"But I Wasn't There!" The Alibis of DNA Exonerees[1]

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Using the exoneree summaries in the Innocence Project and the documentation in the Innocence Record, we analyze the content of the alibis of those who have been wrongly convicted and exonerated with the use of DNA. Sixty-five percent of the 377 DNA exonerees had an alibi. Fifty-one percent reported that their alibi corroborators were friends and/or family members, while only about 10% presented physical evidence to support their alibi. Those with an alibi were significantly less likely to falsely confess than those without an alibi. Eyewitnesses were significantly more likely to be a contributing cause of conviction for those with an alibi than for those without an alibi, and 27% of the exonerees with an alibi had only eyewitness evidence to implicate them. Those that had an alibi were also more likely to claim that they had an inadequate defense than those that did not have an alibi. We conclude this paper with recommendations for reforms and future research.

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I Introduction

In 1992, a 17-year-old female was raped after working a nighttime shift at McDonald's. She gave a description of her attacker to police, and she said she recognized the man as a McDonald's customer from three weeks earlier. Three days after the attack, she called the police saying that she saw her attacker in the McDonald's parking lot, and 22-year-old Dion Harrell was subsequently arrested.

Harrell said he was a frequent customer at McDonald's as he lived across the street. He insisted he was innocent, and he presented an alibi. He said that at the time of the offense, he was playing basketball with friends, including a police detective. Several of these people, including the detective, testified at his trial. But Harrell was found guilty of second degree sexual assault and spent four years in prison and two decades on the sex offender registry before he was exonerated with the use of DNA (Innocence Project, n.d.). Dion Harrell did not commit this crime, and he provided an alibi as evidence that he was somewhere else when the crime occurred. Yet the police investigators, as well as the jury, did not see his alibi as credible. Why not?

With this paper, we will explore the presentation of alibis for those in the Innocence Project database. After a review of research relevant to alibis, we will use the exoneree summaries in the Innocence Project and the documentation in the Innocence Record to indicate how many DNA exonerees presented an alibi. We will also analyze the content of those alibis and reveal what other evidence was present (e.g., eyewitnesses, confessions) that was seemingly more compelling. We will conclude this paper with recommendations for reforms and future research.

A. Alibis: A Review of the Literature

a. Person Evidence and Physical Evidence

An alibi is a claim that one was elsewhere when the crime in question was committed (Merriam-Webster Online Dictionary, n.d.). The provision of the alibi is only the first step in the process. Alibis should also be evaluated; evidence should be gathered in an effort to determine if the alibi can be validated. This brings us to the question: what influences the strength (i.e., believability) of an alibi?

There has been a surge of research in the last two decades that has investigated the question of what makes an alibi more believable. Olson and Wells (2004) was one of the first teams to consider this question. According to Olson and Wells' alibi taxonomy, an alibi is validated using "person evidence" and "physical evidence" (p. 157). A stronger alibi is corroborated by those perceived as less motivated to lie (strangers versus friends and family) and by physical evidence that is more versus less difficult to fabricate.

Researchers have considered how the details of "person evidence" influence the believability of an alibi, and they have generally found support for Olson and Wells' (2004) taxonomy. For example, Culhane and Hosch (2004) found that the relationship between the defendant and the alibi witness was important; jury-eligible students were less likely to render a guilty verdict when a neighbor versus the defendant's girlfriend testified. Hosch et al. (2011) found that participants were more likely to believe an alibi witness when that witness was unrelated versus related to the defendant *(*also see Eastwood et al., 2016; 2020). Furthermore, Marion and Burke (2017) found evidence that alibi witnesses were more willing to corroborate a known false alibi for a friend than for a stranger, offering further support for Olson and Wells' taxonomy.

Thus, research suggests that the relationship between the suspect/defendant and the alibi corroborator is important to the decision of whether to believe the alibi. In the present study, we will use Olson and Wells' (2004) taxonomy to document the type of relationships between DNA exonerees and their alibi corroborators.

Another aspect of person evidence to consider is the number of alibi corroborators. Some have suggested that the number of corroborators can be influential in decisions made by those evaluating alibis (although note that this feature was not included in Olson and Wells' (2004) taxonomy). For example, Eastwood et al. (2016) found that for samples of university students, law enforcement students and police officers asked to judge alibi believability, having "several" corroborators (versus only one) was the most important factor (p. 262). Despite this finding, there have been individuals who have been wrongly convicted even though they had multiple corroborators. For example, Steven Avery had 18 alibi witnesses (local and out-of-town family members, store clerks, neighbors and business associates) who testified that he was elsewhere at the time of the crime, yet he was still convicted (*Wisconsin v. Avery,* n.d.). In the present study, we will document the number of alibi corroborators for DNA exonerees in the Innocence Project database.

As mentioned above, Olson and Wells (2004) also considered physical evidence as part of their taxonomy. They found that physical evidence that was seen as difficult to fabricate (e.g., video footage) or even easy to fabricate (e.g., a cash receipt) was considered more believable than alibis that were not supported by such evidence, but more surprisingly, they found that alibis supported by *any* kind of physical evidence were more believable than alibis supported by person evidence. Congruent with Olson and Wells' findings, when Dysart and Strange (2012) asked law

enforcement officers to "describe the most believable alibi story a suspect could give," the officers were far more likely to describe a form of physical evidence rather than that provided by witnesses (p. 15). In the present study we will use both Olson and Wells' taxonomy and Olson and Charman's (2012) modifications to document the physical evidence supporting an alibi in each DNA exoneree's case.

b. Generating Alibis in Laboratory Settings

In a further effort to understand alibis, researchers have also considered how people generate alibis in a laboratory setting. Researchers have determined that those asked to provide an alibi typically give what Olson and Wells (2004) consider weak person evidence, the word of friends and family. Physical evidence is usually much more difficult to obtain. For example, Culhane et al. (2008) discovered that 88% of their sample of undergraduates reported having at least one alibi witness to corroborate where they were two nights earlier (for non-Hispanic White participants, most witnesses were friends, and for Hispanic participants, most were family members), but only 29% claimed to have physical evidence to support their statements. Similarly, Culhane et al. (2013) found that when they asked undergraduates to provide a true or false alibi regarding where they were 5 or 12 days earlier at 9:30 p.m., and then return two days later with evidence to support that alibi, most reported that they had friends or family members who could support their claim; far fewer produced physical evidence. Nieuwkamp et al. (2017) found that when community members were asked for a true alibi, almost all provided details regarding where they had been. Most presented person evidence (65% reported that their alibi witness was a friend or family member), while only about 25% presented physical evidence, mostly weak evidence by Olson and Wells' standards.

We will analyze the content of the person evidence and physical evidence for alibis for those within the Innocence Project database and compare it to the results obtained from lab research.

B. Contributing Causes of Conviction

In every Innocence Project case there is evidence offered that contributed to a conviction. In most cases, each of the Innocence Project summaries includes a list of the contributing causes of conviction for that exoneree (i.e., eyewitness misidentification, false confessions, improper forensic science, informants, inadequate defense, and government misconduct). We will briefly review these contributing causes here.

a. Eyewitness Misidentification

In an early review of alibis in the Innocence Project, Connors et al. (1996) indicated that alibis "apparently were not of sufficient weight to the juries to counter the strength of the eyewitness testimony" (p. 15). Consider a statement made at the trial of Alejandro Dominguez: "It is well settled that identification of the accused by a single eyewitness is sufficient to sustain a conviction, provided the witness viewed the accused under circumstances permitting a positive identification…This is true even when that identification testimony is contradicted by alibi testimony." **(***In re Dominguez*, 2004, p. 14).

Eyewitness misidentification is the top contributor to wrongful conviction. In a recent analysis, West and Meterko (2015/2016) reported that 72% of 325 DNA exoneree cases involved eyewitness misidentification. An emerging line of research considers how the conflicting evidence of an alibi and the word of an eyewitness together can influence decisions regarding a case. For example, Dahl et al. (2009) found that when an eyewitness identified a suspect who had a strong alibi, the evidence that was presented last was more influential (i.e., a recency effect—see e.g., Murdock, 1962). Price and Dahl (2014) also considered the relative influence of alibi witness evidence and eyewitness evidence on judgments made by students acting as mock investigators. They found recency effects on both guilt judgments and evidence credibility ratings, especially when the more recent evidence was strong and when it contradicted earlier strong evidence. In other words, despite what some have suggested (e.g., see the above statement from Alejandro Dominguez's trial), Price and Dahl did not find eyewitnesses to be consistently more persuasive than alibi witnesses; the presentation order and evidence strength (alibi or eyewitness) mattered.

Pozzulo et al. (2012) were also interested in how decisions are made when both eyewitness and alibi witness evidence are available. In a study in which eyewitness age and the relationship between the defendant and the alibi witness were manipulated, Pozzulo et al. found that when a non-related alibi witness (i.e., a store clerk) contradicted the testimony of a four-year-old eyewitness (but not a 12 or a 20 year-old witness) jurors were more likely to render a not guilty verdict. In this case, only the young child was discredited as an eyewitness when the defendant had a strong alibi. But other research suggests that not all young children are as easily disregarded. Bruer et al. (2017) found that participants were sensitive to the age of an *alibi* witness when conflicting evidence was present. When an adult eyewitness provided testimony that conflicted with the testimony of a six-year-old alibi witness, participants were more likely to believe the child. On the other hand, when an adult eyewitness testified and the alibi witness was an adult, participants were more convinced of the suspect's guilt. These results collectively suggest that the characteristics of those providing evidence (i.e., eyewitnesses, alibi witnesses) may be important to fact finders.

