

# Toward reducing wrongful convictions: Improving the protective value of alibis



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*In his Zippo lighter, he sees the killer's face / Maybe it's someone standing in a killer's place / Twenty years for nothing, well that's nothing new / Besides, no one's interested in something you didn't do.<sup>1</sup>*

Fans of Canadian rock music will recognize these lyrics from The Tragically Hip's song *Wheat Kings*. According to archived news interviews with the band, the song was inspired by the infamously botched David Milgaard case. To recap the case briefly, Milgaard was convicted in 1970 for the first degree murder of Gail Miller in Saskatoon, Saskatchewan. He spent 23 years in prison before being released and eventually proven innocent through DNA evidence. Although many factors contributed to this miscarriage of justice, of particular interest is that Milgaard was suspected, arrested, and convicted *in spite of* having an alibi – his friends originally told police that he was with them on the day the crime was committed (and that he was not at all involved) – that could have removed him from suspicion at the beginning of the case. This raises an important question: Why wasn't his alibi believed?

Unfortunately, Milgaard's case is not unique given that several hundred wrongful conviction cases have now been identified in Canada and internationally. These cases have revealed several problems with investigative procedures that can lead to miscarriages of justice (e.g., faulty eyewitness testimony, coercive interrogation tactics, improper use of

forensic science).<sup>2</sup> Another important element in many of these cases is that the innocent individual offered an alibi that was not perceived as believable by investigators. This initial assessment of an alibi claim is crucial; if the veracity decision is incorrect, then an innocent suspect becomes the primary focus of the investigation and all subsequent decisions may be influenced by this perception (i.e., tunnel vision).

## What Do We Know About Alibis?

Despite the importance of the alibi assessment and generation process, serious attempts to research alibis within criminal investigations only began just over a decade ago. Olson and Wells' taxonomy of alibis<sup>3</sup> is credited as being the foundation upon which much of the current research is built. These authors proposed that the veracity of an alibi is dependent largely on the ability of the suspect to provide evidence that corroborates the alibi, and specifically that (1) difficult-to-fabricate physical evidence (e.g., CCTV footage vs. a receipt) and (2) testimony from someone not motivated to lie for the suspect (e.g., store clerk vs. family member) lead to more believable alibis. Subsequent research has confirmed that believable alibis are those that contain strong physical evidence and/or corroboration from several non-motivated others.<sup>4</sup>

Research from the alibi generation side, however, has shown that alibi providers rarely include physical evidence to corroborate their alibis<sup>5</sup> and person evidence (understandably) often comes from family members or close friends.<sup>6</sup> Some research has also reported on various factors that negatively impact alibi believability. For example, changing details is often viewed as being deceitful (vs. simply mistaken),<sup>7</sup> and alibis containing illegal or sexual information appear to be regarded as less believable.<sup>8</sup>

### What Is Next In Alibi Research?

Authors in a recent issue of *Behavioral Sciences and the Law*<sup>9</sup> highlighted important areas within the alibi research field, and offered some new direction to alibi researchers. In particular, the role of memory – and the recognition of its fallibility and malleability – was cited as an important angle that alibi researchers should consider. Thus, a ripe area of exploration concerns the conditions under which the most accurate and complete alibis are produced. That is, what can investigators do to best facilitate reliable memory recall in alibi-givers and alibi witnesses? As researchers uncover the circumstances under which the most reliable alibis can be generated, the protective value of alibis for innocent people may be enhanced and the truth-seeking process will benefit substantially.

Research of this nature offers information that helps alibi evaluators determine the truth of alibi claims. However, unless it is shared among those who will benefit from it (e.g., police practitioners), the full potential of this empirical knowledge is not achieved. Working partnerships between police organizations and university research labs help to bridge this gap, often through applied research and training programs. Providing alibi evaluators with knowledge of human behaviour from the psychology literature (e.g., frailty of memory, difficulty [especially under stress] of generating a detailed alibi) will provide a scientific foundation upon which

legal decisions can be made. In addition, the popularity and success of numerous documentaries and podcasts related to the handling of certain high-profile cases by police investigators (e.g., *Making a Murderer*) – including several related specifically to the alibi process (e.g., *The Long Shot, Serial*) – demonstrate the apparent widespread dissatisfaction with some current police practices. This further highlights the need for this topic to be explored by researchers and for findings to be shared with relevant actors within the legal system.

Considering the dearth of alibi research, increased media attention and public interest in issues with alibi evidence, and implications for all parties involved in presenting and assessing the alibi, it is clear that more research needs to be conducted in this area. As up-and-coming researchers follow in the footsteps of pioneering alibi scholars, more practical solutions for the justice system will undoubtedly be discovered. Inspired by The Tragically Hip album that was home to a song concerned with a miscarriage of justice, we commit to dedicating our time and research efforts *fully, completely* toward improving the protective value of alibis through empirically supported science, and hope to prevent innocent suspects from enduring the same injustice as David Milgaard.

For a complete list of references, visit [www.cpa.ca/psynopsis](http://www.cpa.ca/psynopsis)

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