An Investigation into the Presentation and Evaluation of Alibi Evidence in the Courtroom

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An Investigation into the Presentation and Evaluation of Alibi Evidence in the Courtroom

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Abstract

An alibi, as a claim that the accused was elsewhere at the time an offence was allegedly committed, has the potential to be a defence worthy of vindication or (potentially, erroneous) conviction. Alibis are a leading contributory factor in cases of miscarriages of justice, yet research remains nascent. To ensure an effective, fair, and equitable legal system, thereby mitigating for wrongful convictions, it is vital that research seeks to redress this paucity. The thesis provides an integrative, mixed methodological investigation into the courtroom presentation and evaluation of alibis, achieved through three distinct, yet interconnected, studies.

In Study One, four criminal barristers took part in semi-structured interviews to explore their perceptions, experiences, and approaches to questioning of alibis in court: the first of its kind within the jurisdictional context of England and Wales. The findings demonstrated that barristers were professionally sceptical and distrustful of such evidence. Direct examination seeks to present the defence using a controlled, story narrative, whilst cross-examination undermines and discredits the alibi by exploiting testimonial (between-statement) inconsistencies and discrediting the defendant and/or alibi witnesses manner, demeanour, or character.

Informed by the real-world cross-examination techniques identified in Study One, 204 jury-eligible participants took part in Study Two, whereby the effect of alibi between-statement inconsistencies and prior conviction evidence on mock juror evaluations and decision-making was examined. Such factors had a significant negative effect on the verdict and appraisals made by mock jurors, demonstrating such techniques are indeed effective in undermining and discrediting the defence when evaluated by jurors.

Using the same real-world cross-examination techniques, and building upon the findings of Study Two, Study Three qualitatively explored mock jurors and juries' understanding, perceptions, and use of alibi evidence as part of the deliberative process within a simulated criminal trial. The novel findings demonstrated that participants were overarchingly sceptical of alibi evidence and evaluated the

defence through the lens of non-evidential factors, with an idealistic (yet unrealistic) expectation for complete consistency between and within accounts.

Together, the thesis has achieved a concerted and triangulated understanding of such discrete, yet interdependent, aspects, producing novel knowledge that is invaluable to barristers, jurors, juries, and the Criminal Justice System.

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Glossary of Abbreviations

ANOVA	Analysis of Variance
ANCOVA	Analysis of Covariance
BAILII	British and Irish Legal Information Institute
BPS	British Psychological Society
BPTC	Bar Professional Training Course
BSB	Bar Standards Board
CBA	Criminal Bar Association
CCTV	Closed Circuit Television
CJA 2003	Criminal Justice Act 2003
CJS	Criminal Justice System
CMIF	Continuum Model of Impression Formation (Fiske & Neuberg, 1990)
CPIA 1996	Criminal Procedure and Investigations Act 1996
CR	Critical Realism
CPS	Crown Prosecution Service
ELM	Elaboration Likelihood Model (Petty & Cacioppo, 1986)
GPS	Global Positioning System

HM	[Her] His Majesty's
MANOVA	Multivariate Analysis of Variance
MANCOVA	Multivariate Analysis of Covariance
MoJ	Ministry of Justice
PNC	Police National Computer
RAs	Research Assistants
SIO	Senior Investigative Officer
TA	Thematic Analysis

Specialist Terminology

Alibi: An alibi, as defined by Section 6 A (3) of the Criminal Procedure and Investigations Act (CPIA) 1996, states:

> *by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.*

Alibi Direction: A judicial direction, as per the Crown Court Compendium's (Judicial College, 2023) guidance, intended to inform juries that it is the responsibility of the Crown to refute the alibi and not the defence to prove the defendant was where the alibi alleges they were. It is advised that juries should be informed that, if they believe the alibi to be false, that in itself is not necessarily indicative of guilt and an innocent defendant may generate a false alibi to bolster a defence that is otherwise genuine.

Alibi Provider: As per Olson and Wells' (2004) definition, alibi provider is a term used interchangeably with suspect/defendant to refer to the individual being questioned about their location at the time the offence was committed.

Alibi Witness or Corroborator: The alibi witness or corroborator refers to individual/s who can support a suspect/defendant's account as to their whereabouts at the time in question (Olson & Wells, 2004).

Bad Character Direction: A judicial direction provided to the jury pertaining to the purpose and use of bad character evidence during deliberations and decision-making, as per the Crown Court Compendium (Judicial College, 2023).

Between-Statement (In)Consistency: A term found within the deception literature that refers to consistency between earlier provided accounts (e.g., consistency between accounts provided during police interview or direct examination, compared to cross-examination) (Vredeveldt et al., 2014).

Consistency Heuristic: A heuristic whereby consistency is (erroneously) seen as indicative of truthfulness, whilst inconsistency is suggestive of dishonesty (Granhag & Strömwall, 2001).

Cross-Examination: Cross-examination, by the opposing advocate, is designed to undermine and discredit evidence provided in-chief, by producing or drawing out evidence to the contrary and/or demonstrating there are faults in the contrasting version of events (Henderson et al., 2016).

Crown Court Compendium: The Crown Court Compendium (Judicial College, 2023) provides detailed guidance for judicial practitioners, namely judges, when giving directions to the jury in Crown Court proceedings.

CSI Effect: A phenomenon named after the increase of television programmes concerned with forensic evidence, resulting in jurors increased expectations as to the presence, capability, and reliability of forensic science (Baskin & Sommers, 2010; Mancini, 2013; Shelton et al., 2006).

Defendant: A term used to describe an individual charged with a criminal offence and is being tried for said offence in a criminal court.

Defendant Bad Character Evidence: As defined by Part 11 of the Criminal Justice Act (CJA) 2003 (Section 98), evidential material that demonstrates “evidence of, or of a disposition towards, misconduct on his [defendant’s] part, other than evidence which – (a) has to do with the alleged facts of the offence”.

Examination-in-Chief: Examination-in-chief, or direct examination, refers to the calling of an individual (for example, the defendant or witness/es) to elicit evidence that is in keeping with the client’s case (Henderson et al., 2016).

Insinuating Questions: A form of questioning used during cross-examination to put forward an alternate version of events to an individual (Allen et al., 2015; Boon, 1999).

Probing Questions: A type of examining question designed to gather further details, which can then be used to test the account against other versions or facts (Boon, 1999).

Riveting Technique: A strategy used in cross-examination that is intended to secure an individual's commitment to a particular statement or version of events, before subsequently undermining it with evidence to the contrary (Boon, 1999).

Suspect: A term to describe an individual who is believed to have committed the offence in question and is subject to a police investigation concerning the matter.

Within-Group (In)Consistency: A term used within the deception literature to refer to (in)consistency within statements provided by two or more individuals (e.g., consistency between statements provided by a defendant and witness) (Leins et al., 2011).

Chapter One: Thesis Aim and Objectives

A defendant's alibi is judged by a variety of evaluators throughout the Criminal Justice System (CJS), whether that be the police, barristers, judges, jurors, and juries (Allison, 2022). If deemed to be of standing, an alibi has the potential to be evidence worthy of vindication (Burke et al., 2007). If regarded negatively, as evidenced in US cases of miscarriages of justice (Connors et al., 1996; Heath et al., 2021; Wells et al., 1998), an alibi can be a major contributing factor towards (erroneous) liability (Allison, 2022; Jung et al., 2013). Weak alibi evidence is a leading contributory factor in (US) wrongful convictions (Heath et al., 2021), yet the literature remains nascent (Burke & Marion, 2012; Kienzle & Behl, 2022; Olson & Morgan, 2022), in stark contrast to other prominent contributors of miscarriages of justice (such as eyewitness memory: Sauerland, 2017). Thus, to ensure the administration of equal, fair, and effective justice, it is vital that research seeks to redress this paucity.

This chapter provides a concise overview of the literature pertaining to alibi evidence (a more comprehensive review is provided in Chapter Two), thus setting out the rationale and aim for the thesis. Following this, the thesis' overarching objectives are detailed. Finally, an outline of the thesis' structure, including the focus of each of the chapters, is described. In doing so, the three distinct, yet inter-linked, studies that make up the thesis (concurrently referred to as Study One, Two, and Three, as described in Chapters Four, Five, and Six respectively) are outlined.

Overview of Literature

An alibi, as a claim the accused was elsewhere during the time an offence was allegedly committed, is a criminal defence that may be used by a defendant in court (Burke & Turtle, 2003; Criminal Procedure and Investigations Act [CPIA] 1996; Kienzle & Behl, 2022). Alibi evidence features prominently in wrongful convictions in the US (Connors et al., 1996; Heath et al., 2021; Wells et al., 1998), and is evident in miscarriages of justice within England and Wales (see, for example, Sam Hallam: Evidence-Based Justice Lab, no date). Whilst an alibi is disparaged by evaluators

across the entire CJS as a defence that is considered easy to fabricate and, indeed, corroborate (Gooderson, 1977; Sommers & Douglas, 2007; Steele, 2020), the actual generation of an alibi is fraught with difficulties (see, for example, Cardenas et al., 2021; Laliberte et al., 2021; Olson & Charman, 2012; Strange et al., 2014). Thus, the ability for a defendant to accurately generate and consistently recall an alibi throughout their involvement with criminal proceedings is problematic, which in turn impacts on the perceived believability of the defence when evaluated by others (Charman et al., 2019; Culhane & Hosch, 2012; Dysart & Strange, 2012; Price & Dahl, 2017). Whilst physical evidence may be used to corroborate an alibi, and is indeed viewed more favourably by evaluators due to perceived difficulties in fabricating such evidential material, it is considered a relative rarity in artificial and real-world practice (Culhane et al., 2008; Culhane et al., 2013; Dysart & Strange, 2012; Health et al., 2021; Matuku & Charman, 2020; Olson & Wells, 2004; Turtle & Burke, 2003). Conversely, person evidence (particularly corroboration provided by those known to the suspect/defendant), whilst more readily available, is viewed negatively by evaluators for this very reason (Allison & Kollar, 2023; Culhane & Hosch, 2004; Eastwood et al., 2020; Hosch et al., 2011; Pozzulo et al., 2012).

To date, there is little existing research examining alibis from the perspective of those judicial practitioners (i.e., barristers) responsible for offering the evidence for evaluation before the court. Surveys of barristers in the US (Epstein, 1964; Levine & C. Miller, 2021) have found, akin to mock and real police investigators (Culhane & Hosch, 2012; Dysart & Strange, 2012; Price & Dahl, 2017), alibis are viewed cynically due to difficulties faced in substantiating them with believable evidence, thus making it a difficult defence to present effectively in court. However, if and how these views translate to barristers practicing Criminal Law in England and Wales is currently unknown. Similarly, there is a limited understanding as to how barristers present and examine alibis during trial proceedings within the same jurisdiction. With regards to cross-examination, the narrow legal literature that exists (concerning alibi witnesses only) recommends advocates probe details of the story to exploit weaknesses, seek inconsistencies, and manipulate improbabilities in the defence (Steele, 2020; Stone, 1995). Of note, drawing out inconsistencies (even relatively minor ones) can be advantageous in undermining the credibility of the defence (Heath et al., 2021; Stone, 1995), despite psychological literature

demonstrating alibi discrepancies are commonplace and indeed expected (Laliberte et al., 2021; Leins & Charman, 2013; Matuku & Charman, 2020; Strange et al., 2014). Courtroom questioning, whilst not specific to alibis as such, has found that barristerial questioning (e.g., multiple, negative, and leading questions) can detrimentally impact on eyewitness testimonial accuracy (see, for example, Gous & Wheatcroft, 2020; Jack & Zajac, 2014; Kebbell et al., 2010; Wheatcroft & Ellison, 2012). There exists no clear evidence-based guidelines for barristers in understanding and using alibi evidence in court. This contrasts with other wrongful conviction contributors, namely eyewitness memory, where barristerial training is recommended to rectify misunderstandings (Houses of Parliament, Parliamentary Office of Science and Technology, 2019) and judicial directions designed to educate jurors are advised (Crown Prosecution Service [CPS], 2018b; *R. v Turnbull*, 1977). As the way in which alibis are presented and challenged in court has the potential to considerably shape and impact mock juror and juries' evaluations, perceptions, and decision-making, it is first imperative to explore this from the professional perspective of those directly accountable for doing so.

With regards to the evaluation of alibis by mock jurors and juries', the credibility of the defence is of central importance (Allison, 2022). In terms of system variables (Behl & Kienzle, 2022), mock jurors demonstrate scepticism of alibis that are changed or inconsistent through delayed disclosure (Allison et al., 2020; Allison & Hawes, 2023; Fawcett, 2015) or on-the-stand testimonial discrepancies (Allison et al., 2023). This is despite evidence demonstrating such common difficulties are associated with poor alibi memory encoding, storage, and retrieval (Crozier et al., 2017; Laliberte et al., 2021; Leins & Charman, 2013; Olson & Charman, 2012). However, there is limited research (besides Allison et al., 2023) that has examined the impact of alibi inconsistencies given on-the-stand by defendants, on mock jurors and juries' evaluations and decision-making, none of which has specifically considered this is in response to barristerial cross-examination techniques. This is of pertinence, since seeking out alibi inconsistencies is a central barristerial strategy used to undermine the defence's credibility where alibi witnesses are concerned at least (Heath et al., 2021; Stone, 1995) and may be a factor of greater salience (and thus of greater detriment) when presented during cross-examination (Culhane & Hosch, 2012).

Similarly, little attention has been paid to non-legal, estimator variables that may shape and inform jurors and juries' views on alibis (Behl & Kienzle, 2022). One of those factors, distinct from the alibi itself yet likely to interact with its perceived credibility, is that of a defendant's prior convictions (Ross, 2007). Given the high incidence rate of repeat offending (His [Her] Majesty's [HM] Government, 2018; Taylor, 2022), such evidence could conceivably be admitted before the court under the provisions of Part 11 (Sections 98-113) of the Criminal Justice Act (CJA) 2003. Allison and Brimacombe (2010), as the only researchers to have explored this within the alibi literature, found that mock jurors were more likely to view a defendant with similar previous convictions as guilty compared to a defendant with convictions for dissimilar offences. This finding is consistent with wider literature that demonstrates prior convictions negatively impact on juror and juries' perceptions of the defendant's character and culpability (e.g., Devine & Caughlin, 2014; Lloyd-Bostock, 2000; Schmittat et al., 2022). However, further research is needed to substantiate these findings within the contextual nature of alibis presented at trial in England and Wales, given the relevant study focused only on prior convictions stipulated during a fictional police interview within a US-based jurisdiction (Allison & Brimacombe, 2010).

Whilst wider literature has evidenced the effect of other non-legal factors (such as a reliance on heuristics, stereotypes, preconceptions, biases, and so forth) on juror and jury decision-making, this has yet to be endorsed within the alibi research. Literature has certainly alluded to this (for example, as seen with the misconception that alibi inconsistency equates to deception: Granhag & Strömwall, 2001; Strömwall et al., 2003; Vernham et al., 2020), although this has yet to be substantiated. Gaining a greater understanding of alibi evidence in the courtroom would be particularly valuable, exploring how jurors and juries think, feel, view, and negotiate alibis as part of the deliberative process. In redressing the obvious absence of any existing qualitative alibi research (as per Diamond, 1997 and Weiner et al.'s, 2011 two-step process), the role, if any, of non-legal factors on evidential recall and deliberative discussion must be considered.

Thesis Rationale, Aim, and Objectives

An alibi defence has the potential to vindicate or (potentially, erroneously) convict a defendant (Allison, 2022; Burke et al., 2007; Jung et al., 2013), yet the psychological literature concerning its use and evaluation in court remains only a burgeoning topic (Burke & Marion, 2012; Kienzle & Behl, 2022; Olson & Morgan, 2022). This is despite its role in cases of wrongful convictions in the US (Connors et al., 1996; Heath et al., 2021; Wells et al., 1998) and presence in instances within England and Wales (Evidence-Based Justice Lab, no date; HL Deb, 1974; Logan, 2020), and in clear contrast to the evidence base for other such noteworthy contributors to miscarriages of justice (Sauerland, 2017). Thus, to ensure the CJS adheres to its fundamental principles of providing a fair and equitable process for all concerned, it is imperative that research rectifies this paucity through the implementation of research to address how it is presented and evaluated in the courtroom. In turn, such findings provide an underpinning in which to recommend evidence-based guidance for judicial practitioners, jurors, and juries on the use of alibi evidence in court. Improved education for all parties as to the nuances of an alibi defence is intended to mitigate for wrongful convictions where such evidence is concerned, thereby ensuring confidence in the system not only for practitioners, defendants, and victims, but also for the wider public and society.

The thesis aim and objectives arise from a thorough review of the existing alibi literature (as considered in Chapter Two). In doing so, the thesis provides an understanding of key aspects of criminal practice, providing knowledge that is invaluable to judicial practitioners, juries, and indeed the overall CJS. Thus, the overall aim of the thesis is to provide an integrated, mixed methodological investigation of the presentation and evaluation of alibi evidence in the courtroom within the jurisdictional context of the CJS in England and Wales. There is a paucity of literature that has examined how such evidence is viewed and used within the courtroom by those legal professionals directly responsible for presenting alibis to jurors and juries, none of which has been conducted in England and Wales. In turn, there is a limited understanding of the impact the manner in which barristers present and examine alibis in court has on mock jurors and juries' evaluations, perceptions, and use of the defence in deliberations and decision-making. Taken together, the

thesis sets out to investigate the related and interdependent elements of how alibis are presented and ultimately evaluated during criminal trial proceedings.

In investigating the presentation and evaluation of alibi evidence in the courtroom, the thesis will address the following three overarching objectives:

1. How do criminal barristers' present alibi evidence in the courtroom?

2. What impact does the manner of courtroom presentation of alibi evidence have on mock jurors and juries' evaluations and perceptions of alibi evidence?

3. How do mock jurors and juries' use alibi evidence in the deliberative process when reaching a verdict?

Thesis Chapters

The following provides an outline of the thesis' structure, including an overview of the content for each of the chapters, designed to address the aforementioned aim and objectives.

Chapter Two: Review of the Psychological and Legal Literature Pertaining to Alibi Evidence

This chapter provides a detailed consideration of the existing legal and psychological literature concerning alibi evidence and its use in the CJS. Alibi definitions and legislative practices relevant to the thesis are first outlined. Two of the prominent theoretical explanations for the generation, corroboration, and evaluation of alibis are discussed. Subsequently, the way such a defence is examined, perceived, and ultimately appraised in the courtroom is considered, from the perspective of the presenters (that is, barristers) and evaluators (that of jurors and juries). The thesis' rationale, aim, and objectives, grounded in the literature review, are reiterated to conclude this chapter.

Chapter Three: Methodology

The third chapter provides an overview of the methodological and epistemological stance adopted by the thesis, to address the aim and objectives drawn out from the literature (as first set out in Chapter One). A mixed methods approach was employed, utilising the strengths of qualitative and quantitative research methods to explore the presentation and evaluation of alibi evidence in the courtroom. The rationale for the sequential nature of the research, the mode of data collection employed, and the qualitative data analysis utilised in Study One and Three are thoroughly explained. Ethical considerations are discussed, and a reflexive account is provided.

Chapter Four: Study One - Criminal Barristers' Perceptions and Experiences of Alibi Evidence in the Courtroom

Chapter Four refers to the first of the thesis' three inter-linked studies (hereon in referred to as Study One), which aimed to qualitatively explore criminal barristers' perceptions, attitudes, experiences, and questioning of alibi evidence in the courtroom. Four qualified barristers, with criminal practice experience ranging from four to 25 years, took part in semi-structured interviews to address the following research questions:

1. What are criminal barristers' perceptions, attitudes, and experiences of alibi evidence in court?

2. What techniques, strategies, and modes of questioning do criminal barristers use when examining and cross-examining alibi evidence in criminal trial proceedings?

This study is the first to have explored the perceptions and experiences of alibis with a sample of criminal barristers within the legal system of England and Wales. The findings (together with future research directions and recommendations, as discussed in Chapter Seven) provide a basis on which to recommend guidance

and training designed to better educate and inform such legal practitioners as to the nuances of alibi evidence. The analysis also provided a foundation on which to explore the evaluation of the defence by mock jurors and juries', as considered in the succeeding studies.

Chapter Five: Study Two - Impact of Barristerial Cross-Examination Techniques on Mock Juror Evaluations of Alibi Evidence

Informed by the real-world cross-examination techniques identified in Study One, this chapter details the second study of the thesis (hereafter referred to as Study Two). The research quantitatively examined the impact of barristerial cross-examination techniques, namely exploiting alibi between-statement inconsistencies and the submission of defendant bad character evidence in the form of prior convictions for similar offences, on mock juror evaluations and decision-making. The study implemented a mock juror paradigm, with a sample of 204 jury-eligible participants, to examine eight hypotheses (as stated in Chapter Five). The findings, in evidencing mock jurors' evaluations of alibis are significantly negatively impacted by such factors, demonstrate such techniques are indeed effective in undermining and discrediting the defendant and defence. Supplementary analysis revealed that, for the most part, the mock juror demographic characteristics of age and gender had no significant impact on the outcomes. Together, the findings provide a basis on which to explore, through the supplementation of more representative trial mediums and samples and the use of deliberations (Curley & Peddie, 2024; Diamond, 1997; Wiener et al., 2011), *why* such decisions were reached (as seen in the thesis' final study: Chapter Six). Resultingly, the findings support the proposal of procedures and practices (such as the implementation of psychologically informed judicial instructions) designed to improve juror and jury awareness of alibi confines and limitations.

Chapter Six: Study Three - Mock Juries' Understanding, Perceptions, and Use of Alibi Evidence During Deliberations

This chapter outlines the third and final thesis study (henceforth known as Study Three), which aimed to qualitatively explore mock jurors and juries' understanding, perceptions, and use of alibi evidence during deliberations within the context of a simulated criminal trial. The study built upon the findings of both Study One and Two, using a mock jury paradigm with real-world cross-examination strategies, a more realistic trial presentation medium than typical mock juror research, and the inclusion of deliberations, to gain a deeper understanding as to how jurors and juries think, feel, view, and negotiate alibis as part of the deliberative process. Four six-person mock juries' viewed pre-recorded trial re-enactment footage, before taking part in mock deliberations to reach a verdict, to answer the succeeding research questions:

1. How do mock jurors and juries perceive and use alibi evidence in the deliberative process?

2. What role do the barristerial cross-examination strategies of exploiting alibi between-statement inconsistencies and discrediting the defendant through prior conviction evidence have within mock jurors and juries' understanding and perceptions of alibi evidence?

The novel methodology and findings provide a noteworthy contribution to the existing alibi literature and, together with the preceding studies and recommended future research, provide a basis on which to suggest recommendations designed to improve judicial practitioners, jurors, and juries understanding and knowledge of alibi defences.

Chapter Seven: General Discussion

The final chapter revisits the thesis' aim and overarching objectives, evidencing how they have been achieved through the three empirical studies. The contributions to both knowledge and practice are considered, demonstrating the thesis' novel contribution to the existing alibi literature. A summary of future research directions is provided, together with a discussion as to wider recommendations and

implications for the use of alibi evidence within the CJS, based on the thesis' findings.

Summary and Conclusions

To conclude, the overall aim of the thesis is to provide a mixed methodological investigation into the courtroom presentation and evaluation of alibi evidence in England and Wales. The thesis addresses three overarching objectives derived from the literature, covering how criminal barristers present alibi evidence in court, the impact such presentations have on mock jurors and juries' evaluations and perceptions of the defence, and finally how mock jurors and juries' use alibis when reaching a decision as to culpability. To do so, the thesis involved three sequentially conducted studies (Study One, Two, and Three) to address the aforementioned objectives, as described in the subsequent chapters.

Chapter Two: Review of the Psychological and Legal Literature Pertaining to Alibi Evidence

Although alibi evidence is a potentially rich and varied topic to explore, the psychological research is still in its infancy and has only emerged as a prominent topic within the past 20 years or so (Burke & Marion, 2012; Kienzle & Behl, 2022; Olson & Morgan, 2022). This is emphasised by Sauerland (2017), who conducted a literature search containing the term *alibi* and found only 57 articles for the period between 1998-2017, compared to more than 2500 for the word *eyewitness*[1] and 3000 for *deception* within the same timeframe. This is despite the key role weak alibi evidence plays in a considerable number of (US) miscarriages of justice (Connors et al., 1996; Heath et al., 2021; Wells et al., 1998), emphasising the importance of research in this field to ensure the administration of fair justice.

This chapter provides a literature review focused on the existing legal and psychological literature concerning alibi evidence as a criminal defence. An overview of alibis within the context of the CJS will first be provided, discussing several of the prevailing definitions and with reference to relevant legislation and criminal practice. Theoretical explanations for the generation, corroboration, and evaluation of the defence will then be considered. Moving on to alibis in the courtroom, the presentation and perception of alibis by barristers will be discussed, before considering the existing literature on how they are evaluated by (mock) jurors and juries. Finally, the chapter ends with a summary of the thesis' rationale and a reiteration of the overall aim and objectives.

[1] Although the extensive eyewitness memory literature offers useful evidence on which to draw, it is of relevance to note there are several key variances between the two fields that make direct derivations difficult (Crozier et al., 2017; Sauerland, 2017). Eyewitnesses, in viewing a crime, are generally aware that their account may be useful in the investigation and prosecution of the offence. Contrastingly, alibi providers and witnesses may be unaware of the significance of the event until asked to recall and evidence it at a later date, thus their account may be impacted by issues concerning poor memory encoding, storage, and retrieval (Burke et al., 2007; Charman et al., 2019). Furthermore, Sauerland (2017) notes that eyewitness memory typically involves evidence of an incriminating nature (i.e., identifying an offender), whereas alibis are concerned with evidence that absolves the suspect/defendant of any involvement by reason of being elsewhere. Resultingly, the former may be subject to investigator and confirmatory biases, whilst the latter impacted by scrutiny and scepticism of evaluators. Thus, this thesis, in examining the presentation and evaluation of alibi evidence, makes deliberate limited reference to the eyewitness memory literature (unless otherwise specified) for the aforementioned reasons.

Alibis in the Criminal Justice System

An alibi can have a momentous impact on decision-making in the CJS (Jung et al., 2013): an alibi that is deemed credible can result in vindication of a suspect/defendant, thus ceasing all further legal proceedings (Burke et al., 2007). Likewise, a weak alibi or one that is seen to be of poor credibility can adversely impact on the outcome of the case, to the extent of (potential erroneous) conviction (Allison, 2022; Connors et al., 1996; Heath et al., 2021; Wells et al., 1998). The impact of weak alibi evidence features prominently in cases of miscarriages of justice, with Connors et al.'s (1996) analysis of 28 US cases of DNA exonerations demonstrating that a weak or absent alibi was a causal factor in the wrongful conviction of 25% of those instances examined. Wells' et al. (1998) furthered this by including an additional 12 cases, demonstrating that (besides eyewitness misidentification, which featured in 90% of those cases examined) weak alibi evidence was a leading contributory factor in miscarriages of justice. More recently, Heath et al. (2021), in their examination of 377 DNA exonerations through the US Innocence Project, found a significant proportion (65%) had an alibi for the time of the offence and yet were convicted regardless. The primary reason for this was suggested to be the poor believability of the defence (for example, 51% of those alibis were corroborated by family or friends, which was used to undermine the strength of the evidence in court).

Data pertaining to the frequency in which alibis are presented in court in England and Wales, together with their role in cases of wrongful convictions, is sincerely lacking. Yet, individual examples of miscarriages of justice within said jurisdiction provide evidence of similar practices (e.g., issues with evidence disclosure, as in the cases of Luke Dougherty and Gerald Conlon, or alibi inconsistencies, as illustrated in Sam Hallam's instance: Evidence-Based Justice Lab, no date; HL Deb, 1974; Logan, 2020). In the latter, the defendant's alibi was dismissed as false by the prosecution at the original trial, yet his conviction for murder was later overturned on the basis that his memories of his whereabouts at the time were flawed due to "faulty recollection and a dysfunctional lifestyle, and that it [the defendant's alibi] was not a deliberate lie" (*R. v Hallam*, 2012, para 78). The defending barrister at the Court of Appeal summarised the case as containing "some

of the familiar ingredients of a miscarriage of justice: flawed identification, flawed alibi, non-disclosure, and failures in the police investigation" (*R. v Hallam*, 2012, para 49). As such, evidence of false convictions based on issues with alibi disclosure, or the perceived weak credibility of the defence, is sufficient to support the very real need for research examining alibis in the CJS and, particularly, gaining an understanding and evaluation of how the defence is presented by barristers and evaluated by jurors and juries. In turn, greater understanding as to the use and interpretation of alibi evidence in the courtroom will provide, not only an important contribution to knowledge, but allow for informed and evidence-based recommendations for psychological and legal practice to be made. This, thereby, ensures trials are delivered fairly and ultimately lessens the risk of future miscarriages of justice.

Defining Alibi Evidence

An alibi, as defined by Section 6 A (3) of the CPIA 1996, states that the defendant:

> *by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.*

The legal definition refers to such evidence in its strictest sense, in that the individual could not have committed the offence as they were elsewhere at the time. Alibis comprise a relatively unique time-space feature, in that the account provided must contain details covering both the period the alleged offence was committed and the location in which the suspect/defendant occupied (Burke et al., 2007; Kienzle & Behl, 2022; Olson & Wells, 2004). However, a mere statement that an individual was elsewhere is likely to be insufficient (Charman et al., 2019), and there must be some form of supporting evidence for it to be considered believable (see Olson & Wells, 2004, as discussed later in this chapter, for alibi corroboration and its types). Hence, an alibi articulates that a suspect/defendant could not have committed the offence as they were elsewhere at the time, which may (or perhaps may not) have corroborating evidence in support of it. Thus, Burke and Turtle's (2003, p. 193)

definition is also of relevance, in that an alibi is a “defence strategy that forces the trier of the fact to weight the claim against other evidence”. This reflects the believability facet of alibi evidence, which is of pertinence when considering how such evidence is presented and evaluated by those involved in courtroom proceedings.

One important distinction is that of a true and false alibi (Burke et al., 2007; Charman et al., 2019). The former refers to where the suspect/defendant provides a factual account as to their whereabouts during the concerned time (although may still contain inaccuracies). The latter can be one of two categories: fabricated or erroneous. A fabricated alibi is where a false account is provided deliberately (whether that be because the suspect/defendant are indeed responsible for the offence or are opposed to disclosing the true version of events, for instance if they were engaging in a salacious activity at the time). Fabricated alibis may be altruistically corroborated by witnesses (Marion & Burke, 2013, 2017), with kin selection (Hamilton, 1964) and reciprocal altruism (Trivers, 1971) dictating that the potential costs of providing false evidence (at worst, a potential conviction for perjury) must be offset by biological relatedness or potential future compensation. Herein lies an important connotation when defining alibis: fabricated alibis are likely to supported by family and friends based on altruistic principles (Hamilton, 1964; Trivers, 1971), yet genuine alibis are equally likely to be corroborated by the same individuals on the basis that is whom most typically spend time with (Burke & Marion, 2012; Culhane et al., 2013). Thus, this affords a predicament regarding how to accurately assess its credibility when presented in a court of law. Conversely, an erroneous alibi differs somewhat as, although it is a mistaken account, it is believed to be true at the time of providing their version of events. This may be because the suspect/defendant has no memory of their whereabouts at the specified time and/or a schematic overreliance produces errors and potential inconsistencies in the account provided (Charman et al., 2019; Crozier et al., 2017). In turn, discrepancies in the account provided raise similar credibility issues in the eyes of evaluators (e.g., Allison et al., 2023; Dysart & Strange, 2012; Price & Dahl, 2017).

Despite the varying definitions, Gooderson (1977) state that the mere term alibi is one that is greatly loaded. It is one of the few forms of defence that is

disparaged amongst the entire CJS, ranging from judges to barristers and ultimately jurors and juries, and is viewed as something which must be proved (Gooderson, 1977). That is, the very fact the case has proceeded to a criminal court despite an alibi being present, implies that the alibi evidence is inherently weak. Similarly, Steele (2020, p. 1) refer to an alibi as a "hip pocket defence", due to the apparent ease at which it can be produced at any point during criminal proceedings. This viewpoint is further supported by Sommers and Douglas (2007), who suggested that the mere use of the word alibi (in their stimulus materials) may have been sufficient to elicit assumptions pertaining to its weak credibility, and ultimately the guilt of the defendant involved. As such, this must be accounted for when defining alibis and considering how others, particularly jurors and juries who are ultimately responsible for deciding culpability, view such evidence and the role prior beliefs and expectations may have upon their decision-making.

Legislative and Criminal Practices Relevant to Alibis

There are several aspects of criminal legislation and practice that are of relevance to alibis as a criminal defence and this thesis as whole, which are briefly outlined.

Advance Disclosure

A defence statement must be submitted before the (Crown) court and prosecution, outlining the defence on which the defendant is intending to rely upon and specifying the issues that are in contention (CPS, 2021). Advance disclosure must be completed in a timely manner, as governed by the CPIA 1996 (Defence Disclosure Time Limits) Regulations 2011. In instances where limitations are violated, Section 11 (5) of the CPIA 1996 and the Crown Court Compendium (Judicial College, 2023) dictates that the jury may be advised that adverse inferences can be made (i.e., in the absence of a sufficient explanation, failure to disclose the defence is suggestive of the defendant not having one).

Section 6 A (2) of the CPIA 1996 states that, should an alibi defence be disclosed, details on which the defendant is intending to rely upon must be provided. The CPS (2018a, "Alibi Evidence: Crown Court Cases" section) dictates this should include:

- *The name, address and date of birth of any witness the Defendant believes is able to give evidence in support of the alibi, or as many of those details as are known when the statement is given.*
- *Any information in the Defendant's possession, which might be of material assistance in identifying or finding such witness, where the details above are not known to the Defendant when the statement is given.*

The guidance (CPS, 2018a, "Alibi Evidence: Introduction" section) directs the prosecution to "scrutinise potential alibi evidence properly and, where appropriate, to take steps to fully investigate such evidence and to interview any witnesses put forward by the Defence". This may include ensuring a full alibi account is provided, sufficient to allow for police investigation, and requesting the police complete a background check on any corroborating witnesses for previous convictions.