How often are alibis offered in cases with one or more eyewitnesses? We will document the number of cases in which the presence of one or more eyewitnesses was a contributing cause of conviction and an alibi was offered. We will also determine if those with alibis were equally likely to have mistaken eyewitnesses as part of their cases as those without alibis.

b. False Confessions

False confessions have also been documented as playing a role in wrongful convictions. West and Meterko (2015/2016) recently found that 27% of those within the Innocence Project database falsely confessed.

According to Kassin et al. (2012) "confession evidence is so powerful that once a suspect is induced to confess, additional investigation often stops, and the suspect is almost invariably prosecuted and convicted" (p. 41). This can mean that once a suspect confesses, an offered alibi may not be investigated. In addition, once a suspect confesses, the willingness of alibi witnesses to support an alibi may be affected. Research exists that is relevant to this latter point. For example, Marion et al. (2016) set up a situation in which a participant was paired with a confederate who is later falsely accused of a crime. If participants initially corroborated the confederate's alibi (i.e.,

the confederate said that she never left the room), 95% of participants continued to support the confederate's alibi as she denied involvement. In a second condition, participants were told that the confederate confessed. In this case, only 45% continued to support the confederate's alibi when questioned a second time. In a third condition, the participants were told that the confederate had confessed, but then recanted, and that corroborating this person's alibi suggested that the two worked together to steal the money. In this case, corroboration dropped to 20% (the latter two conditions yielded means that were not significantly different).

We will document the number of DNA exoneree cases in which a confession was a contributing cause of conviction and an alibi was offered. We will also determine if defendants with alibis were equally likely to have false confessions as part of their cases as those without alibis.

c. Unvalidated or Improper Forensic Science

Meterko (2017) found that the "misapplication of forensic science" was a contributing factor in 46% of the wrongful convictions of DNA exonerees, with serology and hair analysis most often implicated (p. 640).

In 2009, the National Academy of Sciences (NAS) provided an important review of problems with a variety of forensic techniques. In short, "with the exception of nuclear DNA analysis, … no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source" (p. 7). The NAS report reviewed the use of a variety of forensic analyses such as bite mark analysis, microscopic hair analysis, and fingerprint examinations, noting that many forensic techniques had not undergone the needed scientific scrutiny.

The NAS report (2009) also cited additional problems with forensic evidence, problems that go beyond reliability and validity. Regardless of the type of forensic analysis used, the available evidence must be interpreted and reported in an appropriate manner. Not surprisingly, these interpretations are typically subjective and can be influenced by bias (e.g., Dror & Hampikian, 2011; Dror et al., 2005). In some cases, for example, experts provided misleading testimony such as exaggerating the findings, suggesting that there was more of a match between the evidence and the defendant than there actually was. There is also evidence that some forensic experts have not just exaggerated, but have completely falsified their data (see e.g., Giannelli, 2006).

Researchers have begun to consider the interplay of an alibi and forensic evidence. For example, Ribeiro et al. (2020) investigated how mock jurors would view DNA evidence (present, absent) in light of six varying alibi strengths; Ribeiro et al. also varied the strength of the DNA evidence across two experiments. Knowing that DNA evidence (i.e., likelihood ratios) can be difficult to understand, Ribeiro et al. wondered the following: When DNA evidence is presented, would participants be convinced by the DNA evidence regardless of the strength of the alibi? When the alibi is strong, would they consider the possibility that there was an error in the DNA evidence (e.g., contamination such as that which occurred in Dwayne Jackson's case: The National Registry of Exonerations, n.d.). Although participants did have trouble interpreting the DNA evidence, they were sensitive to the strength of the alibi. Participants were more likely to conclude that an error

was possible in the DNA analysis as the strength of the alibi increased (this effect was mainly driven by the strongest alibi condition in which there was strong physical evidence indicating the defendant was out of the country at the time of the crime).

We will provide the number of DNA exonerees who presented an alibi in a case that included the misapplication of forensic evidence as categorized by the Innocence Project. We will also determine if those with alibis were equally likely to have unvalidated or improper forensics as part of their cases as those without alibis.

d. Informants

Informants have also played a role in wrongful conviction. There are three kinds of informants: 1) a jailhouse informant (provides information about a crime obtained while incarcerated), 2) an informant that is a member of the community (e.g., one who calls an anonymous tip line), and 3) a co-conspirator informant (also known as an accomplice witness). Informants offer information about crimes to authorities, typically in exchange for incentives such as money or a reduced sentence. The credibility of informants, especially jailhouse informants, has often been questioned among legal scholars (e.g., Natapoff, 2018) because their lies are incentivized.

West and Meterko (2015/2016) reported that 15% of the 325 DNA exonerations they analyzed included information from at least one informant. According to Garrett (2011), who reviewed the first 250 DNA exoneree cases, informants often provided testimony that was consistent with the arguments made by the prosecution, arguments that the prosecution was unable to prove in any other way. In some cases that meant undermining the word of alibi witnesses.

As far as we know, research has not been conducted that considers how an informant's testimony and a defendant's alibi might together influence evaluators. We will document the number of cases in which an alibi was offered and the case included a jailhouse informant or an informant that was a member of the community.[2] We will also seek to determine if those with alibis were equally likely to have informants as a contributing cause of conviction as those without alibis.

e. Inadequate Defense

An inadequate defense has been classified by the Innocence Project as another contributing cause of conviction. In his review of the postconviction proceedings of 165 DNA exonerees, Garrett (2011) found that 32% of the exonerees claimed they had an inadequate defense. West (2010) found that 21% of the first 255 DNA exoneration cases claimed an inadequate assistance of counsel in their post-conviction appeals. Pertinent to the current study, one of the possible reasons that a defense attorney can be labeled inadequate is when that attorney fails to investigate alibis or call alibi witnesses.

[2] The Innocence Project only includes jailhouse informants and informants who are community members in their data summaries; they do not include co-conspirator informants, thus we did not either.

We do not know of any research that has considered perceptions of an alibi in conjunction with claims of an inadequate defense. We will examine the documentation for the DNA exonerees in an effort to identify the number of cases in which an alibi was offered and the defendant claimed that counsel provided an inadequate defense. We will also consider the number of cases in which the inadequate defense was tied to a failure to investigate alibis or call alibi witnesses. We will determine if those with alibis were equally likely to claim that they had an inadequate defense as those without alibis.

f. Government Misconduct

According to the Innocence Project, government misconduct refers to both police misconduct and prosecutorial misconduct. In both categories, one form of government misconduct is the suppression of exculpatory evidence (Great North Innocence Project, n.d.), and one form of exculpatory evidence that has been suppressed is evidence supporting a defendant's alibi (see Zack, 2020). West and Meterko (2015/2016) found official misconduct in 30% of DNA exonerations (they extracted this information from the *National Registry of Exonerations*, a database of all known exonerations, not just those exonerated with DNA).

As far as we know, researchers have not yet considered perceptions of government misconduct specifically as it relates to alibis. We will document the number of cases in which an alibi is offered and a claim of government misconduct has been recorded. We will determine if those with alibis were equally likely to cite government misconduct as part of their cases as those without alibis.

II Previous Reviews of Alibis in the Innocence Project Database

The Innocence Project was created in 1992 to exonerate wrongly convicted individuals using DNA evidence. Researchers have considered the prevalence of alibis from the early days of the database formation. For example, Connors et al. (1996) found that in a review of 28 cases within the Innocence Project, 57% of the defendants provided an alibi. Interestingly, Connors et al. noted that these alibis were presented as incriminating evidence because they were either not corroborated at all or were corroborated by friends and/or family. Wells et al. (1998) also did a review of early Innocence Project cases, analyzing the first 40 cases in which DNA was used to exonerate wrongly convicted individuals. In this case, the presence of "weak" alibis or no alibi was stated as "evidence producing conviction" for 20% of the sample (p. 606).[3] In their review of alibi research, Burke et al. (2007) stated that more than 25% of the 157 cases in the Innocence Project included an alibi in the exoneree summaries. More recently, Garrett (2011) considered the first 250 DNA exonerees and found that 68% of the DNA exonerees (140 out of 207) provided an

[3] Connors et al. (1996) and Wells et al. (1998) had different calculations regarding the number of alibis presented within the initial 28 cases. Among these initial 28 exonerees, Wells et al. reported that 28% had alibis, and Connors et al. reported that 57% had alibis. This difference is likely the result of consulting different sources (i.e., Connors et al. went beyond written documentation and interviewed defense counsel and prosecutors).

alibi.[4] Most (86%) of those presenting an alibi had alibi corroborators (usually family members), and almost no one had physical evidence supporting their alibis.

III The Current Plan

The current study will provide an updated and comprehensive analysis of alibis for DNA exonerees. Using both the Innocence Project database and the Innocence Record, we will document the number of exonerees with alibis and analyze the content of those alibis using Olson and Wells' (2004) alibi taxonomy and other categorizations as noted below. Finally, we will consider what other evidence was present in each case, evidence that seemingly led police investigators, prosecutors and juries to disregard the offered alibis.

A. Hypotheses

Based on previous research findings (e.g., Nieuwkamp et al., 2017), we expect that the most common type of alibi corroborator will be family and friends, and we expect that most exonerees will not have physical evidence to support their alibis. As for the number of corroborators one has, since we used a sample restricted to only those who had alibis that were not believed, we expect that each exoneree with an alibi in this sample would have few alibi corroborators.

