MLI Straight Talk

Scott Newark on DNA

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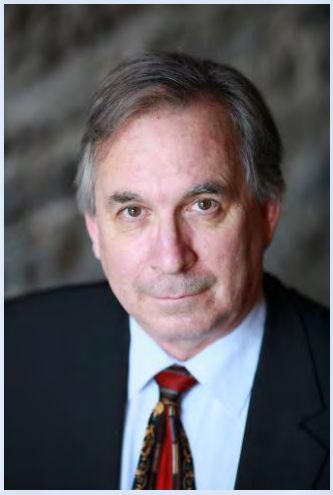
Unlike many of the fanciful crime-fighting technological tools popularized by shows like CSI, DNA has proven its value many times over.[i] It allows great certainty in identifying individuals, the exclusion of innocent people who might otherwise be suspects in a crime and an improved ability to connect criminals to different crime scenes.



Scott Newark has a thirty year criminal justice career beginning as an Alberta Crown Prosecutor with subsequent roles as Executive Officer of the Canadian Police Association, Vice Chair and Special Counsel for the Ontario Office for Victims of Crime and as a security and policy advisor to both the Ontario and federal Ministers of Public Safety.

DNA's use as a crime-fighting tool has been limited in Canada, however, by an unwillingness to treat DNA collection as we treat the collection of fingerprints, another piece of information whose value to police and the courts has proven inestimable.

In this second of our *Straight Talk* series MLI talks to crime-expert Scott Newark about the benefits from extending the laws governing fingerprinting to include DNA.

***MLI*:** The topic of crime gets people arguing about things like Young Offenders, minimum sentencing, building prisons and crime rates (on which you recently wrote a major paper), but you also think a major issue that needs more attention is reforming Canada's DNA databank system. Explain?

***Scott Newark*:** There are multiple crime scenes where there is trace evidence left behind and, in particular, the most serious offences, including homicide and sex crimes. DNA forensic analysis became available in the 80's but there was no legal authorization to go and get an order to get a DNA sample from somebody that the Courts had ruled was required. As a result, in the early 1990s, Parliament created "DNA search warrants" which were useful for individual investigations, but the law originally made no provision for creating a database to match samples similar to what exists for fingerprints. This is critical because a defining feature of crime in Canada (and elsewhere) is that a disproportionately large volume of crime is committed by a disproportionately small number of offenders, especially violent and sexual crimes. Experience tells us that when we target laws or policies on this group of high frequency offenders we get positive public safety results. By having a DNA database of defined offenders, we increase our ability to solve unsolved crimes as well as preventing future ones by catching guys who've committed crimes and left trace evidence behind. It's like fingerprints only it's the technology of the 20th century instead of the 19th century.

***MLI*:** Is the basic problem that when the police charge somebody they can fingerprint them, but cannot take a DNA sample?

***Scott Newark*:** That's basically correct. If you are charged or in custody on an indictable offence, the police are authorized to take your fingerprints. With DNA, instead of being able to get it when the individual is charged with an indictable or even specially designated serious offences, the first Bill Parliament enacted said that it could only be taken when the individual was convicted. In addition, the Crown has to apply and judges have to consider the 'privacy' interest of the person convicted.

So, for instance, suppose someone in Ottawa is charged with break and enter and comes to court. Let's also say he is actually responsible for a couple of rapes which we don't know about (and break and enter and rape have common offender traits) where he left trace evidence behind. In this country, there is an extraordinarily high chance that he is going to make bail. He knows if he comes back and gets convicted of the break and enter the court may order that he give his DNA and they are going to match it to trace evidence at the rape scenes.

So what do you think the odds are that he is going to show up in court? It is a real problem in Canada that the police have been complaining about for years. B.C. is a favoured destination for criminal fugitives so let's continue the story. When the person charged with break and enter doesn't show up for court in Ottawa, a warrant is issued for his arrest. As happens every day, the suspect gets picked up on something else. The police in B.C. call the police in Ottawa and say, "We have this guy, do you want him back?" The cops in Ottawa will likely respond, "No, it is only a break and enter, never mind." So that individual is still out on the streets. Sooner or later we will catch him, he will be convicted, and we will get his DNA but by that point he may well have committed other crimes with potentially horrific consequences. Critically, this could have been prevented if we had taken the right steps when he was first in custody on the break and enter.

Had we taken the DNA sample when he was charged with the break and enter in Ottawa, we would have realized, "Oh look! This DNA matches three other crime scene evidence!" Thus, it is not just a tool that solves historic crimes, but it also has the potential to *prevent* serious crimes in the future.

***MLI*:** Is there any other stage at which you recommend taking DNA?

***Scott Newark*:** Yes, we should also use the model incorporated in the Identification of Criminals Act, which allows fingerprinting of people already in custody on defined offences. My experience tells me that there are a lot of people who are currently serving sentences who are responsible for serious crimes that remain unsolved.

***MLI*:** When people are actually convicted of something serious, how often, roughly, do they have a DNA sample collected?

***Scott Newark*:** The last data analysis I am aware of was back in 2004 and it showed that less than 50 percent of those eligible for DNA samples for the most serious offences were completed and somewhere around 20 percent were completed for secondary offences.

***MLI*:** Has the current federal government done anything of note?

***Scott Newark*:** The Harper Government has introduced changes recently which takes away judicial discretion on the most serious, "primary designated offences" like murder and sexual assault. But it is still only after conviction and offences like break and enter are secondary designated offences where that judicial balancing act is still going to take place.

***MLI*:** From a legislative point of view, how easy would it be to fix?

***Scott Newark*:** These are very simple amendments because we already have the fingerprinting model in the Identification of Criminals Act as well as the basic DNA authorizations in the Criminal Code. The key to legislation is to cover three issues: First, we do it at the point when the individual is arrested and charged on defined offences. Secondly, it must be mandatory, as with fingerprinting. And third, it must apply to those people currently in custody or still under sentence on defined offences.

***MLI*:** What's involved in taking a DNA sample?

***Scott Newark*:** There are three authorized samples: blood, hair or a buccal swab which is, literally, like a little Q-Tip swab on the inside of your cheek.

***MLI*:** Would you support the elimination or destruction of DNA samples when a person is acquitted?

***Scott Newark*:** Yes. Unlike with fingerprints, the Criminal Code requires the destruction of DNA samples and any record created from it in the case of an acquittal, charges being withdrawn, or a non-match in a consensual DNA sample. The law also creates a very narrow exception to this where a Court can order sample retention in defined circumstances.

***MLI*:** What kind of bite do you think it would take out of crime if we did this?

***Scott Newark*:** Two things in particular. It will certainly assist in solving unsolved serious crimes, including homicides and serious sexual crimes where there is trace evidence available. Second, it will address the suspects whose samples we do not have even though they're charged with or under sentence for designated offences. So, it is not just a crime-solving tool it is, also, a crime-prevention tool. In my view modernizing DNA databanks is probably the single most effective operational reform we could make to solve and reduce the most serious violent offences.

Conclusion:

DNA collection should be modernized so that sample taking is:

- Done at the point of when the individual is arrested and charged on defined offences
- Mandatory
- Applicable to those currently in custody or still under sentence on defined offences.

[i] See, for example, the 2007-08 Annual Report of the National DNA Data Bank http://www.rcmp-grc.gc.ca/pubs/nddb-bndg/ann-07-08/07-08-eng.pdf.

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- Allan Gotlieb, former Deput Minister of External Affairs and Ambassador to Washington

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- Hon. James S. Peterson, former Minister of International Trade and Member of Parliament for 23 years

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