Alibi Judicial Directions

The Crown Court Compendium (Judicial College, 2023) provides comprehensive guidance for judges on jury directions in Crown Court proceedings. In relation to alibi evidence, the relevant direction (Judicial College, 2023, "18-2" section) states:

> *where D* [defendant] *relies on alibi, it is for the Crown to disprove the alibi to the criminal standard. If the alibi is demonstrably false, that fact alone does not entitle the jury to convict. The jury should, where appropriate, be reminded that an alibi is sometimes invented to bolster a genuine defence.*

An alibi direction should be provided in instances of delayed defence disclosure and/or where the account differs from that previously provided (Judicial College, 2023).

Defendant Bad Character Evidence: Previous Convictions

Should the defendant have prior convictions that are of relevance to the case, these may be admitted before the court as bad character evidence under the provisions of Part 11 (Sections 98-113) of the CJA 2003. Such evidence is only permitted if deemed admissible under one of seven gateways (Section 101 (1) (d) of the CJA 2003). For example:

> *a defendant's propensity to commit offences of the kind with which he is charged may … be established by evidence that he has been convicted of - (a) an offence of the same description as the one with which he is charged, or (b) an offence of the same category as the one with which he is charged* (Section 103 (2) CJA 2003).

In this instance, the judge should provide direction to the jury on the purpose and use of such evidence (Judicial College, 2023, "12-6 S.101 (1) (d)" section), including:

> *a tailored and fact-specific direction to the jury, indicating that it is for them to decide to what extent, if any, the evidence helps them to decide the issue/s to which it is potentially relevant. … The jury should be warned against prejudice against D* [defendant] *or over reliance on evidence of bad character and that they must not convict D wholly or mainly on the basis of previous convictions or bad behaviour.*

Theoretical Explanations of Alibi Evidence

There exists two prominent theoretical models and classifications pertaining to alibi evidence, each of which will be discussed: Olson and Wells' (2004) taxonomy of alibi believability, latterly updated by Olson and Morgan (2022), and Burke et al.'s (2007) model of alibi generation and evaluation.

Olson and Wells' (2004) Taxonomy of Alibi Believability

Olson and Wells (2004) proposed the concept of a taxonomy of alibi believability (as depicted in Figure 1), updated somewhat by Olson and Morgan (2022), to categorise the relative believability of the defence according to the

strength of the corroborating evidence provided. The original classification is based on two categories of alibi corroboration, physical evidence and person evidence, and the perceived ease with which an alibi provider can fabricate such proof (Olson & Wells, 2004). Nieuwkamp et al. (2023) proposed a third form of corroboration, supportive evidence (defined as unique information, known only if a person was present at a particular time and location), although further research is needed in substantiation. In the first taxonomy iteration (Olson & Wells, 2004), physical evidence referred to tangible material such as closed-circuit television (CCTV), receipts, and so forth, whilst Olson and Morgan's (2022) updated classification recognised that modern technologies (e.g., location tracking and wearable technologies) may afford greater opportunities for physical corroboration. This type of corroboration was subcategorised according to degree with which it could be fabricated: easy to fabricate (e.g., a receipt) versus difficult to fabricate (e.g., CCTV). The latter type of corroboration, person evidence, has three subcategories:

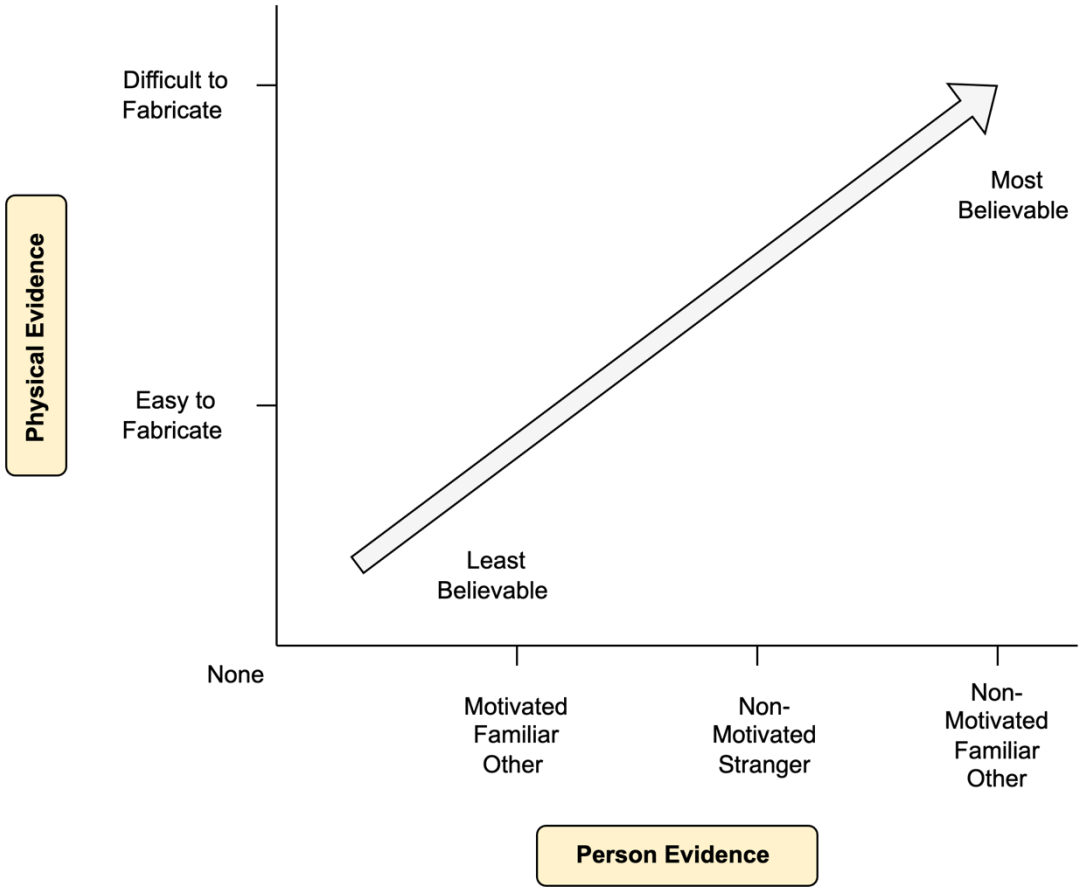
1. Motivated familiar other, such as a family member, characterised as evidence that is easy to fabricate but is not likely to be mistaken.
2. Non-motivated stranger, as an account that is difficult to fabricate but has the potential to be incorrect (for instance, a stranger who may potentially misidentify the suspect/defendant).
3. Finally, non-motivated familiar other (e.g., a shopkeeper or taxi driver) is an alibi that would be difficult to fabricate but is not expected to be mistaken.

In validating the taxonomy, Olson and Wells (2004) asked participants, acting as mock police investigators, to rate a series of alibis on measures of the individual's likelihood of committing the offence and alibi believability. Physical evidence was deemed to be of greater superiority than person evidence, to the extent that the presence of easy to fabricate physical evidence rendered a non-motivated witness irrelevant. Furthermore, participants deemed non-motivated strangers and non-motivated familiar others to be of similar levels of credibility (contrary to the expectation that the former would be of greater believability than the latter, due to the absence of a relationship between the suspect and corroborator). Nevertheless, despite the presence of both forms of evidence in what was considered to be the most reliable format (a dated, timed CCTV recording, and a statement from a non-

motivated individual), mean believability ratings were only 7.4 out of a possible 10. Thus, alibi evidence (without the presence of others forms of evidence) is viewed with scepticism (also termed the alibi scepticism hypothesis: Olson, 2004), and other variables clearly exist that impact upon ratings of perceived believability. The authors acknowledge this, particularly with regards to culpability, and note that the presentation of evidence during trial proceedings (that is, by the defence and prosecution) is likely to have bearing on the decision-making of jurors and juries.

Figure 1

Olson and Wells' (2004) Taxonomy of Alibi Believability (Adapted from Olson & Wells, 2004)



Physical and Person Corroboration

Although the taxonomy classified physical evidence according to the ease in which it could be fabricated (ranging from easy to difficult), research suggests the actual ability to produce such corroboration in both real-world and simulated instances is difficult (Charman et al., 2017; Culhane et al., 2008; Culhane et al., 2013; Dysart & Strange, 2012; Heath et al., 2021; Turtle & Burke, 2003; Warren et al., 2022). In contrast, person evidence, particularly corroboration from a motivated familiar other, appears to be the most frequently cited form of corroboration (Burke et al., 2007; Charman, 2019; Culhane et al., 2008; Culhane et al., 2013). For example, Turtle and Burke (2003), in examining 45 Canadian Supreme Court rulings, found only 2% of real-world cases with a defence of alibi involved any form of physical corroboration. In contrast, 86% of those cases examined included person evidence as corroboration. Similarly, Heath et al. (2021) found that only 10% of wrongful convictions involving alibi evidence had supporting physical evidence, compared to 72% with person corroboration.

Some research (Culhane et al., 2008; Culhane et al., 2013) has used mock suspects to determine the prevalence rate for alibi generation and corroboration, with similar findings. Culhane et al. (2008) found that, whilst 88% of participants reported a (truthful) alibi, only 29% of those could be corroborated by physical evidence. However, the two most common types of evidence provided were receipts and tickets, both of which would be deemed easy to fabricate according to the alibi believability taxonomy (Olson & Wells, 2004). In contrast, 84% of participants reported they could provide alibi witnesses who were family, friends, or significant others (thus motivated familiar others: Olson & Wells, 2004). Yet, the majority (61%) of participants believed they could attain false alibi corroboration, accounted for by nearly all (97%) motivated witnesses. Similarly, Culhane et al. (2013) found that 16% and 62% of participants acting as mock suspects could provide physical or person evidence in corroboration of their alibi, respectively. Regardless of whether the alibi provided was truthful or deliberately dishonest, participants equally reported that they could provide corroboration from a motivated familiar other in support of their account.

In keeping with the difficulties of alibi generation (as considered later in the chapter: Cardenas et al., 2021; Laliberte et al., 2021; Olson & Charman, 2012;

Strange et al., 2014), Culhane et al.'s (2013) research demonstrated there were frequent changes to an alibi provided between intervals two days apart, irrespective of whether the statement provided was truthful or not. However, complete contradictions between accounts (where the story provided at the second interval was entirely different from that initially given) were a rarity. Culhane and colleagues proposed that, whilst changes to details of an alibi may be commonplace, entirely inconsistent stories may be suggestive of deliberate deception. Evaluators erroneously view inconsistency as indicative of deception as per the consistency heuristic (discussed later in the chapter: Granhag & Strömwall, 2001), yet there remains no highly reliable technique in which to determine true and false alibi accounts. Thus, the manner in which the evidence is presented (i.e., by barristers in court) is likely to be play an integral role in defining and shaping juror and jury perceptions.

Although physical evidence may be considered the gold standard in alibi corroboration, it is not without its difficulties. For example, CCTV is regularly used in police investigations (Davis et al., 2018) and is considered strong alibi corroboration due to the evidence being difficult to fabricate (Nieuwkamp et al., 2018; Olson & Wells, 2004; Sargent & Bradfield, 2004). However, such evidence is vulnerable to issues concerning its (potentially poor) quality and thus the increased potential for misidentification (Brookman & Jones, 2022; Keval & Sasse, 2008; Porter, 2011; Seckiner et al., 2018). Indeed, evaluators of such evidence within the context of simulated identity verification were highly likely to be mistaken in their identification, with 44% of participants incorrectly identifying a defendant was absent from one year old CCTV footage (Davis & Valentine, 2008). In such instances, for example, juries should be informed of said issues during trial proceedings (as per the Turnbull guidelines: CPS, 2018b; *R. v Turnbull*, 1977).

Of a similar nature, the CSI effect, a phenomenon named after the increase of television programmes of the same name, refers to jurors increased expectations as to the presence, capability, and reliability of forensic science (Baskin & Sommers, 2010; Mancini, 2013; Shelton et al., 2006). Some research has demonstrated that forensic evidence is seen as superior to that of other evidential material (such as eyewitness testimony: Hawkins & Scheer, 2017; Maeder et al., 2017), although

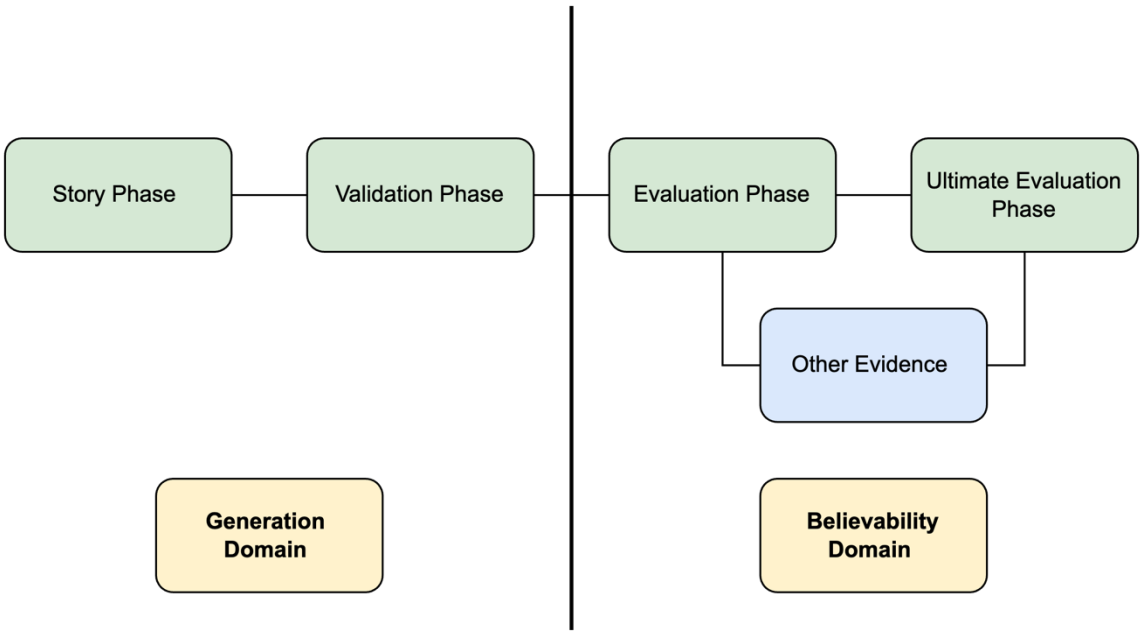
more recent literature has questioned its (in)effect on juror (Lodge & Zloteanu, 2020) and jury (Klentz et al., 2020) decision-making. The CSI effect may be of relevance to alibis, in that jurors and juries may expect some form of forensic/physical corroboration to be present as sustenance to a defendant's account and thus perceive it negatively in its (probable: Culhane et al., 2008; Culhane et al., 2013) absence.

Burke et al.'s (2007) Model of Alibi Generation and Evaluation

Burke et al. (2007) proposed a theoretical model of alibi generation and evaluation, as shown in Figure 2, encompassing the generation and validation of the alibi during the police investigative stage, in addition to its subsequent evaluation during courtroom proceedings. The two domains, that of generation and believability, will be discussed in turn.

Figure 2

Burke et al.'s (2007) Model of Alibi Generation and Evaluation (Adapted from Burke et al., 2007)



Generation Domain

The first domain, that of alibi generation, denotes two phases that refer specifically to the alibi provider. The first stage, the story phase, is where the suspect provides a statement as to their whereabouts during the time of the alleged offence. The subsequent validation phase of the generation domain involves the alibi being (potentially, although not always) corroborated by the presence of physical and/or person evidence (as defined by Olson & Wells', 2004 taxonomy of alibi believability). Such evidence can be provided by the alibi provider themselves, in the case of physical corroboration, or by other individuals such as alibi witness/es. Generating an alibi involves autobiographical memory: that is, an individual must have encoded and stored a memory or memories for the event in question, which they must then retrieve and recall when asked to do so (most likely, in the first instance, by the police) (Crozier et al., 2017). However, the task of generating an alibi is difficult, due to limitations in terms of memory encoding, storage, and retrieval (Crozier et al., 2017). There are two reasons why an individual may have difficulty providing an accurate account: a lack of memory as to their whereabouts (for example, due to issues with memory encoding or delayed recall, or the potential impact of other factors such as substance misuse or the formation of [traumatic] memories in perpetrators: Dysart & Strange, 2012; Hervé et al., 2007) and/or a mistaken account of their activities due to an overdependence on schemas (Charman et al., 2019).

With regards to the former, Burke et al. (2007) note that an innocent individual may find it difficult, if not impossible, to recall what they were doing at a specified date, time, and/or location. Memory processes do not work like a video camera, readily recording and storing events as they occur, despite the misconception amongst laypersons that this is the case (Belli & Loftus, 1996; Brewin et al., 2019; Clifasefi et al., 2007; Lacy & Stark, 2013; Simons & Chabris, 2011). This may be because the events occurring at the time lacked any noteworthy salience or significance, for instance routine day-to-day tasks, therefore were not encoded into the memory in the first instance (Brewer, 1988; Crozier et al., 2017; Kassam et al., 2009; Tourangeau, 2000). Similarly, an individual may be asked to provide an alibi for something that occurred in the previous weeks, months, or years beforehand, by which point the memory is likely to have degenerated significantly, if not entirely

(Lacy & Stark, 2013; Pertzov et al., 2017; Schacter, 1999). In such instances, an alibi provider may be only able to provide vague (if any) details as to their whereabouts.

Such difficulties in alibi generation have been demonstrated in experimental research (Cardenas et al., 2021; Laliberte et al., 2021; Olson & Charman, 2012; Strange et al., 2014). Olson and Charman's (2012) findings demonstrate that, for participants required to generate an alibi alongside corroborating evidence 48 hours after an event, 36% were mistaken in their reported account. Furthermore, for the vast majority, alibis were reliant upon evidence that would be deemed to be of poor quality by evaluators (weak or entirely absent physical or person evidence, for instance a statement provided by a family member or friend, or a burned computer disc with no date or time information recorded). Indeed, only 21% could provide physical evidence of moderate to strong quality, whilst only 6% were able to produce person evidence of a non-motivated stranger in support of their alibi. Similarly, Laliberte et al.'s (2021) novel experiment involved participants' activities being monitored electronically for a month (e.g., data on Global Positioning System [GPS], physical activity, and so forth), noteworthy given that the police may request such information via appropriate technologies to corroborate or undermine an alibi. After a one-week delay, participants were required to take part in a memory test, specifying their location on a map (i.e., provide an alibi) for various dates and times. The findings demonstrated that, on average, the alibis provided were incorrect in 36% of cases, despite most participants having some consistent pattern of behaviour (for example, were university students and attending timetabled classes).

A delay between encoding the event and retrieving details of it may account for greater difficulties in alibi generation (Eastwood et al., 2021). Strange et al. (2014) requested participants provide a written account of their alibi for an event three weeks prior, before asking those involved to recall the same alibi one-week later. Less than 50% of alibi accounts were consistent between the first and second recall. The highest levels of inconsistent details were concerned with the timing of events (66% were, in part or completely, inconsistent), details of what occurred after the crucial period (62% were partly or wholly inconsistent), and the activity recalled (60% were partially or entirely inconsistent). Similar findings were replicated in a

study by Cardenas et al. (2021), whereby participants' subsequent recall of an alibi account (after an average time delay of eight days) was entirely consistent in only 62% of cases. Characteristics concerning the actions of said account were less consistent compared to details relating to both the setting and persons involved. The authors concluded alibi generation was extremely difficult, most likely due to the fact memories for alibi events aren't always encoded or stored in the first instance. This has the potential to be exploited by the prosecution to their advantage and thus have a significant effect on the perceived credibility of the defence in the courtroom.

In the event of an alibi provider being able to recall their whereabouts, they may rely on a schema, or script, of an event to remember the finer details (Charman et al., 2019; Leins & Charman, 2013). The Schema Disconfirmation Model (Charman et al., 2019) notes that generating an alibi involves elements of both autobiographical memory and schema reliance, in that an alibi is generated in response to specific time cues. In the absence of a memory for said event, an individual may rely on a schema for the crucial time period, if it is considered likely and there are no other memories to disconfirm it. Alternatively, an actual account may be generated if there is a stored memory of the event or disconfirmation of the schema stimulates recall. In addition to schemas, memory is easily distorted and contaminated by prior or preceding events, therefore an alibi may contain erroneous details that relate to a different event to the one in question (Crozier, 2017). For example, if an individual is asked for an alibi about a time in which they are typically at work, they may provide details as to their usual activities (based upon a behavioural script, or their contaminated memory of the events that occurred). However, if for some reason the event deviated from their usual activities, and this is uncovered over the course of a police investigation or criminal proceedings, the discrepancy in details of their alibi may have an adverse impact on its apparent credibility (Burke et al., 2007; Culhane & Hosch, 2012; Price & Dahl, 2017). Leins and Charman (2013), in the second of their studies examining the accuracy and reliance on schemas of innocent alibi providers, found participants were significantly more accurate in their account when the activity for the critical period was consistent with their schemas, compared to inconsistent. However, participants reported steadily high levels of confidence irrespective of whether the alibi provided was schema-consistent or schema-inconsistent, a concerning finding given the risk this

poses for the generation of a confident, yet inaccurate, alibi account (particularly as highly confident child alibi witnesses are seen by mock jurors as of increased honesty, accuracy, and reliability: Fawcett & Winstanley, 2018).

Some literature has considered whether retrieval cues or techniques may be beneficial in aiding the process of alibi generation (Eastwood et al., 2021; Matuku & Charman, 2020). Matuku and Charman (2020) found innocent individuals have very poor memory recall for both the event (indeed, only 28% recalled their whereabouts correctly) and physical evidence in corroboration of their alibi. However, chronological recall, whereby individuals were instructed to provide their whereabouts for the period in question in a sequential manner compared to a free recall, increased opportunities for alibi providers to recollect corroboration in support of their account. Conversely, Eastwood et al. (2021) found that reverse-order instructions (techniques used during cognitive interviewing, which involve asking an individual to provide their account backwards, designed to increase the volume and accuracy of information provided) had no significant effect on the accuracy of the alibi provided in a sample of 20 university students. Likewise, participants relied heavily on schemas in recalling their whereabouts, thus produced inaccurate accounts, and were dependent on weak supporting evidence in corroboration (Eastwood et al., 2021). Thus, errors in alibi generation appear to be commonplace and there is little existing literature to date in support of techniques which may improve alibi veracity. Given such demonstrable errors and inconsistencies in alibi generation, it is imperative that research considers how these are viewed from the perspective of jurors and juries who are responsible for determining culpability. In turn, this enables the proposal of evidence-based recommendations to ensure the fair presentation and evaluation of alibis in court.

Believability Domain

Believability, as a construct, is often used interchangeably with the term credibility in the alibi literature. Credibility is a multifaceted and subjective concept (Cramer et al., 2009), often discussed in the context of eyewitnesses and expert witnesses (for example, see O'Neill Shermer et al., 2011; Wilcox & NicDaeid, 2018),

and comprises of a host of factors such as accuracy, believability, and trustworthiness (Brodsky et al., 2010). Credibility is a pertinent concept within the Story Model (Pennington & Hastie, 1986, 1988, 1992) of juror decision-making (as discussed later in the chapter), whereby presentation of evidence in a narrative format allows for easier assessment of a witness' credibility derived from the certainty principles of coverage, coherence, and uniqueness. In keeping with the wider alibi literature, these terms will be used interchangeably in the thesis and broadly refer to judgements relating to how believable and convincing the individual and/or evidence is.

Returning to the second domain of Burke et al.'s (2007) model, that of alibi believability, this consists of two phases that refer to the evaluator. To summarise, in the first of those, the evaluation phase, the believability of the alibi is examined by those who encounter it. The model predominantly refers to police as the initial evaluators of the alibi, likely in the early phase of an investigation, whereas other evaluators (such as judges, barristers, and jurors) may encounter such evidence after it has been retold, likely on several occasions to numerous individuals or parties. As will be considered, in keeping with the aforementioned difficulties associated with alibi generation, some literature has examined perceptions of (mock and real) police evaluations of alibi evidence in instances where the account is inconsistent or changed (Culhane & Hosch, 2012; Dysart & Strange, 2012; Price & Dahl, 2017). Finally, a decision is made as to its believability, in terms of a verdict, in the ultimate evaluation phase. This stage involves the final assessment of the alibi and its veracity by judge/s, jurors, and juries during criminal proceedings, and involves the presentation of the facts of the case, the defence as a whole, and other evidence where applicable (compared to earlier stages, where such evidence may be omitted or unknown to evaluators). Literature pertaining to the ultimate evaluation stage, that is (mock) jurors and juries' evaluations of alibi evidence, will be discussed later in this chapter.

Alibi (In)Consistency

In evaluating an alibi, mock and real police investigators view such evidence with scepticism (Culhane & Hosch, 2012; Dysart & Strange, 2012; Price & Dahl, 2017). In a survey of 63 law enforcement practitioners, Dysart and colleagues examined a range of topics based on contemporaneous alibi research at that time. The findings demonstrated that nearly 52% believed a false alibi to be easily fabricated. The respondents noted that the most likely evidence to be offered in support of an alibi was person evidence provided by family, friends, and other significant parties (40%, 36%, and 34%, respectively), and that such witnesses were most likely to lie in (false) corroboration of the alibi during the police investigation and court proceedings. Physical evidence was provided far less commonly in the sample's experience, in only 24% of cases. Despite research demonstrating that errors in alibis are common (Cardenas et al., 2021; Laliberte et al., 2021; Leins & Charman, 2013; Matuku & Charman, 2020; Olson & Charman, 2012; Strange et al., 2014), 81% of those police investigators surveyed believed that a later change to an alibi account suggested a suspect had been lying in the first instance (indeed, a view shared by 90% of a student population: Culhane et al., 2008). Encouragingly, some participants did recognise that alibis could be mistaken after a time delay of a week due to factors such as substance misuse (28%), poor memory (27%), and lack of event salience resulting in memories not being readily recalled (17%). However, this view was based on only a proportion of respondents (35 responses, within a sample of 63 participants), thus may represent the view of some (but not all).

Building on such findings that demonstrate alibi consistency is of relevance to its believability, Culhane and Hosch (2012) examined the impact of changed statements with a sample of laypersons and current and future law enforcement. In their first of three experiments, a total sample of 350 participants made up of said populations completed a series of measures designed to assess their views on alibi evidence. Consistent alibis were viewed more favourably compared to those which were inconsistent, even if the change resulted in a perceived enhancement to the evidence (for example, the alibi was subsequently corroborated), with future law enforcement participants evidencing the most sceptical views of changed accounts. The authors hypothesised that real-world police experiences may in some way negate potential biases regarding evidence which is altered in some way, however this wasn't reflected in the results (with no differences in mean believability scores

across all three groups). The second study examined changed statements within the context of a mock police investigation, which again yielded similar findings. Suspects who changed their alibi over the course of a police interview were judged to be significantly more likely to be guilty, more likely to be responsible for the offence in question, and seen as less believable and honest in terms of their character traits. In contrast, Keeping et al. (2017) found only alibis that were salacious and involved illegal activity resulted in increased suspect guilt ratings and reduced alibi believability across a series of 32 alibis from (mock) suspects in a murder investigation. Other factors, such as changes to the account, had no significant effect on such variables, suggesting that evaluators may be more concerned with the nature of the alibi rather than its means of presentation. However, the authors acknowledged that the study was limited to an extent by its low ecological validity, the use of brief written vignettes, and the possibility of fatigue in the presentation of such a volume of information. In doing so, alibi veracity may be more overtly influenced by such characteristics when presented in a more realistic and representative manner (including a clearer manipulation of such variables and set within the wider context of the alibis evidential corroboration, or indeed lack of).

Price and Dahl (2017) extended the findings that demonstrate inconsistent alibis are seen as indicative of deliberate deception, further evidencing the scepticism levelled at such a defence. Undergraduate students, acting as mock police investigators, reviewed several materials (including a written police case summary and a video recorded statement from an alibi witness) relating to a fictional case, whereby the account was first provided one-week after the alleged offence and again five years later. Consistency of the statement provided by the corroborator was one of three manipulated conditions (in addition to two control conditions): consistent, contained minor contradictions (alibi witness' account differed in terms of the activity described), or major contradictions (the alibi was changed regarding both the activity and location stated). In instances where there were major inconsistencies, participants rated the suspect as more likely to be guilty, were more inclined to arrest the suspect based on the information provided, and viewed the alibi witness to be of lesser credibility, accuracy, and honesty. Perhaps demonstrating some awareness on the part of the mock investigator as to the

limitations of memory in alibi evidence (Crozier et al., 2017), participants viewed suspects and corroborators where there were minor inconsistencies between accounts in a similar nature to where the statements were entirely consistent. However, it should be noted that overall credibility ratings for both consistent and minor contradicted statements were towards the lower end of the scale (mean scores of 2.69 and 2.65 respectively, where 1 was *not at all credible* and 6 was *entirely credible*, compared to a mean evaluation of 1.88 for statements with major inconsistencies). Taken together, the authors noted that mock police investigators generally viewed an alibi defence with cynicism and were particularly sceptical of significant testimonial inconsistencies in their assessment and evaluation of both the alibi provider and witness. However, if and how these findings translate to that of advocates and evaluators is poorly understood given the dearth of literature in this area.

Heuristic Processing

Heuristic processing or pre-existing presumptions and expectations about alibis may provide an explanation as to why inconsistency is (inaccurately) perceived by some as equating to deception. The consistency heuristic, as defined by Granhag and Strömwall (2001), states that consistency is erroneously viewed by evaluators as demonstrating truthfulness, whereas inconsistency is indicative of deception. This viewpoint is inaccurate and fails to acknowledge or account for the well-known difficulties associated with the reliability and contamination of memory (Fisher et al., 2013; Hudson et al., 2020). Indeed, the opposite may be the case for those seeking to deceive: in an attempt to be seen as truthful, liars may be deliberately more consistent in their account by simply repeating what has been previously said (Fisher et al., 2009; Fisher et al., 2013) or reciting a basic script of their false narrative to avoid contradictions (Vrij et al., 2022). It is noted that those evaluating deceptive statements should exercise extreme caution in discrediting accounts which contain inconsistencies solely on this basis (Granhag & Strömwall, 2001).

Of relevance to this discussion from the broader deception literature, (in)consistency is further subcategorised as between-statement (in)consistency and within-group (in)consistency (see Vredeveldt et al., 2014 for a summary of the deception literature pertaining to consistency and dishonesty). The former refers to (in)consistency between statements or accounts provided over the course of an individual's (be it the defendant, witness etc.) involvement with judicial proceedings (Vredeveldt et al., 2014). For example, inconsistency could be present between statements initially provided (e.g., at police interview or during direct examination) and subsequently offered (e.g., during cross-examination). The latter refers to (in)consistency between accounts provided by multiple individuals, such as inconsistencies between statements offered by a defendant and witness/es (Leins et al., 2011).

Evidence of reliance on the consistency heuristic when assessing the veracity of alibi evidence has been demonstrated in research by Strömwall et al. (2003) and Vernham et al. (2020). Strömwall et al. (2003), in examining evaluations of the believability of alibis provided by truthful and deceptive mock suspects, demonstrated that participants relied on the consistency of the alibi account (both in terms of constancy provided within the same statement by one suspect, and uniformity in accounts provided by both individuals) as subjective cues of deception. Indeed, nearly all (90%) evaluators reported that if statements were inconsistent within pairs, this was indicative of deception. This is despite experimental findings that demonstrate pairs providing an untruthful alibi had greater within-group consistency compared to those providing a truthful account (Sakrisvold et al., 2017). Similar findings were demonstrated by Vernham et al. (2020), whereby within-group inconsistency (for instance, evidence of contradictory or omitted information) was a self-reported measure used by evaluators to judge the truthfulness of pairs asked to generate a collective alibi. Given the frequency of errors within alibi generation demonstrated by experimental research (Cardenas et al., 2021; Laliberte et al., 2021; Olson & Charman, 2012; Strange et al., 2014), the reliance by evaluators on the consistency heuristic to assess and judge an alibis believability is extremely problematic for the integrity of the CJS.

In a similar vein, Abbott (2016) and Olson and Wells (2012) noted that evaluators may erroneously rely on heuristics that suggest the process of generating an alibi is an easy one, with little appreciation for the difficulties associated in both recalling an account and providing credible evidence to support said statement. As such, those responsible for assessing the believability of such evidence may judge an alibi on this basis of said heuristic processing. In cases where an alibi does not meet this expectation (for example, if there are inconsistencies in the account/s provided due to associated memory difficulties and/or the statement is supported by weak or absent corroborating evidence), this furthers the sceptical nature by which the evidence is viewed (Allison, 2022; Olson, 2004; Olson & Wells, 2004). This is coupled with even the simple presence of the term alibi as enough to trigger assumptions about the poor credibility of the evidence provided (Sommers & Douglas, 2007). However, Olson and Wells (2012) noted that the actual act of generating an alibi before evaluating the alibi of others, termed the alibi generation effect, resulted in improved ratings of a suspect's believability compared to simply evaluating the defence alone. The authors proposed this was due to both "the phenomenological feeling-of-difficulty in generating alibis and a cognitive knowledge that alibi generation is difficult" (Olson & Wells, 2012, p. 161). Thus, the exercise may be useful for evaluators (e.g., as an exercise facilitated by the defence counsel) to increase awareness, understanding, and empathy for the difficult task faced by defendants in cases involving an alibi defence.

Whilst the literature (for example, Culhane & Hosch, 2012; Dysart & Strange, 2012; Strömwall et al., 2003; Vernham et al., 2020) suggests evaluators are distrustful of inconsistent alibis, some findings (Portnoy et al., 2020, and partly consistent with Dysart & Strange, 2012; Price & Dahl, 2017) demonstrate that there is a degree of awareness or knowledge as to its limitations. Portnoy et al. (2020) surveyed 343 laypersons from the United Kingdom, Israel, and Sweden as to their beliefs on alibi evidence. Whilst there was evidence of mistaken views, namely that innocent suspects were unlikely to provide erroneous details in their account (contrary to the results of Cardenas et al., 2021; Laliberte et al., 2021; Olson & Charman, 2012; Strange et al., 2014, to name some), participants noted that memory impairments may provide an explanation for this. Further exploration via free-text response indicated that participants believed this may be because innocent

suspects do not encode the event details at the time due to failing to recognise its significance or, if specifics were encoded, they had simply been forgotten due to the passage of time. This is promising, and whilst a finding not previously seen within the alibi literature, is consistent with some eyewitness research that demonstrates evaluators may demonstrate a level of understanding as to the fallibility of memory (Desmarais & Read, 2011; Magnussen et al., 2006; Wake et al., 2020, although see Benton et al., 2006 and Magnussen et al., 2009 for opposing observations). However, if and how this knowledge translates to courtroom decision-making and the potential for leniency in the eyes of jurors and juries has yet to be demonstrated.