As noted above, we will document the number of cases that included each of the contributing causes noted by the Innocence Project. In each case, we expect to find percentages comparable to what others have found. We will also extend previous research in that we will determine if those with alibis and those without alibis are equally likely to experience each contributing cause. Due to a lack of research taking this approach, we have not made any predictions for these findings.

IV Method

A. Sample of Exonerees

As of January 2020, 377 individuals were profiled on the Innocence Project website (since this website is ever-changing, we felt it was important to "freeze" the number of exonerees and the content to be considered).[5]

[4] Garrett (2011) went beyond the Innocence Project summaries. He obtained a variety of documents for the exonerees including trial transcripts for 207 of the 234 exonerees convicted at trial, and he shared these documents with the Innocence Record (Garrett, personal communication, 1/26/21). Thus, when granted access to the Innocence Record, we had access to these documents. Garrett's (2019) updated record of these documents is located at https://convictingtheinnocent.com/.

[5] Sometime in 2020, the Innocence Project removed some exonerees from their database with the explanation that "The Innocence Project did not have a role in exonerating this person." Readers looking for these exonerees are referred to the National Registry of Exonerations

B. Analysis of Alibi Information Within the Innocence Project Database

Olson and Wells (2004) make a distinction regarding the language of alibis and we adopt that position here. Their position stems from the legal system definition that an alibi is a defense that places the defendant elsewhere at the time of the crime. Thus, if a suspect/defendant says, "I was home alone," we consider this an alibi, (although it may be difficult to find evidence to support that alibi). If a suspect/defendant says, "I don't remember where I was," the suspect has not provided an alibi. If the documentation does not mention anything about where the suspect/defendant was at the time of the crime, the suspect/defendant will be coded here as not having an alibi.

Typically, each exoneree has a page at the Innocence Project website. This page usually includes a summary of the details of his or her case in a few paragraphs. As a first step, we determined whether or not an alibi was included in a case and what the content of that alibi was by reading these summaries. We found that out of 377 exonerations, as judged by the information provided in the Innocence Project summaries, 114 included information about alibis (30% of the total number of exoneeres represented at the Innocence Project website).

Alibi information within the Innocence Project summaries was coded by the first and third authors independently. Inter-rater reliability on coding alibi content was calculated at 89.5% (percent agreement: (#agree/#agree+#disagree)). Differences were resolved through discussion.

C. Analysis of Alibi Information Within the Innocence Record Database

The Innocence Project summaries are, by nature, incomplete. In order to form a more complete picture, we also reviewed information at the Innocence Record (www.innocencerecord.org), the available public records for DNA exonerees.

An Innocence Record database search in July 2020 revealed "about 1,280 records" that contained the word "alibi." Seventeen of the documents were duplicate files, thus a total of 1,263 documents were examined for information relevant to alibis. Documents were eligible for analysis only if they were relevant to the 377 exonerees profiled at the Innocence Project as of January 2020. Note that since the Innocence Record database contains the "available public records," the records may not represent the entirety of each case.

One hundred and ninety-nine of the 377 exonerees of interest had at least one document with the word "alibi" presented at least once in the Innocence Record (thus, on the face of it, this database provides more information than the Innocence Project summaries). Some exonerees (13%) had only one document with the word "alibi;" most had many, and documents ranged from one to 1,579 pages (only pages with alibi information were reviewed). Review of The Innocence Record documents revealed that four of the exonerees did not have an alibi despite having the

(https://www.law.umich.edu/special/exoneration/Pages/about.aspx). Note that despite removal from the Innocence Project site, DNA evidence still did contribute to these exonerations. The data contained in this article include these removed exonerees as described in the Method section.

word "alibi" in their documentation.[6] Therefore, after review we determined that our search of the Innocence Record website provided alibi information about an additional 117 exonerees (beyond the Innocence Project summaries). We also used Garrett's (2019) *Convicting the Innocent: DNA Exonerations Database* (Convicting the Innocent: DNA Exonerations Database, n.d.) which presents compiled data from the first 350 DNA exonerations; this database provided information about an additional 15 exonerees with alibis that were not captured by the original search of the Innocence Record. Thus, overall, we have information about an alibi for 246 exonerees (114 from the Innocence Project, 117 from the Innocence Record and 15 from Garrett's (2019) database of the 377 exonerees under consideration. According to this analysis, 65% of the 377 DNA exonerees presented information regarding an alibi.

D. Demographics of the Exonerees

The demographics of the overall sample, the sample who offered, and the sample who did not offer an alibi were all very similar. As of January 2020, the Innocence Project database was composed of information regarding 371 males and 6 females. Sixty-two percent were African American, 30% were White, 6% were Latinx, less than 1% were Asian or Native American, and race was not indicated for less than 1%. For the 246 with presented alibis, 62% were African American, 33% were White, 5% were Latinx, and less than 1% were Asian, while the 131 without an alibi were 64% African American, 26% White, 9% Latinx and less than 1% were Native American.[7]

The average time served for all 377 exonerees was 15.30 years. Those with an alibi served an average of 15.31 years in prison, while those without an alibi served an average of 14.77 years. Six percent of 375 exonerees had been given the death penalty (sentencing was not specified for 2 individuals); 7% of those with an alibi were given the death penalty, and 5% of those without an alibi were given the death penalty.

V Results

Using information from both the Innocence Project and Innocence Record databases, the following information was documented:

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[6] Kennedy Brewer was babysitting his girlfriend's child when she was abducted, thus he was not "elsewhere." Luis Diaz offered an alibi, then withdrew it. The Innocence Project summaries also claimed that both Gerald and Dewey Davis had an alibi. In this case the victim had gone to the defendants' apartment to do laundry (they were family friends), and the victim claimed that Gerald Davis raped her in the presence of his father, Dewey Davis. The defendants acknowledged that they were present, but disputed the rape charge. The Innocence Project characterized this as an alibi. If we use the definition of "alibi" as a defense that places the defendant elsewhere at the time of the crime, this would not be considered an alibi. Therefore, these two defendants were not included in the count as having an alibi.

[7] Note that according to the 2019 U.S. Census (https://www.census.gov/quickfacts/fact/table/US/RHI225219), African Americans are only 13.4% of the U.S. population but they are 62% of the wrongly convicted DNA exonerees (see e.g., Gross et al., 2017 for more on the topic of racial disparity and wrongful convictions).

1) Person evidence
   a. Type of corroborators
   b. Number of corroborators
2) Physical Evidence
3) Contributing causes of conviction
   a. eyewitness misidentification
   b. false confessions
   c. informants
   d. unvalidated or improper forensic science
   e. inadequate defense
   f. government misconduct

A. Person Evidence

"Person evidence" refers to the person or persons who corroborate the alibi; this was evaluated using Olson and Wells' (2004) taxonomy (p. 157). More specifically, the following categories were used in the analysis of person evidence:

- None (i.e., no one corroborated the alibi),
- motivated familiar other (e.g., family members, friends, girlfriend/boyfriend),
- non-motivated familiar other (e.g., store clerk where a person is a regular customer),
- non-motivated stranger (e.g., store clerk where a person has never before shopped).

For the purpose of this analysis, all neighbors and work colleagues were coded as "non-motivated familiar others."

Our goal was to determine the prevalence of different types of corroborators for those with information regarding an alibi (n = 246). Eleven percent (n = 28) of exonerees had a combination of alibi types. Of these, 9% (n = 22) had alibi corroboration from one or more motivated familiar other(s) and one or more non-motivated familiar other(s); 2% (n = 4) had corroboration from one or more motivated familiar other(s), one or more non-motivated familiar other(s) and one or more non-motivated stranger(s), and less than 1% (n = 2) had corroboration from one or more motivated familiar other(s) and one or more non-motivated stranger(s). We included these cases in the final count of the category that would be considered the strongest evidence in Olson and Wells' (2004) taxonomy. For example, for the 9% that had alibis corroborated by at least one motivated familiar other and at least one non-motivated familiar other, they were included in the "non-motivated familiar other" count because the non-motivated nature of these corroborators would theoretically have made the alibi stronger.

Twenty-two percent (n = 53) of the alibis could not be further analyzed because details regarding the alibi were not available (e.g., the documentation noted that "two alibi witnesses testified," but no further information was provided).

Thus overall, for those who had sufficiently detailed documentation regarding an alibi, we calculated the prevalence of the different types of corroborators (provided below in order of strength from least to most):

- 8% had uncorroborated alibis (e.g., home alone at the time of the crime) (*n* = 19).
- 51% offered motivated familiar others as corroborators (*n* = 126).
- 16% offered non-motivated familiar others as corroborators (*n* = 40).
- 4% offered non-motivated strangers as corroborators (*n* = 11).

Thus, most of those presenting an alibi were known to have alibi corroborators (72%), and as expected, the most common type of alibi corroborator was motivated familiar others (i.e., family and friends). These results are comparable to that found in lab-based research; for example, Nieuwkamp et al. (2017) also found family and friends to be the most common type of alibi corroborator.

B. Number of Corroborators

Whenever possible, we established the number of alibi corroborators available in each case. In some cases, an exact number was not available; the documentation just reported that "multiple" or "several" alibi witnesses testified (these cases were coded as having 3 or more corroborators). We were able to ascertain how many alibi corroborators *testified at trial* for 82% of the cases. Forty-two percent (*n* = 85) had only 1 or 2 alibi corroborators, and 43% of the exonerees (*n* = 87) had at least 3 alibi corroborators. It is also worth noting that in 5% of cases (*n* = 10) the exoneree was the only witness testifying in support of the alibi, and in 10% of cases (*n* = 20), the corroborators were not asked to testify.

