002)
The Royal Commission on Criminal Justice, 1993, London: HMSO
Thomas, P. (1996) *John Wilkes: a friend to liberty* (Oxford : Oxford University Press)
Thornton, B. (2013) *The Guardian: Miscarriages of justice body to receive increased funds after applications rise*. [ONLINE] Available at: http://www.theguardian.com/law/2013/jul/03/miscarriages-of-justice-ccrc-funding. [Accessed 09 October 15]
Thussu, D & Freedman, D (2003) *War and the Media: Reporting Conflict 24/7*. (SAGE Publications Ltd)
Titscher, S., Meyer, M., Wodak, R. & Vetter, E. (2000) *Methods of Text and Discourse Analysis*. London: Sage
Tomalin, C. (2012). *Charles Dickens*, London: Penguin
Tompkinson, M. (1982*) The Pornbrokers*. London: Virgin

Tumanov, D., Sakhapov, R., Faizrahmanov, D., & Safin, R. (2016) *The Origin of a Jury in Ancient Greece and England*, International Journal Of Environmental & Science Education, 11, pp. 4154-4163

Tumber, H. (2000) *News: A Reader*, Oxford Readers in Media and Communications Series, (Oxford University Press)

Tunstall, J. (1971a) *Journalists at Work* (London: Constable)

Van Dijk, T. (2011) *Discourse studies*, London: SAGE

Vasterman, P. (2005) *Media-Hype: Self-Reinforcing News Waves, Journalistic Standards and the Construction of Social Problems*, European journal of communication Volume: 20 Issue 4

Walker, C. & Starmer, K. (1993*) Justice in Error* (Blackstone Press)

Walker, C. (2002) *Miscarriages of Justice: An inside job?* Centre for Criminal Justice Studies, University of Leeds

Waller, G, (1989) *Miscarriages of Justice*, (London: Justice)

Weber, M. (1922) *Economy and Society* (University of California Press)

Weber, R. P. (1990) *Basic content analysis* (2nd ed) (Newbury Park, CA: Sage)

Weeden, J. (2009) Speech at Garden Court North Chambers in Manchester

Weeden, J. (2012) *Criminal Cases Review Commission* (CCRC) of England, Wales and Northern Ireland, The [article] Criminal Law Quarterly, Vol. 58, Issue 2 (February 2012), pp. 191-206

West, R. (1998) *The life & strange surprising adventures of Daniel Defoe*, London: Flamingo

Wetherell, M. and Potter, J. (1992) *Mapping the language of racism: Discourse and the legitimation of explotation.* Hempsted: Harvester Wheatsheaf

Williams, F. (1957) *Dangerous Estate*. London: Longman

Williams, K. (1997) *Get me a murder a day!: The history of mass communication in Britain*. New York: Distributed exclusively in the USA by St. Martin's Press.

Wimmer, R. D, & Dominick, J. R. (1991) *Mass media research: An Introduction* (7th ed) (Belmont, CA: Wadsworth)

Wimmer, R. D, & Dominick, J. R. (2003) *Mass media research: An Introduction* (7th ed) (Belmont, CA: Wadsworth)

Wodak, R. and Meyer, M. (2016) *Methods of critical discourse studies*. 1st ed. Los Angeles, CA: SAGE.

Wodak, R. and Meyer, M. (2007) *Methods of critical discourse analysis*, Los Angeles [et al.]: Sage

Wolfe, T. (1975) *The New Journalism*, (London: Pan)

Woffinden, B. (2015) *Institutionalising miscarriages of justice. Justice in a time of Moral Panic*, 1, 68, 71

Woffinden, B. (1999) *Error of judgment*, The Guardian

Wykes, M. (2000) *News, crime, and culture*, London: Pluto Press

Young, M. and Hill, P. (1983) *Rough Justice*, London: BBC

Young, R. and Sanders, A. (1994) *The Royal Commission on Criminal Justice: A Confidence Trick?* Oxford Journal of Legal Studies 14 (3)

Youssefi, K., Baghban Kanani, A., & Shojaei, A. (2013) *Ideological or International Move? A Critical Discourse Analysis toward the Representation of Iran Sanctions in Western Printed Media*, Journal Of Language Teaching & Research, 4, 6, pp. 1343-1350

Zander, M. (1993) *Where the critics got it wrong*. New Law Journal. September (1), 1338-1341

Zander, M. (2007) *Cases and Materials on the English Legal System* (Cambridge University Press, 2007)

Zander M. (2009) *Foreword in The Criminal Cases Review Commission: Hope for the Innocent*. Naughton, M. (Palgrave Macmillan)

Zander, M. (1988) *A Matter of Justice* (I.B. Tauris & Co Ltd Publishers)

Zander, M. (2013) Commissioner on Royal Commission on Criminal Justice [interview by B. Thornton] 13 June 2013