Presentation of Alibi Evidence in the Courtroom

Criminal advocacy is often referred to as a theatre (Evans, 1993; Yong, 1985), in which barristers seek to entertain, engage, and finally persuade the audience (i.e., the jury) to believe their client's proposed account (Boon, 1999; Drew, 1997; Morley, 2015; Ross, 2007). In doing so, the literature (e.g., Clark, 2011; Morley, 2015; Nolan, 2011; Webb et al., 2013, 2019) identifies several approaches that may be effective during examination-in-chief and cross-examination of defendants/witnesses, some of which will be discussed. Of relevance, several types of questioning have been considered (Grant et al., 2015; Kebbell et al., 2003; Kebbell & Johnson, 2000; Wheatcroft & Woods, 2010), as summarised in Table 1.

Table 1

Types of Questioning Used in Direct Examination and Cross-Examination (Some Examples Adapted from Kebbell et al., 2003)

Question Type	Description	Example
Open	Questions that require a detailed response.	'Describe the defendant's car.'
5WH	Who, what, where, when, and why questions (often incorporating an additional sixth how question), which are designed to invite an account or explanation.	'Who was there? What did you see? Where did he go? When did that happen? Why did he go there? How would you describe that?'

Question Type	Description	Example
Closed	Questions that necessitate a limited response.	'What colour was the defendant's car?'
Yes/No	Restricted form of closed questioning, in which the response can only be yes or no.	'Was the defendant driving a red car?'
Leading	Questions that imply the expected response.	'Did you see the defendant driving the red car?'
Directive Leading	Questions that strongly imply the expected answer.	'The defendant was driving a red car, wasn't he?'
Negative	Questions that include the word 'not'.	'So was the defendant not driving a red car?'
Double Negative	Questions that include the word 'not' twice.	'Is it not true that the defendant was not driving a red car?'
Multiple	Questions with two or more parts, each requiring a separate response.	'Was the defendant driving a red car, whilst wearing a blue t-shirt?'

However, few sources (besides exceptions such as Steele, 2020 and Stone, 1995) explicitly address approaches that may be favourable when examining and cross-examining alibi evidence. Similarly, little is known on the views or experiences of legal advocates responsible for presenting and examining alibis in court. This fails to account for such an integral part of the literature, as an awareness of how alibis are evaluated by jurors and juries in court is incomplete without first understanding how they are viewed, used, and shaped by those legal practitioners directly responsible for presenting such evidence.

Techniques, Strategies, and Questioning Styles Used in Direct Examination and Cross-Examination

As part of court proceedings, the defendant (if they choose to give evidence) and witness/es are required to be examined by both the counsel who has called the witness and the opposing party (Murphy, 1994; Webb et al., 2013, 2019). Such examinations comprise of examination-in-chief, cross-examination, and re-examination by barristers representing either the defence or prosecution, with the additional possibility of further examination by the judge/magistrates (Webb et al., 2013, 2019). Barristers are "specialist legal advisers and court room advocates" (Bar Council, n.d., "What is a Barrister?" section), who are skilled in effective oral advocacy (Bar Standards Board [BSB], 2016; Shultz & Zedeck, 2009). Barristers

are typically self-employed (Criminal Bar Association [CBA], no date; Goulandris, 2016), governed in their professional practice by the BSB (2023a) Code of Conduct, although bound to accept any case suitable to their experience and expertise (termed the cab rank rule: Flood & Hvidd, 2013) and to act in their client's best interests (BSB, 2016; The Honourable Society of the Middle Temple, 2014).

Examination-in-chief, or direct examination, is whereby an individual is called to provide a narrative account of their testimony, one that is relatively free flowing in nature and with few interruptions by their counsel (Henderson et al., 2016). Presenting the proposed version of events in a clear, thorough, and coherent manner is important, in that the audience is sold a story (Mazzocco & Green, 2011; P. H. Miller, 2002; Rideout, 2008; Van Patten, 2012). So much so, the most persuasive story is one in which the audience become involved in what is being said, thereby believing the proposed version of events (M. O. Miller & Mauet, 1999; Van Patten, 2012). This is consistent with the Story Model (Pennington & Hastie, 1986, 1988, 1992), as the most comprehensive and extensively cited model of juror decision-making (Willmott et al., 2018), contrasting that of other proposals such as the Bayesian approach (Finkelstein & Fairley, 1970). The Story Model (Pennington & Hastie, 1986, 1988, 1992) suggests that jurors actively process detailed and complex information presented during trial through the construction of chronological narratives, using their pre-existing knowledge, beliefs, and preconceptions to assist with this. It is expected that multiples stories will be generated, thus jurors must determine the acceptability of each based on the certainty principles of coverage, coherence, and uniqueness. Only when a story can account for all evidential material, is cohesive (including consistent, complete, and plausible), and a juror is confident in it as a version of events, will it be accepted. As such, barristers can play to the strengths of the client's case by facilitating the presentation of their account in such a manner.

The most effective method of storytelling is one in which the narrative develops at the individual's own pace, with little involvement of the counsel (Webb et al., 2013, 2019). It is suggested that barristers should ask open and 5WH (what, where, why, who, and when, in addition to how) questions (Grant et al., 2015; Kebbell et al., 2003) to facilitate this (which are deemed to be non-leading in nature),

and in sequential order to ensure evidence is given chronologically (Morley, 2015). Interruptions should be few, besides to clarify detail or guiding the defendant/witness to information that has been omitted from their testimony, and done with courtesy and politeness (Ross, 2007). However, questioning must be “tight” (Webb et al., 2013, p. 156), in that examination-in-chief is a focused exercise designed to achieve only the required information relevant to the counsel’s case (Morley, 2015). This approach has been demonstrated in real-world practice (Kebbell et al., 2003, 2004; Lively et al., 2019), with analysis of court transcripts in criminal cases demonstrating considerably more open and closed questions used during direct examination (compared to cross-examination), with closed questions employed advantageously to constrain the information provided.

The use of leading and suggestive questioning styles is prohibited in examination-in-chief, except in instances where questions are with regards to formal matters (name, address etc.) (Ross, 2007; Slorach et al., 2017). It is recommended inconsistencies in an account should be acknowledged, to prevent a pejorative cross-examination, but mitigated as much as is possible (Ross, 2007). This is in line with the adversarial system of justice, as operated in England and Wales, whereby legal counsels must present their case favourably to the court for an independent adjudicator to come to a decision regarding verdict (although does not necessarily seek to establish the truth as to what occurred: Haworth, 2013, 2021). Thus, whilst direct examination by barristers seeks to outwardly offer a narrative for evaluators to examine, it is subtly and simultaneously providing a version of events that is most favourable to their client’s position (Morley, 2015; Seuren, 2019).

Cross-examination is designed to undermine and discredit the accuracy and credibility of the individual’s testimony (Allen et al., 2015; Henderson et al., 2016), in which there are several techniques, strategies, and questioning styles that are actively encouraged to do so in the most persuasive manner possible (Melilli, 2016; Pratt, 2011; Voss, 2005). Leading questions, including directive leading questions, are deemed admissible as a means of evaluating a defendant/witness’ account through controlled and specific questioning (Kebbell & Johnson, 2000; Webb et al., 2013, 2019; Wheatcroft & Woods, 2010). Morley (2015) and Nolan (2011) note that leading questions should always be asked during cross-examination, implying

preferred responses that are consistent with their client's account. This should be coupled with closed and yes/no questions, further designed to limit and control the information provided, with open questions avoided for this very reason (Clark, 2011; Morley, 2015). Questions containing the word 'not' (negative and double negative questions) can be confusing or difficult to understand, potentially causing the defendant/witness to speculate an answer rather than respond with uncertainty, fostering poor credibility of the evidence (Kebbell et al., 2003). Similarly, multiple questions can cause confusion and limit the information provided by responding to only part of what was asked (Kebbell et al., 2003), although some advocacy literature (Morley, 2015) advise against this to deliver a more damning cross-examination.

Whilst the criminal advocacy literature vouches for the effectiveness of such questioning during cross-examination (Clark, 2011; Morley, 2015; Nolan, 2011; Pratt, 2011), psychological literature has demonstrated these approaches have a significantly detrimental impact on the accuracy of eyewitness accounts. Examination of trial transcripts of real-world cases in England (Kebbell et al., 2003), New Zealand (K. Hanna et al., 2012), and Canada (Lively et al., 2019) found, as expected, that cross-examination of both adults and children contained greater use of yes/no, leading, and multiple questions than direct examination. However, the use of such questioning styles in mock cross-examination negatively impacts on the accuracy and consistency of eyewitness' accounts (Jack & Zajac, 2014; Kebbell et al., 2010; Valentine & Maras, 2011). Leading and directive leading questions also feature heavily in cross-examination (Wheatcroft, 2017; Wheatcroft et al., 2015), yet it has been demonstrated that they negatively impact on the testimonial accuracy of both adults and children (see Gous & Wheatcroft, 2020; K. Hanna et al., 2012; Wheatcroft & Ellison, 2012; Wheatcroft & Woods, 2010, although Wade & Spearing, 2023 offer contradictory findings that suggest an absent or enhanced effect of leading questions on the accuracy of adult witnesses during cross-examination, possibly related to the study's stimulus materials). Nevertheless, it should be noted that, whilst relevant in that they provide a broad overview of questioning approaches that may be applicable in the case of alibis, it is currently conjecture (besides leading questions: Stone, 1995) as to if and how they apply in the case of such a defence.

It is worth noting that, as per eyewitness memory being the leading contributor to miscarriages of justice (Sauerland, 2017), the CJS has implemented optional training for both judges and barristers designed to redress the common myths and misunderstandings associated with such evidence (Houses of Parliament, Parliamentary Office of Science and Technology, 2019). This formal guidance is designed to ensure practitioners are assessing and handling such evidence in a manner consistent with the literature, and to avoid communicating and imparting inaccurate information to jurors and juries. The same source also notes expert witnesses can be utilised to accurately inform and educate jurors on eyewitness memory, if deemed appropriate by the presiding judge, and similarly advocated for by others (Loftus, 2019; Pezdek & Reisberg, 2022). Yet, research has yet to examine the impact of such training on barristers' presentation, examination, and questioning of eyewitnesses in court. Despite alibis being a prominent factor in US wrongful convictions (Connors et al., 1996; Heath et al., 2021; Wells et al., 1998) and evident within miscarriages of justice in England and Wales (Evidence-Based Justice Lab, no date; HL Deb, 1974; Logan, 2020), there exists no similar guidance or training for judicial practitioners where alibi evidence is concerned.

Juxtaposition in Questioning in Investigative Interviewing and Criminal Advocacy

Although not directly related to criminal advocacy, the topic of questioning styles within the CJS would be incomplete without consideration (albeit brief) to the approaches used within investigative interviewing (see Grant et al., 2015 and Oxburgh et al., 2010 for a more detailed consideration). One of the key principles of investigative interviewing dictates that interviewers must ask an array of questions in a manner that is not biased or unjust, to achieve the overall aim of gathering an account that is both complete and accurate (College of Policing, 2022; Shawyer et al., 2012). For example, the PEACE interviewing framework (see Milne & Bull, 1999; Bull, 2018, 2023 for a consideration of PEACE and its development) recognises that some questions are productive (for example, open questions), in that they are beneficial in gathering detailed information (College of Policing, 2022). Others (such as leading and multiple questions) are considered unproductive and may limit or

hinder responses, thus diminishing the reliability of the account provided, potentially resulting in allegations of oppressive and unethical interviewing and possible evidential inadmissibility (Griffiths & Milne, 2006; Oxburgh et al., 2010). Of relevance, the response of Senior Investigative Officers (SIOs) to a police interviewing style that is adaptive or neutral (defined as a reaction by an interviewer to new, contradictory information: van Beek et al., 2021) evidences an increased responsiveness to a suspect's alibi, emphasising the importance of an approach that reduces the impact of cognitive biases (van Beek et al., 2022). In contrast, the aim of barristerial questioning is to convince the audience that their proposed version of events is to be believed (Lively et al., 2019; Westera et al., 2017). Those questions that would be considered ineffective and obstructive within the context of a police interview (e.g., leading questions) are permitted and indeed actively encouraged during courtroom advocacy, to represent their client in the most appropriate and necessary manner (Lively et al., 2019).

Thus, there exists a juxtaposition between the purpose of questioning in both contexts (Haworth, 2013, 2021): whilst both aim to obtain information, the former sets out to gather the 'truth' of what occurred. Contrastingly, the latter seeks to elicit a particular narrative and therefore persuade the jury that their client's account is the truthful one, irrespective of whether that is the case or not. Some (e.g., Henderson 2015, 2016; Lively et al., 2019) have acknowledged that concerns regarding ineffective questioning recognised within police interviewing are of pertinence to courtroom advocacy, yet there exists no mandatory or standardised questioning protocols, procedures, or training for barristers to obtain high-quality (alibi) evidence in the courtroom. This may be of relevance to alibis, given how poorly perceived such evidence is already deemed by evaluators (e.g., Dysart & Strange, 2012), potentially exacerbated by barristerial presentation that exploits such weaknesses and discrepancies.

Presentation of Alibi Evidence in Court

There is limited reference in the legal literature as to the recommended approaches and strategies that advocates should use in the direct examination and

cross-examination of alibi evidence, specifically. Broadly speaking, the general approaches to the examination of evidence previously noted (that is, presenting a coherent story during examination-in-chief, and exploiting the accuracy and credibility of the evidence in cross-examination: Allen et al., 2015; Morley, 2015; Nolan, 2011; Pratt, 2011; Ross, 2007; Webb et al., 2013, 2019) could be applied in the case of an alibi defence. Of the legal literature that has considered advocacy in the case of alibis (Steele, 2020; Stone, 1995), this has focused on the cross-examination of alibi witnesses (perhaps to be expected, since person evidence is the most frequent form of alibi corroboration: Culhane et al., 2008; Culhane et al., 2013; Dysart & Strange, 2012; Matuku & Charman, 2020; Turtle & Burke, 2003). Stone (1995) advocates that the general approach to alibi evidence that should be taken during cross-examination is to probe the story in detail, designed to capitalise on evidential weaknesses and improbabilities, and to seek inconsistencies in the accounts provided. This should be done to weaken the defence to the extent that contrary evidence offered by the prosecution is acceded.

With regards to the prosecutorial cross-examination of alibi witness/es, Stone (1995) proposes that there are two possible lines of examination, which vary depending on the relationship of the witness to the defendant. Where the defendant has some form of prior relationship with the witness, cross-examination of the witness should suggest their statement is untruthful (whether that be because the witness is mistaken in their account, or because the alibi is deliberately falsified). In instances where the witness is independent and unconnected to the defendant (non-motivated witnesses, as defined by Olson & Wells, 2004), cross-examination should take the form of alleging that their corroboration is erroneous. This is consistent with Olson and Wells' (2004) original taxonomy of alibi believability, in that the relationship between the defendant and witness is of relevance to its credibility.

Stone (1995) considers the motivation of the alibi provider and the perceived ease at which they could fabricate evidence, giving recommended styles of cross-examination that are in line with Olson and Wells' (2004) hierarchal believability of person evidence. It is proposed that the first stage of cross-examination should be to explore the character of the witness and their motivation for supporting the defendant's alibi. If the witness is known or related to the defendant, their

relationship should be made explicit (with the view that the closer their relationship to one another, the weaker the alibi), to draw out the inference that the corroborator is deceitful. This is in keeping with findings that demonstrate evaluators view motivated witnesses as significantly less credible when compared to a non-motivated corroborator (Culhane & Hosch, 2004; Dahl & Price, 2012; Eastwood et al., 2020; Hosch et al., 2011; Price & Dahl, 2014), and are more heavily scrutinised by a jury as a result (Charman et al., 2019). Subsequently, their account should be explored in greater detail to highlight discrepancies and "exploit any improbabilities" (Stone, 1995, p. 198). Stone (1995) suggests that swift and unpredictable styles of questioning are likely to prevent the witness from devising appropriate responses, thus adversely affecting the defence.

Highlighting discrepancies, or in the case of alibi corroboration that is believed to be deliberately falsified, leading witnesses to provide an inconsistent account is recommended during cross-examination (Stone, 1995). Probing details of the story is endorsed, making use of probing questions (Boon, 1999) designed to gather specifics that can later be tested against other known facts. This can take the form of examining relatively minor details (for example, if the alibi refers to watching television, asking the witness what was on at the time), which lying corroborators may be unprepared for (Stone, 1995). Once an inconsistency has been established, barristers should seek to lead the witness into robustly asserting their assurance in this (Stone, 1995), an approach known as the riveting technique (Boon, 1999). This can make revealing the inconsistency before evaluators more persuasive, before presenting evidence to the contrary and insinuating (Allen et al., 2015; Boon, 1999) the witness is mistaken (and thus unreliable and not to be believed) or deceitful. Whilst effective, it is worth noting that Heath et al. (2021, p. 260) stated highlighting inconsistencies and attacking an alibis credibility on this basis featured prominently in cases of wrongful convictions (despite research demonstrating inconsistencies are commonplace: Cardenas et al., 2021; Leins & Charman, 2013; Olson & Charman, 2012; Strange et al., 2014), with trial attorneys in a wrongful conviction case noting:

> *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. … 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'.*

Similarly, Steele (2020) acknowledges that the defence should expect a robust cross-examination in cases where an alibi has been submitted before the (in the authors case, US) court. Witnesses who are testifying in support of an alibi should expect to be questioned on topics including the nature of their relationship with the defendant, their motive or intention in testifying, their credibility as a corroborator (including any prior convictions), and their certainty in the evidence provided, to name but a few (Steele, 2020). So much so, Steele (2020, p. 38) notes that the defence should "expect the prosecutor to ridicule your [alibi] witnesses", consistent with the purpose of cross-examination being to undermine and discredit the evidence presented (Henderson et al., 2016).

Nonetheless, Stone (1995, p. 200) notes a caveat to cross-examination of alibi evidence, in that "destruction of an alibi does not per se place the defendant at the scene of the crime or establish guilt", although should be sufficient to weaken the believability of the defence offered. This implies that weak alibi evidence, in isolation, is not indicative of culpability and should be considered in the wider context of other evidential material. This is also acknowledged within the Crown Court Compendium (Judicial College, 2023), whereby judges are advised to stress to the jury in their directions that, in instances where an alibi defence is used, the defendant is not required to prove that they were elsewhere, or indeed their innocence. Furthermore, if an alibi can be demonstrated by the prosecution as false, the judge is advised to direct the jury that an untrue alibi is not necessarily indicative of deliberate deception and thereby culpability. It may be that a false alibi has been provided based upon the defendant's belief that the truth will not be adequate to persuade the court of otherwise, and therefore should not be used as the sole reason to convict.

Criminal Barristers' Perceptions of Alibi Evidence

To date, little empirical literature has explored criminal barristers' views, attitudes, perceptions, and experiences of alibi evidence. Of the sources that do exist (Epstein, 1964; Levine & C. Miller, 2021), these are surveys that have been conducted with district attorneys across several jurisdictions in the US. Whilst there are similarities (including the notion of trial by peers) that allow comparisons to be drawn to criminal practice in England and Wales, there are key differences to the way alibi evidence is presented that make direct derivations difficult (Steele, 2020). Namely, some, but importantly not all, US states operate the prior notice rule, requiring an alibi defence and any corroborating witnesses to be disclosed in advance of trial (similar to the advance disclosure requirements set out by Section 6 A (2) of the CPIA 1996 in England and Wales, although the frequency in which this practice is used is thought to be varied: Lord Chief Justice of England and Wales, 2008; The Right Hon. Lord Justice Gross & The Right Hon. Lord Justice Treacy, 2012; Steele, 2020). However, given the prior notice rule is a statute inconsistently applied across all states in the US, and each with varying time limits (Steele, 2020), it is not possible to directly apply the findings of any existing literature across the two adversarial legal systems.

Whilst there are some inherent jurisdictional differences, Epstein (1964) and Levine and C. Miller (2021) have yielded some relevant preliminary findings on an otherwise unexplored area of the alibi literature. Following the introduction of the prior notice rule across 14 US states, Epstein (1964) examined the views on this with a sample of 76 prosecuting attorneys using a brief 11-item survey. Respondents noted that the use of an alibi defence varied, with 80% reporting alibis were used in up to 15% of cases, 16% in 16-30% of cases, and 4% in 31-60% of cases. When alibis were submitted before the court, the majority (89%) of those surveyed reported that the defence was infrequently a successful one. In response to a question concerning pre-trial investigation of an alibi defence (hence the potential for the case to be dismissed, if such investigations prove successful in determining the defendant was indeed elsewhere at the time), the author noted "many responses expressed the view that most alibis are false and that few were dismissed after investigation for this reason" (Epstein, 1964, p. 37).

Levine's and C. Miller's (2021) more recent survey of practising and retired US defence attorneys demonstrates very little has changed in the way in which alibis are perceived by such legal professionals. Like Epstein's (1964) findings, 95% of those surveyed reported alibis were raised by their clients in a quarter of cases. This is noteworthy, given the evidential and technological advances since that time (for example, developments in digital forensic evidence mean there is potentially a greater possibility to demonstrate a suspect/defendant was, or indeed was not, elsewhere at the time) (Olson & Morgan, 2022). This is also perhaps related to alibi believability, or lack of, as 83% of respondents believed the alibi defence must be moderately or extremely convincing for it to be successful in court. Indeed, one of those surveyed was quoted as stating "far too often … [defence attorneys] reject[2] the use of alibi defences out of a concern that it will cause a jury to flip the burden of proof" (Levine & C. Miller, 2021, p. 22). The notion that defendants may be prevented from sharing their alibi for fear it will harm their case is consistent with the loaded contentions the mere term alibi has within the CJS (Gooderson, 1977; Sommers & Douglas, 2007; Steele, 2020).

With regards to corroboration, physical evidence was considered by defence attorneys to be preferable to person evidence due to its perceived credibility (Levine & C. Miller, 2021). So much so, 91% stated the availability and accessibility of this evidence was significant in their decision to present the alibi defence. Person evidence was viewed with cynicism, with one respondent stating if it's a "mom or girlfriend, I don't use it: they always lie" (Levine & C. Miller, 2021, p. 6). The scarcity of non-motivated witnesses, both in terms of their accessibility and ability to recall details of the event in question, was acknowledged by those surveyed. As a result, respondents considered this noteworthy in whether to submit alibi evidence in court, or not. Specifically, 62% of respondents rated the time between the offence being committed and the suspect's arrest as of influence in their decision to use or disregard this defence.

[2] Criminal law practice in the US dictates that it is the responsibility of the defence attorney to investigate and ultimately make an informed judgement, ideally together with their client, whether an alibi defence should be presented before the court (Levine & C. Miller, 2021; T. Sullivan, 1971). In instances where the defendant wishes to present a weak alibi, but it is the opinion of the attorney that this would have an adverse impact on the outcome of the case, the defence can strategically forgo the presentation of said alibi for the benefit of the case, without contravening attorney professional guidelines (Levine & C. Miller, 2021).

The findings from the aforementioned surveys (Epstein, 1964; Levine & C. Miller, 2021) suggest that US attorneys view alibis with scepticism. The infrequency in which alibis are used successfully, together with the incidence of deceptive and/or weak corroboration, contribute to their poor believability. Returning to Steele's (2020, p. 1) reference to an alibi as a "hip pocket defence", it would suggest advocates see the defence as one that is difficult to substantiate and therefore present effectively in court. However, if and how these perceptions and attitudes are reflective of experiences with alibi evidence of criminal barristers practising in England and Wales, has yet to be explored. Furthermore, the case theory, arguments, approaches, and strategies used by advocates in cases where alibi evidence is concerned have the potential to considerably impact and shape the discussions and ultimately decisions made by jurors and juries as to the defendant's culpability. Thus, a limited understanding of how these integral legal practitioners perceive and use alibis in court fails to reflect such a central component of the evidence (that is, how it is presented during a criminal trial in advance of being evaluated by the audience).

(Mock) Jurors and Juries' Evaluations of Alibi Evidence

The concluding phase in which an alibi is appraised, termed the ultimate evaluation stage in the believability domain of Burke et al.'s (2007) model of alibi generation and evaluation, is where a decision is made as to its believability and ultimately whether evaluators (in this instance, jurors and juries) consider the defendant to be responsible for the offence in question. Behl and Kienzle (2022) note that the alibi literature has predominantly focused on system variables (factors concerning the alibi as part, or all, of the defence's legal evidence), with little attention paid to the role of estimator variables (non-legal factors, such as the impact of character, demeanour, non-verbal presentation, biases, stereotypes, preconceptions, and so forth). Thus, in considering the latter, this review will draw on the wider body of psychological literature pertaining to such factors. Given the vast variation in the possible characteristics of alibi evidence in real-world cases (encompassing offence types, defendants, corroborators, settings, timings, barristers etc., to name some), relatively few factors in relation to mock juror and

juries' decision-making and evaluations have been studied from an empirical perspective. A summary of the legal and non-legal factors that have been examined, to date, is shown in Table 2.

Table 2

Overview of Legal and Non-Legal Factors Relevant to Mock Jurors and Juries' Evaluations of Alibi Evidence, As Studied to Date

Factor	Strength of Evidence
	Legal Factors
Context (i.e., police investigation versus trial)	Same alibi presented in the context of a criminal trial is of reduced strength, believability, and credibility compared to an investigative context (Sommers & Douglas, 2007).
Corroboration – Physical Evidence	Strong physical evidence superior to weak physical evidence (Allison et al., 2020), and alibi of increased credibility when physical evidence present compared to absent corroborating evidence (Jung et al., 2013).
Corroboration – Person Evidence (including age)	Alibis corroborated by motivated witnesses are viewed more negatively than those supported by non-motivated witnesses (Allison & Kollar, 2023; Culhane & Hosch, 2004; Eastwood et al., 2020; Hosch et al., 2011; Pozzulo et al., 2012). Age of child alibi witness has no effect on verdict or defendant perceptions (Fawcett & Winstanley, 2018).
Salaciousness	Findings are varied: alibi salaciousness resulted in positive alibi believability and defendant character trait ratings (Allison et al., 2014; Nieuwkamp et al., 2016), or negative alibi believability ratings (Allison & Hawes, 2023) and defendant character trait evaluations when coupled with weak/no physical corroboration (Jung et al., 2013).
Delayed Disclosure	Delayed disclosure has no effect on verdict (Allison et al., 2020; Allison et al., 2023; Allison & Hawes, 2023; Fawcett, 2015). A non-motivated alibi witness presented in timely manner improved reliability ratings compared to delayed disclosure (Fawcett, 2015). Conversely, late disclosure decreased ratings of defendant trustworthiness (Allison et al., 2020), or had no effect at all (Allison et al., 2023; Allison & Hawes, 2023).
Consistency	Consistency has no effect on verdict, however consistent alibis seen as more believable and defendant's character viewed more positively compared to an inconsistent alibi (Allison et al., 2023).
	Non-Legal Factors
Previous Convictions	Defendants with prior convictions for same offence are significantly more likely to be guilty compared to dissimilar offences, and those previously convicted of perjury are seen as having less believable alibis compared to those with history of physical assault (Allison & Brimacombe, 2010).

Factor	Strength of Evidence
Judicial Instructions	Judge's directions had no effect on verdict, although presence of directions (relating to prior conviction evidence) increased alibi believability ratings compared to absence of judicial instructions (Allison & Brimacombe, 2010).

It is worth highlighting that the contextual nature of an alibis presentation is particularly relevant to its ultimate evaluation: the fact the case had proceeded to the courtroom despite its presence implies a degree of scepticism has already been levelled at the defence sufficient to warrant an independent appraisal as to its credibility (Gooderson, 1977; Sommers & Douglas, 2007; Steele, 2020). Indeed, Sommers and Douglas (2007) demonstrated that the same alibi presented in a criminal trial context was deemed to be of weaker strength and poorer believability and credibility compared to if it were offered during a police investigation. As per the Elaboration Likelihood Model (ELM) (Petty & Cacioppo, 1986), this may result in jurors peripherally processing and evaluating trial information by focusing on the message source (weak alibi evidence), rather than its fundamental content. Similarly, the salience in which factors are presented may be of relevance when determining its believability (Allison & Hawes, 2023; Culhane & Hosch, 2012). Applying the Continuum Model of Impression Formation (CMIF) (Fiske & Neuberg, 1990) to juror decision-making (Strub & McKimmie, 2015), this implies that weak alibi evidence may be salient information that is congruent with the initial categorisation of the defendant being an offender and thus responsible for the offence in question. For example, Culhane and Hosch (2012) postulated that changes to an alibi resulting in an inconsistent account would be more salient to jurors in a criminal trial (compared to a police investigation, as per their study). The authors deemed this would be the case more so under the scrutiny of cross-examination, and thus evaluators would view the alibi more sceptically and judge the defendant more harshly as a result. Thus, the mere fact an alibi is being presented for evaluation before the court implies an inherent and pre-existing degree of cynicism and distrust as to its believability as a plausible defence.

Legal Factors

Several distinct factors concerning an alibis corroboration (Allison et al., 2020; Allison & Kollar, 2023; Culhane & Hosch, 2004; Eastwood et al., 2020; Hosch et al., 2011; Jung et al., 2013; Pozzulo et al., 2012) and context (such as salaciousness: Allison et al., 2014; Allison & Hawes, 2023; Jung et al., 2013; Nieuwkamp et al., 2016, delayed disclosure: Allison et al., 2020; Allison & Hawes, 2022; Fawcett, 2015, and consistency: Allison et al., 2023) have been explored in relation to their effects on mock juror decision-making. In addition to a dichotomous (occasionally continuous, see Hosch et al., 2011) verdict, research has considered the impact of the defence on various character traits and attributes for both the alibi provider and witness (see, for example, Allison et al., 2014; Allison & Hawes, 2023; Fawcett, 2015). Examining the effect of such variables on character ratings is pertinent, since it allows for a determination of some of the characteristics that potentially make for a believable (or less believable) alibi and in turn a direct and quantifiable assessment as to their impact on evaluators decision-making (Olson & Wells, 2004).

Perhaps to be expected, similar findings have been demonstrated in mock jurors evaluations as to the believability of alibi corroboration (Allison et al., 2020; Allison & Kollar, 2023; Culhane & Hosch, 2004; Eastwood et al., 2020; Hosch et al., 2011; Jung et al., 2012; Pozzulo et al., 2012) as those seen in a police investigation context (Culhane & Hosch, 2012; Dysart & Strange, 2012). Consistent with the taxonomy of alibi believability (Olson & Wells, 2004), strong physical evidence is seen as superior to weak physical evidence (Allison et al., 2020) and an alibi corroborated by physical evidence as more credible compared to no evidence at all (Jung et al., 2013). Furthermore, defendants with alibis supported by motivated witnesses are perceived more negatively by mock jurors compared to non-motivated corroborators (Allison & Kollar, 2023; Culhane & Hosch, 2004; Eastwood et al., 2020; Hosch et al., 2011; Pozzulo et al., 2012).

Yet, the findings concerning mock jurors assessment of an alibis contextual factors have been varied (Allison et al., 2020; Charman et al., 2019). For instance, the salaciousness of an alibi, that is where the defence involves some form of immoral or illegal behaviour (Allison et al., 2012), resulted in mock jurors appraising the defence and defendant more positively in terms of believability and character

traits such as trustworthiness and sincerity (Allison et al., 2014; Nieuwkamp et al., 2016). However, Jung et al. (2013) found that alibi salaciousness had no significant effect on mock jurors' ratings of culpability or alibi believability, only that the defendant's character was seen more negatively when coupled with weak or absent physical corroboration. Similar negative inferences for alibi believability were demonstrated in research by Allison and Hawes (2023), with the authors recommending that the defence should seek to downplay any salacious facets when presenting the alibi to promote a more complimentary impression of the defendant to the jury. This suggests that mock jurors as evaluators make judgements not only the surface characteristics of the alibi (i.e., evidence in corroboration of it), but also inferences as to its believability based on its content and contextual nature, factors which advocates can use advantageously when offering the defence in court.

The time and stage in which an alibi is disclosed appears to be relevant when making assessments as to its believability (Allison et al., 2020; Fawcett, 2015). Delayed disclosure, or an ambush alibi (Fawcett, 2015), refers to the late submission of the defence, done either intentionally to withhold a weak or deceptive alibi or genuinely due to issues with memory salience or schematic overreliance (Burke & Turtle, 2003; Kassam et al., 2009; Leins & Charman, 2013). The (in)admissibility of such evidence is directed by procedures set out in the CPIA 1996 (Defence Disclosure Time Limits) Regulations 2011 and Section 11 (5) of the CPIA 1996, although anecdotal accounts imply delayed alibi disclosure occurs frequently (Eady, 2009). In such instances, it may be that the defence is permitted to be put forward regardless of its late submission to ensure cases are dealt with fairly and justly (Owusu-Bempah, 2013).

As with salaciousness (Allison et al., 2014; Allison & Hawes, 2023; Jung et al., 2013; Nieuwkamp et al., 2016), the findings concerning the impact of delayed disclosure on mock jurors evaluations are mixed. Fawcett (2015) found that the submission of an ambush alibi witness did not significantly impact on evaluations of the defendant's culpability or reliability, suggesting that mock jurors did not see this as indicative of deliberate deception. However, a non-motivated alibi witness presented in a timely manner was deemed to be significantly more reliable than an ambush account. Allison et al. (2020) found similar findings, with the timing of an

alibi disclosure (either one, or 19, days after the setting of the trial date) having no significant effect on perceptions of verdict. Nevertheless, those defendants who submitted an alibi 19 days late were seen by mock jurors as less trustworthy compared to those who submitted earlier (although this negative inference did not transcend to other character ratings, such as credibility, where there were no significant differences). Contrastingly, Allison and Hawes (2023) found that the time in which an alibi was disclosed (one working day or 20 working days post-trial date setting) had no meaningful effect on mock jurors' perceptions of an alibis believability or ratings of the defendant's character.