C. Physical Evidence

Physical Evidence refers to items indicating the suspect was at a place other than the crime scene when the crime occurred. As expected, physical evidence was rarely offered; only 10% of the DNA exonerees with alibis (*n* = 25) offered physical evidence as corroboration. This estimate is lower than what researchers typically elicit in the lab (e.g., Culhane et al. (2008) found about 29% provided physical evidence).

Physical evidence was first categorized according to Olson and Wells' (2004) taxonomy:

- none,
- easy to fabricate (e.g., a cash receipt, items without a time or a date stamp) and
- difficult to fabricate (e.g., a photo/video footage, items with a time or date stamp)

Using Olson and Wells' (2004) classification taxonomy, 80% of the physical evidence was classified as more difficult to falsify (e.g., land-line phone records, credit card receipts, timecards from a place of employment, bus tickets, photographs, police reports/tickets, store videos, bank records) while 20% of the physical evidence was classified as easier to falsify (e.g., handwritten cash receipts, date book entries). The classification of physical evidence was coded by the first and second authors independently. Inter-rater reliability on coding alibi content was calculated at 88% (percent agreement: (#agree/#agree+#disagree)). Differences were resolved through discussion.

Physical evidence was also categorized according to Olson and Charman's (2012) taxonomy:

- no physical evidence
- weak physical evidence (evidence that has no time or place information)
- moderate physical evidence (evidence that has time or place information but could not be definitively linked to the participant such as a phone record)
- strong physical evidence (evidence that contains time and place information and could be linked to the specific participant such as a timecard from an employer)

Using Olson and Charman's (2012) classification taxonomy, 40% of the physical evidence was classified as strong evidence, 52% of the physical evidence was classified as moderate evidence, and only 8% was considered as weak evidence. The classification of this physical evidence was coded by the first and second authors independently. Inter-rater reliability on coding alibi content was calculated at 72% (percent agreement: (#agree/#agree+#disagree)). Differences were resolved through discussion.

D. Contributing Causes of Conviction

As noted above, for each of the exonerees within the Innocence Project database, there is typically a multi-paragraph summary detailing major components of the exoneree's case. In addition, for each exoneree, there is a list in the margin that provides a briefer overview of the major details of the case. These margin details include "contributing causes of conviction." According to the Innocence Project's classification system, the following items are considered contributing causes of conviction: eyewitness misidentification, false confessions, informants, unvalidated or improper forensic science, inadequate defense, and government misconduct. We will document the percentage of DNA exonerees that have each of the contributing causes of conviction, and we will determine if those with alibis and those without alibis are equally likely to experience each contributing cause.[8]

a. Eyewitness Misidentification

We first calculated the number of DNA exonerees that had eyewitness misidentification in their case as indicated within the Innocence Project summaries. We found that overall, 69**%** of the DNA exonerees (*n* = 259) had cases which included eyewitness misidentification. This is reasonably comparable to other statements of how often mistaken eyewitnesses are cited as a contributing cause of conviction (e.g., West & Meterko, 2015/2016).

We compared the presence of mistaken eyewitness evidence for those with an alibi (*n* = 185) and those without an alibi (*n* = 74). Eyewitnesses were significantly more likely to be a

[8] In a few cases, the paragraph summary for an exoneree indicated that a contributing cause was present, but this was not reflected accurately in the list provided in the margin. In these cases, we will include the information in our calculations (e.g., although Alejandro Hernandez' summary information provided in the margins did not include "informants," we concluded that Alejandro Hernandez' case had informants because they were described in the paragraph summary). We also included specific contributing causes when they were listed in the margin and not listed in the paragraph summaries (e.g., John Kogut's summary did not mention an "informant" in the paragraph summary, but it was listed in the margin summary. Thus, we concluded that Kogut's case had an informant).

contributing cause of conviction for those with an alibi (75%) than for those without an alibi (56%), $z = -3.73$, $p = .0001$.

Given that the combination of an alibi and eyewitness evidence was so often present in wrongful conviction cases suggests that the word of an eyewitness can be a powerful influence on decision-makers. Consider the case of Alejandro Dominguez. He was only 16 when he was charged with rape. The victim said her rapist wore a pierced earring and had a tattoo; Dominguez did not have pierced ears or tattoos. She said her rapist spoke English; Dominguez did not speak English. Dominguez was 5-6" shorter than she claimed the rapist to be. In an effort to make an identification, the detective used a show-up (a technique typically considered suggestive—see e.g., Wells et al., 2020 for a review). The detective brought the victim to an office and asked her to look through a window, and said, "Watch the one sitting on the chair. Tell me if that is the one." Despite having three alibi witnesses, Dominguez was convicted by a jury, perhaps because the victim claimed she was "absolutely positive" that he was the one who raped her; (*Illinois v. Dominguez*, n.d., p. 13). She was wrong.

To explore how often investigators used suggestive eyewitness techniques, we calculated the number of show-ups used in our sample. We found that show-ups were used in 15% of the cases ($n = 58$) overall. Interestingly, the use of show-ups was significantly more likely for those with an alibi (19%; $n = 45$) than for those without (9%; $n = 13$), $z = 2.15$, $p = .03$.

b. False Confessions

We calculated the number of DNA exonerees who had confessed as indicated within the Innocence Project summaries. We found that 27% of those within the Innocence Project database confessed ($n = 102$); this is comparable to the percentage that West and Meterko (2015/2016) recently reported.

We found that 22% of those with a documented alibi confessed ($n = 54$), while 37% of those without an alibi confessed ($n = 48$). In other words, those with an alibi were significantly less likely to confess, $z = 3.06$, $p = .002$.

Consider Angel Gonzalez's case as an example of a defendant who provided a false confession despite having an alibi. Gonzalez originally was stopped by police because his car matched the general description of a car belonging to two men who raped a woman. Gonzalez was not a good match to the description of the perpetrators, but the victim identified him in a show-up as he was standing in front of a patrol car. Gonzalez was arrested and held overnight. The police began interrogating him after he had been awake for 26 hours. Despite Gonzalez's limited use of English, he waived his *Miranda* rights and told the police about his alibi. Instead of investigating his alibi, the police asked Gonzalez to write out a statement in Spanish, and a police officer typed up an English version. The two versions were later revealed to be completely different. Gonzalez served 20 years in prison before being exonerated using DNA (Innocence Project, n.d.).

c. Unvalidated or Improper Forensic Science

According to the Innocence Project summaries, 46% of the DNA exonerees included improper or unvalidated forensics as part of their cases ($n = 173$). This is comparable to what West and Meterko (2015/2016) reported.

For those that had an alibi, 49% had cases that included improper or unvalidated forensic science (n = 120); this was not significantly different from the 40% who had cases with improper forensic science and did not have an alibi (n = 53), z = 1.54, p = .12.

The Innocence Project classifies the type of forensics that contributed to the wrongful convictions; they use the following categories: serology, hair analysis, bite mark analysis, footprint analysis, DNA Testing, fingerprint analysis, and "other." Using these categories, we found that overall, 23% of the cases involved improper serology evidence, 18% involved improper hair analysis, and 3% involved improper bite mark analysis. For cases in which an alibi was presented, serology was again the most often cited as improper (23%). Hair analysis was the second most commonly implicated improper forensic (21%), and 3% of the cases with improper forensics involved bite mark analysis. For cases in which an alibi was not presented, 22% involved serology, 11% implicated hair analysis and 2% cited improper bite mark analysis. Other types of improper forensics were much less common (each representing less than 1% of cases overall.)[9]

Overall, serology was most often implicated as the reason for a statement of improper forensics; this typically was because the analyst made inappropriate statements while testifying. For example, during Barry Laughman's trial the analyst (incorrectly) stated that "bacterial degradation could have changed type A blood to type B blood" (Innocence Project, n.d., para. 4). As for hair analysis, some analysts have inappropriately made claims of a match or finding a microscopic similarity between hair found at the crime scene and the hair of a defendant (e.g., see Clyde Charles' case: Innocence Project, n.d.).[10] Bite mark evidence is similar to hair analysis in that, according to The NAS (2009) "there is no evidence of an existing scientific basis for identifying an individual to the exclusion of all others" (p. 176). Unfortunately, in some cases a forensic odonologist had indicated that a match had been found (e.g., see Gerard Richardson's case--he served 18 years in prison; the only evidence against him was bite mark evidence—Innocence Project, n.d.).

d. Informants

When we consulted the Innocence Project summaries, we found that 20% of the DNA exonerees included an informant (n = 74). As noted earlier, West and Meterko (2015/2016) reported that 15% of the 325 DNA exonerations they analyzed included information from at least one informant. One possible reason for the discrepancy between the two calculations may be because in some cases (e.g., Alejandro Hernandez) the Innocence Project summaries described a case with an informant, but the margin summary did not list "informants" as a contributing cause of conviction.

In our analysis, we found that informants were equally likely to be a contributing cause of conviction for those with an alibi (20%) (n = 48) and those without an alibi (20%) (n = 26), z = -.08, p = .94.

[9] We used the Innocence Project's classification for an indicator of the presence of "unvalidated and improper forensic evidence" and did not examine documentation (e.g., trial transcripts) from the Innocence Record for this information. Therefore these estimates are potentially underestimates.