Whilst delayed disclosure inherently makes an alibi inconsistent (since the accounts provided differ from one another e.g., no alibi provided at police interview, compared to an alibi submitted before the court), there is only one study (Allison et al., 2023) to date to have examined mock jurors evaluations of alibi inconsistencies within the context of those that occur during a criminal trial. Findings from a (mock and real) police investigator perspective demonstrate inconsistent alibis are viewed sceptically (Culhane & Hosch, 2012; Dysart & Strange, 2012; Price & Dahl, 2017), based on the ill-informed consistency heuristic (Granhag & Strömwall, 2001; Strömwall et al., 2003; Vernham et al., 2020). This is despite well-documented findings that demonstrate alibis frequently contain errors and inconsistencies due to issues concerned with poor memory encoding, storage, and retrieval (Charman et al., 2019; Crozier et al., 2017; Laliberte et al., 2021; Leins & Charman, 2013; Matuku & Charman, 2020). However, little is currently known about how jurors and juries perceive alibi inconsistencies when given on-the-stand by a defendant and in direct response to barristerial questioning during cross-examination. This is of pertinence, since seeking out inconsistencies is considered key during alibi witness cross-examination (Stone, 1995) and was an approach frequently employed in cases of wrongful conviction where an alibi defence was present (Heath et al., 2021). If jurors and juries do indeed hold similar beliefs that impact on their perceptions, evaluations, and decision-making of the defendant, it would be wise for the CJS to ensure comprehensive, psychologically informed information and guidance is offered in such instances to ensure a fair and accurate appraisal of the alibi defence.

Allison et al.'s (2023) study manipulated the following three variables via a one-page case summary: alibi consistency (where the defendant's account provided during the police investigation was the same or different to that provided during trial, also known as between-statement inconsistency: Vredeveldt et al., 2014), timing of disclosure (either one, or 21, days after the trial date was set), and physical evidence in the form of a receipt (present or absent). The findings showed consistent alibis were seen as more believable by mock jurors than those that were inconsistent, and the defendant viewed as more credible, persuasive, honest, knowledgeable, and trustworthy as a result, although consistency had no significant effect on verdict. Comparatively, disclosure timing nor corroboration had no meaningful impact on verdict, alibi believability, or character traits. The findings provide an important first step in demonstrating that alibi (in)consistency has a noteworthy impact on the evaluations and decisions of jurors. The authors recommended future research should seek to substantiate these findings, including using more ecologically valid methods (such as a video recording of a simulated case), whilst gaining a greater understanding of the way in which participants use alibi evidence to reach their verdict would be invaluable.

Non-Legal Factors

As previously noted, the alibi literature has paid little attention to non-evidential factors that may impact upon juror and juries' perceptions of the defence (Behl & Kienzle, 2022). One such study (Allison & Brimacombe, 2010) sought to redress this paucity by examining the role of alibi strength, defendant previous convictions, and judicial instructions on mock juror decision-making. Evidence of previous convictions can be submitted before the court in England and Wales under the strict provisions detailed in Part 11 (Sections 98-113) of the CJA 2003. Proven reoffending figures show an average rate of 29% between 2008 and 2021 (Taylor, 2022), with the Serious Violent Strategy (HM Government, 2018) noting that a minority of individuals account for a significant majority of offences. Thus, defendant bad character evidence in the form of prior convictions could theoretically be admitted before the court in a significant number of cases. Furthermore, the CPS (2018a) guidance on alibis specifies that, in examining the defence, a background

check of witnesses for prior convictions is completed, thus it is possible that this may extend to the defendant also. Whilst separate to the alibi per se, barristers may use relevant prior convictions to infer that the defendant is lacking in trustworthiness and thus not to be believed (Ross, 2007).

In Allison and Brimacombe's (2010) Canadian study, a total of 339 participants listened to an audio recording of a fictional police interview in which the suspect had an alibi for a robbery offence and the strength of the defence (strong/weak), prior convictions (same offence/different offence/perjury offence), and judicial instructions on said convictions (present/absent) were manipulated. The findings demonstrated that participants, acting as mock jurors, viewed the defendant with prior convictions for the same offence as significantly more likely to be guilty in comparison to other offence categories (although it had no meaningful effect on mock jurors' perceptions of the defendant's character). Furthermore, those with a prior conviction for perjury were rated as having a less believable alibi compared to defendants with a history of physical assault. This is in keeping with the consensus in the wider body of literature that mock investigators, jurors, and juries are more likely to find a defendant with prior convictions guilty and view the defendant's character negatively as a result (Clary & Shaffer, 1985; Devine & Caughlin, 2014; Greene & Dodge, 1995; Hans & Doob, 1976; Lloyd-Bostock, 2000; Pickel, 1995; Schmittat et al., 2022; Tanford & Cox, 1988; Wissler & Saks, 1985, although see Honess & Matthews, 2012 and Oswald et al., 2009 for contradictory findings). Schmittat (2023), however, recognised that the effect of prior convictions on juror and jury decision-making may be moderated somewhat by other variables (such as case and methodological characteristics), thus research should seek to consider what role the evidence has on the overall narrative created by evaluators. Thus, further research is needed to substantiate these findings with prior convictions provided during courtroom proceedings (in contrast to Allison & Brimacombe's, 2010 fictional police interview) and within the wider context of juror and jury decision-making.

Interestingly, Allison and Brimacombe (2010) found that the presence or absence of judicial instructions pertaining to prior conviction evidence had no impact on guilt ratings. The authors suggested that, whilst mock jurors may have

comprehended the direction, they failed to use them appropriately when determining culpability. This finding has been consistently replicated in wider juror research (for example, Alvarez et al., 2016; Helm, 2021; Lieberman, 2009; Nietzel et al., 1999; Ogloff & Rose, 2005), signifying that jurors find it difficult to understand the directions given and thus do not use them as instructed in their decision-making. Nevertheless, whilst the direction in Allison and Brimacombe's (2010) study related to previous offending per se, it was found that alibi believability ratings were significantly higher when participants heard such an instruction compared to not. It could be that the instruction prompted participants to consider the evidence in more detail, thus making them more likely to believe the defendant (akin to the alibi generation effect: Olson & Wells, 2012). However, there is no empirical literature to date that has included, nor assessed, the impact of alibi directions on mock juror or jury decision-making. The inclusion of such instructions in case materials (particularly when an alibi is inconsistent, given a direction is recommended in such instances), to provide a more realistic and representative alibi presentation medium, would be a valuable first step in remedying this.

Devine's (2012) integrative multi-level theory of jury decision-making (combining both the juror-level "Director's Cut" Model, and jury-level "Story Sampling" Model) seeks to understand the role and impact such characteristics have on the stories created and debated by jurors and juries in reaching a verdict (see Devine, 2012 for a detailed discussion). In summary, the "Director's Cut" Model specifies that, in jurors creating a mental representation of what they individually believe to be the case, they rely on cognitive scripts (cognitions centred on an event: Devine, 2012) and stereotypes (defined by Dane, 1992, p. 33 in the context of jury decision-making as "any structured set of beliefs about any identifiable group of people") retrieved from memory to do so. Combined with information gained from the trial (for example, the credibility and scope of the prosecution's evidence), jurors generate and continually revise the story to ultimately provide a coherent narrative used to evaluate the plausibility of the account. Once deliberations commence, jurors will share their story and beliefs with the jury, with the verdict determined based on the deliberation style and informational and normative influences of the group.

Of note, a defendant's prior convictions are one of the factors specified in Devine's (2012) model that influence the story created by jurors. Stereotypical inferences that 'criminals' are repeat offenders, as frequently depicted in the media, may be triggered when presented with details of a defendant's prior convictions. In turn, this may serve to support the prosecution's proposed account and ultimately the view that they are indeed responsible for the offence in question (Devine, 2012; Devine & Caughlin, 2014). The conveyance of such stereotypes during deliberations, particularly for those individuals with strong informational influence within the group, may successfully transmit this view to others and have a significant determination over (a guilty) verdict (Stawiski et al., 2012). Misinformation and mis-recollected evidence may serve to further support stereotypes and their transmission (Fitzgerald, 2000; Lorek et al., 2019; Pritchard & Keenan, 2002; Ruva & Guenther, 2015; Thorley et al., 2020; Wright et al., 2000).

The broader psychological literature has also identified that the demeanour and non-verbal behaviour of defendants and witnesses has noteworthy impacts on juror and jury decision-making (Chalmers et al., 2022; Denault & Dunbar, 2019; McCabe, 2016; McKimmie et al., 2014; Savitsky & Sim, 1974), although this has yet to be explored where alibi evidence is concerned. For instance, a defendant who presents as angry is viewed more negatively and punished more punitively compared to other emotional states (McCabe, 2016; Savitsky & Sim, 1974). Similarly, an eyewitness who presents in a manner consistent with stereotypical, although misconceived, non-verbal cues indicative of deception (Bogaard et al., 2016; Bond et al., 2015; Bond Jr & DePaulo, 2006, 2008; DePaulo et al., 2003; Strömwall et al., 2003; The Global Deception Team, 2006; Vrij, 2008; Vrij et al., 2019; Vrij & Turgeon, 2018) was seen as having weaker evidence than an eyewitness who did not present with a stereotypically deceptive demeanour (McKimmie et al., 2014). Similarly, Chalmers et al. (2022) found that mock juries' relied heavily on the delivery of witness testimony to assess credibility, with the most cited (inaccurate) cues being body language, expressed emotion, and nervousness.

Jurors and juries may rely on ill-informed beliefs to inform their decision-making, particularly when such behaviours act as a form of confirmation bias (defined as a propensity to perceive and construe evidence in a manner that

corroborates a pre-existing belief or expectation: Lord et al., 1979; Nickerson, 1998). For example, a defendant's body language may be erroneously suggestive of deception, thus this supports a guilty verdict (Charman et al., 2009; Rassin et al., 2010, although see Charman et al., 2013 for an alternative viewpoint), irrespective of instructions to disregard non-verbal cues (Bogaard & Meiher, 2022). In the absence of knowledge or expertise to suggest otherwise, it is proposed that jurors understand and interpret information through the guise of their own experiences and expectations, relying on heuristics to do so (B. H. Bornstein & Greene, 2011; Curley et al., 2022). The alibi literature in the context of mock police investigators demonstrates evaluators rely on heuristics when assessing (in)consistency (Granhag & Strömwall, 2001; Strömwall et al., 2003; Vernham et al., 2020) and ease of alibi generation (Abbott, 2016; Olson & Wells, 2012). Therefore, it would not be inconceivable to suggest that jurors and juries would employ similar peripheral processing (ELM: Petty & Cacioppo, 1986) when making judgements on a defendant's (and indeed barristers: Berger & Stanchi, 2017; Hans & Sweigart, 1992; Melilli, 2016) presentation. Whilst such views may not be reflective of all individuals in the context of group (jury) decision-making, in the absence of clear directions prohibiting its use (Vrij & Turgeon, 2018), it may be difficult for those with a minority or more lenient viewpoint to counteract the seemingly obvious guilty behaviour as seen by the majority (Deutsch & Gerard, 1955; Devine, 2012; M. K. Miller et al., 2011; Tanford & Penrod, 1986). As such, it is likely that individual and group preconceptions and biases concerning alibis do indeed impact on decision-making, however there is no research to date that has definitively demonstrated that this is the case. Gaining a more encompassing understanding as to how jurors and juries think, feel, view, and negotiate alibis within the process of deliberations would be invaluable. Supplementing this qualitative approach with the use of representative stimulus materials (in keeping with Diamond, 1997 and Weiner et al.'s, 2011 two-step process, as discussed in Chapter Three) would further strengthen the findings to provide a strong basis on which clear, evidence-based recommendations could be made to ensure the fair and accurately informed appraisal of alibis within the courtroom.

Summary and Conclusions

Alibis can have a powerful impact on a suspect/defendant's involvement with the CJS, to the extent of acquittal or significantly contributing to (potentially wrongful) liability (Allison, 2022; Burke et al., 2007; Jung et al., 2013). Despite this, the literature pertaining to alibis has only emerged within recent years and thus remains a burgeoning yet under-researched field (Burke & Marion, 2012; Kienzle & Behl, 2022; Olson & Morgan, 2022). This is despite alibis being a leading contributory factor to miscarriages of justice in the US (Connors et al., 1996; Wells et al., 1998), with weak alibi evidence featuring in almost two thirds of DNA exonerations (Heath et al., 2021), and its presence in wrongful convictions in England and Wales (e.g., Sam Hallam: Evidence-Based Justice Lab, no date). This nascence is contrary to other leading causes of wrongful convictions, namely eyewitness memory, where there is wealth of literature on which to draw upon (Sauerland, 2017). Gathering a greater understanding as to how alibis are shaped and appraised in the courtroom is imperative to ensure fair and just trials, thus mitigating for wrongful convictions and to avoid undermining a CJS that is effective for all those involved.

The generation of an alibi can be arduous, fraught with difficulties associated with limitations in terms of poor memory encoding, storage, and retrieval (Crozier et al., 2017; Charman et al., 2019). As such, inconsistencies are frequent and expected (Cardenas et al., 2021; Laliberte et al., 2021; Olson & Charman, 2012; Strange et al., 2014), yet viewed sceptically by evaluators (Culhane & Hosch, 2012; Dysart & Strange, 2012; Price & Dahl, 2017). When in court, whilst US research reports attorneys are cynical of alibis (Epstein, 1964; Levine & C. Miller, 2021), little is known about how alibis are perceived and presented by barristers in England and Wales. Mock juror research has demonstrated that alibi evaluations, perceptions, and ultimately decisions are negatively impacted by several legal and non-legal factors (e.g., Allison & Brimacombe, 2010; Allison et al., 2023; Allison & Kollar, 2023; Eastwood et al., 2020; Jung et al., 2013). Yet, there is a limited understanding as to what role alibi system and estimator variables relevant to barristerial cross-examination have (such as exploiting alibi (in)consistency and a defendant's bad character), particularly when exploiting such weaknesses can be used to the prosecution's advantage (Heath et al., 2021; Steele, 2020; Stone, 1995). Finally,

gaining a greater understanding as to mock jurors and juries' thoughts, feelings, views, and negotiations on alibis during the deliberative process would be particularly valuable to offer a more encompassing perspective than presently exists. Only once an integrative comprehension of both the presentation and evaluation of alibis has been established, can evidence-based guidance for judicial practitioners, jurors, and juries on the use such evidence in court be recommended.

To reiterate, the thesis aims to provide a mixed methodological investigation into the presentation and evaluation of alibi evidence within the context of the courtroom in England and Wales. In doing so, the following three overarching objectives will be addressed:

1. How do criminal barristers' present alibi evidence in the courtroom?

2. What impact does the manner of courtroom presentation of alibi evidence have on mock jurors and juries' evaluations and perceptions of alibi evidence?

3. How do mock jurors and juries' use alibi evidence in the deliberative process when reaching a verdict?

Chapter Three: Methodology

The thesis adopted a mixed methods approach, utilising both qualitative and quantitative research methods to explore the presentation and evaluation of alibi evidence in the courtroom. This chapter demonstrates the suitability of mixed methods approaches, and the methodological, sampling, and epistemological stance employed, to address the thesis' aim and objectives (as discussed in Chapter One). The thesis was conducted sequentially, that is each of the three distinct, yet inter-linked, studies followed on from one another (referred to as Study One, Two, and Three), thus the justification for this approach is explained. Next, the rationale for the design and mode of data collection for each of the three studies, followed by the qualitative data analysis employed in Study One and Three, is discussed. Finally, ethical considerations applicable to all three studies are reviewed and a reflexive account is provided.

Mixed Methods

A mixed methods approach refers to collecting and analysing both qualitative and quantitative data, thereby producing a concerted understanding of a topic or phenomenon than could otherwise be provided by one paradigm in isolation (Creswell, 2010, 2014). Taking the thesis in its entirety, the research involved three inter-connected studies (Study One and Two, collected qualitative data, and Study Three, measured quantitative data), thereby employing a mixed methods methodology.

The benefits of a mixed methods approach in psychological research are invaluable, concurrently combining the benefits of qualitative and quantitative approaches to produce a more encompassing perspective, and is of particular importance in subject matters that are unexplored or under-researched (Creamer & Reeping, 2020; Tashakkori et al., 2021). This is relevant to alibi evidence, given the absence of any existing literature on criminal barristers' perceptions and experiences of this defence within the jurisdiction of England and Wales (as considered in Study One). Furthermore, there is a paucity of research examining

how barristerial cross-examination techniques concerning alibis are evaluated and perceived by mock jurors and juries' (addressed in Study Two and Three). The advantages of a mixed methods approach are several (as observed throughout this chapter) but, of note, such an approach provides a means by which to explore different aspects or distinctions within the same phenomenon (Todd et al., 2004). Whilst the thesis is broadly exploring alibi evidence within the courtroom, the focus is on the interdependent elements of how it's presented and ultimately evaluated in trial proceedings. The cornerstone of a mixed methods approach is its integrative nature (Creswell & Plano Clark, 2017), in that the data produced from different sources and perspectives provides a more detailed and concerted understanding than could otherwise be achieved alone, simultaneously offsetting any limitations of any one approach alone (Creamer & Reeping, 2020). Whilst it is worthwhile, and indeed important, to explore criminal barristers' perspectives and experiences of alibi evidence, these findings are further substantiated by subsequently considering how the strategies used, when presenting and evaluating such evidence in court, directly impact upon evaluators perceptions and evaluations. In turn, this achieves a greater breadth and depth of understanding on the subject matter. This is one of the novel contributions to the evidence base that this thesis provides: together, the thesis allows for triangulation (Denzin, 1978; Flick, 2018) or 'closing of the loop', so to speak, when it comes to establishing and evaluating the impact of alibi presentation in court, which most research in this area fails to demonstrate.

Qualitative and Quantitative Approaches in Alibi Research

A qualitative methodology gathers data to gain rich information about an individual's views, perceptions, and experiences that would otherwise be lost if condensed into numerical data (Coolican, 2018; Willig, 2022). Such an approach is concerned with exploring the subjective meaning behind *why* a phenomenon occurs. Qualitative research reflects the complexity of an individual's knowledge and experiences, providing their voice on the topic under consideration, thus producing exhaustive data that understands and interprets the meanings they attach to the world (Creswell, 2014). To date, there is no research within the alibi literature that has implemented a qualitative methodology. Thus, to its detriment, the field has

overlooked barristers, jurors, and juries' thoughts, feelings, and conveyance concerning alibis, or only considered views (of jurors) constrained by the relatively narrow focus of quantitative research that subsequently lacks richness and depth.

Contrastingly, quantitative approaches examine the relationship between identified variables, controlled by means of the study's design or analyses, to answer a series of proposed hypotheses (Creswell, 2014). The approach is concerned with *how*, and under what conditions, do variables objectively effect a set of numeric measures or observations. Quantitative methodologies using individual, juror decision-making paradigms, with variables manipulated as a function of written case summaries or brief vignettes materials (with some exceptions, for example, fictional audio recordings of police interviews: Allison & Brimacombe, 2010, or some element of brief deliberations when using quantitative measures: M. K. Miller et al., 2011), is the dominant approach taken in the alibi literature (Allison, 2022). The quantifiable data generated through such approaches is assumed to result in increased reliability and generalisability, and greater internal and external validity (Creswell, 2014). The strengths of this within the alibi literature are that the findings have demonstrated the effect of several manipulated factors (for example, delayed disclosure: Allison et al., 2020; Allison & Hawes, 2023; Fawcett, 2015) on a series of specific measures such as verdict and defence believability. This is relevant given the research is nascent, allowing for a controlled examination as to its effect, producing results which are of (arguably) greater reliability and validity.

Methodologies in Mock Jury and Juror Research

Since the thesis implements both qualitative and quantitative mock jury and juror decision-making paradigms, it is worth briefly remarking on the debate as to the benefits and shortcomings of such approaches and its implications for the related methodologies (Curley & Peddie, 2024 offer a detailed critique of such experimental methodologies, published since the original submission of this thesis: see also B. H. Bornstein & Greene, 2011; Devine et al., 2001; Diamond, 1997). Quantitative research on mock juror and jury decision-making has been criticised for its poor ecological validity, relying solely on convenience sampling with student

populations, succinct written materials (often only a case summary or a short vignette), and without any deliberative processes (R. M. Bray & Kerr, 1979; B. H. Bornstein, 2017; B. H. Bornstein et al., 2017; B. H. Bornstein & Greene, 2011; Curley & Peddie, 2024; Devine et al., 2001; Diamond, 1997; Krauss & Lieberman, 2017; Nuñez et al., 2011; Wiener et al., 2011). Research has found little or no difference in verdicts found between student and community samples (B. H. Bornstein, 1999; B. H. Bornstein et al., 2017; Devine & Caughlin, 2014), although they do differ in terms of other factors such as authoritarianism and conservatism (Berg & Vidmar, 1975; B. H. Bornstein et al., 2020), cognitive capabilities (Weiten & Diamond, 1979), and receptiveness to expert evidence in civil cases (McCabe & Krauss, 2011). Similarly, issues have been raised as to the validity of verdicts reached as product of individual or group decision-making, since the judicial system relies on the latter, yet (alibi) research relies on juror-level processes that are then extrapolated to juries to understand the phenomena under consideration. Despite this, the strongest predictor of verdict resulting from deliberations is pre-deliberative verdicts of individuals (B. H. Bornstein & Greene, 2011; Devine et al., 2000; MacCoun & Kerr, 1988), suggesting the outcome at least is the same regardless of the method of decision-making implemented.

To address such concerns, Diamond (1997) and Wiener et al. (2011), in their recommendations for mock juror and jury research, advocate a two-step process for validity and representativeness. The first step endorses mock juror paradigms in the first instance, which can provide important insights as a first foray into a particular subject matter. Written case materials are an experimentally controlled and convenient method, of particular importance when examining factors with an absent or sporadic empirical evidence (as is the case in Study Two). Following this, “initial findings using mock jurors in minimalist paradigms are tested against the responses of community samples in more ecologically valid simulation paradigms that include deliberations and realistic trial procedures” (Wiener et al., 2011, p. 477-478). Thus, where possible, research should seek to develop and triangulate mock juror findings through the supplementation of realistic trial presentation mediums, representative samples, and true-to-life deliberative processes in the context of jury simulation. Comparably, Curley and Peddie (2024) advocate for a stepped approach, recommending juror-level studies with high internal validity and reliability in the first

instance (using written vignettes or transcripts, students as participants, and with no deliberative process), later supplemented by follow up studies that progressively increase the external and ecological validity of the research (with a particular emphasis on the use of realistic video trial presentation mediums, representative community samples, and the inclusion of jury deliberations). B. H. Bornstein (2017) similarly advocate for the use of more ecologically valid methods of presenting trial materials, given that actual jurors would see and hear evidence as opposed to read it, which may impact on the way in which individuals process information and thus construct a story of the proposed version of events (Pezdek et al., 2010). B. H. Bornstein (2017) emphasises the value of replicating studies using varying trial formats (i.e., non-written, such as audio or video recorded, materials), as one medium may not generalise to another. Allison (2022) noted, to further the field of alibi research and improve on the generalisability of its findings, consideration of alibis as they would be viewed by evaluators in real-world practice (i.e., as one piece of evidence within a wider criminal trial and appraised by a group of individuals acting as a jury) would be invaluable. Thus, the thesis seeks to address this by implementing a quantitative mock juror paradigm *and* a qualitative jury simulation study to examine alibi evidence in court, thereby producing triangulated and integrative findings that are of greater representativeness to real-world practice.

Sample Size in Qualitative Methodologies

Determining an 'appropriate' sample size when employing a qualitative methodology is a much debated and contested matter (Terry et al., 2017). When employing thematic analysis (TA) as an analytic method, some authors make no suggestions as to a recommended sample size (King & Horrocks, 2010). Alternatively, very broad suggestions are offered, ranging from two to 200 depending on the nature of the topic and population under consideration (Braun & Clarke, 2013). Conversely, some propose indicative sample sizes based on the scale of the project. For example, where TA forms part of a wider PhD project, between 15 and 20 interviews, and three to six focus groups (perhaps most alike a mock jury paradigm), are suggested (Braun & Clarke, 2013). Nevertheless, Terry et al. (2017) emphasise that the *quality* of the data is the most important feature within

qualitative methodologies, producing data that reflects a complex and nuanced understanding on a particular subject matter. In other words, “quantity (e.g., sample size) is also a consideration, but should not be conflated with quality” (Terry et al., 2017, p. 22).

As an alternative to indicative sample sizes, the notion of data saturation (or information redundancy: Lincoln & Guba, 1985, both broadly defined as the point in which no new information can be derived and a commonly cited rationale for ceasing with additional data collection: Braun & Clarke, 2021b; 2022a), and latterly information power (Malterud et al., 2016), has been proposed (see Braun & Clarke, 2019 for a detailed discussion and critique of the former concept within TA). In summary, whilst data saturation is a commonly cited justifying principle for sample size within qualitative research (e.g., Fusch & Ness, 2015; Vasileiou et al., 2018), indeed one that is closely aligned to some versions of TA (Braun & Clarke, 2019), it is a concept that is heavily criticised by Braun and Clarke (2019) in its application to (reflexive) TA. The authors state saturation lacks conceptual consistency, as it is not a notion that can be generically applied to all types of qualitative research, and concur with Low (2019) in that, providing data is continually collected and analysed, new insights will always be generated. Braun and Clarke (2019, p. 11) propose an alternative means of determining sample size through:

> *guestimating* [*sic*] *a provisional, anticipated lower and/or upper sample size or range that will potentially generate adequate data to tell a rich, complex and multi-faceted story about patternings related to the phenomena of interest (…) then make an in-situ decision about the final sample size, shaped by the adequacy (richness, complexity) of the data for addressing the research question (…) recognising that sample size alone is not the only factor at play.*

Information power is an alternative to saturation (and a concept adopted within this thesis), as a pragmatic means of assessing the size of a sample based on five factors: the aim of the study, specificity of the sample, theoretical background, dialogue quality, and the analytical strategy (see Malterud et al., 2016 for a detailed overview of said factors). A study may need fewer participants if, for example, it is concerned with achieving a narrow, focussed aim through a sample of participants with highly specific knowledge/experiences, based on established

theoretical underpinnings, coupled with a clear interview dialogue, and a detailed exploration of narratives and discourses. Malterud et al. (2016) emphasis a move away from numerical determination of participants and their input, to a focus on the contribution of new knowledge that is resultingly generated by the research. For a study of an exploratory nature (as in the case of Study One and Three), a complete account of all aspects relating to a particular phenomenon would be unobtainable. Instead, the focus is on generating novel insights that offer a noteworthy contribution to the current understanding, with enhanced information power since it involved a sample of participants whose knowledge or experiences are previously unheard or undescribed in the literature. As such, this thesis offers a suggested 'guide' for participant numbers for the studies described in Chapters Four and Six, derived from relevant literature, whilst simultaneously recognising that the novel, previously overlooked sample (and subsequent findings) generated because of this thesis are of greater value and importance than the size of the sample itself.

Critical Realism

The philosophical stance adopted within the thesis was that of critical realism (CR), a movement first introduced by Bhaskar (1975, 1978, 2008). It assumes that, whilst scientific exploration can attempt to access and understand reality, direct admission can never be fully achieved since it is moderated by socio-cultural meanings and interpretations (Terry et al., 2017). One of the core principles of CR is that ontology (concerned with reality, and the nature of this) cannot be abridged to epistemology (the understanding of knowledge and how it is constructed) (Coolican, 2018; Fletcher, 2017). In doing so, CR combines a relativist epistemology and a realist ontology, recognising that knowledge is representative of only a fraction of a much wider reality (Braun & Clarke, 2022a; Issac, 1990). The ontological perspective of CR assumes that there are three domains of reality, that of an empirical level, an actual level, and finally a real level (Bhaskar, 1978). The first, empirical domain is concerned with reality that can be observed, whether that is in a direct or indirect manner. The actual domain refers to elements of reality that take place but are events which aren't necessarily experienced or interpreted by an individual. The third, real level is defined as the underlying casual mechanisms that

are responsible for producing events. Whilst the three domains are detailed distinctly, they are not isolative from one another and together form the same version of reality (Fletcher, 2017). As such, CR seeks to generate greater understanding by examining the impact said casual structures have on other domains of reality, mediated through the domains of language and culture. This knowledge can be achieved through empirical exploration and the generation of theoretical concepts (McEvoy & Richards, 2006).

CR is a broad methodological framework and is not allied with one approach or method (Fletcher, 2017). The stance emerged out of the longstanding debate between constructivist and positivist frameworks, combining elements of both standalone approaches into its ontological and epistemological position to provide an alternative perspective (Denzin & Lincoln, 2017). Constructivism, and later social constructivism, assumes that knowledge is reflective of how an individual views the world around them (C. Sullivan, 2019). The perspective notes that an individual's experiences are subjective, constructed through historical, cultural, and social interactions, and one view is not necessarily more valid than that of another (Creswell, 2014). This is in contrast with positivism, which assumes there is an objective 'truth' waiting to be uncovered and that this can only be achieved through scientific exploration and examination. The perspective notes that all phenomena can be reduced to observable facts and assumes only factual knowledge that can directly observed and measured is of relevance to science (Coolican, 2018; Creswell, 2014). This is evident within the alibi literature and the dominant quantitative methodologies employed, reducing evaluations of alibis to a series of determined measures and outcomes (valuable, yet perhaps does not provide a more encompassing appraisal of the defence). CR addresses some of the broad concerns levelled at such frameworks as it is independent of, yet inclusive to, all methodologies.

CR is critical of both constructivism and positivism for reducing reality to knowledge (whether that is in the former, where knowledge is entirely constructed, or in the latter, where knowledge can be achieved only through scientific investigation) and recognises that knowledge accounts for only part of a much wider reality (Fletcher, 2017). The perspective assumes that (whilst reality does indeed

exist) understanding, interpretation, and experience are mediated by discourse and the cultural environment in which an individual is situated (Braun & Clarke, 2022a). Thus, mixed methods approaches are suited to such a stance through their recognition of the affinity between the two standpoints: the world is construed through an individual's own insights, yet within the context of a reality existing out with of one's perceptions (Shannon-Baker, 2016). CR is compatible with both qualitative and quantitative research, recognising the dialogue between the two approaches in exploring and investigating causality within a specific contextual framework (J. A. Maxwell & Mittapalli, 2010). Such a stance provides an approach to mixed methods research that emphasises the relationships that exist amongst individuals, actions, and concepts by "taking new perspectives, understanding different viewpoints, and representing diverse voices" (Shannon-Baker, 2016, p. 330). Thus, CR is an appropriate stance to examine the integrative relationship between the presentation and evaluation of alibi evidence in court, considering the interrelatedness between the views and approaches of barristers and the consequential impact they have on informing and shaping the perspective of jurors and juries.

Social Desirability Bias

Within the context of the adopted philosophical stance, it is importance to recognise the disparities that conceivably exist between an individual's actual beliefs, attitudes, opinions, and so forth, and their outward behaviour as a participant in psychological research. The social desirability bias (or effect) may arguably play a role in juror and jury decision-making, in that "people are motivated to present themselves in a positive, socially desirable light" (Hans & Jehle, 2003, p. 1195), thus are inclined to offer a response that they believe is socially expected of them, as opposed to the truthful one (Hudspith et al., 2024). To illustrate, Salerno et al. (2023) found that social desirability impacted on verdict decisions within a mock juror paradigm concerned with racial bias. Participants who predicted that the research was examining racial bias were less likely to provide a guilty verdict for a black defendant, compared to a white defendant, than those who believed the study to be concerned with an unrelated topic. Similarly, Korva et al. (2012) acknowledge that

emphasising the importance of objectivity (in their study, in relation to the defendant's appearance) may have impacted on mock jurors susceptibility to overrate or underrate their responses on two self-report measures designed to assess biased attitudes towards the judicial system. Despite this, the authors argue that this effect may be (entirely, or in part) mitigated by the anonymity awarded to participants when completing the study (as is the case in Study Two), allowing them to provide responses that are reflective of the 'truth' (Korva et al., 2012). Some note that this bias may be prominent in self-report measures or questionnaires used within mock juror and jury decision research concerned with sensitive topics (such as rape myths: Hudspith et al., 2024; Leverick, 2020; Munro, 2019). Regardless of how a participant 'scores' on such measures, Munro (2019) argue that how rape myths are applied and used during deliberative discussions within the contextual nature of a specific case is of equal importance. The multifaceted discourse and dynamics of deliberative discussions may reflect the, potentially nuanced, role such biases play in the complex decision-making process that juries are responsible for.

More broadly, when considering the potential paradox between an individual's objective views and their subjective behaviour, it is imperative to reflect on this within a wider methodological and analytical context. The ontological perspective of CR assumes that the causal mechanisms that are responsible for producing empirical events are not directly observable, and inferences must be made that are directly derivable from evidence present within the data (Bhaskar, 1978; Stutchbury, 2021). With regards to a CR position to (reflexive) TA, the approach seeks to offer a mediated version of reality that is situated and influenced by an individual's cultural, social, and communicative context (Braun & Clarke, 2022a). Thus, the thesis recognises and interprets the data with the understanding that it does not seek to present an entirely objective, direct version of reality, but one that acknowledges situational and subjective realities and "how the material world and social structure shapes and constrains people's sense-making and might also situate their accounts in the materiality they have to negotiate and manage" (Braun & Clarke, 2022a, p. 171). In doing so, it presents a version and account of reality as described by participants that is taken at 'face-value', presenting an inductive analytic account drawn directly from the data itself (albeit recognising that this may

not necessarily be entirely objective, since it is contextually mediated and negotiated).

In application of this to the present thesis, and in the context of alibi evidence (albeit tentatively, given the entirely absent consideration of this within the existing literature), this emphasises the importance of the mixed methodological approach adopted (for example, considering *how* and *why* mock jurors and juries' evaluations and perceptions of alibis are impacted by the way it is presented in court, as in Study Two and Three respectively). Furthermore, whilst social desirability bias may be a pertinent issue in relation to mock jurors and juries' where factors such as race or rape myths are concerned, biases towards alibis are arguably not overt within public consciousness as much as racial bias, for example. Thus, are participants likely to conceal a bias towards alibis, when being sceptical of such evidence is not necessarily a socially unacceptable stance (unlike in the case of racial bias, where individuals are highly likely to be aware of the social need to hide this view from others)? Indeed, scepticism towards alibis is a position defined and commonly reported within the alibi literature (see alibi scepticism hypothesis: Olson, 2004). Similarly, in Study One where the focus was on barristers' perceptions and experiences of alibis, participants were unlikely to conceal the approaches used in their evaluation of such evidence given they are legally admissible in court. The fact that they willingly admit to the use of questioning techniques designed to discredit and undermine the defence (e.g., discrediting the character of a defendant/witness) suggests they are being truthful, despite it potentially showing them in a less desirable light.

Sequential Nature of Studies

Fetters et al. (2013) identify several different design frameworks in mixed methods research that are concerned with the integration of both qualitative and quantitative data. In relation to the overall design of the thesis, the research employed a multistage mixed methods framework. This is defined as research involving at least three distinct stages where there is a sequential element, in that the data from a stage informs the next (Fetters et al., 2013). Sequential designs

mean that, typically, the study's research questions, participant sampling and recruitment, data collection, and so forth are informed by the findings of the former phase (Tashakkori et al., 2013). Multistage mixed methods designs are conducted over a period of time, with the phases building on one another to address one or more overarching objectives. The benefits of such an approach are that, as the findings of each individual study inform the next, this builds a detailed understanding of the topic under consideration. This was particularly valuable in this instance, to address the thesis' principal aim and objectives. For example, the barristerial cross-examination strategies identified in Study One were directly utilised and applied in the context of juror and jury decision-making in Study Two and Three, respectively. Given the limited research on approaches to alibi cross-examination (besides Steele, 2020; Stone, 1995), little was known about the strategies used beforehand and thus these came as a direct result of Study One and subsequently used in Study Two and Three. Without a multistage mixed methods approach, it would not have been possible to achieve the integrative understanding of courtroom presentation and evaluation of alibi evidence that has been generated because of this thesis.

Data Collection

Study One - Criminal Barristers' Perceptions and Experiences of Alibi Evidence in the Courtroom

The thesis' first study (detailed in Chapter Four) qualitatively explored the perceptions and experiences of alibi evidence within a sample of criminal barristers in England and Wales using semi-structured interviewing. Given the paucity of literature on the topic, it was important to first explore in a detailed manner the way in which such evidence is viewed and used within the courtroom by those legal professionals directly responsible for presenting alibis to jurors and juries. A qualitative approach was the most apt to consider the aforementioned topic, since the study's aim was to explore expert knowledge on the subject matter and indeed *why* this was the case. This was based on participant's descriptions of their own experiences with the phenomena under consideration, giving a voice to participants

and their accounts in a way that is unique and reflective of their own subjective experiences (Creswell, 2014; Leavy, 2014; Runswick-Cole, 2011; Willig, 2022).

Interviews are the most widespread mode of collecting data within qualitative research and are an exploratory method to gather an individual's subjective experience on a particular subject matter (King et al., 2019; Willig, 2022). Semi-structured interviews, using a broad schedule of areas or questions to flexibly guide discussions, allows for the interviewee to respond freely and discuss other aspects as they see fit (King & Hugh-Jones, 2019). This method was chosen as it allowed for the gathering of detailed views and experiences by criminal barristers on alibis, particularly given the only existing literature on the topic (conducted in the US) had taken the form of surveys (Epstein, 1964; Levine & C. Miller, 2021), thereby limiting the richness of existing data. Whilst other modes of qualitative data collection, for example focus groups, would have also allowed for the collation of views and opinions, such approaches are disadvantaged in that they can be restricted to discussions on fewer topics to ensure sufficient coverage, thereby producing fewer individual reflections than in interviews (Neuman, 2014). Furthermore, focus groups can be impacted by challenges associated with scheduling, a particular issue within this population given the contractual nature of Criminal Law practice. Since the study aimed to gather data on barristers' perceptions and experiences on the topic of alibi evidence, individual semi-structured interviews were the most appropriate method. Furthermore, interviews are well-suited to an analysis that involves interpretation of meaning to form a greater understanding of participant's knowledge, as in the case of the method employed in this study (that of TA, as discussed later in this chapter) (King et al., 2019; King & Horrocks, 2010).

Study One utilised purposive sampling to recruit a sample of criminal barristers, as a non-random means of identifying participants based on their knowledge or expertise on the topic under consideration (Robinson, 2014), together with snowball sampling (whereby recommendations or referrals by initial interviewees are made to other potential participants who possess the relevant characteristics of interest: Biernacki & Waldorf, 1981; Coolican, 2018; King et al., 2019). Several barriers were encountered during recruitment (discussed in greater detail in Chapter Four), resulting in amendments to the study's recruitment strategy,

which ultimately prevented the enlistment of the anticipated number of participants. Non-response to participant recruitment can be a common barrier in qualitative research, particularly as purposive sampling focuses on recruiting a narrow range of individuals who met the target population for the study (in this case, barristers specialising in Criminal Law) (Braun & Clarke, 2013; Patel et al., 2003). This was likely to be further compounded by issues specific to the population under consideration, namely the predominantly self-employed nature of Criminal Law, high workload demands, and the effects of stress, burnout, and vicarious trauma within the legal profession (BSB, 2023b; Fleck & Francis, 2021). Indeed, these issues were highlighted more widely in the recent Bar strike due to longstanding disputes concerning insufficient legal funding and inadequate pay (CBA, 2022; The Law Society, 2022). This, coupled with absence of a pre-existing working relationship with the sample (King et al., 2019), is likely to have had a significant impact on recruitment uptake. Nevertheless, these barriers by no means detract from the value of the data collected from a sample of highly experienced legal practitioners and the power of the information held by the study's findings (Malterud et al., 2016).

Study Two - Impact of Barristerial Cross-Examination Techniques on Mock Juror Evaluations of Alibi Evidence

The second study (detailed in Chapter Five) utilised a quantitative approach to examine the effect of barristerial cross-examination techniques, namely exploiting alibi between-statement inconsistencies and bad character evidence in the form of the defendant's previous convictions for similar offences, on mock jurors evaluations and decision-making. A quantitative approach was fitting in this instance, since the study examined the relationships between the aforementioned variables and their effect on a series of numeric measures (Creswell, 2014). Building on the findings of Study One, this study provided a means in which to objectively test *how* these strategies impacted on participants verdicts and evaluation of the defendant within the context of a mock juror paradigm.

As per Diamond (1999) and Wiener et al.'s (2011) two-stage research process for juror and jury decision-making research (see also Curley & Peddie's,

2024 stepped approach), this study utilised a written fabricated trial transcript within a mock juror paradigm to manipulate the variables under consideration. The case transcripts used in the research, as in Study Three, were hypothetical story vignettes (D. Gray et al., 2017; Sampson & Johannessen, 2020). The transcripts were based on a real-world case (*R. v South*, 2011), to enhance the validity of the materials used. The strengths of this method were its ability to examine alibis within the contextual framework that real-world jurors would experience such evidence, that is a criminal trial. A written trial transcript (compared to a more representative trial presentation medium, that of a video recorded trial re-enactment, as used in the third study) was used to present such vignettes with the benefits of simplicity and convenience, in that an excerpt of a trial presented in text form would conceivably be easier and quicker for participants to access and read. Such advantages would, therefore, be more likely to produce the large sample size required for quantitative research. Furthermore, a trial transcript in written form allowed for the variables under consideration to be easily controlled and manipulated (Aguinis & Bradley, 2014). The is perhaps why written materials are in keeping with most mock juror research on alibis, and in general (Allison, 2022; B. H. Bornstein, 2017; B. H. Bornstein et al., 2017). Comparatively, in the third study, where greater emphasis was placed on representativeness and triangulation of findings, video materials were more apt. Curley and Peddie (2024) recommend a stepped approach within juror and jury decision-making research, in that research should seek to employ varied methodologies that balance internal validity and reliability (as seen in juror research, which provides an experimental context for examining specific, manipulated variables) against external and ecological validity (represented in jury research, that progressively incorporates processes reflective of real-world practice e.g., video trial presentation mediums, community samples, and/or the inclusion of deliberations). Thus, by using this step-by-step method, this allows for the creation of “a highly controlled, externally valid, and reliable programme of research, even if each of its component studies lack in relation to a particular validity and/or reliability” (Curley & Peddie, 2024, p. 204). This approach was evident within this thesis, in that it incorporated the use of two complimentary methodologies (in Study Two and Three) to provide an integrated and triangulated exploration as to both *why* and *how* the presentation of alibi evidence in court impacts on the evaluation of the defence.

The collection of quantitative data, typically in the form of a questionnaire, is a frequently used approach within the alibi literature (see, for example, Allison et al., 2012; Allison & Hawes, 2023). Questionnaires, typically composed as per the study's design to be specific to the topic under consideration, provide a structured and effective means in which to collate responses widely and conveniently (Neuman, 2014). Furthermore, as per quantitative approaches, such measures produce numeric data that is arguably more objective and replicable within the narrow framework of the concept/s under consideration (Coolican, 2018). Thus, since the aim of the study was to examine the effect of two manipulated variables on a series of quantifiable measures, the use of a questionnaire was most fitting in this instance.

Many of the measures within the questionnaire utilised a Likert-type scale, a commonly used technique that allows participants to provide a response on a continuum (Giles, 2014). The nature and scoring of the questionnaire items are discussed in more detail in the relevant empirical chapter (Chapter Five), however these were worded to reflect alike questions used in previous alibi research (e.g., ratings of alibi believability and likelihood of the defendant being responsible for the offence: Allison & Brimacombe, 2010; Olson & Wells, 2004) for the purpose of comparability. Whilst the questions were similar, allowing parallels to be drawn across the alibi literature, these were examined within the novel framework of the effect of between-statement inconsistencies and defendant previous convictions on said questions. A series of statistical analyses (details of which are provided in the study's empirical chapter) were used to measure the numeric relationship between and amongst the variables under consideration.

The study was hosted using Qualtrics, an online platform designed for the distribution of questionnaires and surveys. Conducting the study online, compared to the traditional paper-and-pencil method, allowed for increased accessibility to a large sample (as is required for statistical power purposes) of potential participants (Coolican, 2018). Online data collection also provided flexibility for respondents to partake on a computer or mobile device and at a time and location most suited to them, further widening the potential pool of participants. Random allocation to conditions, thereby improving the study's internal validity, was performed by

Qualtrics. Using online platforms in data collection for psychological research is popular (Newman et al., 2020), as paper-and-pencil and online methods are generally equal to one another in terms of quantitative comparability between conditions (Weigold et al., 2013). Furthermore, there is a strong, replicable relationship between a juror's initial individual verdict preference and the final verdict of a jury following deliberation (Devine, 2012), as demonstrated in several meta-analyses on the topic (Devine et al., 2001; MacCoun & Kerr, 1988). Thus, whilst deliberation provides a unique and important insight into the decision-making process (as seen in Study Three), research demonstrates there is little observed difference in the decisions reached by jurors compared to juries (Devine, 2012; Devine et al., 2001; MacCoun & Kerr, 1988). Thus, the use of a mock juror paradigm hosted online was beneficial in terms of accessibility and flexibility, substantiated by research demonstrating little discernible change to verdict based on individual compared to group decision-making (Devine et al., 2001; MacCoun & Kerr, 1988).

Study Three - Mock Juries' Understanding, Perceptions, and Use of Alibi Evidence During Deliberations

Study Three (as described in Chapter Six) qualitatively explored mock jurors and juries' understanding, perceptions, and use of alibi evidence within the context of deliberations in a simulated criminal trial. The third and final study of the thesis built upon the preceding studies using a mock jury paradigm. Firstly, the same as the thesis' second study, it utilised the key, novel findings from Study One in terms of the exploitation of alibi inconsistencies and discrediting of (defendant) character through bad character evidence as primary strategies for dealing with alibi evidence in the courtroom. Such findings were fundamental in creating stimulus materials that were realistic and convincing, without which the transcript used would not have been possible to create. Thus, given the very limited research in this area (Steele, 2020; Stone, 1995) and in keeping with the multistage mixed methods framework (Fetters et al., 2013), it was essential for the studies to be conducted in such a sequential manner. Secondly, Diamond (1999) and Wiener et al. (2011) recommend a two-stage process in juror and jury decision-making research (see also Curley & Peddie's, 2024 stepped approach), whereby more representative trial presentation

mediums and samples are used to supplement and triangulate findings with samples and methods of convenience to enrich the credibility of the research. Whilst Study Two demonstrated *how* such factors impact on the verdicts decided upon, Study Three furthered the understanding gained by demonstrating *why* mock jurors came to make such decisions. Thus, this study built upon the findings of Study Two through such means, providing a greater understanding as to how mock jurors and juries' think, feel, view, and negotiate alibis within deliberations.

The study utilised a mock jury paradigm, whereby a pre-recorded, scripted trial re-enactment was presented visually to participants to explore how mock juries' perceived and used alibi evidence in the context of group deliberations. The trial re-enactment was based on the same real-world case used in Study Two (*R. v South*, 2011), using a fictious transcript devised by the principal researcher to increase the validity of the trial presentation medium (B. H. Bornstein et al., 2017). The footage was professionally recorded in a mock courtroom, using sector-experienced professional actors. This added further weight to the video footage used, given that it allowed for the creation of high-quality materials that were of enhanced realism and validity.

The mock jury paradigm is somewhat distinctive in the sense of qualitative data, combining elements of the more traditional qualitative methods seen in vignettes (D. Gray et al., 2017) and, to a degree, group interviews (perhaps most like citizens' juries: King et al., 2019). The use of a mock trial re-enactment, as an elaborate hypothetical story vignette (D. Gray et al., 2017; Sampson & Johannessen, 2020), allowed for the exploration of participants' understanding and interpretations of the phenomenon within a specific situational framework. Furthermore, the jury deliberation aspect generated rich data on an otherwise unexplored area of the alibi literature, producing novel findings which are of enhanced ecological validity, and provided a unique viewpoint into how alibis are perceived and used as a function of group decision-making. In line with qualitative approaches, the deliberations provided a voice to the mock jurors and juries' (Creswell, 2014), affording an opportunity for their understandings and perceptions to be heard in a manner that has thus far been entirely neglected within the alibi literature.

Qualitative Data Analysis

Thematic analysis (TA) was used to analyse the qualitative data generated in both Study One and Study Three. For the thesis' first study, TA according to King and Horrocks' (2010) three-step procedure (summarised in Table 3) was employed to analyse the transcribed interviews from a sample of criminal barristers. Due to the development of TA between conducting Study 1 and 3, reflexive TA, as per Braun and Clarke's (2022a) guidelines for the six-phase process (as shown in Table 4), was used to explore the mock jury deliberation transcriptions in the final study. A more detailed discussion of the processes applicable to each study can be found in Chapters Four and Six.

Table 3

King and Horrocks' (2010) Procedure of Thematic Analysis (Adapted from King & Horrocks, 2010)

	Phase	Description
1.	Descriptive Coding	Read transcript, highlighting relevant words, phrases, or sentences with brief comments attached. Identify broad definitions for descriptive codes. Repeat process for each transcript, refining and re-refining descriptive codes.
2.	Interpretative Coding	Cluster descriptive codes. Interpret meaning of clustered descriptive codes in relation to research question/s, thereby creating interpretative codes. Apply interpretative codes to entire dataset.
3.	Overarching Themes	Interpret key themes from entire dataset, considering interpretative codes from a theoretical and/or practical standpoint. Create diagram to represent themes and relationship between coding.

Table 4

Braun and Clarke's (2022a) Guidelines for the Process of Reflexive Thematic Analysis (Adapted from Braun & Clarke, 2022a)

	Phase	Description
1.	Dataset Familiarisation	Read and re-read transcripts, making concise notes regarding points of interest for both individual data items and the entire dataset.

Phase		Description
2.	Coding	Systematically assign code labels across the entire dataset, to reflect aspects of the data that are of analytic relevance to the research question/s and are of semantic and/or latent meaning. Once completed, collate code labels and accompanying aspects of data for each code.
3.	Generation of Initial Themes	Cluster codes that may share a pattern of meaning across entire dataset, pertinent to the research question/s, into provisional candidate themes. Once completed, organise all relevant coded data for each candidate theme.
4.	Theme Development and Review	Assess viability and goodness of fit for each provisional candidate theme, in line with the coded data and complete dataset. Ensure each theme has a "central organising concept" (Braun & Clarke, 2022a, p. 35) and consider how themes relate to one another and existing theoretical and practice framework.
5.	Theme Refinement, Definement, and Naming	Clarify analysis, ensuring themes are clearly defined and organised around a core concept. Create short, informative names for each theme, accompanied by a brief outline of what the theme entails.
6.	Write Up	Formal writing up of the analysis, providing an intelligible and convincing story of the data (accompanied by detailed extracts from the data) that addresses the study's research question/s.

TA is a method of qualitative data analysis that provides a systematic and robust way in which to identify, analyse, and report patterns, also known as themes, across a dataset (Braun & Clarke, 2013, 2022a). The primary strength of TA is its flexibility, in that it is not limited to explicit theoretical frameworks or ontological and epistemological assumptions (Braun & Clarke, 2013, 2022a; Guest et al., 2012). Since this process of data analysis is not bound or restricted by such factors, the adoption of a CR stance within the thesis is suited and appropriate. Indeed, Braun and Clarke (2022a) note that CR is perhaps the most popular position adopted within reflexive TA. Furthermore, TA is not prescriptive in terms of modes of data collection and can be used across a wide variety of qualitative data, from individual to group interviews (Freeman & C. Sullivan, 2019), making it well suited to the data generated over the course of the thesis. The method also provides a versatile approach that assists in the description and organisation of the data in a way that is relatively accessible to both the researcher and the reader, yet still provides a complex understanding of the phenomenon under consideration (Howitt & Cramer, 2014). TA is recursive in nature, moving between the data and the different analytical stages, to generate an understanding of the concerted patterns within the dataset (Braun & Clarke, 2022a; King & Horrocks, 2010). Both approaches used in

Study One and Three employed an inductive, or data-driven, approach to TA, in that data coding and derivative themes were resultant from the data itself (Boyatzis, 1998; Braun & Clarke, 2006). In terms of the continuum on which meaning is understood (ranging from semantic, explicit themes to latent, implicit themes), the two studies included a combination of both (Braun & Clarke, 2006, 2022a). Some themes were semantic, in that they represented an organised pattern of meaning on a level which was more manifest in nature, whilst others were more implicit and interpretive in nature in that they explored what was underpinning the theme itself.

It should be noted that there are several different approaches to TA, albeit with broad conceptual similarities in terms of generating patterns of meaning, and that Braun and Clarke (2022a) and King and Horrocks (2010) reflect just two of which (for a detailed discussion on differing approaches to TA, see Braun & Clarke, 2022a). Variations in methods and methodologies is commonplace in qualitative research, often grounded in diverse philosophical assumptions and frameworks (Braun & Clarke, 2022a; Freeman & C. Sullivan, 2019). King and Horrocks' (2010) version, derived from Braun and Clarke (2006) and Langdridge (2004), provides a system of TA that reflects the interpretative and hierarchical nature of the approach (King & Horrocks, 2010; King et al., 2019). TA according to King and Horrocks' (2010) process was the most appropriate in Study One, as a means in which to understand and interpret participants' perceptions, experiences, and perspectives of alibi evidence based on procedures available at that time. Study Three, conducted sometime later, reflected the development and progress made in terms of TA as a structured approach to qualitative data analysis aimed at exploring "deep, complex, nuanced meaning and understanding" (Braun & Clarke, 2022a, p. 247). Thus, Braun and Clarke's (2022a) analytic process was chosen as a detailed and contemporaneous orientation to TA appropriate for addressing the research questions in Study Three. Despite this, it is important to note that this does not make the analysis used in Study One any less apt than that of Study Three: it is acknowledged that no one iteration to TA is more valid or endorsed than another, simply that they reflect methodological variations based on ever emergent knowledge (Braun & Clarke, 2022a). The key caveat to the selected approach to TA is that the researcher uses it knowingly in terms of how to aligns to the purpose and aim of the research (Braun & Clarke, 2021c, 2022a).

Quality and Methodological Integrity

The quality of qualitative research, and indeed the use of quality criteria, is a much debated and widely discussed topic (see Lester & O'Reilly, 2020 for an overview and Braun & Clarke, 2021a for a specific consideration of quality in TA). For example, King et al. (2019) rejects the use of quality criteria per se in qualitative research, arguing that said measures are at odds with the wide-ranging and subjective realities such data is designed to reflect. However, Yardley's (2000, 2008, 2015) quality principles for qualitative research (that of sensitivity to context, commitment and rigour, coherence and transparency, and impact and importance) provide a useful guide when considering this issue and are advocated for by both Braun and Clarke (2022a) and King and Horrocks (2010). These four principles consider how the research reflects participants' viewpoints within a social and contextual setting, the level of engagement with the data that the researcher has demonstrated, the extent to which the methodology is clearly explained and coherently presented, and that the practical relevance and application of the research is demonstrated. In Study One and Three, the research is considered within the framework of relevant psychological theoretical and empirical literature on the subject matter. The analyses in both studies were rigorous and detailed, adhering to the principles of methodological integrity (as outlined below), demonstrating both a depth and breadth of engagement with the phenomenon. Of note, systematic record keeping allowed for the adherence to relevant standards and procedures to be clearly evidenced. The methodological stance for the research is coherently explained, as described earlier in the chapter, and congruently presented in line with the methods used within each study. Lastly, the two studies reflected on the contribution of knowledge provided by the findings (see Chapters Four and Six) and consider its implications and application within the context of the CJS (Chapter Seven).

Methodological integrity is central to valuable qualitative research and reflects the "alignment and coherence in research design and procedures, research questions and theoretical assumptions, so that a research project produces a trustworthy and useful outcome" (Braun & Clarke, 2022a, p. 267-268). Both Braun and Clarke (2022a) and King and Horrocks (2010) identify several procedures for

ensuring quality when conducting TA to demonstrate methodological integrity (discussed as follows in relation to Study One and Three). Firstly, methodological triangulation (Denzin, 1978; Flick, 2018) was employed across both studies (and indeed Study Two, albeit quantitively), utilising different frameworks and modes of data collection to explore the same, overarching subject matter. An audit trial was kept throughout (e.g., coded data, draft versions of collated coded data, and preliminary outlines of themes and themed data), and frequently formed part of the discussions and reflections had with supervisors during the process. Finally, when writing up the analysis, thick descriptions were provided, that is clear and detailed interpretations within the defined context of the observed phenomenon (Geertz, 1973; Kostova, 2017; Ponterotto, 2006). Alternatively, Braun and Clarke (2022a) refer to this as contextualising the data to understand the importance and interpretation of the analysis. As such, the analysis is accompanied by lengthy direct excerpts from the data itself, thus providing the voice of participants on the topic (Creswell, 2014). As a final note, the characteristics of the participants are noted (e.g., in Study One, where professional experience and specialisms are described) and the contextual nature of the research are considered, where appropriate, in relation to the transferability (Braun & Clarke, 2022a; King et al., 2019; Terry et al., 2021) of the findings (for example, in Study Three, consideration is given to the use of a real-world case for only one offence type and its subsequent impact on the transferability of the study's findings).

In terms of data analysis, a reflexive journal (Gough & Madill, 2012; King et al., 2019) was kept throughout, as a means in which to informally record and reflect on the research process as it happened. Reflexivity is considered integral to qualitative research and should reflect on both individual characteristics and epistemological perspectives that have contributed and shaped the construction of meaning over the course of the research (Braun & Clarke, 2013; Crowley, 2019; Lazard & McAvoy, 2020; Willig, 2022). The process of keeping a reflexive journal provided an important and necessary opportunity for me as the researcher to record and interpret my thoughts, reflections, and so forth, and provided a basis on which I could share these as part of the supervisory process.

Researcher Subjectivity

The subjective nature of qualitative research is a well-versed matter within the literature (see R. F. Bornstein, 1999 and Gough & Madill, 2012 for a more detailed consideration of this topic). Denzin and Lincoln (2005) note that qualitative research is inherently interpretive in nature, whereby it is (consciously, or otherwise) informed and shaped by the researcher and their own beliefs, values, identities, and perspectives. Within this particular methodology, Gough and Madill (2012) encourage researchers to see subjectivity as less of a problematic matter, and more a valuable source of knowledge that can assist in situating and conceptualising the researcher within both the phenomenon under consideration and the broader research design and procedures.

With the chosen analytic approach (TA), Braun and Clarke (2022a) recognise that subjectivity[3] is essential to reflexive qualitative research in general, and TA specifically. King et al. (2019) note that TA does not set out to be objective, but should provide a sufficiently detailed account of the design and analytic processes involved so that the reader can see how decisions made by the researcher could have been reasonably reached. Similarly, within reflexive TA, the analytic process involved in coding data is subjective: the analysis does not seek to establish or uncover the 'truth', but interpret and conceptualise how meaning is constructed (Braun & Clarke, 2022a). To put simply, "researcher subjectivity is the primary tool for reflexive TA, as knowledge generation is inherently subjective and situated" (Braun & Clarke, 2022a, p. 8). Within the context of this thesis, it is recognised that the research in Study One and Three is small-scale and exploratory in nature and, in turn, does not seek to provide an entirely complete and 'truthful' account of all aspects of the topic under consideration.

"Owning one's perspective" is important to quality qualitative research (Elliott et al., 1999, p. 221), thus this thesis acknowledges and recognises the role of the

[3] Of relevance, Braun and Clarke (2022a) use the phrase subjectivity, over (researcher) bias, proposing that the latter implies that the generation of knowledge can be an entirely objective and impartial process in which (conscious and unconscious) biases of the researcher can be controlled for. The authors suggest that this terminology is better suited within the framework of quantitative, positivist research, as it is at odds with the active role and engagement of the researcher within reflexive TA (Braun & Clarke, 2022a).

researcher and their subjectivity within the process. In terms of owning my own perspective, as both an individual with my own thoughts, attitudes, beliefs, and experiences *and* as a researcher, I recognise that the former may have had some inherent impact on the manner in which the research was designed, implemented, and analysed. Within the subsequent reflexive account, I acknowledge that my knowledge is solely derived from academic literature and professional experience (predominantly, the former), and not from any personal or lived experiences. Furthermore, my outsider perspective (Dwyer & Buckle, 2009) may have been of some detriment (particularly to the recruitment of barristers in Study One). In turn, these factors may have impacted on the manner in which I approached the design and analytic process. Additionally, it is recognised that this PhD has not been without its challenges, and the use of recommended reflective practices (such as a reflexive journal: Gough & Madill, 2012; King et al., 2019) have been valuable in allowing me to consider how the research has been shaped and informed by the difficulties I have faced. Finally, throughout the reporting of this research and its design, procedures, and analysis, I have made a concerted effort to be transparent in the perspectives, orientations, and decisions I have made. For example, the methodological and personal orientations relevant to the research (Elliott et al., 1999) are referenced and discussed (as an example, see the earlier section of this chapter [p. 64] on the adoption of a critical realist stance and how this is applicable within the context of this research). I have strongly adhered to Yardley's (2000, 2008, 2015) quality principles for qualitative research (as previously discussed) and I have implemented practices (such as methodological triangulation, systematic record keeping and audit trails, and the use of thick descriptions of the data) to ensure methodological integrity has been met throughout.

Ethical Considerations

Each of the three studies was approved by the Faculty of Health and Education Research Ethics and Governance Committee at Manchester Metropolitan University (Appendices 1, 9, and 18). Details of these can be found in Table 5. Of relevance, Study Three took place during the time of the Coronavirus

(COVID-19) pandemic, thus some alterations were required to accommodate related restrictions.

Table 5

Summary of Ethical Approval

	Study	Date of Approval	Reason for Amendment (where applicable)
1.	Study One (Ethics Number 1289)	14th May 2015	-
	1.1. Amendment	5th October 2015	Widening recruitment strategies.
	1.2. Amendment	21st December 2015	Widening recruitment strategies.
2.	Study Two (EthOS Number 328)	17th April 2019	-
	2.1. Amendment	22nd July 2019	Change to materials as per pilot study outcomes.
	2.2. Amendment	5th November 2019	Change to materials as per pilot study outcomes.
3.	Study Three (EthOS Number 9832)	17th September 2019	-
	3.1. Amendment	19th December 2019	Widening actor recruitment strategies.
	3.2. Amendment	18th May 2021	Alteration to data collection due to COVID-19.
	3.3. Amendment	2nd September 2021	Alteration to data collection due to COVID-19.

The research was conducted in line with the relevant research principles set out by the British Psychological Society (BPS)[4], including the Code of Ethics and Conduct (BPS, 2021a), Code of Human Research Ethics (BPS, 2021b), and (where applicable) Guidelines for Internet-Mediated Research (BPS, 2021c). The research was also conducted as per Manchester Metropolitan University's research ethics and governance framework, standards, and regulations.

Reflexive Account

The process of completing this thesis was a lengthy one, complicated by several challenges relating to my academic, professional, and personal

[4] Note, only the most contemporaneous versions of relevant codes and guidelines are cited.

circumstances and commitments. Such factors had, at times, a noteworthy impact on my ability to undertake the research involved and my level of engagement with the PhD as a whole. Academically, this was particularly pertinent in the significant issues I experienced recruiting participants for Study One and Three, resulting in prolonged delays to accommodate alterations to recruitment strategies and modes of data collection. These challenges were exasperated by, at least part of my studies, taking place during the time of the COVID-19 pandemic. From a more professional and personal perspective, I completed my thesis on a part-time basis, which meant that it had to be balanced alongside the workload of my employment (initially in a custodial environment, and latterly in my first academic teaching position). This was challenging at times, particularly in those early periods of teaching, where I wasn't always able to dedicate the time I would have liked to working on my thesis. Over the course of completing this PhD, I have also taken several suspensions from my studies due to my own health, the illness of a close family member, and a complex pregnancy, in addition to a period of maternity leave. Completing my PhD part-time, together with those periods of suspensions, was necessary but did impede my progress and meant that the thesis overall took me far longer than I wanted and anticipated. Additionally, I often found it difficult to resume my studies on my return and 'pick up where I left off' so to speak (often with additional considerations and challenges in tow, such as motherhood). Despite all of these challenges, the experience of completing this PhD has imparted on me the values of determination, commitment, and perseverance and the importance of addressing and overcoming challenges to produce important and valued research.

With researcher subjectivity in mind (as discussed in the earlier section of the chapter of the same name), from a personal perspective, I approached this research from a purely academic interest in the subject matter. Whilst conducting the research, I was employed for several years within a multidisciplinary mental health team in a custodial environment working with male offenders. In the latter period of the research, I took up an academic position within Manchester Metropolitan University teaching on undergraduate and postgraduate forensic psychology courses. Whilst I have had no personal contact or engagement with alibi evidence and/or the CJS as such, my knowledge and experience lay in that gained from both academic study and working in the aforementioned environments. As such, my

understanding is solely derived from academic and professional sources, and not from direct personal experience on the subject matter. I recognise that this perspective may have consciously and unconsciously informed my approach to the research processes involved, but I do so from the standpoint of owning this perspective (Elliott et al., 1999) and see it as valuable in assisting me with the conceptualisation of this research.

I approached the thesis from an outsider perspective (Dwyer & Buckle, 2009), having no personal knowledge or lived experience of said topic and lacking a relationship or membership, so to speak, to the populations under consideration. Being an outsider can be beneficial in that it reduces, to an extent, the influence of personal experiences and interpretations on the exploration and analysis of the data, allowing for a more 'objective' approach to the thesis topic. However, whilst this perspective was useful to the extent that it afforded me a degree of neutrality (as much as can be warranted in qualitative research), I believe this impacted to a degree the extent to which I was able to recruit participants in Study One. As previously noted, I found it extremely challenging to recruit criminal barristers, in part perhaps due to the absence of any pre-established relationships with those in the field. Several alterations to the project were implemented (after undergoing the relevant ethical approval processes, as noted above), however this failed to yield further participants, and a decision to cease recruitment after a period of 12 months of adjustments and modifications was agreed in consultation with supervisors. Whilst I was keen to make progress with data collection, particularly in those initial months, my own priorities and timescales had to be carefully balanced against the busy workload and demands of others (both that of the facilitator who was assisting recruitment, and potential participants themselves). It was difficult not to be disheartened and frustrated by this at the time, although (as considered in greater detail in Chapter Four) does not detract from the value and power of the information (Malterud et al., 2016) held by those participants who ultimately did take part in the study. On reflection, it would have perhaps been useful to consider the use of multiple facilitators across various academic institutions and chambers (if possible), although I recognise that may be idealistic given the challenges I faced accessing this particular population in the first instance.

As previously highlighted, data collection for Study Three took place during the time of the COVID-19 pandemic (with recruitment of participants due to commence very shortly before non-essential contact was stopped and the first national lockdown was imposed). This resulted in a period in which all research activities were ceased, at a crucial point where data collection was due to begin, which negatively impacted on my relationship with the research and the thesis as a whole. Once research was permitted to recommence, alterations to the project were required to allow for data collection to take place remotely via Microsoft Teams[5] (and latterly in-person and/or remotely), which allowed for a degree of flexibility to accommodate the ever-changing restrictions in place at any given time. However, the initial round of participant recruitment (whereby the study could take place remotely only) yielded no interest from participants. Reflecting on this, whilst it was certainly disheartening at the time, I felt more equipped to handle and address these challenges than I did when I experienced similar barriers with regards to recruitment in Study One (perhaps reflective of my development and progress as a researcher). Following this (unsuccessful) period of recruitment, due to the subsequent easing of government-imposed national and local restrictions, the study was amended to permit face-to-face and/or remote data collection. This proved successful, with all data collection for Study Three taking place in-person.

Of further relevance, the original design for the trial re-enactment footage used in Study Three permitted actors to be students studying a relevant course (e.g., law or drama). However, alterations were required to allow for the recruitment of professional actors due to difficulties recruiting said students. This posed different challenges compared to recruiting participants, in that I had to be innovative in how I recruited actors to take part (professional actors were eventually recruited, using internal funding sourced from the School [Department] of Psychology). In turn, this was advantageous due to its benefits in terms of heightened realism and validity of the study's materials compared to the original proposal.

[5] Conducting synchronous qualitative research online is considered equivalent to face-to-face data collection, with added potential benefits of greater ease and flexibility in scheduling arrangements, participant interaction, and data capturing (Fox, 2017; P. Hanna & Mwale, 2017).

Summary and Conclusions

In summary, the thesis employed a mixed methods approach and a CR stance to examining the presentation and evaluation of alibis in the courtroom. This approach utilised the strengths of both qualitative and quantitative methodologies to explore an important, yet under-researched, area within the existing alibi literature. Through the combination of semi-structured interviewing, a mock juror experimental framework, and a mock jury paradigm, the research achieved an integrated and triangulated exploration of alibi evidence. Several measures were implemented to maximise objectivity and validity in the thesis, encompassing the design of the research and the method of data analysis employed. This included, but not limited to, the use of real-world cases and cross-examination techniques, together with representative samples and materials which demonstrate sound quality and methodological integrity. Together, the thesis provides a unique and valued contribution to the knowledge base on alibi evidence and the interrelated elements of how it's presented and ultimately evaluated within trial proceedings.