The case of Wilton Dedge is an example of a case in which an alibi was undermined by informant testimony. Dedge was accused of rape, but the case against him was not strong. Dedge was shorter and lighter than the witness had claimed. The other evidence was from a police dog (later discredited) who identified Dedge's scent from crime scene bed sheets. Dedge had 6 co-workers testify that he was at work all day when the crime occurred. Still, Dedge was convicted although that conviction was reversed because his attorney had not been allowed to present testimony to refute the evidence from the dog. Unfortunately, the prosecution enlisted an informant for the second trial. The informant said that Dedge claimed he had fooled his co-workers into believing he was at work the entire day. Wilton Dedge was convicted and served 22 years in prison until he was exonerated using DNA. The informant had 162 years taken off his own sentence for testifying against Dedge and against other defendants tried by the same prosecutor (Torres, 2017).

e. Inadequate Defense

An inadequate defense has been classified by The Innocence Project as another contributing cause of conviction. According to the Innocence Project margin summaries, 6% of the DNA exonerees had this classification (n = 21). We had reason to believe that this was an underestimate as West (2010) found that 21% of the DNA exoneree cases had claims of ineffective assistance of counsel when she analyzed the published appeals for the first 255 DNA exoneration cases, while Garrett (2011) found that 32% claimed their defense was inadequate. Thus, we supplemented the Innocence Project data with data gathered from the Innocence Record and from Garrett's (2019) review of the Innocence Record, and we found that 25% of the DNA exonerees had a claim of an inadequate defense (n = 94).

Using these same data, we found that for those who had an alibi, approximately 30% were said to have an inadequate defense (n = 74), and for those that did not have an alibi, 15% (n = 20) were said to have an inadequate defense; this difference was significant, z = 3.17, p = .001.

Pertinent to the current topic, a defense attorney can be labeled inadequate when that attorney fails to investigate an alibi or call alibi witnesses (Innocence Project, n.d.). Thirty percent of the 94 exonerees classified as having an inadequate defense (n = 28) included an alibi-based reason for that claim.

Take Travis Hayes' case as an example. Hayes was 17-years-old when he and a friend, Ryan Matthews, were charged with murder. When the police started questioning him, Hayes provided an alibi. However, the police did not check the validity of this statement, and after seven hours of interrogation, Hayes confessed and implicated his friend in the crime (Hayes later recanted). There were more than 10 witnesses who could have corroborated the alibi that Hayes provided. Hayes' attorney did not investigate, nor interview these witnesses, nor did they testify during the trial (*Louisiana v. Hayes*, 2006).[10] Hayes was convicted of second degree murder and was sentenced to life in prison. He spent 9 years in prison before being exonerated using DNA (Innocence Project, n.d.).

[10] Note that the Innocence Project website did not list "inadequate defense" as a contributing cause of conviction for Travis Hayes; however, Hayes' Application for Post-Conviction Relief, which is available at the Innocence Record, explicitly cited that "Mr. Hayes was denied the effective assistance of counsel at trial" (*Travis Hayes v. Burl Cain*, 2003, p. ii). (Note that this should be footnote #11)

f. Government Misconduct

Government misconduct includes both police and prosecutorial misconduct. According to our review, the Innocence Project classified 18% of the DNA exonerees overall as having experienced government misconduct (*n* = 68). This is low compared to the estimates that others have obtained. West and Meterko (2015/2016) found official misconduct in 30% of DNA exonerations. We had reason to believe that the Innocence Project estimate was an underestimate as West and Meterko noted that the Innocence Project doesn't methodically track this information. Thus, we supplemented the Innocence Project data with data compiled by Garrett (2019) from the Innocence Record (using "prosecutorial misconduct," "coerced confession," "suggestive eyewitness identification" and "fabrication of evidence" as search terms), and overall, we found claims for police and prosecutorial misconduct in 36% of cases (*n* = 135).[11] We used these data for the subsequent analyses.

We were interested in how often exonerees with alibis were faced with government misconduct. For those that had an alibi, 39% of the cases involved government misconduct (*n* = 96), while for those without an alibi, government misconduct was a contributing factor in the conviction of 30% of the exonerees (n = 39). This difference was only marginally significant, *z* = 1.78, *p* = .07.

Government misconduct, whether committed by police investigators or prosecutors, comes in many forms, and in some cases those actions are directed toward suppressing alibi evidence (see Zack, 2020). For example, Mark Bravo's alibi defense wasn't adequately investigated by the police (Connors et al., 1996), a form of misconduct. Bravo was accused of a rape that occurred around 12:30 p.m., yet police asked Bravo and his alibi witnesses to account for his time later that afternoon. Thus, Bravo appeared not to have an alibi for the crucial time period (*California v. Bravo*, 1991). Although his alibi was actually strong, he was convicted and served four years in prison before DNA eliminated him as the rapist (Innocence Project, n.d.).

E. A Consideration of all Contributing Causes for Those with Alibis

In this section we consider how prevalent the six different types of evidence were in the cases of DNA exonerees. Out of the 246 DNA exonerees with alibis, 34% (*n* = 83) had *only* one type of evidence supporting a conviction. Specifically:

- 27% (*n* = 66) of the exonerees with an alibi had *only* eyewitness evidence as a contributing cause of conviction
- 3% (*n* = 8) of the exonerees with an alibi had *only* a confession as a contributing cause of conviction

[11] Some estimates of government misconduct have been higher. For example, Garrett (2011) reviewed the available written decisions from appeals and postconviction proceedings for the first 250 DNA exonerees and determined that 47% of the 165 available decisions were, in part, based on prosecutorial misconduct. It may be difficult to determine definitively how many of the DNA exonerees' cases included prosecutorial and/or police misconduct, not only because documentation has not been made available, but also because it is possible misconduct may not have been documented at all. (Note that this should be footnote #12)

- 2% (*n* = 4) of the exonerees with an alibi had *only* an informant as a contributing cause of conviction
- 2% (*n* = 4) of the exonerees with an alibi had *only* improper forensic evidence as a contributing cause of conviction
- <1% (n = 1) had *only* government misconduct as a contributing cause of conviction.

Out of the 246 DNA exonerees with alibis, 42% (*n* = 104) had two types of evidence supporting a conviction. The most common combinations of types of evidence were as follows:

- 23% (*n* = 57) had *only* an eyewitness and improper forensic science supporting a conviction.
- 3% (*n* = 8) had *only* an eyewitness and a confession as causes of conviction.

Of the remaining exonerees most (*n* = 40) had three types of evidence supporting a conviction.

IV Discussion

Every single person represented in the Innocence Project database was wrongly convicted, and according to the present analysis, at least 65% of them had an alibi – a statement that they were not at the crime scene. Why did they end up in prison despite having an alibi? We will review possible reasons here.

A. Why Weren't the Alibis Believed?

The results of this analysis using both the Innocence Project summaries and the Innocence Record documentation suggest that most of the alibis presented were weak by Olson and Wells' (2004) standards. Specifically, 51% reported that their alibi corroborators were just friends and/or family members. Corroboration from friends and family was expected as people are most likely to be with friends and family rather than with strangers. In addition, other researchers (e.g., Nieuwkamp et al., 2017) have found that when community members are asked for an alibi, most present alibi support from friends and family.

The use of family and friends as corroborators was, at times, blatantly used against the defendant. For example, prosecutors sometimes attempted to discredit the alibi by claiming that it was *only* family members who testified. In Chester Bauer's case, the alibi was referred to as a "family alibi" (*Montana v. Bauer*, 1983, p. 4). In Alan Newton's case, the prosecutor questioned whether it was possible to trust a defendant's fiancée given that she had "an interest in the outcome of this case" (*New York v. Newton*, 1984, p. 870). While these alibis may certainly have represented the truth, these tactics likely undermined the strength of the alibis in the evaluators' eyes.

Research suggests that the alibis of these exonerees would have been more convincing if they had been corroborated by people perceived as less motivated to lie (ideally strangers) (e.g., Hosch et al., 2011). It is worth noting that some exonerees did have non-motivated alibi corroborators. Specifically, 16% had non-motivated familiar others (e.g., neighbors) and 4% had strangers as their alibi corroborators, yet they were not believed (see e.g., Wilton Dedge's case).

Having a non-motivated stranger as one's alibi witness may potentially make one's alibi more believable, but it is not without its risks. Charman et al. (2017a) found that students who interacted with strangers were overly confident that they would be recognized 24 hours later. However, only 37% of the potential alibi corroborators who were strangers accurately identified the student they interacted with, and only 7% identified the student, remembered what the student did, and remembered the time of their interaction (likely important details for an alibi corroborator to recall). We do not know of real-life instances in which a stranger was unable to corroborate the alibi of a wrongly convicted individual, but certainly overestimating the likelihood that a stranger will remember a brief interaction can potentially be damaging to the credibility of one's alibi.

Another feature that researchers have suggested can be important to alibi believability is the number of corroborators one has (Eastwood et al., 2016); was this an important factor for the DNA exonerees? Since we used a sample restricted to those who have had alibis that were not believed, one might have expected that this sample of exonerees would each have few alibi corroborators. While this was true for some (5% of the sample had no corroborators at all, and 42% had only 1 or 2 corroborators), 43% of those with an alibi had at least 3 alibi corroborators. In fact, some had many corroborators and yet they were still not believed. For example, consider the case of Timothy Durham. He was charged with a rape that had occurred in Oklahoma, but 11 alibi witnesses testified that he was in Texas at the time of the offense; his alibi did not keep him out of prison (Innocence Project, n.d.).

As for physical evidence, recall that Olson and Wells (2004) found that alibis supported by *any* kind of physical evidence were more believable than alibis supported by person evidence, a sentiment shared by Dysart and Strange's (2012) sampled law enforcement officers. Although only about 10% of the DNA exonerees with an alibi presented physical evidence (lower than what is typically found in research—see e.g., Culhane et al., 2008), the physical evidence provided by the DNA exonerees tended to be surprisingly strong as classified using Olson and Wells' and Olson and Charman's (2012) taxonomies. The relatively low percentage of exonerees with physical evidence supporting their alibi relative to that found in research speaks to the difficulties in the real world of providing physical proof of where one was, often after a lengthy delay. Twenty-nine percent of Culhane et al.'s participants had physical evidence, but they were only required to provide physical evidence of where they were two days earlier.

It should be noted that some DNA exonerees had strong physical evidence, but it wasn't enough to keep them out of prison. Consider Timothy Durham again. He had credit card receipts for the gas he and his parents bought, the dinner they ate, and the clothes they purchased. Despite having what was arguably a strong alibi, Durham was sentenced to 3,200 years in prison (Garrett, 2011).

In some cases, alibis may have been perceived as weak or were discounted completely because they were not investigated in a timely manner. As time passes, it becomes more difficult to obtain evidence relevant to an alibi; physical evidence may be discarded; alibi witnesses forget. I will refer again to the cases of Travis Hayes and Ryan Matthews as an example. Hayes and Matthews were interviewed separately by police shortly after the murder was discovered, and their accounts were quite similar, basically presenting a list of eight errands that they had been on together. According to his account of the day of the crime, Matthews visited a store which had a videotape recording of what occurred at the store. Unfortunately, that physical evidence had been

destroyed before it could be used by the defense (*Louisiana v. Hayes,* 2006). Investigators eventually determined that DNA available at the crime scene matched neither Hayes nor Matthews, and the charges were dropped, but not before legal arguments were made regarding the quality of alibi statements eight years after the day in question: "It's impossible eight years later. I mean, nobody could possibly reconstruct an alibi. It was clear if you read Ryan Matthews and Travis Hayes' statements that night, had a diligent investigation been done promptly, when everything was fresh in everybody's minds in terms of where Travis Hayes and Ryan Matthews were, it's clear that an alibi defense was available to be present, but it never was and it can't be now. It has been permanently gone" (*Louisiana v. Hayes,* 2006, p. 52).

Sometimes a person's alibi lacks credibility because investigators are not certain of the time of the offense. Take the case of murder. Although there are many indicators that a coroner can use to indicate the time of death (e.g., Shrestha et al., 2020), unless a witness takes note of the timing of a fatal wounding, a stated time of death is just an estimate. Consider the cases of John Restivo and Dennis Halstead. The defense submitted a notice of alibi to the Court but did not list specific alibi witnesses because the defense had not been given a specific date and time of death. In the defense attorney's words, "nobody, yourself, myself included, Judge, can give the whereabouts of themselves for 25 consecutive days some two years ago" (*New York v. Restivo and Halstead,* 1986, p. 25).

When alibi information was presented for consideration, attacking the alibi was commonplace. Police investigators sometimes were critical of the alibi when interrogating the suspect. According to Leo and Drizin (2010), once an investigator has a presumption of guilt, part of an investigator's plan of action could include attacking an alibi as "inconsistent, contradicted by all of the case evidence, implausible or simply impossible" (p. 18). In some cases, the police were even said to have harassed alibi witnesses. For example, in John Restivo's case, an alibi witness was said to have been harassed to such a degree that a lawsuit was initiated to stop the harassment. The witness "apparently succumbed to the police pressure" and indicated that the alibi statement he initially made was not true (*In re Restivo,* 2000, p. 46).

Prosecutors also often attacked inconsistencies in alibi testimony in an effort to discredit the corroborators, although when there was consistency, that was sometimes attacked as well—in the latter case, the testimony was claimed as planned. One of the defense attorneys in the trial for Alejandro Hernandez, Stephen Buckley, and Rolando Cruz summed up the problem well:

> "You start questioning people about little, itty, bitty details about the alibi, specifics about time, what somebody ate, what type of clothing they were wearing, little, itty, bitty things. And if the alibi witnesses recall, then the argument is, of course 'Well, ladies and gentleman, who could recall with such specificity and detail two years ago? Must be a lie.' Or if you're not quite as exact in your details about the alibi, then counsel's argument is, 'Geez, they were awfully vague about what happened on that day. Must be too vague. Can't believe them. They really don't know anything. It was just another day in their lives. They're too vague.' So, you lose. It doesn't matter. There's an argument to account for whatever position you come up with" (*Illinois v. Hernandez, Buckley and Cruz,* 1985, p. 133).

Researchers have found that alibi evaluators generally see consistent alibis as more believable than inconsistent alibis. For example, Culhane et al. (2008) found that almost 90% of their undergraduate sample agreed that defendants who change their alibis after being questioned by police are probably lying. This is congruent with what Dysart and Strange (2012) found with a sample of law enforcement personnel; they said that over 80% of suspects who change their alibi were originally lying, not just mistaken. These beliefs could explain the lie bias that law enforcement professionals frequently show, making more "lie" decisions than "truth" decisions (Masip et al., 2016; Meissner & Kassin, 2002).

Police officers, lawyers and mock jurors have been shown to share the belief that inconsistency of a statement is indicative of "inaccuracy" (Potter & Brewer, 1999, p. 97); however, there are mixed findings with regard to whether inconsistency actually does indicate deception. For example, when Culhane et al. (2013) compared inconsistencies in both true and false alibis, they did find more inconsistencies in false alibis, although there were few inconsistencies overall. On the other hand, Granhag et al. (2003) found deceptive statements by colluding pairs were more consistent than truthful statements by colluding pairs, while single liars and truth tellers were equally consistent over the course of a week. They recommended that evaluators exercise caution when using consistency as a measure of deception.

There are other possible reasons why a provided alibi did not work in a defendant's favor. In some cases, a thorough investigation of the alibi did not take place. This failure to investigate was, at times, blamed on the police (e.g., Anthony Gray's case). Dysart and Strange (2012) did find that most of the law enforcement officers sampled indicated that failure to investigate an alibi is substandard police practice, but 46% said that this inaction would not be considered police misconduct. In other cases, the defense counsel was blamed for a failure to investigate the defendant's alibi. For example, after Richard Johnson was convicted for rape and robbery, he claimed that his defense was inadequate. His defense attorney did not investigate his alibi, claiming that Johnson did not need alibi witnesses because the prints on the knife were not his (*Johnson v. Illinois*, 1994). Johnson spent four years in prison before being exonerated using DNA (Innocence Project, n.d.).

Obviously, it would be better to have an offered alibi investigated thoroughly earlier rather than later. If police investigators verify an alibi, then a trial and a wrongful conviction can possibly be averted. Sommers and Bradfield Douglas (2007) found that an alibi was perceived as stronger when it was evaluated as part of a police investigation rather than as part of a trial. They proposed that a possible reason for these perceived differences as a function of the context was because participants may have thought that if a case made it to trial, then the alibi must not have carried much weight. They caution researchers to consider context when evaluating their results.

Another reason why a provided alibi did not work in the defendant's favor is because the prosecution kept something from the defense that would support the alibi. This is prosecutorial misconduct, a deed that typically carries no punishment for the offender (e.g., Selby, 2020). For example, in Fredric Saecker's case, the State failed to turn over an ATM slip and taxi records that would support Saecker's alibi (*Wisconsin v. Saecker*, 1996).

In some cases, alibi information, although available, was not presented at the trial. In A.B. Butler's case, for example, the defense attorney decided not to allow the alibi witness to testify

because the attorney thought the testimony that was going to be provided would be inconsistent with the alibi witness' original statement (*Ex Parte A.B. Butler*, Jr., 1990).

There were also cases in which an alibi was investigated, but investigators chose not to believe the alibi. Sometimes, in hindsight, it is difficult to understand why one alibi is believed and another is not. Consider Frank Sterling's case. In 1988, a 74-year-old woman was taking a walk when she was struck in the head by BB gun pellets, and then beaten to death. Sterling was immediately a suspect because his older brother had been imprisoned for attempting a sexual assault of the same woman. Sterling had what could be considered a solid alibi; he was at work at the time the crime was said to have occurred, then he went to buy frosting for cakes he had made, and then he watched television for two hours. Every facet of his alibi was checked and confirmed (*New York v. Sterling*, n.d.).

Another suspect, Mark Christie, was questioned 10 days after the murder. Christie told police that he was at school on the day of the murder; he also said that if he had killed the victim, he would lie about it. The police indicated that they believed his alibi and did not investigate Christie any further. More than two years passed without an arrest; then a new investigative team took over. Five months later, Sterling was again brought in for questioning. After 12 hours of an interrogation in which he was hypnotized, told to imagine committing the murder, and shown the crime scene photos to "help him remember," he confessed. Many of the details in Sterling's confession were inconsistent with the facts of the case, and Sterling immediately recanted, but he was convicted. Shortly before Sterling's sentencing, the defense attorney was informed that Christie had told his friends that he had committed the murder. The defense moved for an order to set aside the verdict, but the trial judge thought there was insufficient reason to believe the statements made by Christie's friends. Sterling was sentenced to 25 years in prison. He served almost 18 years, before DNA evidence revealed that Christie was the real culprit. Christie's alibi was eventually investigated and found to be uncorroborated. He hadn't arrived at school until 1:20 p.m. on the day of the murder; his statement of being in school at the time of this crime was false. What is even worse is that while Sterling was serving time for a crime that Christie committed, Christie killed a 4-year-old girl (*New York v. Sterling*, n.d.). Why was Sterling's true alibi not believed and Christie's false alibi was? Why was Sterling's alibi investigated in a timely manner and then not trusted even when corroborated, while Christie's alibi was initially not even investigated but believed? It can be difficult to know why the investigators made the decisions they made, but in this case, one thing is clear. The investigators who believed Christie's alibi and did not believe Sterling's alibi were wrong.