Chapter Four: Study One - Criminal Barristers' Perceptions and Experiences of Alibi Evidence in the Courtroom

There is a paucity of literature exploring criminal barristers' perspectives and experiences of alibi evidence, despite such judicial practitioners being responsible for presenting and cross-examining the defence in court. To understand how alibis are evaluated by mock jurors and juries', it is first imperative to explore how such evidence is perceived and used by those legal professionals central to the adversarial legal system in England and Wales. This chapter sets out the first study of the thesis (likewise referred to as Study One), which aims to explore criminal barristers' perceptions, attitudes, experiences, and questioning of alibi evidence in the courtroom.

Introduction

The legal literature refers to trial advocacy as a theatrical performance (Evans, 1993; Yong, 1985), whereby barristers aim to regale the jury in to accepting their client's proposed version of events (Boon, 1999; Drew, 1997; Morley, 2015; Ross, 2007). In direct examination, the presentation of evidence in a chronological and narrative fashion, or storytelling, is an effective means of offering a complete and coherent version of events (Mazzocco & Green, 2011; P. H. Miller, 2002; Morley, 2015; Rideout, 2008; Van Patten, 2012), consistent with the Story Model (Pennington & Hastie, 1986, 1988, 1992). Open and 5WH questions (Grant et al., 2015; Kebbell et al., 2003) are valuable in doing so, allowing the story to seemingly develop at a natural pace (Webb et al., 2013, 2019). Yet the narrative offered must be focused and controlled, only affording information of relevance and in favour of the case, whilst mitigating for any irregularities that may disadvantage the counsel's proposed version of events (Morley, 2015; Ross, 2007; Seuren, 2019; Webb et al., 2013, 2019).

Cross-examination seeks to undermine and discredit the account offered by the opposing counsel (Allen et al., 2015; Henderson et al., 2016), using permitted and indeed encouraged methods such as leading and multiple questions (Kebbell

& Johnson, 2000; Morley, 2015; Nolan, 2011; Webb et al., 2013, 2019). This is despite a wealth of literature demonstrating the detrimental impact such approaches have on the accuracy and consistency of eyewitness memory (see, for example, Gous & Wheatcroft, 2020; Jack & Zajac, 2014; Kebbell et al., 2010; Valentine & Maras, 2011). The juxtaposition between the aim of questioning within the context of investigative interviewing and criminal advocacy is perhaps best demonstrated by cross-examination, contradicting the 'truth' of what occurred in the former, with the most favourable account to their client in the latter (Haworth, 2013, 2021). Yet there exists no mandatory or standardised protocols, procedures, or training for barristers on questioning designed to obtain high-quality evidence generally (Henderson, 2015; Lively et al., 2019), nor in relation to alibi evidence specifically, contrary to the (albeit optional) training programme for judicial practitioners that exists for eyewitness memory (Houses of Parliament, Parliamentary Office of Science and Technology, 2019).

With regards to alibi evidence, there is limited reference in the legal literature as to the approaches and strategies recommended when such a defence is submitted before the court. Of the sources that do exist (Steele, 2020; Stone, 1995), these focus on the cross-examination of alibi witnesses, perhaps in keeping with the higher incidence rate of corroborating person evidence (e.g., Turtle & Burke, 2003). Steele (2020) note that the credibility of the alibi witness will be robustly examined by the prosecution, including the relationship between the provider and corroborator and any prior convictions which may undermine that. The customary tactics designed to weaken the strength of the alibi are probing details of the account, exploiting weaknesses, seeking minor and substantial inconsistencies, and capitalising on improbabilities in the defence (Stone, 1995). Leading or accentuating discrepancies in the account/s provided, even relatively minor ones, is advised by Stone (1995), making the presentation of contrary evidence that establishes erroneous or deceptive corroboration more formidable (Allen et al., 2015; Boon, 1999). Yet, attacking an alibis credibility on the basis of inconsistencies features heavily in cases of US wrongful convictions (Heath et al., 2021), and despite psychological literature demonstrating errors in alibis are both frequent and expected (see, for example, Cardenas et al., 2021; Leins & Charman, 2013; Olson & Charman, 2012).

To date, little empirical attention has been paid to barristers' perspectives and experiences of alibi evidence, despite the considerable impact the arguments, approaches, techniques, and strategies used by such practitioners is likely to have on the discussions and decisions had by jurors and juries. There are only two existing surveys to have examined how barristers view, use, and examine alibis in court, both of which are of district attorneys' perceptions of alibi evidence across various jurisdictions in the US (Epstein, 1964; Levine & C. Miller, 2021). However, direct comparisons to the jurisdictional region of England and Wales are difficult due to the varying implementation and practice of the prior notice rule in the US (as discussed in Chapter Two) (Steele, 2020). Epstein's (1964) brief survey, some sixty years ago, found that, whilst alibis were mostly relied on as a defence in 30% of cases or less (80% of those surveyed reported alibis were used in 0-15% of cases, and 16% in 16-30% of cases), it was overwhelmingly an unsuccessful one. Many of the respondents noted that alibis were typically false, thus pre-trial investigations of the defence infrequently dismissed the entire case on this basis in advance of it reaching court. Similar findings were replicated in Levine and C. Miller's (2021) more recent survey, whereby nearly all (95%) respondents reported alibis were present in up to 25% of cases, yet it was considered a weak defence unless it was of a highly convincing nature. Consistent with Olson and Wells' (2004) taxonomy of alibi believability, physical evidence was seen to be of greater credibility than person corroboration (Levine & C. Miller, 2021). So much so, the presence of the latter was influential in some respondent's decisions to strategically forgo the presentation of the defence in court due to the potential for "aggressive prosecutorial cross-examination that will ultimately make things worse for the defendant" (Levine & C. Miller, 2021, p. 14).

Taken together, Epstein's (1964) and Levine and C. Miller's (2021) findings demonstrate that alibis are viewed sceptically by US advocates. The apparent ease at which a (false) alibi can be produced, coined a "hip pocket defence" (Steele, 2020, p. 1), coupled with the frequency at which weak corroboration is used, are integral to its perceived futility as a defence. However, if and how these perspectives apply to criminal practice in England and Wales is currently unknown. Achieving a greater comprehension of barristers perspectives and experiences of alibi evidence within the CJS in England and Wales will allow for an improved understanding as to how

alibis are ultimately evaluated by mock jurors and juries', mitigating for the possibility of wrongful convictions where alibis are concerned and promoting trial practices that are fair and equal to all.

Aim and Research Questions

The aim of the study is to explore the perceptions and experiences of alibi evidence from the perspective of criminal barristers in England and Wales. That is, those legal professionals who are directly responsible for presenting and undermining such evidence in the courtroom. Since the way alibis are presented and challenged within the courtroom has the potential to impact its evaluation by juror and juries, it is important to first hear the voice (Creswell, 2014) of those professionals who are central to the CJS. Given the very limited literature in this area, none of which has been conducted within the context of the adversarial system in England and Wales, a qualitative exploration of two distinct, yet interrelated, aspects are necessary. Firstly, barristers' personal and professional perceptions, attitudes, and experiences of alibis and, secondly, the way such evidence is presented, questioned, and challenged within the context of a criminal trial.

The research questions to be addressed in this study are:

1. What are criminal barristers' perceptions, attitudes, and experiences of alibi evidence in court?

2. What techniques, strategies, and modes of questioning do criminal barristers use when examining and cross-examining alibi evidence in criminal trial proceedings?

Method

Design

The study employed a qualitative research methodology, in which criminal barristers partook in semi-structured interviews on their perceptions, attitudes, and experiences of alibis, in addition to the techniques and strategies used when examining and presenting such evidence in court. The interviews were audio-recorded and transcribed, and qualitatively analysed using TA (King & Horrocks, 2010).

Participants

Sampling and Recruitment

Using a purposive sampling strategy (Robinson, 2014) in which contact was made with potential participants via a facilitator or the principal researcher (as subsequently outlined), the target population was qualified, practising or non-practising barristers specialising in Criminal Law. Snowball sampling was also pertinent to the sampling strategy, namely due to the close proximity in which barristers typically work with peers (i.e., in chambers), thereby potentially increasing opportunities for additional participants to be enlisted. It was anticipated that the benefits of enlisting non-practising criminal barristers, in addition to practising barristers, would be two-fold: firstly, to consider how alibis have been viewed and used historically and how attitudes and questioning styles may have developed and changed (or indeed, not) over time. Secondly, it was anticipated that the target population would widen the participant pool to ultimately aid the recruitment process.

Recognising the existing debate with the literature on sample size in qualitative research (as discussed within Chapter Three), a provisional approximation of up to 10 qualified criminal barristers was expected to be recruited. Given the focus of this study was on a small-scale, exploratory analysis of the phenomenon under consideration (one that does not seek to offer an unachievable

complete account of all aspects), a smaller sample size was determined based upon the guiding principles of information power (Malterud et al., 2016). These were that it had a narrow and focussed aim, underpinned by an established theoretical understanding (of alibi evidence), with participants that possess highly specific and relevant knowledge and experiences using an interview schedule designed to provide a detailed exploration of personal and professional perceptions, attitudes, and experiences on a specific subject matter. Whilst this number was a little lower than the indicative sample size suggested by Braun and Clarke (2013) (of between 15 to 20 interviews, for a PhD project of this scale), this was in pragmatic recognition of the potential challenges expected in recruiting self-employed professionals as participants within the context of a challenging and demanding CJS (BSB, 2023b; CBA, 2022; Fleck & Francis, 2021; The Law Society, 2022), which ultimately came to fruition. Lastly, existing published research by Temkin (2000) with the same population (criminal barristers, as part of wider study on criminal justice practices concerned with cases of rape) has utilised a sample size of the exact same. Thus, a 'guide' of 10 criminal barristers was expected to be recruited.

The originally proposed sample anticipated that participants would be recruited from the aforementioned target populations, recruited from one of two sources: staff at a Law School at a university in Northwest England, in addition to referrals to practising barristers with whom the aforementioned department had established connections. Consent (Appendix 2) was granted from the Head of the Law School, and the Programme Lead for the Bar Professional Training Course (BPTC)[6], to contact staff regarding participation in the study, and to aid facilitation with local chambers (using recruitment media: Appendix 3). Several difficulties were encountered, namely the limited number of responses received from the original correspondence, potentially due to high workload demands and the self-employed nature of the Bar (BSB, 2023b), the potential effects of stress, burnout, and vicarious trauma (Fleck & Francis, 2021), and/or the topic itself as a barrier (as seen in the scepticism evidenced by US attorneys: Epstein, 1964; Levine & C. Miller, 2021).

[6] The BPTC, as it was at the time of the interviews, was replaced by the Bar Training Course in September 2020 (BSB, 2023c). Both refer to the vocational component of the training required to become a barrister. Given the BPTC was the training in operation at the time of the interviews, this study will refer to the former rather than the latter.

Follow up correspondence failed to yield any further interest, as did iterations to the study that allowed for interviews to take place via videoconferencing platforms for greater convenience and flexibility (Archibald et al., 2019; L. M. Gray et al., 2020) or widening the participant pool to include individuals and organisations (other university's Law Schools, and chambers in locations outside of the Northwest of England) with whom contact had not been made via a facilitator. Alternative modes of data collection were latterly considered in the form of accessing transcripts of real-world trials in which an alibi has been used as a defence, to consider modes of questioning used by barristers when defending and prosecuting actual criminal cases. Whilst Crown Court proceedings are recorded, they are not typically transcribed unless specifically requested to do so and at a fee (HM Courts and Tribunals Service, 2024). However, upon further exploration of this option, it transpired that this would be unfeasible in terms of suitability and expense. As trials are recorded based on offence, rather than the type of defence used, it was difficult to search and locate for alibis within a real-world case (one was identified in Study Two based on a lengthy systematic search, although it was challenging to locate more). Perhaps most importantly, some of the subtleties of questioning may have been lost in a written transcript (for example, a transcript would only provide details on what was said, rather than why it was said, thus it would be difficult to discern any form of approach or strategy used). Conversely, interviews provide concrete views, experiences, and intent behind the modes of questioning used in cases involving an alibi defence. As such, this alternate mode of data collection was not pursued further.

The recruitment of participants was a lengthy process, marred by several barriers that ultimately prevented the enlistment of the originally proposed number of participants. Of the 10 participants expected to be recruited, four participants eventually took part in individual interviews, all of whom were enlisted in the first phase of recruitment. It was ultimately decided, after approximately 12 months of alterations aimed at increasing recruitment numbers, that data analysis would commence with the four participants recruited in the first instance. Whilst it would have been advantageous to recruit additional participants (for the benefits of greater transferability: Braun & Clarke, 2022a; King et al., 2019; Terry et al., 2021), it should not detract from the value of the data collected and the power of the information held

within the sample (Malterud et al., 2016). As noted by Terry et al. (2017), the ability of research to produce quality data that reflects complex and nuanced meaning is of a greater importance and value than the size of the sample alone. Furthermore, the study was exploratory in nature, designed to generate novel understanding and knowledge, as opposed to a definitive and exhaustive list of barristers' beliefs and strategies (which arguably could never be fully achieved by one study alone). Those participants recruited were all highly experienced legal practitioners, who were able to provide knowledge on a topic that has otherwise been neglected within the literature. Thus, the findings result in a reflection of those barristers' perceptions, attitudes, and experiences of alibi evidence in the courtroom. As such, whilst it is necessary to reflect on the strategy of participant recruitment and its subsequent iterations, it should not detract from the data collected from those interviews conducted.

Furthermore, since the method of qualitative analysis was TA, the application of quantitative approaches to sample size (that is, large sample sizes are needed to warrant findings that are noteworthy) is at odds with the exploratory ethos of TA and ultimately qualitative research. King and Horrocks (2010) make no suggestions as to the recommended size of the dataset for TA. Drawing upon the wider literature on which King and Horrocks' (2010) process is based (Braun & Clarke, 2006; Langdridge, 2004), Braun and Clarke's (2013) recommendation for sample size in TA range from anywhere between two and 200. This varies depending on the topic and population under consideration. Baker and Edwards (2012) recognise that a small number of interviews can provide valuable insights, particularly when studying populations that are difficult to access (for example, elitist professions). Moreover, Braun and Clarke (2016) and Hammersley (2015), in their reply to Fugard and Potts' (2015) paper on computing sample size and power when using TA, state that such an approach shouldn't rely on the notion that themes are simply waiting to be found within a sample. The view that large samples are needed to 'discover' these ideas, which would otherwise be missed if the sample were small, goes against the whole concept of TA being an organic process whereby codes and themes are constructed and not simply found (Braun & Clarke, 2021b). A clear conceptualisation of the themes within the data that encompasses their representation of shared meaning, including why and how they are treated as relevant features, is of greater importance

than the size of the sample itself. Simply put, “the bigger the sample, the greater the risk of failing to do justice to the complexity and nuance contained within the data” (Braun & Clarke, 2016, p. 742).

Participant Demographic Information

A total of four participants, all of whom were qualified barristers in the practice area of Criminal Law, individually took part in face-to-face semi-structured interviews. Three of the participants were still practicing at the Bar, whereas one was no longer practicing and was employed as a senior university lecturer. Two of those that took part identified as female, and two male. Participants will be referred to by their pseudonym from hereon in.

Liz

Liz was originally a solicitor, before training as a barrister and being called to the Bar in the late 1990’s. She reported she practiced full-time in Criminal Law for approximately three years, before leaving for familial reasons. Liz returned to work approximately four years later, where she taught on the BPTC at a Northwest university for 14 years. At the time of the interview, Liz had recently returned to criminal practice on a part-time basis, whilst continuing to teach on the BPTC. The duration of Liz’s interview was 51 minutes.

Mary

Mary was in full-time practice as a barrister for 10 years, after being called to the Bar in the early 1990’s. She subsequently took up a dual role, teaching on the BPTC at a Northwest university and practicing on a part-time basis, which she had continued to do for 15 years. Mary reported she had *“wide experience” [Mary, p. 2, l. 30]*, having counselled at both Magistrates and Crown Court and for both the prosecution and defence. Her interview was 48 minutes long.

Maurice

Maurice was a practicing barrister, specialising in crimes of varying seriousness, namely those of theft, violence, drug offences, and sexual offences. He was a highly experienced advocate, having practiced full-time in chambers in Northwest England for approximately 25 years. During the interview, Maurice reported that he makes a *"conscious effort" [Maurice, p. 1, l. 16]* to represent defendants for the prosecution and defence as he noted that *"you get a better appreciation of either side" [Maurice, p. 1, l. 24-25]* in doing so. His interview lasted for 50 minutes.

Tom

Tom was a qualified criminal barrister, who was no longer practicing at the Bar as he was employed as a senior university lecturer at a Northwest university teaching on the BPTC. Tom reported that he practiced for four years and counselled for both the prosecution and defence, including representing defendants at youth courts. He stated he primarily acted as an advocate in offences against the person, including assault. The total length of Tom's interview was 49 minutes.

Data Collection

A semi-structured interview schedule (Appendix 6) was devised, driven by the study's aim and research questions, which comprised of a list of 21 questions on the topic of alibi evidence. The questions focused on participant's subjective perceptions, attitudes, and experiences of alibis, in addition to the way such evidence is presented and challenged in court. The questions were open-ended, to encourage detailed responses and facilitate lengthy discussion (King & Hugh-Jones, 2019; Willig, 2022), and were deliberately broad given the limited existing literature on this topic. The questions were self-generated by the principal researcher for the purposes of the study and were designed to comprise of predominately WH (and 'how') questions, with some further prompt questions included should supplementary information be required (Coolican, 2018). The ordering of the questions reflected good practice in qualitative interviewing (King et al., 2019), starting with simple, easy-to-answer questions designed to establish

rapport and build trust between the interviewer and interviewee. This led into the more challenging or thought-provoking questions in the main body of the interview, closing with a planned ending in which the participant was provided with an opportunity to offer any additional information to supplement the matters discussed, and to ask any questions they may have (King et al., 2019). During the interviews, the demonstration of active listening through verbal communication (for example, generic probing questions designed to elaborate on a response provided) and non-verbal communication (such as eye contact, head nodding etc.) was implemented. The questions in the interview schedule were sub-divided into four topics:

1. Opening questions covering participant's general experience as a barrister, including numbers of years in practice and any counsel and offence specialisms. Such questions were designed to collate relevant information on demographic characteristics and occupational experiences.
2. Questions on participant's professional experiences and perceptions of alibis, including their understanding of such evidence, frequency of its submission as a defence in practice, and their personal views on alibis. In order to address the first research question, said questions were devised following a review of the relevant literature and were deliberately broad (for example, *what is your understanding of alibi evidence?*). These were designed to gather data to reflect both their professional experiences in terms of its presence and use (e.g., *how often do you encounter alibi evidence in practice?),* together with their personal perceptions and attitudes (e.g., *what are your personal views on alibi evidence?*).
3. Questions concerning participant's attitudes on the reliability and believability of alibi evidence, in addition to the presence, frequency, and types of corroborating evidence seen in practice. To answer the first research question, these covered initial questions on what they considered to be a believable/non-believable alibi (such as, *what would you deem to be a reliable/believable/strong alibi?*), followed by more focused questions on the form and frequency of corroboration (for example, *what is the most common physical evidence provided?).* Prompt questions, with specific examples of types of physical (e.g., *video surveillance, receipts, phone records*) and person (such as, *partners/family, friends, acquaintances,* and *strangers*)

supporting evidence based upon Olson & Wells' (2004) taxonomy, were included.

4. Questions addressing how they would present alibi evidence in court if they were acting on behalf of the defence and prosecution, including any techniques, strategies, and modes of questioning used, and how effective they considered these to be. In addressing the second of the research questions, these covered broad, opening questions on the topic from the perspective of both the defence and prosecution (such as, how would you present/challenge alibi evidence in court?). These were complemented by specific questions that explored techniques, strategies, and modes of questioning that may be used when presenting/challenging such a defence, with prompt questions covering examples of those that may be used in direct and cross-examination (such as leading, negative and multiple questions, as described in the legal literature and outlined in Chapter Two), and the effectiveness of these. Further questions also covered participant's thoughts on how alibis are perceived by the jury and the impact presentation styles may have on the verdict (*e.g., how do you think juries'/jurors view alibi evidence?*).

Process

Potential participants received an electronic copy of the recruitment media via email, either shared on behalf of the principal researcher via a facilitator or directly from the principal researcher (dependent on the stage of recruitment, i.e., contact was made via a facilitator in the initial stages, whereas direct email correspondence with individuals, organisations, and chambers was made in subsequent iterations). Potential participants were requested to contact the researcher via email if they wished to take part in the study and were provided with a copy of the Participant Information Form (Appendix 4) upon expressing interest. If they decided to partake, the date, time, and location of the interview was arranged directly between the researcher and participant, as and when was most convenient for them (with all interviews taking place within the weeks following initial contact).

The interviews took place in person and at the participant's workplace, either in a pre-booked meeting room or at their private office, depending on their preference. The interviewer allowed up to 90 minutes for each interview (see Appendix 6 for interview schedule, including timings). At the start of the interview, participants were again provided with details about the study's nature and purpose via a Participant Information Form and provided with an opportunity to ask any questions to the researcher prior to taking part. Following the review of the study information, participants were required to sign two copies of the Consent Form (Appendix 5) (for the researcher's and participant's records), to indicate their consent to participate. Participants were allocated a participant number (and later a corresponding pseudonym, for the purposes of data analysis), which was documented on all participant-facing information for the purposes of pseudo-anonymity and data withdrawal.

At the start of the interview, the aim of the study was reiterated (as previously noted in the Participant Information Form), in addition to a discussion of relevant procedures for the interview (expected length of interview, opportunities for breaks etc.). Following this, audio-recording using two separate devices (a Dictaphone and a laptop computer) commenced and the interview began. The interviews were guided by the questions detailed on the interview schedule, however additional questions were introduced in response to participant's responses as and when appropriate (Runswick-Cole, 2011). Once the interview was complete, the participant was thanked for their participation and the audio recording ceased. Debrief information (Appendix 7) was provided and the opportunity to ask any questions was offered.

Data Analysis

Transcription

The interviews were transcribed verbatim by the principal researcher and two second year undergraduate psychology students, acting as voluntary research assistants (RAs). RAs were employed for the benefits of ensuring the transcription

was completed in a timely manner, allowing greater focus and attention to be paid to the analytic process (Point & Baruch, 2023). This was due to professional and personal challenges experienced by the principal researcher at that time, which meant that it was a necessary and viable approach. Following transcription, a period of familiarisation with the data was conducted to ensure the quality of the analysis was not impaired in any way by the use of RAs. The RAs were informed of the purpose of the research and signed a confidentiality agreement to say they would hold all raw data and research information in the strictest of confidence. To ensure cohesiveness across the transcription process, a transcription guide (Appendix 8) was devised for use by both the principal researcher and the RAs, adapted from Poland's (2001) notation system for transcribers. Any identifiable information (e.g., names, locations etc.) mentioned in the audio recordings were removed from the subsequent transcripts. Following the completion of the transcription process, all transcripts were checked by the principal researcher against the original audio recording to ensure quality and accuracy.

Thematic Analysis

TA, according to King and Horrocks' (2010) three-step process, was employed to analyse the transcribed interviews. The process of analysis was completed using hard copies of the data, as recommended by Bringer et al. (2006), with the final overarching themes and subthemes recorded using the computer assisted qualitative data analysis software NVivo. A more detailed discussion and consideration as to the study's methodological approach can be found in Chapter Three.

In the first stage, descriptive coding, the transcript was first read thoroughly. On the second time of reading, relevant words, phrases, and sentences were highlighted that related to participant's perceptions, attitudes, experiences, and questioning of alibis. Brief comments, highlighting the area of interest, were made in the margins, which in turn were used to generate and define descriptive codes. The descriptive codes included brief comments and labels, staying close to the data to avoid making any interpretation at this stage (King & Horrocks, 2010). The

process of reading, highlighting, and noting comments was repeated for each of the transcripts. Where the comments were encompassed by a previously established descriptive code, this was used, or alternatively a new descriptive code was created. The descriptive codes were modified and redefined, with related codes merged where applicable, as the coding process continued. In stage two, interpretative coding, descriptive codes with a shared meaning were clustered together, thereby creating interpretative codes for each of the transcripts. Such coding focused on a more detailed interpretation behind the participant's accounts, guided by the study's research questions and epistemological position. This process was repeated for each of the four transcripts, applying and redefining interpretative codes as the process progressed. The third and final stage of the analytic process involved defining overarching themes across the entire dataset, building upon the interpretive codes to generate several key themes that embodied the central concepts in the analysis. Theory and research were drawn upon, where supported by the data, to support abstract conceptualisation of the overarching themes[7]. The process was recursive in nature, going back and forth between the steps as and when necessary to modify and redefine coding, thus staying true to participant's experiences and providing their voice on the subject matter (Creswell, 2014).

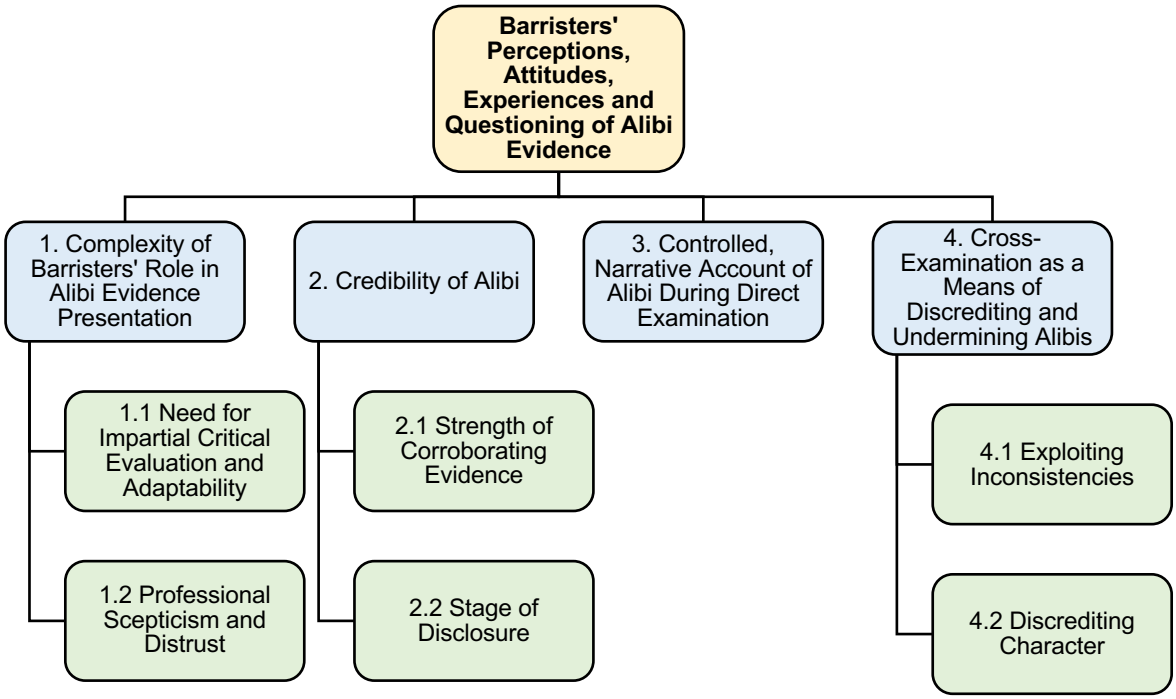
[7] For example, as outlined in the subsequent analysis and discussion section, the term independent/non-motivated witness was constructed to refer to a type of alibi corroboration described by participants. This was devised by drawing upon the exact phrasing and descriptions used by participants to explain such supporting evidence (e.g., Tom and Liz), whilst also using terminology consistent with that of Olson and Wells' (2004) taxonomy. This was, however, with the caveat that participants did not distinguish between the two categories of independent/non-motivated witnesses (non-motivated familiar others and non-motivated strangers: Olson & Wells, 2004), thus this terminology was not 'imposed' on the data.

Analysis and Discussion

The aim of the study was to explore criminal barristers' perceptions, attitudes, experiences, and questioning of alibi evidence in the courtroom. Four qualified criminal barristers, all of whom had varying criminal practice experience and were, or had, practiced at the Bar, partook in semi-structured interviews. The interviews were recorded and transcribed verbatim, and TA (King & Horrocks, 2010) used to analyse the data. Four overarching themes, three of which had subthemes, were constructed[8]. These are depicted in Figure 3.

Figure 3

Visual Representation of Overarching Themes (Shown in Blue) and Subthemes (Shown in Green)



Theme 1: Complexity of Barristers' Role in Alibi Evidence Presentation

[8] Verbatim quotes are used in support of the analysis and discussion of the data for all themes and subthemes. Quotes are formatted using the participant pseudonym, transcript page number (abbreviated to p.), and line number (abbreviated to l.), for example [*Mary, p. 1, l. 14]*.

The complexity and intricacy of a barristers' role in presenting and evaluating alibi evidence during courtroom proceedings was evident across all the interviews. In the presentation of alibi evidence, two key subthemes were generated: firstly, the need to evaluate evidence impartially and critically from all perspectives, reacting in a manner that is responsive to events as they occur on-the-stand. Secondly, and adding further to the complexness of their role, is the professional scepticism and distrust levelled at a defence of alibi. These two sub-themes, almost contradictory in nature, reflect the complex dichotomy of a barristers' role when presenting alibi evidence: the importance of evaluating evidence critically and impartially as a function of their role as an advocate, despite the obvious cynicism levelled at such a defence. The picture is further complicated depending on whether advocates act on behalf of the defence or prosecution, or both (as is the case for three of those interviewed), reflecting that barristers' perspective may shift and change considerably depending on the counsel they are representing at any given time.

Subtheme 1.1: Need for Impartial Critical Evaluation and Adaptability

The complexity of a barristers' role notes that the evidence, particularly its strength, was central to an advocate's success in persuading evaluators to believe their proposed version of events. Given the responsibilities of a barrister are to *"present the evidence" [Tom, p. 16, l. 31]* in the most favourable manner possible, the need to evaluate evidence impartially and critically and reactively adapt the strategies, techniques, and questioning used were central to this.

> *The more realistic of the two propositions, then they will probably go with you. Erm so that I think, the jury will respond to the best CASE which will normally involve the best EVIDENCE [Tom, p. 33, l. 34-37].*

Liz and Mary discussed the need for flexibility in the presentation of evidence and the ability to *"think on your feet" [Liz, p. 15, l. 32]*, reflecting that situations and challenges may occur that a barrister has not prepared for in advance of the trial. Whilst *"preparation" [Liz, p. 17, l. 9]* and *"case theory" [Mary, p. 23, l. 14]* are important, a barrister must actively attend to what is being said on-the-stand and respond appropriately. Nevertheless, it was acknowledged that, for most

practitioners, such skills necessary for effective legal advocacy *"comes with practice, years and years of practice" [Liz, p. 13, l. 36-3]*.

> *You know people do get into the witness box, not just alibi cases, and say things that you're not expecting. (…) You know that happens relatively regularly, or people respond in a different way to cross examination, people just you know do things that you haven't necessarily expected [Mary, p. 13, l. 19-26].*

> *…you've got to be able to listen, you've got to be able to ADAPT what you're asking, because sometimes the witness might give you too much information in response to a question. If you're not listening and you then go on to your next question, you've already answered it but if you're not listening, you've missed that haven't you? And how does that look to the jury and the judge? [Liz, p. 17-18, l. 32-11].*

The professional competencies for practising barristers, as set out by the BSB (2016, p. 11), identify such skill sets as central to persuasive oral advocacy: namely, the ability to "identify strengths and weaknesses from different parties' perspectives" and the capability to "listen and respond effectively to questions and opposing arguments". These skillsets were reflected in the complex narrative by which the participant's discussed alibi evidence. In the discussions on establishing and presenting strong alibi corroboration, participants often considered the differing perspectives within the same dialogue. Thus, recognising that a single piece or facet of evidence could be concurrently advantageous and disadvantageous to the opposing counsels. The following excerpt, albeit related to corroborating evidence, reflects this complexity:

> *I mean, fundamentally, the way you will pitch the case to the jury and what the jury will be asking themselves is 'does this witness' (…) well 'how reliable is the witness?', that's always the first question. And the reliability of the witness is a sort of (…) a combination of a number of factors. Erm (…) but one of the reasons why the witness might be reliable is because they are independent and have no reason to lie. (…) So provided you think that they are accurate in what they are saying (pause), that's one issue (laughs). But at least you think that there is no reason for them to lie. Whereas you see you've got the girlfriend situation, then what they are saying may or may not be accurate, but who cares because they are probably lying. Erm so it goes round the other way so (…) I think independent witnesses are FAR more reliable than the witness who is a mate of the defendant [Tom, p. 23-24, l. 37-16].*

Tom discussed the accuracy and motivation of alibi witnesses paradoxically: an independent witness has *"no reason to lie" [Tom, p. 24, l. 10-11]*, although there may be concerns regarding the accuracy of the evidence provided, yet motivated witnesses are perhaps more likely to be accurate but are *"probably lying" [Tom, p. 24, l. 13]*. This is consistent with the alibi believability taxonomy (Olson & Wells, 2004), reflecting the tension that exists in the relationship between the alibi provider and corroborator as an indicator of deception (that is, the closer the relationship, the more likely the alibi is seen to be dishonest: Allison & Kollar, 2023; Culhane & Hosch, 2004; Eastwood et al., 2020; Hosch et al., 2011; Pozzulo et al., 2012), whilst acknowledging that the need for impartiality increases the potential for mistaken identity. Herein lies the complexity of a criminal trial, and of a barristers' role within that, in that the same piece of evidence could be presented favourably by the defence, yet simultaneously refuted or undermined by the prosecution, and vice versa. Barristers must be able to view evidence from all perspectives, being mindful of how evidence could be interpreted and presented by the opposing party and perceived by the jury (BSB, 2016; Shultz & Zedeck, 2009). For instance, when acting for the prosecution, barristers may argue that a motivated witness is unreliable due to their relationship to the defendant and thus should not be believed, and yet contend for the reverse when representing the defence. All participants interviewed were experienced advocates (ranging from four to 25 years' experience), thus the way alibis were discussed may have intuitively reflected the analytic and evaluative skills central to such a profession. Whilst such skills are not specific to the presentation of alibis per se, it is of relevance for such evidence given the sceptical nature in which it is viewed throughout its contact with barristers and the wider CJS (Epstein, 1964; Gooderson, 1977; Levine & C. Miller, 2021; Sommers & Douglas, 2007; Steele, 2020).

Subtheme 1.2: Professional Scepticism and Distrust

The complex nature of barristers' role was further demonstrated in the second subtheme, where a professional cynicism of alibi evidence was reflected by all those interviewed. Personal and vocational perceptions and attitudes towards such evidence, in addition to the professional issues and challenges created as a

consequence of the sceptical nature by which alibis are viewed, were considered. This went beyond the archetypal scepticism levelled at such a defence (Gooderson, 1977; Steele, 2020), to the extent of a concern over their professional reputation should they have to present an extremely weak or dishonest alibi in court. Indeed, even the language used to describe such evidence reflected this distrust, with participants referring to the defence as *"iffy" [Tom, p. 30, l. 24]* and *"viewed with caution" [Liz, p. 5, l. 23]* and *"scepticism" [Maurice, p. 5, l. 26],* to name but a few.

> *I mean my personal view is that a lot of alibis are made up (laughs). They find someone who's going to lie for them to say that I wasn't there. That seems to be quite a common thing [Tom, p. 9, l. 32-33].*
>
> *…you tend to get it in front of juries where basically erm you've got either some other evidence, forensic evidence or something like that, (…) that supports presence and you've got witnesses, alibi witnesses who you've done a bit of digging on er (…) and it looks (…) there's a healthy degree of scepticism [Maurice, p. 20, l. 5-10].*

Participants' real-world professional experiences of alibi evidence appeared to be a contributory factor in the development and maintenance of such sceptical attitudes. Whilst false alibis were *"a common thing" [Tom, p. 10, l. 2-3]*, *"genuine" [Maurice, p. 3, l. 11]* alibis were considered a rarity. Even the expression of the term *"genuine" [Maurice, p. 3, l. 11]* portrays the underlying distrust by which such defences are viewed:

> *…it's relatively rare I have to say, it's certainly one of the rare, more rare defences erm for (…) genuine alibi [Maurice, p. 3, l. 10-11].*

The apparent ease at which a (false) alibi can be produced and corroborated is a possible explanation behind this perception: *"it would be very easy for them to say 'well it wasn't me'" [Tom, p. 3, l. 17-18]* and to *"wave the defence of alibi" [Tom, p. 12, l. 19]*. Alibis have long been disparaged amongst the CJS for this reason (Gooderson, 1977), with Steele (2020, p. 1) referring to it as a "hip pocket defence" due to the ease in which they can be contrived. Additionally, participants reflected that, in their practice experience, alibis were frequently supported by motivated witnesses and is thus considered weak and less than *"credible" [Mary, p. 9, l. 24]* evidence which is of diminished value *"from the outset" [Liz, p. 5, l. 14]*. This is

despite physical evidence and/or independent corroboration being far less commonplace (e.g., Dysart & Strange, 2012; Heath et al., 2021; Matuku & Charman, 2020; Olson & Charman, 2012), with the same scepticism of motivated alibi corroboration also reflected in mock jurors evaluation of such evidence (Allison & Kollar, 2023; Culhane & Hosch, 2004; Eastwood et al., 2020; Hosch et al., 2011; Pozzulo et al., 2012).

> *In most of the cases that I've done erm (…) alibi witnesses are never truly independent alibi witnesses. So erm it's always the defendant calling the girlfriend or the wife you know or (…) or vice-versa. The wife, the girlfriend calling the boyfriend. Always tends to be a boyfriend erm of a couple of months and therefore the alibi evidence isn't particularly good alibi evidence [Liz, p. 3, l. 20-26].*

Whilst alibis do indeed appear to be reported relatively easily by mock innocent suspects, producing an alibi which is of good quality (e.g., a consistent account, supported by strong corroborating evidence) is significantly more difficult (Leins & Charman, 2013; Olson & Charman, 2012). Maurice recognised that, in his 25 years' experience, alibi evidence tended to be antipodal: either good or bad, effective or wholly ineffective. As a result, he found "*it a difficult defence to run for a whole host of reasons" [Maurice, p. 3, l. 15-16]*.

> *…normally they either fall flat on their faces, alibis, or they're very very good. I can't, off the hand, I can't recall one where I thought it was really really finely balanced [Maurice, p. 21, l. 23-26].*

> *…an effective defence to run if successful but difficult to run erm (…) in most circumstances [Maurice, p. 3, l. 22-23].*

Whilst scepticism of alibis appears to be evident amongst (most) laypersons, police, and jurors (see, for example, Allison & Kollar, 2023; Dysart & Strange, 2012; Price & Dahl, 2017; Portnoy et al., 2020), there is limited empirical research on whether this attitude extends to that of barristers. Epstein's (1964) survey of US prosecuting attorneys found that, in trials where alibis were presented, they were considered only occasionally successful in 81% of cases. Similarly, Levine and C. Miller (2021) found that 83% of US defence attorneys surveyed believed that alibi evidence must be highly persuasive evidence if it were to prevail in court. The scepticism, in a professional capacity or otherwise, evidenced by participants in this

study demonstrates that they view this defence cynically. However, despite their own sceptical views on such evidence, barristers are bound to present an alibi if so desired by the client (in contrast to US criminal practice, as previously noted) (BSB, 2023b; Levine & C. Miller, 2021). It should also be acknowledged that barristers', and ultimately jurors and juries', experiences of alibis are restricted to instances where a degree of scepticism has already been levelled at the defence, sufficient for it to have reached trial proceedings (Gooderson, 1977; Sommers & Douglas, 2007; Steele, 2020). Given that the same alibi presented during a criminal trial is perceived more negatively in terms of its strength, believability, and credibility than if it were provided during a police investigation (Sommers & Douglass, 2007), the context in which it is presented is of importance to its evaluation.

The distrusting nature by which alibis were viewed was also considered in the context of its potential consequence on a barristers' professional practice. Mary and Maurice discussed the possibility of *"problem*[s]*" [Maurice, p. 11, l. 8]* and *"frustrations" [Mary, p. 12, l. 27]* caused by such evidence. This was most evident when there were significant inconsistencies in the alibi account (for example, introducing a *"mystery* [ambush: Fawcett, 2015] *witness" [Mary, p. 12, l. 18]* or disclosing an alibi at a later date). So much so, an alibi which is changed to such an extent may cause "*professional difficulties in continuing with the trial" [Mary, p. 12, l. 30-31]*.

> *…well it would be an extraordinarily difficult situation if your client is changing his defence to THAT extent. You then become involved in really (…) ethical questions of 'can we now believe, or rely, on what he's said?' And if you can't, then you have to consider your professional position [Maurice, p. 10, l. 29-34].*
>
> *…if it gets to a point where you feel that you're professionally embarrassed you might not be able to continue in the trial. You may not be able to carry on under those circumstances. (…) If it's so very different, or if they're saying they want to say something different in the witness box to what they said to you, that would cause you to become professionally embarrassed [Mary, p. 12, l. 33-40].*

Professional and indeed *"ethical" [Maurice, p. 10, l. 32]* integrity (BSB, 2023b; The Honourable Society of the Middle Temple, 2014) were central features of the advocacy discussed by participants in relation to alibi evidence. Instances where a

barristers' integrity is challenged, for example where there are significant changes to a client's alibi account or corroborating evidence, may result in a reassessment of their *"professional position" [Maurice, p. 10, l. 34]*. This is despite research demonstrating that genuine errors in an alibi account are commonplace (Laliberte et al., 2021; Leins & Charman, 2013; Matuku & Charman, 2020; Strange et al., 2014). Whilst barristers are bound by the cab rank rule (Flood & Hvidd, 2013), and have a duty to act in the best interests of the instructing client (BSB, 2016), participants highlighted that upholding their own professional standing is also of the upmost importance. Given the precarious nature of this occupation, more so for self-employed practitioners whose reputation and thus potential for future work is dependent on the outcome of the cases they represent (CBA, no date; Goulandris, 2016), the possible risk of reputational damage in alibi cases cannot be ignored (a perspective that may have also extended to a reluctance to participate in this study). Whilst balancing their own professional needs with that of the client and the court is of importance, this likewise emphasises the need to ensure barristers are reliably informed as to the likely nuances of alibis (and thus do not consider it to be a problematic defence for reasons, such as testimonial inconsistencies, that are accounted for by the psychological literature).

Theme 2: Credibility of Alibi

All participants made frequent reference to the credibility of an alibi, in particular its believability and reliability, as "*this entire defence is based around BELIEVING the defendant" [Tom, p. 19, l. 5-6]*. The idiosyncratic nature of credibility is subjective and multidimensional (Brodsky et al., 2010; Cramer et al., 2009; O'Neill Shermer et al., 2011; Wilcox & NicDaeid, 2018) and is a pertinent concept within the Story Model (Pennington & Hastie, 1986, 1988, 1992), demonstrating its significance in the narrative created by jurors. This theme constructed the credibility of an alibi to be composed of two distinct yet inter-linked subthemes: the strength of the corroborating evidence and the stage at which the alibi is disclosed.

Subtheme 2.1: Strength of Corroborating Evidence

The evidence, or *"proof" [Tom, p. 17, l. 16]*, required to support and corroborate an alibi was of central importance to its credibility as a defence. Indeed, this was reflected in participant's fundamental perceptions of what an alibi defence was:

> *It's ANYTHING that establishes that that defendant was not present at the scene of the crime [Tom, p. 2, l. 11-12].*
>
> *…quite often (…) people will say "oh, it wasn't me, I wasn't there" but then that isn't (…) you're not actually producing evidence as such to demonstrate why they weren't there either by people who've seen them or by (…) by evidence [Mary, p. 3, l. 6-10].*

An alibi was viewed as more than a statement of *"it wasn't me, I wasn't there" [Liz, p. 8, l. 31]*, but *"evidence which tends to show that the offence was not committed by the accused person by reason of him being elsewhere" [Maurice, p. 2, l. 30-32]*. Consistent with Olson and Wells' (2004) taxonomy of alibi believability, two broad categories of corroborating evidential material were discussed by participants, that of physical evidence and person evidence. In keeping with the findings of Levine and C. Miller's (2021) survey of US attorneys, physical evidence was considered by participants to be the gold standard in alibi corroboration, as it is *"an objective provable truth" [Tom, p. 8, l. 25-26]*. A host of different types of physical evidence were mentioned during interviews. This included, but was not limited to, CCTV, forensic evidence, electronic monitoring data, automatic number plate recognition, card transactions, and paper receipts. Given the evidential and technological advances since the first taxonomy iteration (Olson & Wells, 2004), this perhaps reflects increased opportunities for potential corroborating physical evidence to be available (Olson & Morgan, 2022).

There was also a degree of acknowledgement by Mary and Tom as to the *"levels of proof" [Tom, p. 20, l. 10]*, in that some types of physical evidence (e.g., forensic evidence) were described more favourably in terms of being an *"established body of (…) scientific evidence" [Mary, p. 7, l. 23]*. Yet, this effect has the potential to be confounded by the CSI effect from the perspective of jurors and juries (Hawkins & Scheer, 2017; Klentz et al., 2020; Lodge & Zloteanu, 2020; Maeder et al., 2017). Conversely, other forms of evidence had greater *"possibility of mistake"*

[Mary, p. 18, l. 31], whilst receipts for example demonstrate *"SOMEONE bought SOMETHING in that shop" [Tom, p. 11, l. 26-27],* but not necessarily that it was the defendant themselves.

Tom made some noteworthy comments regarding the scarcity of physical evidence to corroborate an alibi as *"most of the time of course you ARE at home or you are doing something, you're doing the dishes, you're playing on the PlayStation, watching tele* [*sic*]*" [Tom, p. 13, l. 16-18]* thus *"physical evidence is (…) UNDERSTANDABLY more rare" [Tom, p. 13, l. 28-29]*. Difficulties in being able to recall and subsequently provide physical evidence are commonplace (Matuku & Charman, 2020; Olson & Charman, 2012), with only 29% (Culhane et al., 2008) and 16% (Culhane et al., 2013) of mock suspects able to provide some form of physical evidence to substantiate their alibi. This is even less so in real-life cases (Heath et al., 2021) with, for example, only 2% of defendants in Canadian cases able to offer supporting physical evidence to corroborate their whereabouts (Turtle & Burke, 2003). Furthermore, the onus lies with the suspect/defendant to evidence their alibi, since the investigating body is unlikely to have the resources to trawl CCTV, for example, to corroborate an alibi if sufficient circumstantial evidence exists to bring a charge. This may be further complicated if a degree of time has elapsed since the offence (Cardenas et al., 2021; Eastwood et al., 2021; Strange et al., 2014) or they rely on schemas to generate an alibi (e.g., Charman et al., 2019; Culhane & Hosch, 2012; Leins & Charman, 2013), thus increasing the likelihood of inconsistencies in their account and in turn detrimentally impacting on the credibility of their defence.

> *I suppose in fairness to the defendant, I mean they'd have to be pretty LUCKY to have some sort of concrete erm (…) physical evidence [Tom, p. 13, l. 7-9].*
>
> *…it's actually I think a lucky defendant that can actually wheel out a piece of concrete evidence. I suppose as a defence lawyer, you might use that and say well (…) to the jury (…) you know, we can't all be you know (…) luckily catched* [*sic*] *on camera all the time [Tom, p. 13, l. 20-24].*

CCTV was perceived to be a common form of corroboration due to its *"prevalence" [Maurice, p. 9, l. 8]*, in that *"so much of the country is covered by CCTV" [Mary, p. 4, l. 23]* and *"if it's a public place there's a good chance there is CCTV"*

[Maurice, p. 9, l. 32-33]. The value of CCTV evidence was highlighted, particularly for the defence of alibi, as it can clearly *"prove the case" [Tom, p. 8, l. 28]* that the defendant was elsewhere at the time of the offence. This is consistent with the alibi literature, whereby CCTV footage is considered strong corroboration due to it being evidence that is difficult to fabricate (Nieuwkamp et al., 2018; Olson & Wells, 2004; Sargent & Bradfield, 2004).

> *…with obviously alibi ALL you're needing to show is 'can we recognise the person on the picture?' If we can, great, that puts him there. You know, he can't be at the scene of the crime [Maurice, p. 9, l. 19-23].*

Nevertheless, it was recognised that CCTV wasn't *"incontrovertible" [Mary, p. 8, l. 6]* and that *"there's a whole issue of about erm how useful or reliable is that footage" [Tom, p. 9, l. 19-21]*. All referred to the *"quality" [Liz, p. 6, l. 29]* of CCTV as evidential material, for example that the footage is often *"grainy"* or *"dark" [Tom, p. 9, l. 15],* whilst Mary, Maurice, and Tom also made reference to "*how long stuff is preserved for" [Mary, p. 4, l. 14-15]* (that is, if the date and time were correct in the first instance).

> *…your nightmare scenario is him coming up with alibi at a later stage when it cuts off the ability, because most footage for example is recorded over within about 30 days. You know, it's very very difficult [Maurice, p. 9, l. 34-38].*

CCTV is used regularly in police investigations (Davis et al., 2018), yet poor image quality is a significant issue within the forensic examination of such footage (Porter, 2011; Seckiner et al., 2018), and may result in a Turnbull direction being provided to juries if identification evidence is contested by the defence (CPS, 2018b; *R. v Turnbull*, 1977). Low quality stills of CCTV recordings decreased correct person identification by up to 18% (Keval & Sasse, 2008), potentially increasing the risk of misidentification (Brookman & Jones, 2022). Davis and Valentine's (2008) simulation experiments of identity verification from video footage, reflecting the decisions made by juries in real-world cases, found identification was highly vulnerable to mistake. For example, in instances where the footage was one year old, 44% of participants incorrectly identified that the defendant was not present in video footage. Thus, whilst Olson and Wells' (2004) taxonomy identified CCTV as

strong alibi corroboration, juries in reality may be exposed to legal discourse by barristers reflecting the *"problem*[s]*" [Maurice, p. 9, l. 18]* associated with such evidence, potentially compounding the scepticism associated with alibi evidence further.

Turning attention to *"person evidence" [Maurice, p. 5, l. 28]*, barristers noted that this was more commonplace, in their experience, than corroborating physical evidence. All participants acknowledged that person evidence typically took the form of someone with whom the defendant knows on *"any sort of personal or friendly level" [Tom, p. 8, l. 21-22]* (a motivated familiar other: Olson & Wells, 2004). Examples given were of "*relatives" [Maurice, p. 8, l. 20]*, a *"partner" [Liz, p. 5, l. 25]*, or *"mates" [Mary, p. 9, l. 26]*.

> *Well from my experience erm (…) alibi evidence, in practice, tends to take the format of erm a partner being the alibi [Liz, p. 5, l. 16-18].*

It was constructed that there was a degree of cynicism and distrust towards corroborating evidence from a motivated party, with participants perceiving that if *"the witness is known to that defendant (…) therefore it's very suspect" [Tom, p. 7, l. 22-23]* and is therefore *"not the most persuasive evidence" [Liz, p. 3. l. 31-32]*. The altruistic nature of providing a (false) alibi and, in turn, how this was viewed by a jury were noted, as *"they've all got reasons for wanting to help the person out" [Mary, p. 10, l. 6-7]*. Yet, there was some recognition by Mary and Maurice that motivated witnesses were the most likely individuals to substantiate an alibi: "*it's your mates, this sort of thing (…) spending time with you of an evening" [Maurice, p. 8, l. 18-19]* and not an 'model' witness such as the *"Archbishop of Canterbury" [Maurice, p. 8, l. 17]*.

> *Yes, I mean (…) invariably you do have people with whom the defendant has a close connection, either emotional or erm (…) they are related. And that leads on to a difficultly that (…) the jury in deciding on whether or not to accept that evidence has to obviously bear in mind 'well that link is there, there may be a feeling of loyalty erm or bias in the witness that they're trying to you know simply help'. It doesn't obviously mean they're telling the truth, it doesn't mean they're telling lies… [Maurice, p. 8, l. 3-11].*

A biological or social relationship could potentially lead to the altruistic act of corroborating a false alibi (Marion & Burke, 2013, 2017), based on kin selection (Hamilton, 1964) and reciprocal altruism (Trivers, 1971). Indeed, this relationship would no doubt be highlighted to the jury by the prosecution as a means of undermining the credibility of the defence (Steele, 2020; Stone, 1995). As such, Maurice's assertion that motivated witnesses are placed under more scrutiny by the jury is founded (Charman et al., 2019). Those with an alibi corroborated by a motivated witness are seen by evaluators as significantly less credible compared to an unrelated witness (e.g., Allison & Kollar, 2023; Culhane & Hosch, 2004; Dahl & Price, 2012; Eastwood et al., 2020; Hosch et al., 2011; Price & Dahl, 2014). In fact, Culhane et al. (2013) found that the classic defence of 'I was at home with family and friends' was more indicative of a truthful alibi than a false one (35% of truthful alibis reported being at home with family/friends, compared to 15% of false alibis). Given that Liz reflected *"most of the cases that I've done (…) alibi witnesses are never truly independent" [Liz, p. 3, l. 20-21]*, as with jurors, it is possible that prior experience of cases involving motivated alibi witness testimony contributed to the perceived scepticism of such evidence.

An *"independent witness" [Maurice, p. 8, l. 13]*, someone with whom there is *"no personal connection" [Mary, p. 10, l. 14]* to the defendant, was considered *"good evidence" [Liz, p. 5, l. 12-13]*. All participants placed a higher value on corroborating evidence from an independent witness, examples of whom included "*a complete stranger or somebody who's you know they've come across the defendant in their line of work" [Mary, p. 10, l. 11-13]*. Barristers in this study did not explicitly distinguish between non-motivated familiar others and non-motivated strangers, as proposed by Olson and Wells (2004), thus the term independent/non-motivated witnesses will refer to both collectively.

> *So if you've got someone whose got NO (…) NO interest in the case at all erm and they say 'I saw this person, I was there you know, I was playing football against them' or whatever it was, they've got no reason to lie. Then you might go ok, that's you're very strong witness because they recognise this person so they know who they are, they know they were there at that time playing footie* [*sic*] *and they've got no reason whatsoever to make that up. So that's a very strong witness [Tom, p. 8, l. 9-17].*

> *…if somebody says "I've got an alibi", you're secretly hoping that it's going to be somebody totally independent. Someone from work erm (…) or you're hoping it might be a professional person that the court is going to believe [Liz, p. 3, l. 33-37].*

Nonetheless, whilst independent corroborators were considered *"reliable" [Tom, p. 24, l. 15]* and a *"nice, credible, respectable witness" [Mary, p. 9, l. 24-25]*, the scarcity of such evidence was acknowledged by all participants. This is consistent with law enforcement and US defence attorneys' perceptions of alibi evidence, in that non-motivated witnesses are the most believable yet the least common form of alibi corroboration (Dysart & Strange, 2012; Levine & C. Miller, 2021). Liz reflected on the reasons for this, commenting that an independent witness receives no outward gain from offering such evidence. This is in comparison to motivated witnesses, where there may be the possibility for future reciprocal benefits (Hosch et al., 2011; Trivers, 1971).

> *…independent alibi witnesses are quite rare because, in this day and age, people erm don't want to get involved (…) people don't care. (…) They just think 'why should I get involved?' Erm so it's really hard to get an independent person to take time out of work or their life, to come forward and testify and support somebody else's defence [Liz, p. 6, l. 12-19].*

Independent corroboration of an alibi is idealistic, given the inaccuracies of non-motivated witnesses (Charman et al., 2017) and the fact most time in real-world practice is indeed spent with family and friends (Burke & Marion, 2012; Culhane et al., 2013). When asked to corroborate an alibi, Olson and Charman (2012) found that mock innocent suspects were only able to provide evidence from a non-motivated individual in 6% of cases. In cases of US wrongful convictions, Heath et al. (2021) found that only 20% of cases featured a non-motivated alibi witness (specifically, 16% with a non-motivated familiar other and 4% a non-motivated stranger). Despite this, barristers in this study expressed a clear preference for independent corroboration of an alibi defence. Yet independent alibi corroborators appear to be vulnerable to the same memory issues as alibi providers (Charman et al., 2019), with only 37% of strangers being able to accurately recall having seen an innocent suspect 24 hours earlier within an alibi corroboration paradigm (Charman et al., 2017). Similarly, laypersons possess unrealistic expectations regarding the

likelihood that a stranger would be able to corroborate, in sufficient detail, a suspect's alibi (Warren et al., 2022).

One factor that may impact on the strength of the corroborating evidence is memory veracity. Maurice and Tom recognised that memory decay may play a role in the ability of individuals (Maurice referred to both the alibi provider and witness, whereas Tom specifically discussed non-motivated witnesses) to accurately remember corroborating information. Of note were instances where there had been a significant delay between the event and recall. Maurice noted that, unless there was an event or detail of significance at the time of encoding for example *"someone else's birthday's, some significant event or something like that" [Maurice, p. 13, l. 30-31]*, *"allowances for human memory" [Maurice, p. 21, l. 4]* should be made.

> *…because of the length of time it had been (…) we're then in the difficulty where he's got difficulty with his own memory. He said 'I know I wasn't THERE but if you ask me where I was (…) I can't easily say' [Maurice, p. 4, l. 9-14].*
>
> *…trying to say to the shopkeeper 'does this man look familiar to you at that time?' You know, it could be six months ago. (…) He won't remember [Tom, p. 12, l. 25-28].*

Difficulties in alibi memory veracity due to decay, distortion, and schema-reliance have been well recognised in the alibi literature (Cardenas et al., 2021; Crozier et al., 2017; Laliberte et al., 2021; Leins & Charman, 2013; Strange et al., 2014), with mixed benefits of retrieval cues or techniques designed to aid generation (Eastwood et al., 2021; Matuku & Charman, 2020). Yet law enforcement generally demonstrates a poor acknowledgement of these (Dysart & Strange, 2012), with some recognition of alibi memory impairments evident in a proportion of laypersons (Portnoy et al., 2020). Thus, it is promising that two barristers in this study recognised that memory processes may limit alibi generation, which could potentially be brought to the jury's attention by the defence in the presentation of such evidence. Building on the findings of the present study, future research should seek to gather a more comprehensive understanding of barristers' perceptions, beliefs, experiences, and approaches to alibi evidence, in part considering what it known (and indeed, not known) about memory in alibis. Consideration should be

given as to whether informing and educating (both trainee and qualified) barristers on the psychological literature pertaining to alibis, and some of the well-recognised limitations of human memory, could be beneficial in presenting the defence in a more fair and accurate manner before its subsequent evaluation by jurors and juries.

Subtheme 2.2: Stage of Disclosure

The latter subtheme concerning the credibility of an alibi related to the stage at which a defendant discloses the defence, and corroborating evidence in support of this. This was perceived as fundamental to it being considered a believable defence, if and when it reaches court. All participants referred to the advance disclosure requirements for an alibi defence, in that details on which the defendant intends to rely upon must be provided before trial in a timely manner, for the prosecution to examine as appropriate (Section 6 A (2) CPIA 1996; CPIA 1996 (Defence Disclosure Time Limits) Regulations 2011; CPS, 2018a, 2021).

> *…if you're in the Crown Court, you are obliged to serve a defence statement. Again, so if you're relying on the defence of alibi, you have to give erm certain alibi notices within defence statements. You have to give the name, the address, the date of birth of the alibi witness because the police will check them out, alright. The police will be running a PNC* [Police National Computer] *on that witness to see whether or not they've got any antecedent history. Again that's going to effect the credibility of that alibi witness at trial [Liz, p. 10, l. 16-25].*

Ideally, participant's preference was for the alibi to be disclosed by the defendant at the initial police interview. This is consistent with police investigators views of such evidence, in that an alibi should be disclosed at the first opportunity (Dysart & Strange, 2012). Maurice noted that the early disclosure of the alibi ensures that access to corroborating evidence is not in any way inhibited or impacted.

> *So it helps er (…) if your defendant is able to say straight off 'alibi' and preferably, well I say preferably, IDEALLY if you've got a situation where he says alibi, he or she says alibi, in the police interview so the POLICE are aware and he gives sufficient details of it [Maurice, p. 9, l. 9-14].*

> *Where alibi is er (…) put forward, your tactic invariably is to act quickly, to get all the evidence together as soon as possible so you're not facing difficulties with being unable to retrieve evidence if it be CCTV or confronting poor memory because of the lack of time er and this sort of thing. So you want to get it bottomed as QUICKLY as you can… [Maurice, p. 21, l. 30-36].*

Participants acknowledged that, in instances where the alibi is deemed *"very good quality" [Maurice, p. 19-20, l. 40-1]* and robust enough to absolve a suspect at the investigative stage, a decision is likely to be made not to pursue the case further. Tom summed this up as *"the prosecution will only proceed if the alibi evidence is a bit iffy" [Tom, p. 8, l. 32-33]*. As previously noted, this denotes that those alibis that barristers (and juries) are exposed to in court are ones where there exists some degree of reservation (Gooderson, 1977; Sommers & Douglass, 2007; Steele, 2020). The notion of 'no smoke without fire' is of pertinence, in that there must be some existing trepidation over its credibility as a defence for it to have reached trial proceedings. The mere fact the defendant has an alibi may be sufficient to invoke a negative impression of the defence, arousing suspicion that results in evaluators relying on automatic, peripheral processing to heuristically evaluate the evidence (Olson, 2003; Petty & Cacioppo, 1986). As per the CMIF (Fiske & Neuberg, 1990), weak alibi evidence may also be considered salient information that is congruent with the initial categorisation of the defendant being an offender and thus supportive of a guilty verdict.

> *….so the police would go off and interview the person (…) see if it checks out and, if it does, well probably end the matter [Mary, 10, l. 31-33].*
>
> *…it's powerful evidence if it's ESTABLISHED, it clearly is the end of the case [Maurice, p. 9, l. 42-43].*

Liz, Mary, and Maurice discussed the notion of delayed disclosure, or an *"ambush" [Mary, p. 10, l. 22]* alibi. The delayed disclosure of an alibi defence could be done purposely, to withhold a weak or dishonest alibi so as to ambush the case (Fawcett, 2015), or genuinely due to the poor memory salience and overreliance on schematic expectations at the time of encoding (Burke & Turtle, 2003; Kassam et al., 2009; Leins & Charman, 2013).

> *…there are special provisions in relation to, if you have an alibi case, that you really have to flag it up VERY quickly. And, er as I say, the other side can't be taken, the prosecution invariably can't be taken by surprise by it [Maurice, p. 3, l. 16-20].*

> *…the point is now, you know you can't have erm defence by ambush, you've got to reveal your case in advance. You've got to be saying erm at interview pretty much, from that stage, from interview onwards [Mary, p. 10, l. 21-25].*

Should an alibi be disclosed in an untimely manner, Liz acknowledged that the defendant will be *"criticised" [Liz, p. 10, l. 9]* for this and adverse inferences can be drawn (Judicial College, 2023). The notion of a *"honest defence" [Liz, p. 10, l. 11]* is worth highlighting, implying that in her view the late disclosure of an alibi defence is an attempt at dishonesty:

> *…if the defendant mentions alibi in interview, that's great, that's the best time to mention it. If he doesn't, he'll be criticised. (…) Because if there is an honest defence, then why was it not mentioned in an interview? Otherwise, under the legislation, there are adverse inferences that can be drawn [Liz, p. 10, l. 7-13].*

The legislation (Section 11 (5) of the CPIA 1996) states, when an alibi is adduced at trial that has not been previously mentioned in a defence statement, the judge can comment on this and inferences can be drawn when deciding on guilt (yet the judicial directions for an alibi defence advise the jury be informed that a weak or false alibi is not necessarily indicative of guilt, and defendants may lie for other reasons). However, in practice, it appears judges have made little use of this legalisation (Lord Chief Justice of England and Wales, 2008; The Right Hon. Lord Justice Gross & The Right Hon. Lord Justice Treacy, 2012). The prevailing principle that criminal cases should be dealt with fairly and justly may prevent judges from penalising failures in disclosure, particularly if such evidence has the potential for acquittal (Eady, 2009; Fawcett, 2015; Owusu-Bempah, 2013). As such, there is the potential for juries to have to consider an ambush alibi in the context of their decision-making. Regarding how jurors perceive such evidence, the studies are few and the results mixed. Allison et al. (2020) and Allison and Hawes (2023) found that early versus late alibi disclosure (one day, or 19 or 20 days, after the trial case was set, respectively) did not affect mock jurors judgement as to verdict or ratings of the

alibis believability. However, defendants who divulged their alibi late were perceived as significantly less trustworthy, suggesting a degree of scepticism on their part (yet insufficient enough to warrant a significant negative impact on other character traits, such as credibility and persuasiveness) (Allison et al., 2020). Furthermore, Fawcett (2015) found that an ambush alibi witness at trial had no significant effect on perceptions of defendant reliability or culpability, implying that mock jurors did not perceive this as an attempt at deliberate deception. Whilst barristers in the current study reported that the most effective alibi is one that has been disclosed at police interview, promptly and without hesitation, the (in)effect and influence of ambush alibis on mock juror decision-making is a factor only somewhat considered within the literature.

Theme 3: Controlled, Narrative Account of Alibi During Direct Examination

During direct examination, participants noted that there was a need for a strategy which demonstrated to the court a narrative that is the most favourable to their client. With reference to examination-in-chief of the defendant by the defence, whereby the *"alibi will first come up" [Tom, p. 15, l. 5-6]*, it should be presented as a narrative account, as if they were telling their *"story from start, middle to end" [Maurice, p. 13, l. 38]*. 5WH questions (Grant et al., 2015; Kebbell et al., 2003) were noted as a means of facilitating this storytelling:

> *So you ask them a series of questions to get them to explain to the jury what was going on, what was happening. (…) So the defendant will say "I was at home" and I will say to the defendant "well who were you with?", erm I say "what proof can you give the court that you were at home?" So I'd ask them questions to get that out, so they are triggering what I will then later prove [Tom, p. 15, l. 3-5, 30-34].*

> *But in order to obviously give the person a degree of confidence and to make their evidence as clear as possible, you go through it so the jury have a clear picture of WHAT, stage by stage, they do. So where they went, where they went from there, what they did, who they were with. Erm so you make it as clear as possible, so it's almost like them just telling the story of their erm (…) experience that particular night, something like that [Maurice, p. 12-13, l. 40-3].*

The importance of a story was mentioned by all participants, with Maurice articulating that *"events are just like a story"* and that "*both sides, prosecution and defence, have differing stories" [Maurice, p. 12, l. 18-19]*. Storytelling has long been considered a means of effective legal rhetoric (Mazzocco & Green, 2011; P. H. Miller, 2002; Rideout, 2008; Van Patten, 2012), whereby the narrative should be elicited in a well-paced, sequential, and broadly uninterrupted manner (Henderson et al., 2016; Morley, 2015; Ross, 2007; Webb et al., 2013, 2019). The central purpose is perhaps best summed up by Tom *[p. 20, l. 5-6]*, who stated *"the whole job of the barrister is to try and make the jury believe you",* and thus your counsel's story. The inherent 'truth' of what happened is perhaps irrelevant, since the story that is believed becomes the 'truth' (at least, from an advocacy perspective) once accepted as fact by the jury (Haworth, 2013, 2021). This is in keeping with both the Story Model (Pennington & Hastie, 1986, 1988, 1992) and "Director's Cut" Model (Devine, 2012), in that jurors organise complex trial information into narrative, chronological stories as to what occurred. This view contrasts with other models of juror decision-making such as the Bayesian approach (Devine, 2012; Finkelstein & Fairley, 1970), that propose guilt is determined elementally based on an initial probability of culpability combined with a belief as to likelihood, assessed against a threshold representing certainty. Thus, the present study's findings demonstrate a barrister's perceived success is dependent on their ability to present a comprehensive and coherent story, for it to be accepted and reflected in the decision-making of jurors and juries (M. O. Miller & Mauet, 1999; Van Patten, 2012).

Whilst participants outwardly endorsed direct examination as a place in which a story could be told, the underlying motivations for the strategies and modes of questioning used during examination-in-chief reflect a far more complex picture. Maurice emphasised the importance of *"present*[ing] *their evidence in the best way possible [Maurice, p.11, l. 35-36]* during direct examination, whilst Liz noted the need to *"control your client" [Liz, p. 11, l. 24]*, to prevent *"rambling"* which could potentially cause them to *"shoot themselves in the foot" [Liz, p. 11, l. 28-29]*. The crux of the issue is that examination-in-chief is a means in which to elicit relevant information in support of the case, and not necessarily an attempt to provide a complete or true account (Morley, 2015; Seuren, 2019).