Deciding whether or not to believe an alibi is a decision many investigators have to make, and sometimes investigators make the wrong decision. Researchers have found that it is generally difficult to determine whether an alibi statement is true or false. This has been demonstrated with students reading alibi statements generated by other students (e.g., Culhane et al., 2013) and with a sample of police detectives reading alibi statements generated by males who had recently been arrested (Nieuwkamp et al., 2019). These are difficult decisions to make because it certainly is possible to falsify an alibi. When Culhane et al. (2008) asked their participants if they could come up with falsified physical evidence to support an alibi statement, 34% thought they could; 61% thought they could find someone to lie for them. Given the combination of relatively easy alibi fabrication and an inability to know when one is being lied to, those judging an alibi may resort to being skeptics and exhibit a lie bias; alibis are frequently not believed.

B. Contributing Causes of Conviction

As we have shown, there are many possible reasons why an alibi may be perceived as weak and subsequently not believed. However, we can still ask why the so-called "strong" alibi evidence of non-motivated corroborators, multiple corroborators, and/or the presence of strong physical evidence did not convince investigators of the veracity of the alibis in this sample? Because in each of these cases, as in all others, there was evidence that served to make the defendant appear guilty. We found, for example, that 75% of those with an alibi had a case that included mistaken eyewitness evidence (eyewitness evidence was significantly more likely in cases with defendants who had, as opposed to did not have alibis). Twenty-two percent of those with an alibi confessed (although those with an alibi were less likely to confess than those without), and for those with alibis, approximately half had improper forensic evidence as part of their case. Twenty percent of those with an alibi had an informant implicating them, at times claiming that the presented alibi was false. A third of the defendants with alibis had cases that included government misconduct (this was marginally more likely to occur for those with alibis than for those without), and almost a third of defendants with alibis claimed that their defense was inadequate (this occurred significantly more often for those with alibis than for those without).

How does an innocent person end up with evidence indicating his or her guilt? There are various pathways and while some defendants were convicted due to unfortunate errors (eyewitnesses can make mistakes without being pressured to identify a particular person—see e.g., Buckhout, 1980), in many cases, biased procedures play a role. We'll review three of the major contributing causes to conviction (mistaken eyewitnesses, false confessions and improper forensic evidence) and their potentially biased procedures here.

As noted above, while it is possible for an eyewitness to be honestly mistaken, some of the procedures police use with eyewitnesses can make errors even more likely. As we have shown, many of the DNA exonerees had mistaken eyewitnesses as part of their case. Indeed, we found that 27% of the defendants with an alibi had *only* eyewitness evidence contributing to their conviction. The procedure to obtain eyewitness identification was, in some cases, tainted. Investigators may be so convinced that the suspect is guilty that they encourage a particular identification.

One suggestive technique used in this sample was the show-up (see Wells et al., 2020). In fact, show-ups were used more often in cases in which an alibi was offered by the defendant (19%) than when an alibi was not offered (9%). Why the difference? One possibility is that since the defendants in these cases were not guilty and had alibi evidence to support that fact, perhaps the investigators felt especially compelled (consciously or not) to lead an eyewitness to make the needed identification. It is reasonable to assume that no credible evidence exists against an innocent person (Leo & Drizin, 2010). Do police investigators work harder to secure evidence when the suspect has an alibi?

Other suggestive techniques beyond show-ups were used with this sample of DNA exonerees. Here are a few examples: In Larry Mayes' case, the victim identified another person in the lineup, but then the police officer grabbed the victim and insisted she take another look at the lineup; she then identified Larry Mayes (*Mayes v. Indiana*, 1996). In some cases, the suspect's photo stood out as different, potentially influencing the eyewitness' identification choice. For

example, when Thomas Doswell was arrested for rape, the victim was shown a photo lineup and his photo was the only one marked with an "R" (it was explained during the trial that "R" stood for rape—Innocence Project, n.d.). In Marvin Anderson's case, the photo lineup had his photo in color while all others were in black and white (Innocence Project, n.d.). In a number of cases (e.g., Malcolm Alexander-- https://innocenceproject.org/cases/malcolm-alexander/), investigators presented the same suspect in repeated identification tasks, and the suspect was the only person shown multiple times. This is problematic because multiple identification experiences have been shown to contaminate a witness' memory (Haw et al., 2007). These eyewitness identification procedures were all biased. Thus, despite each of these defendants having an alibi, they were each chosen as the culprit. Eyewitnesses should never be led to choose a particular person (see Wells et al., 2020 for recommendations regarding the collection of eyewitness evidence).

While it is possible for an innocent person to confess without being pressured to do so (see Kassin, 2006), the procedures police use can induce false confessions. The following is one common pathway. Initially, the suspect is asked questions in a non-confrontational manner about the crime in question. During this questioning period, police investigators assess the suspect's behavioral responses (e.g., posture, eye contact) as indicators of the suspect's credibility. If the investigators decide that a suspect is not being honest, they begin interrogating the suspect (Inbau et al., 2011). Unfortunately, police investigators (like most others) are not generally accurate in detecting deception (e.g., Ekman & O'Sullivan, 1991); thus, they can end up interrogating an innocent person. Interrogators typically have a presumption of guilt when they question suspects (Inbau et al., 2011), and their interrogation tactics (e.g., making false claims about the evidence, making or implying promises or threats) can lead innocent people to confess (e.g., Kassin, 1997). Once a confession is in hand, the investigation often ends (Kassin, 2012) which could mean that an alibi, even a strong one, will be ignored. While we did find that those with an alibi were less likely to falsely confess than those without an alibi, the problem of police-induced confessions is a concern for both populations. See Kassin et al. (2010) for more on risk factors that can lead to police-induced confessions and recommendations for interrogation procedures.

Forensic evidence has also been cited as a major contributor to wrongful conviction, and forensic evidence is also potentially subject to bias. For example, in some cases, the forensic analysts have knowledge of implicating evidence (e.g., a confession, an eyewitness) before analyzing forensic evidence (Saks et al., 2003). This knowledge could influence the analyst's findings (e.g., Dror & Hampikian, 2011). To avoid the potentially biasing effect of information from police investigators, blind forensic testing is recommended among other reforms (e.g., Kassin et al., 2013).

Each of the types of evidence noted in this section can be manipulated, coerced, and created where none should exist. Eyewitnesses can be led to choose a particular individual as the culprit; innocent people can be forced to confess to something they did not do, and forensic evidence can be fabricated, tainted by expectation. In each case, one's beliefs can affect the way one looks at evidence (see Charman et al., 2017b). This tendency to have one's preexisting expectations influence the perception of evidence has been referred to as a confirmation bias (Nickerson, 1998). It can lead to "tunnel vision" in which those in the criminal justice system focus on one suspect, seeking out incriminating evidence and discounting any evidence that is exculpatory (e.g., Findley

& Scott, 2006, p. 292).[12] This is not necessarily a deliberate set of actions (Nickerson, 1998), but it can be damaging, nonetheless.

C. Recommendations for Reform

Many in our sample were wrongly convicted despite having an alibi. Given this information, we recommend reforms in the investigation of alibis. While we do recognize that some alibis may be impossible to verify (e.g., "I was home alone"), many can, and it appears that some in the Innocence Project database had corroborating evidence that was ignored. Officers need to take the time to thoroughly investigate the validity of an alibi statement as quickly as possible. An alibi should never be ignored. Alternatively, an alibi should not simply be believed without the benefit of an investigation. Both approaches are inappropriate. In addition, when alibis are evaluated, it is important to avoid confirmation biases (Nickerson, 1998). We recommend, akin to what was put forth by Marksteiner et al. (2011), having an independent evaluator – one who has not formed an opinion of the suspect's guilt or innocence – investigate the suspect's alibi.

As noted above, an alibi should be investigated by police investigators as early as possible. However, if a defendant comes to trial without the benefit of having his or her alibi investigated, then the defense attorney has a responsibility to complete that investigation. Interestingly, over 70% of Dysart and Strange's (2012) law enforcement sample said that private defense attorneys have a responsibility for investigating a defendant's alibi, and to neglect to do so is indicative of providing a substandard defense. Recall that 30% of the exonerees that claimed to have had an inadequate defense included an alibi-based reason for that claim.

We also recommend a reform similar to what those who study false confessions recommend (e.g., Leo et al., 2009). Police should require probable cause to interrogate. Unfortunately, this does not always happen. Relatedly, Dysart and Strange (2012) found that less than half of the sampled detectives agreed to the statement that "a thorough investigation is *always* conducted before a warrant or arrest," while 38% indicated that "a thorough investigation is *often* conducted," and almost 8% said "a thorough investigation is *sometimes* conducted (p. 17). Almost 5% reported that a suspect's alibi is *rarely* or *never* investigated prior to an arrest or a warrant. Recall that an interrogation includes the presumption of guilt, which can lead one to a false confession and prompt a complete disregard of a presented alibi.

Reforms in the training of police investigators are also worth considering. Dysart and Strange (2012) found that only 23% of their sampled law enforcement officers had received specific training on how to interview alibi witnesses. Officers also need to be trained regarding how to evaluate an alibi. If someone provides a direct contradiction upon retelling their account of an event, that could mean something very different from someone committing an act of commission (adding something in a later interview that was only just remembered, also known as reminiscent details) or an act of omission (leaving something out that was stated in an earlier interview). All could be seen as inconsistencies, but one could argue that a direct contradiction is

[12] Another potential indication of tunnel vision is that, in at least 3% of cases (e.g., Jeff Deskovic--https://innocenceproject.org/cases/jeff-deskovic/), investigators determined, prior to the trial, that the DNA from the crime scene did not match the suspect's DNA, yet they continued with the prosecution. (This should be footnote #13)

more indicative of deception than the addition or deletion of details that just were not remembered during one or more retellings. Krix et al. (2015) did find that reminiscent details can be accurate, suggesting that inconsistency is not necessarily a good indicator of accuracy. Interestingly, Potter and Brewer (1999) found that a police sample in South Australia did not perceive the recall of new information to indicate inaccuracy, but they did see testimony inconsistent with one's own statements and with others' statements to be an indicator of inaccuracy. This distinction between direct contradictions versus reminiscent details should be clear in the training of those investigating alibis.

D. Future Research

It is important to recognize that, in the real world, one piece of evidence is rarely evaluated in isolation. In other words, evaluators are typically not just evaluating a piece of evidence, but are integrating that piece of evidence with others. Researchers have begun to investigate how alibis and various forms of evidence are viewed in cases in which they co-exist. (Recognize that bidirectionality of influence is possible here--the presence of an alibi can affect how evidence that contributes toward a conviction is perceived, *and* the presence of evidence that contributes toward a conviction can affect how an alibi is perceived.) For example, researchers have considered how alibis and eyewitnesses are viewed when pitted against each other (e.g., Dahl et al., 2009) and how a confession might change the actions of an alibi witness (e.g., Marion et al., 2016). In the present study we found that eyewitnesses were significantly more likely to be a contributing cause of conviction for those with an alibi than for those without an alibi, and the use of show-ups was significantly more likely for those with an alibi than for those without. These results suggest that investigators may be treating cases differently when an alibi is offered (it may or may not be intentional). Future researchers may wish to look at this possibility more closely. Researchers should also continue to explore how the believability of an alibi can vary when it is presented with various forms of evidence.

Charman et al. (2019) recently applied Wells' (1978) classic research on the effects of estimator and system variables on eyewitness accuracy to alibi research (also see Allison & Brimacombe, 2010). Much of the research that has been conducted on the topic of alibis has focused on what Wells referred to as estimator variables, variables that are not controlled by the legal system. For example, researchers have found that the relationship between an alibi provider and alibi corroborators can affect alibi believability (e.g., Hosch et al., 2011). Who the suspect has as an alibi corroborator is something that is set by circumstances, not by anything the legal system does. Charman et al. maintain that researchers need to turn their focus to studying system variables, procedures that the legal system can put in place to help ensure that innocent suspects are allowed to provide an alibi that will be fairly evaluated. With this in mind we provide the following recommendations for future research.

The present investigation revealed that in some cases relatively strong alibis were inappropriately ignored by investigators. We need to learn how to maximize the strength of the alibi evidence provided by innocent suspects. Are innocent suspects providing all the details about their alibi that they could provide? One possible avenue for future research is to develop questioning techniques that will aid innocent suspects/defendants when they are attempting to recall where they were when the crime occurred. Matuku and Charman's (2020) recent work on uncovering strategies to improve the quality of alibi evidence for innocent suspects is an example

of this. They found that asking people to recall chronologically what they did as opposed to just asking them for a free recall narrative, served to increase the amount of physical evidence recalled. They also found that, in some cases, asking people to take another's perspective into account could increase recall of potential physical evidence sources.

The growing use of digital technology means that changes are likely occurring in the availability of physical evidence. Those questioning suspects and those evaluating alibis need to be aware that physical evidence may be available, although its presence may not be immediately obvious; researchers need to learn how best to access that information. As retired FBI Supervisory Special Agent James Gagliano recently reported on CNN (2020), it is "tough to walk across the street without emitting some type of digital exhaust. Data hitting off of a cell tower nearby or an easy pass or some type of device—go across a bridge and it takes a picture of your license plate." Furthermore, in today's communities in which cameras are increasingly plentiful (e.g., banks, schools, stores, roadways, private home door cameras), finding video evidence may be more possible than ever (Goodison et al., 2015). Virtual documentation can also be possible—website visits, keyword searches on Google, email sign-ins, and Internet shopping all can provide information regarding what someone was doing at a particular time. "Cell tower dumps" in which data are compiled from telecommunication companies to identify phones used near crime scenes may also be helpful. In some cases, police investigators have obtained a "geofence warrant, a type of digital data hunt" that can identify people in an area at a certain time (Schuppe, 2020).

Researchers should, of course, continue to learn how to differentiate true from false alibis (the detection of deception research is relevant here-see e.g., Kassin & Fong, 1999). Differentiating between true and false alibis is an especially difficult task, because not only can suspects lie, but it is also possible that those providing an alibi are innocent but mistaken about where they were (thus, they are not literally lying). For example, when Ronald Cotton was arrested for sexual assault, he provided an alibi, but he had misremembered where he was at the time of the crime. He later realized his mistake and corrected it, but this inconsistency made him look dishonest (Thompson-Cannino et al., 2009). How do we differentiate between those who are honestly mistaken and those who are lying?

Nieuwkamp et al.'s (2019) sample of detectives achieved a 60% accuracy level when detecting deception in alibis, while Culhane et al.'s (2013) student sample detected false alibis at a chance level. Neither the students nor the police detectives were given an opportunity to validate the presented alibis, a task that may have made it easier to detect a false alibi. Interestingly, the police detectives commented that they would have liked to have been able to view the suspect when he gave his alibi account or be provided with an opportunity to ask follow-up questions. It is unclear at this point whether these actions would have served to increase or decrease accuracy in detecting false alibis or just potentially served to make the detectives more (or perhaps less) certain of their decisions. These are potential questions for future research.

We also need to understand how police investigators view inconsistencies. Inconsistency in recall is not unusual. In fact, it has been documented in memory for both unusual events and for more mundane events (Talarico & Rubin, 2003), and there can be a variety of reasons for inconsistencies in memory (see Crozier et al., 2017). One possible reason for inconsistencies is that memory decays with time (e.g., Murre & Dros, 2015). Another reason for inconsistencies is that those providing an alibi may, at least initially, rely on their schemas to help them generate an

alibi. They report what they usually do at the time in question and that information may not be correct (Leins & Charman, 2016).

Laliberte et al. (2021) recently provided data that documents the ways inconsistency can be seen in alibis. They used a smartphone application to record information such as participants' GPS location every 10 minutes for four weeks (thus ground-truth was known). After a one-week retention period, they asked participants to indicate where they were at a particular time (they had a choice of four possible locations). Overall, participants were wrong 36% of the time. Nineteen percent of the time they were right about the day of the week but were wrong about which week it was. They also made mistakes such as choosing the right hour of the day but the wrong day. It is possible to imagine that someone honestly wavering in their presentation of alibi details would be seen as inconsistent and thus dishonest. It should be noted that Laliberte's participants were college students who generally had regular schedules and were asked to choose from four possible locations, yet their memories were still considerably faulty. Future researchers could extend the external validity of Laliberte et al.'s work (e.g., asking for free recall from a non-college sample).

Researchers also need to generate recommendations that will help ensure that provided alibis are investigated fully and fairly. The research of Olson and Wells (2012) suggests one possibility. They found that participants who first generated their own alibis before evaluating a suspect's alibi rated the suspect's alibi as more believable. The idea here is that generating your own alibi gives one an idea as to how difficult it can be to generate a convincing alibi. At this point, this work has only been done with undergraduates; however, the idea that experience could change the outlook of those judging alibis does have promise and should be investigated further.

E. Limitations

There are some limitations to this archival analysis. We were only able to use information that was available. Just because some DNA exonerees are not represented here as having an alibi does not mean that they did not have an alibi. Some may have offered an alibi, and that information is just not represented in the Innocence Project summaries or in the Innocence Record files that have been made available. We do have evidence that some details were missing. Recall that 22% of the alibis could not be analyzed because details were not available. It is also worth noting that, while in some cases we were able to work directly with trial documents (i.e., the Innocence Record), in other cases, we were limited by summaries of trial documents created by others (i.e., the Innocence Project and Garrett's (2019) *DNA Exonerations Database*); we pointed out the few instances in which we found disagreements in content. Finally, recall that we only reviewed Innocence Record documents that explicitly included the word "alibi;" it is possible that we did not capture all of the relevant information.

F. Conclusion

One might think that in this restricted sample of those who were wrongly convicted, you would have a group of defendants that largely did not have alibis. But this was not the case. Sixty-five percent had alibis, some of them strong. But there were forces working against these defendants at every turn—mistaken eyewitnesses, coerced confessions, improper forensics to name a few, and sometimes, faced with the possibility of a conviction, investigators, prosecutors, jurors and perhaps even defense attorneys seemed to discount the alibi, sometimes not even taking

the time to evaluate the alibi that was offered. One lesson of this work is that alibis need to be evaluated as quickly and thoroughly as possible, ideally by someone who is not already convinced of the suspect's/defendant's guilt.

We need to recognize that an alibi supported by family and friends can represent truth; we need to recognize that just because someone doesn't have physical evidence to support a statement does not mean the statement is not true, and we need to learn how to do a better job of differentiating between true and false alibis. The bottom line is that the lack of an alibi or the presence of an alibi perceived as weak should not be seen as incriminating evidence. Devlin (1976) provides a position supported by the present authors: "The alibi will be at best convincing and at worst, neutral" (p. 92). To think otherwise is a mistake with consequences that can be far too great.

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