> *Well when you call a defendant to give evidence, although you're questioning erm (…) you want to get some sort of narrative, your questions have to be quite focused. So very open but very focused because again, you don't want the client to give unnecessary information and information which may be prejudicial [Liz, p. 11, l. 18-23].*

Despite the apparent importance of storytelling and 5WH questions, direct examination is an exercise in information-control, not necessarily information-gathering, where questioning is a purposeful attempt at controlling the amount and quality of information elicited (Kebbell et al., 2003, 2004; Lively et al., 2019; Seuren, 2019). This is further supported by Morley (2015) and Webb (2013), who note that questioning during direct examination must be focused and controlled to only elicit information that is complimentary to the client and their position. The findings of the present study support the use of this strategy when presenting an alibi defence, outwardly presenting a *"narrative" [Liz, p. 11, l. 20],* yet simultaneously controlling the account provided so that only relevant and favourable information is elicited. Ensuring only a complimentary account is offered demonstrates that the defence's *"case theory is correct" [Mary, p. 23, l.14]* and *"the prosecution version is wrong (…) or can't be relied upon" [Mary, p. 23, l.17-19]*.

Mary commented during her interview that it can be *"much easier" [Mary, p. 14, l. 37]* for focus to be placed on discrediting and undermining the opposing counsel's evidence, rather than trying to convince a jury as to the defendant's believability in cases involving an alibi defence. In particular, she discussed this in terms of defendants and alibi witnesses who have *"previous convictions"* or who are "*living a criminal lifestyle" [Mary, p. 9, l. 20-21]*. This could include, for example, highlighting weaknesses in the prosecution's eyewitness evidence due to the identification being *"wrong" [Mary, p. 15, l. 4]* or *"mistaken" [Mary, p. 15, l. 28]*, rather than trying to demonstrate to the court that their alibi is one that should be believed.

> *If you can find reasons why the prosecution witnesses shouldn't be relied upon, that's much erm (pause) easier generally that trying to persuade a jury to believe a defendant [Mary, p. 14, l. 30-33].*
>
> *Or they're not very attractive to a jury. So it's more difficult if your whole case theory, the whole case has to be built upon everything they're saying is wrong and everything we say is right. (…) Because then that*

> *all doesn't come down to the jury having to rely on, you know, what your perhaps not very appealing defendant has to say [Mary, p. 15, l. 2-11].*

Again, this demonstrates that the role of the defence is not simply presenting a complete, intact alibi defence before the court, but a measured and considered construction of the most favourable case theory for the client. This is similarly noted by Allison and Hawes (2023), where the downplaying of alibi salaciousness by the defence is advised to promote a more favourable impression to the jury. Actively constructing a particular version of events by undermining the opposing story offered can be, as Mary suggested, beneficial in cases where a defendant and their alibi defence is somewhat unappealing. Yet, the mere fact Mary has suggested it may be easier to undermine the opposing counsel's evidence, rather than to persuade evaluators to believe the alibi put forward, is indicative of the need to further consider the manner and effectiveness of the defence's presentation of such evidence. Coupled with the findings of the present study, Pennington and Hastie (1992, p. 203) suggest "a narrative story sequence is the most effective 'order of proof' at trial", consistent with the active comprehension and construction of trial evidence into a narrative form. However, this has yet to examined within an experimental mock juror or jury paradigm. Similarly, experiences of alibi generation can increase evaluators' perceptions of an alibis believability (Olson & Wells, 2012), with said authors recommending defence barristers use an exercise whereby jurors attempt to generate an alibi as a means of increasing understanding and empathy for the defendant. It could be postulated that the controlled manner in which examination-in-chief is performed may limit opportunities for explanations by the defendant/witness as to why an alibi may be seen as weak (e.g., an inconsistent or changed account), resulting in jurors assuming it is indicative of deception rather than considering commonplace issues with memory, for example. Could providing opportunities during direct examination (or re-examination, if applicable) for the defendant to explain to the jury the reasons *why* their alibi may be seen as potentially of poor quality reduce alibi scepticism and ultimately facilitate fair trials? Future research should vary the techniques, strategies, and questioning used by the defence when presenting an alibi defence to determine its effect on verdict and alibi believability.

Theme 4: Cross-Examination as a Means of Discrediting and Undermining Alibis

Prosecutorial cross-examination required a *"two prong" [Tom, p. 24, l. 30]* approach: firstly, to present any evidence which places the defendant at the scene of the crime (thus contradicting their alibi defence), and secondly to discredit or undermine the defence's case and evidence *"as best you can, by using any technique you can" [Tom, p. 18, l. 24-25]*. The *"process of undermining and discrediting" [Liz, p. 17, l. 2-3]* was noted as a central technique, consistent with the overall purpose of cross-examination (Allen et al., 2015; Henderson et al., 2016). Cross-examination is inherently linked to the credibility of the defendant and their alibi defence (as previously discussed in the second of the themes, *Credibility of the Alibi*). There were two distinct techniques of cross-examination constructed from the interviews, each of which contribute to the overall objective of discrediting and undermining the alibi. These are detailed in the following subthemes: exploiting inconsistencies and discrediting character.

The style of cross-examination discussed by participants was worth noting. Liz, Mary, and Tom all advocated the *"the nicey nicey* [*sic*] *approach" [Liz, p. 16, l. 13]* to *"try and get anything USEFUL from the defendant" [Tom, p. 25, l. 34]* and *"lull the witness into a false sense of security" [Liz, p. 16, l. 15]*. Mary stated her *"approach is rarely to be (pause) I mean you see on, in drama or on TV, you see people be very unpleasant when they're cross-examining" [Mary, p. 23, l. 30-32]*, something reiterated by Tom who stated *"you never get angry or antagonistic as a lawyer" [Tom, p. 27, l. 17-18]*. The legal literature recognises that persuasion is key to effective advocacy (Voss, 2005) and, whilst there is some disagreement regarding whether advocates should be concerned with their perceived likeability (Hans & Sweigart, 1992), it is suggested that those that are affable are more likely to be considered by jurors as trustworthy and thus believable (Melilli, 2016). Indeed, the ELM (Petty & Cacioppo, 1986) notes in the peripheral processing route, superficial factors such as an advocate's perceived likeability were influential in producing a noticeable change to evaluator's attitudes and beliefs (Berger & Stanchi, 2017). Thus, the encouraged *"nicey nicey* [*sic*] *approach" [Liz, p. 16, l. 13]*

could be useful in presenting the cross-examining counsel and their contradictory version of events in the most persuadable manner.

The language used to describe the process of cross-examining was also interesting: two participants discussed the notion of "*playing to the jury*" who are the "*audience" [Tom, p. 31, l. 20-21]* and that juries expect "*some dramatic, Oscar winning performance" [Liz, p. 22, l. 29]*. The notion of the courtroom being a theatre (Yong, 1985; Evans, 1993) and the jury as the audience (Boon, 1999; Drew, 1997; Morley, 2015; Ross, 2007) is a well-accustomed concept. Yet, both Mary and Liz's comments allude to a discrepancy between how barristers defend and prosecute cases in real-life and how jurors expect the case to be presented (consistent with pre-existing scripts and stereotypes that jurors bring to the case, resulting in the activation of schematic beliefs and assumptions that influence their decision-making: Devine, 2012).

Subtheme 4.1: Exploiting Inconsistencies

The exploiting of alibi inconsistencies during prosecutorial cross-examination was mentioned by all participants, to the extent of it being considered a *"traditional method" [Maurice, p. 7, l. 17-18]* and a *"classic technique" [Tom, p. 29, l. 20]*. Participants discussed this technique in terms of its applicability to the alibi provider (Tom), the alibi witness (Liz), or both (Mary and Maurice).The manner in which inconsistencies are exploited is twofold: either the disparity has already occurred prior to cross-examination (for instance, discrepancies between the police interview compared to their examination-in-chief), thus the prosecution's role is *"putting any inconsistencies" [Liz, p. 15, l. 5]* to the individual on-the-stand. Conversely, it was considered an active attempt by counsel to get an individual to *"move away" [Tom, p. 28, l. 14]* from the details provided in a previous account. Both approaches are designed to elicit between-statement inconsistencies (Vredeveldt et al., 2014), in that there are discrepancies between the present account and those provided hitherto. Even *"very minor" [Tom, p. 28, l. 21]* inconsistencies, such as changes to the nature of the alibi activity, were considered integral as the *"devils in the detail" [Maurice, p. 7, l. 33]*.

> *…if you're prosecuting and the defence get into the witness box and they say something different (…) you know you're very pleased because then you've immediately got inconsistencies to put to them [Mary, p. 13, l. 37-40].*
>
> *They will have been interviewed by the police and will have given erm their story to the police about where they claim there were. So you've got all that of course, so what you can then do is to try and get them to move away from THAT record they gave the police because even (…) what you're then going do is (…) well you've taken them through various bits of evidence and then hopefully, at some point, they will go away from what they told the police. At which point you will the say to them "oh so you actually said you were watching Coronation Street?" You know it might be very minor but it's just something [Tom, p. 28, l. 11-21].*

This is consistent with the approach to alibi evidence advocated for in the legal literature (albeit with reference to alibi witnesses only: Steele, 2020; Stone, 1995), involving "probing the story in detail [to] seek both minor and material inconsistencies" (Stone, 1995, p. 198-199). In terms of the modes of questioning used in exploiting inconsistencies, several specific question types were endorsed by participants. Tom gave examples of leading questions that could be used to the prosecution's advantage during defendant cross-examination, such as *"you have been to that place before haven't you?" [Tom, p. 24, l. 25-26]*. In terms of the alibi witness, Maurice advocated *"a more open sort of question" [Maurice, p. 18, l. 26] "so if they're winging it (…) I wouldn't give the witness any sort of clue" [Maurice, p. 18, l. 41-42]* as to the level of detail given by the defendant and/or other corroborating witnesses. Additionally, the use of multiple questions to ascertain precise information was referenced by Liz, Maurice, and Tom. Once a statement was made that in some way contradicted previous statements or evidence, further closed questioning to establish certainty on that point was suggested so that "*you've tied them down to this, you've made it very very certain, you've got them in court to swear blind" [Tom, p. 28, l. 36-37].* Subsequently, the discrepancy should be made clear before the court, in that "*you point that out to the jury 'there it is'" [Maurice, p. 18, l. 19-20]*, thus insinuating the testimony provided is erroneous or, more likely, deceptive (Allen et al., 2015; Boon, 1999). In instances where a definitive statement is made, one that is known to the counsel to be inaccurate or inconsistent, the individual should be led in such a way to assert their belief in it resolutely (Boon, 1999; Stone, 1995).

> *Where they were sitting? What was spoken about? Er ok (…) was there anything unusual or anything significant? Why the person was there, who'd invited them? Er what you had (…) what did you have to eat? You know and this sort of thing, what did you do afterwards? Erm so there's a number of things as I say just going into the detail [Maurice, p. 15, l. 2-8].*

> *…whilst they say they are really sure about something and you know, that actually they've said something completely different on a different occasion, you say "oh gosh, you know, are you sure about that? Right ok, so how sure are you?" and they say "oh yeah dead sure" "right ok Mr so and so can I take you back to" and then you spring it on them and they'll like "ooooh" and you're like "well which one is it, is it what you telling the court today or is it what you told the police two hours after this incident?" and the jury are then thinking 'woah' [Liz, p. 16, l. 31-40].*

The use of leading, multiple, and closed modes of questioning are admissible and indeed actively encouraged in cross-examination, to achieve the ultimate aim of discrediting and undermining the credibility of the evidence provided (Allen et al., 2015; Henderson et al., 2016; Pratt, 2011). Yet, such questions are problematic in that they imply, confabulate, control, or limit information or details provided, so only favourable material to the counsel's case is obtained (Clark, 2011; Kebbell et al., 2003; Morley, 2015; Nolan, 2011). Research has demonstrated that such questions are of detriment to the accuracy and consistency of eyewitness accounts (e.g., Gous & Wheatcroft, 2020; K. Hanna et al., 2012; Jack & Zajac, 2014; Valentine & Maras, 2011; Wheatcroft & Ellison, 2012; Wheatcroft & Woods, 2010, although see Wade & Spearing, 2023 for paradoxes) and negatively affect mock juror's ability to reliably assess such information (Kebbell et al., 2010). Lively et al. (2019) concluded that barrister questioning during cross-examination of adult witnesses was counterintuitive to the recommended practices in investigative interviewing for gaining complete and accurate information. As previously noted, criminal advocacy is less about achieving the 'best' evidence and more about what is in the best interests of the client and their case (Henderson, 2015, 2016). Yet, in cases involving eyewitness memory for example, the Turnbull directions (CPS, 2018b; *R. v Turnbull*, 1977) dictate jurors can be educated on known issues with such evidential material designed to improve its evaluation by juries, perhaps counteracting the detrimental effect such questioning techniques may have on their decision-making. There is no such provision in place for alibi evidence, despite weak

alibi evidence being a leading contributory factor in US miscarriages of justice (Connors et al., 1996; Heath et al., 2021; Wells et al., 1998) and its role in instances of wrongful convictions within England and Wales (such as Sam Hallam: Evidence-Based Justice Lab, no date). Indeed, Heath et al. (2021) noted that the very technique of attacking an alibis credibility based on testimonial inconsistencies featured prominently in the 246 examined cases of wrongful convictions where the defendant had an alibi defence. Thus, the resulting recommendations to ensure a fair and neutral CJS, thus mitigating for potential miscarriages of justice, are twofold: consideration must be given to improving the awareness and handling of alibi evidence by barristers and, relatedly, jurors should be reliably informed and educated on alibi evidence to ensure an objective assessment as to the veracity of the defence offered (unhindered by the manner in which the evidence is presented by counsel).

Participants noted that the exploitation of between-statement inconsistencies was designed to undermine the global believability of the defendant and their alibi defence. This is perhaps best summed up as *"the way you undermine someone's credibility is to look for inconsistencies" [Tom, p. 27, l. 34-35]*. Tom noted that, as a result of such inconsistencies, it is assumed the jury will view them as uncredible or unreliable as an alibi provider or witness. In turn, the jury will side with the prosecution and their proposed version of events, thus finding the defendant guilty.

> *It shows that they MUST be lying in some respect. Once you've showed they've lied a little bit, then the jury will just swing with the prosecution because you've shown that they've already started to lie… [Tom, p. 18, l. 16-19].*

Despite the knowledge that memory for alibis is unreliable (Charman et al., 2019; Crozier et al., 2017), and genuine mistakes in accounts are a common occurrence (Cardenas et al., 2021; Leins & Charman, 2013; Olson & Charman, 2012; Strange et al., 2014), barristers in this study expected the alibi provided to be entirely unchanged between and across accounts. As per the consistency heuristic (Granhag & Strömwall, 2001; Strömwall et al., 2003; Vernham et al., 2020), alibi inconsistency was equated with dishonesty and subsequently guilt. This view is consistent with actual and mock police investigators' (Culhane & Hosch, 2012;

Dysart & Strange, 2012; Price & Dahl, 2017) perceptions of the consistency of suspect's accounts. Maurice commented that *"the bigger the detail that's inconsistent, the more glaring the falsity of the er (…) alibi" [Maurice, p. 16, l. 7-9]*. However, even minor inconsistencies, for example the nature of the alibi activity, from *"oh no no, I wasn't watching television at all, I was doing this, I was making the tea, I was walking the dog" [Tom, p. 28, l. 29-30]*, were seen as indicative of dishonesty. This is despite literature (e.g., Cardenas et al., 2021; Leins & Charman, 2013; Olson & Charman, 2012; Strange et al., 2014) suggesting otherwise. For instance, Strange et al. (2014) demonstrated that innocent alibi providers who were asked to recall an alibi at two different time points (with a one-week delay in between) were entirely consistent in less than 50% of cases. Common discrepancies were of event features such as alibi activity (32% inconsistent and 28% partially inconsistent) and temporal details (44% inconsistent and 22% partly inconsistent), which were inaccurately recalled due to the mundanity of the event at the time of encoding. Where inconsistencies between accounts did occur, either naturally or due to specific strategies and techniques used during cross-examination, barristers in this study suggested this should be presented to the jury in a manner to suggest the individual is being deceptive and thus the alibi lacking in credibility. Yet, as noted in subtheme 2.1, some participants discretely recognised the impact of memory veracity on alibi generation and recall (and thus could potentially be used by the defence to present the account more favourably in court). Addressing the absent, or sporadic, understanding of memory errors in alibi inconsistencies on the part of all barristers, through the implementation of psychologically informed guidance and training, is imperative to improve awareness and handling of alibi evidence in the courtroom.

The link between consistency and credibility appears to be of central importance to jurors perception of the overall believability of the defence, in that an efficacious alibi is one that is constant and unchanged by all parties throughout. If an inconsistency can be demonstrated, *"what you have proved is that they are not reliable" [Tom, p. 29, l. 7-8]*. Within an investigative context, Culhane and Hosch (2012) found that suspects who changed their alibi over the course of a police interview, even if the change strengthened the account provided, were viewed less favourably in terms of believability and honesty, and were seen as more likely to be

guilty. This also appears to be the case for alibi witnesses, as mock investigators viewed corroborating statements given after a lengthy time delay sceptically when there were major and minor contradictions present (Price & Dahl, 2017). Only one such study has examined inconsistency within the context of mock juror decision-making (Allison et al., 2023), demonstrating similar findings in that defendants are viewed as having less believable alibis and are judged more harshly in terms of character trait ratings (for credibility, persuasiveness, honesty, knowledgeability, and trustworthiness). Alibis which were entirely maintained or consistent throughout were viewed most favourably (Allison et al., 2023; Culhane & Hosch, 2012; Price & Dahl, 2017). Given exploiting inconsistencies is key to discrediting and undermining an alibi (witness: Stone, 1995, in addition to the findings of this study), and a strategy often employed in miscarriage of justice cases involving an alibi defence (Heath et al., 2021), it is of particular pertinence that future research seeks to redress this paucity by examining the effect of alibi between-statement inconsistencies when given on-the-stand and in direct response to prosecutorial questioning.

Subtheme 4.2: Discrediting Character

As a subcomponent to the overall theme of prosecutorial cross-examination as a means of discrediting and undermining an alibi defence, all participants discussed discrediting of character as a recommended strategy: either in terms of the manner and demeanour of the defendant and/or alibi witness during cross-examination (Tom) or the use of previous convictions to indicate that the individual is somewhat less than credible (Mary and Maurice), or both (Liz). It was recognised that was a means to *"indirectly attack" [Maurice, p. 16, l. 26]* the credibility of an alibi, outside the attenuation of the story itself, but one that is beneficial for the prosecution's case regardless.

> *If they lost their composure and they start shouting and so on (…) you say, "why are you getting so angry about this, I'm just pointing out there is inconsistencies. You know you're an angry man aren't you?" That shows a character flaw… [Tom, p. 31, l. 18-24].*
>
> *…your alibi witness has got previous convictions which, as a prosecutor, you've managed to get before the court, I wouldn't have*

thought they're going to be regarded highly by the jury [Mary, p. 26-27, l. 40-3].

Discrediting an individual's character through the aforementioned means demonstrates an understanding that some jurors may rely on peripheral processing to evaluate evidence, as per the ELM (Petty & Cacioppo, 1986). Highlighting flaws in a defendant or witnesses appearance or demeanour, or referring to a prior offending history, may cause jurors to rely on contextual or peripheral cues to evaluate the source heuristically (Allison & Brimacombe, 2010). In turn, jurors may neglect to evaluate the credibility of the evidence based on rationality and soundness via central processing (Petty & Cacioppo, 1986). Furthermore, the "Director's Cut" Model (Devine, 2012) highlight the activation of pre-existing scripts and stereotypes regarding a defendant's previous convictions as a key characteristic in a juror's mental representation when determining responsibility and culpability. As such, highlighting such factors within the prosecution's narrative may contribute to convincing jurors of their proposed version of events, and ultimately to juries drawing the corresponding inference when it comes to verdict.

Tom and Liz discussed the *"demeanour" [Liz, p. 23, l. 9]* of the defendant and/or alibi witness in terms of their presentation on-the-stand, particularly individuals who present with *"character flaws" [Tom, p. 31, l. 24]* such as being "*hot-headed, angry (…) stubborn, aggressive, (…) arrogant" [Liz, p. 20, l. 34-35]* or *"you know some witnesses just look dishonest, some witnesses are not very articulate" [Liz, p. 21, l. 18-20].* Both participants also made noteworthy remarks regarding the appearance of the individual and its impact on jury decision-making.

…the jury will view them in a less positive light. So they might be wearing their nice (…) you know suit to come to court and all the rest of it but as soon as they are shouting and screaming and swearing at you, then you say "well you're clearly a very angry man" [Tom, p. 31, l. 27-31].

Because the best evidence is having the witness come into court and they can judge that witness on their appearance and their demeanour in the witness box [Liz, p. 23, l. 1-4].

Both participants displayed a degree of awareness that juries may make judgements on an individual's appearance and demeanour, on its own or in conjunction with the evidence presented over the course of proceedings. Defendants who presented as angry are evaluated more negatively (Savitsky & Sim, 1974) and are subject to more punitive punishments (McCabe, 2016) than other emotional states. Whilst this technique focuses on a distinct area outside of discrediting and undermining the alibi itself, it again feeds into the notion of an alibis credibility (or lack of). Combining the strategy of discrediting a defendant's character with other perceived weak aspects of the alibi, for example corroboration from a motivated witness and between-statement inconsistencies, were used by participants to undermine the reliability and trustworthiness of the whole defence.

> *…you also say to the jury "remember when I spoke to the defendant and asked him about some inconsistencies, he got very defensive and got very angry. He showed himself to be an UNRELIABLE witness. Well members of jury, I have given you two people who have NO reason to lie, 'blah, blah, blah* [*sic*]*'. On the other hand you've got a defendant whose got his girlfriend swearing blind that he was with her, we can't trust her can we members of the jury? And you've got a defendant who's told the police one thing, and told the court something else, and he swore to both people that was the truth. So you can't trust the defendant can you?" [Tom, p. 32, l. 22-32].*

In terms of bad character evidence in the form of the defendant and/or alibi witness' previous convictions (Mary and Maurice discussed both parties, whereas Liz focused specifically on the latter), participants acknowledged that there are clear "*rules" [Maurice, p. 16, l. 16]* and "*applications*" *[Mary, p. 26, l. 37]* in place regarding its admissibility. Given the high incidence rate of repeat offending (HM Government, 2018; Taylor, 2022), it is conceivable that such evidence could be admitted before the court in real-world practice to undermine the credibility of the defendant and their defence. Part 11 (Sections 98-113) of the CJA 2003 permits the admission of bad character evidence for defendants in criminal proceedings, providing it is deemed to be of relevance to the offence in question. The CPS (2018a) note previous convictions for alibi corroborators should be assessed as per advance disclosure requirements, and the defence should expect to be questioned on this where appropriate (Steele, 2020), so it is not inconceivable this would be the case for the defendant also. Of note were convictions that demonstrate a propensity for a similar

pattern of offending behaviour, or prior offences which evidence dishonesty. Mary acknowledged that whilst such evidence doesn't go before the court as a "*matter of course (…) there's far more opportunity for that evidence to go before the jury now than there was" [Mary, p. 26, l. 19-21].*

> *Broadly speaking, you need the courts permission and, broadly speaking, it clearly needs to be relevant [Maurice, p. 16, l. 19-21].*
>
> *…if your defendant has a number of convictions for burglary, dressed in the same unusual way, then whilst you're not as it were (…) saying anything about his alibi as such erm (…) another plank of your case will be 'well hold on, there aren't many people who do this'… [Maurice, p. 16-17, l. 35-1].*
>
> *Sometimes you might have an alibi witness who has erm a lot of previous convictions and again, the job is easy then, because you can say "well you've been in trouble before" and especially if they've got previous convictions for dishonesty offences. Or offences such as perverting the cause of justice [Liz, p. 12, l. 15-20].*

Prior convictions increase the likelihood of evaluators finding both a defendant guilty and viewing their character negatively as a result (Clary & Shaffer, 1985; Devine & Caughlin, 2014; Greene & Dodge, 1995; Hans & Doob, 1976; Lloyd-Bostock, 2000; Pickel, 1995; Schmittat et al., 2022; Tanford & Cox, 1988; Wissler & Saks, 1985). A prior conviction of the same or similar nature results in greater inferences of guilt compared to dissimilar offences (e.g., Green & Dodge, 1995; Lloyd-Bostock, 2000; Pickel, 1995; Schmittat et al., 2022; Wissler & Saks, 1985), whilst previous convictions for perjury negatively impact on judgements of the defendant's credibility (Tanford & Cox, 1988; Wissler & Saks, 1985). Participants in this study may have highlighted those particular characteristics and offences based on their legal knowledge as to the admissibility of such evidence (i.e., such factors would be considered highly relevant to the case and thus more likely to be allowed before the court). In doing so, this demonstrates that the barristers in this study recognise the potentially prejudicial nature they can have on the opposing counsel's case if submitted. Evidence of a prior offending history may be of salience to the impression formed by jurors and juries (in keeping with the CMIF: Fiske & Neuberg, 1990), further substantiating the adage that there is 'no smoke without fire'.

Participants noted the value of prior conviction evidence to their case, stating that this can "*affect the credibility" [Liz, p. 10, l. 24]* of the individual and can make them appear *"wholly unreliable" [Mary, p. 27, l. 23]*. In fact, Liz acknowledged that such evidence made it *"dead easy (…) to discredit" [Liz, p. 12, l. 22-23]* during cross-examination. This demonstrates that barristers are aware that such evidence, if admissible, has the potential to significantly undermine the credibility of the alibi defence. In turn, there is an expectation that juries will use this evidence to side with the prosecution and ultimately deliver a guilty verdict. This is consistent with the only study to date on prior convictions with an alibi defence (Allison & Brimacombe, 2010), which found that mock jurors deemed defendants with a conviction for a similar offence as more likely to be guilty and have a less believable alibi compared to a dissimilar offence (although with no comparative condition for the absence of prior convictions). The Crown Court Compendium (Judicial College, 2023) notes, in instances where such evidence is admitted before the court, juries should be informed bad character evidence should not be prejudicial in nature and defendants not convicted wholly on this basis. Nonetheless, Allison and Brimacombe (2010) found the presence or absence of judicial instructions pertaining to the use of prior convictions had no significant effect on verdicts. This suggests participants understood the directions, yet failed to use them as instructed, a finding consistent within the wider field of juror decision-making (e.g., Alvarez et al., 2016; Helm, 2021; Lieberman, 2009; Nietzel et al., 1999; Ogloff & Rose, 2005). Contrastingly, some (Honess & Matthews, 2012; Oswald et al., 2009) suggest the relationship between an offending history and its impact on juror and jury decision is not incontrovertible and consideration as to the role and use of such evidence within the wider narrative generated by evaluators is important to explore and consider (Schmittat, 2023). As such, the impact of prior conviction evidence for offences of a similar nature (alongside its interaction with other barristerial cross-examination techniques, namely exploiting alibi inconsistencies) on mock juror and jury decision-making is particularly worthy of future exploration.

Limitations

As discussed earlier in this chapter, the sample size itself was hindered by difficulties recruiting the anticipated number of participants that the study originally set out to. Whilst the justification and reasoning will not be repeated here, the small sample of participants should not detract from the information power within the data (Malterud et al., 2016) and the valuable insights gained from examining this otherwise unexplored topic within the alibi literature. Qualitative research should be judged on the quality and complexity of the information in the data, within the contextual nature of the research itself, and not merely the size of the sample (Braun & Clarke, 2022a; Malterud et al., 2016; Terry et al., 2017). Given the scale and focus of this study (and the thesis as a whole), the emphasis was on achieving an exploratory, small-scale analysis of a noteworthy subject matter that has direct relevance on how alibis are viewed and evaluated in the courtroom. Still, this should not detract from the importance of future research, with a greater number and diversity of participants, designed to build on the methods and findings used in the present study.

Besides the size of the sample, there were some limitations in that three (of the four) participants were dual-employed as practicing barristers and academics teaching on the BPTC, and all within the same geographical location (Northwest England). Yet, the sample was diverse in their experiences of a range of courtroom settings and representation for varying offence types, with both defence and prosecution roles and experiences reflected on as appropriate. To an extent, this dual-employment could limit or 'truncate' the range of perceptions, attitudes, experiences, and questioning approaches described by participants in this study. For example, how much did this academic perspective, so to speak, impact on the views and practices discussed? Alternatively, could the use of academics be an asset in that it offers a viewpoint that is reflective of how future barristers may be trained to view and use alibi evidence? King et al. (2019) encourages diversity of participants in qualitative research, in that a study should seek to recruit a sample of those who represent a variety of positions and perspectives, so as to reflect variances in experiences. Thus, future research should seek to complement and develop the findings of the present study by providing a large-scale review of barristers' perceptions, beliefs, experiences, and approaches to alibi evidence that encompasses a diverse range of specialisms and legal experiences. This could be

achieved using a survey, for example (allowing for the generation of both quantitative and qualitative data, as per the benefits of a mixed methodological approach: Creamer & Reeping, 2020; Creswell & Plano Clark, 2017; Tashakkori et al., 2021; Todd et al., 2004).

Summary and Conclusions

In summary, this study aimed to qualitatively explore criminal barristers understanding and experiences of alibi evidence in the courtroom, the first of its kind within the criminal jurisdiction of England and Wales. Specifically, this exploratory research aimed to understand barristers personal and professional perceptions, attitudes, and experiences of alibi evidence and how it is presented, questioned, and challenged within the courtroom. The novel findings demonstrated a barristers role in presenting alibi evidence is complex, involving a need for critical evaluation and the ability to adapt the strategies, techniques, and questioning employed in court accordingly. Yet, this was coupled with a distinct professional scepticism and distrust of such evidence, to the extent of consideration as to its potential detriment to a barristers professional practice and integrity. The credibility of an alibi is dependent on the strength of the corroborating evidence, whether that be physical or person evidence, and the stage at which the defence is disclosed. Yet there was a noteworthy recognition by some as to difficulties in alibi memory veracity, contrary to that of most law enforcement (Dysart & Strange, 2012) and some laypeople (Portnoy et al., 2020). The use of 5WH questions and a story narrative, albeit one in which the information provided is offered in a carefully controlled manner, is advocated for in the presentation of an alibi during direct examination. The primary function of cross-examination is to discredit and undermine the credibility of the alibi, achieved through the techniques of exploiting alibi between-statement inconsistencies using leading, multiple, and closed questions and discrediting a defendant and/or alibi witnesses manner, demeanour, or character. Accordingly, barristers expected an alibi account to be entirely unchanged, contrary to the consensus that genuine discrepancies are to be expected (Cardenas et al., 2021; Leins & Charman, 2013; Olson & Charman, 2012; Strange et al., 2014). Taken together, the findings are the first to evidence specific approaches used in the

courtroom presentation and examination of alibi evidence, particularly those of relevance to the prosecutorial cross-examination of the defendant and their defence (with previous legal literature focusing solely on the alibi witness: Steele, 2020; Stone, 1995). Yet, the effectiveness and impactfulness of such techniques on (mock) juror and jury evaluations, perceptions, and decisions are, as yet, unsubstantiated (addressed in the second and third thesis study, as detailed in Chapter Five and Six).

Such findings provide a contribution to the evidence base, offering an exploration into the views and practices of alibi evidence in the courtroom from the perspective of a sample of barristers with a wealth of experience in Criminal Law. The existing literature has thus far neglected to understand how alibis are perceived and used by those individuals directly responsible for presenting evidence, discounting their voice (Creswell, 2014) on the subject matter, and ignoring the pivotal role barristers play in the evaluation of such evidence in the courtroom, as redressed in this study. One notable outcome is that barristerial knowledge on alibi evidence is varied, with some encouraging awareness as to alibi memory veracity, yet simultaneously undermined by the idealistic expectation for a consistent and unchanged account. This emphasises the need to ensure barristers as a collective profession are reliably informed on alibi evidence, recommended as a function of psychologically informed guidance and training on the subject matter. Beyond the scope of the thesis, the field would further benefit from a large-scale review of barristers' perceptions, beliefs, experiences, and approaches to alibi evidence, aimed at achieving an understanding of current awareness and handling of alibis that encompasses a variety of experiences and specialisations. This suggestion for future research is designed to complement and build upon the findings of the present study (not detract from them), with a focus on the collection of both qualitative and quantitative data in this area being of value. This should be coupled with an improved understanding as to the effectiveness of defence techniques, strategies, and questioning on mock juror evaluations and decision-making.

As previously noted, the key techniques used to undermine and discredit an alibi during cross-examination centred on the exploitation of between-statement inconsistencies and discreditation of the defendant's character through prior

conviction evidence for similar offences (where admissible). Yet, to date, little attention (besides Allison et al., 2023; Allison & Brimacombe, 2010) has been paid to the effect of such legal and non-legal factors on mock juror and jury decision-making, none of which has considered these factors as given on-the-stand and in response to barristerial cross-examination. The findings of the present study demonstrate jurors and juries in real-world practice may be exposed to such practices in the courtroom presentation and examination of the defendant and their defence. This, coupled with the frequency in which alibis are extant in cases involving US miscarriages of justice (Connors et al., 1996; Heath et al., 2021; Wells et al., 1998) and present in instances within England and Wales (e.g., Sam Hallam: Evidence-Based Justice Lab, no date), it is vital that research seeks to examine how such factors impact on mock juror and jury evaluations, perceptions, and ultimately decision-making. In turn, this provides a safeguard against potential wrongful convictions, ensuring fair trials and an effective CJS that upholds it values of objectivity and integrity.

Chapter Five: Study Two - Impact of Barristerial Cross-Examination Techniques on Mock Juror Evaluations of Alibi Evidence

The credibility of an alibi can be damaged, potentially irreparably, by the way it is cross-examined by the prosecution in court (Allen et al., 2015; Henderson et al., 2016; Stone, 1995). Resultingly, those determining culpability (i.e., jurors) are expected to concede with the prosecution's proposed story and ultimately find the defendant guilty of the offence in question (Stone, 1995). The key findings from Study One demonstrated that barristerial cross-examination, with its inherent link to the credibility of the defendant and their alibi, sets out to undermine and discredit the defence through the exploitation of alibi inconsistencies and discrediting of character. Thus, such prosecutorial techniques will be examined in the second study of the thesis (concurrently referred to as Study Two). Specifically, this chapter examines the impact of barristerial cross-examination techniques, namely exploiting inconsistencies in the alibi account and the submission of defendant bad character evidence in the form of similar previous convictions, on mock juror evaluations and decision-making.

Introduction

Alibi (In)Consistency

When a defendant puts forward a defence of alibi, this account will be robustly challenged in the courtroom by the prosecution (Steele, 2020). Of the limited literature that exists (and in relation to alibi witnesses, specifically), Stone (1995) advocates that cross-examination should highlight and indeed lead corroborators in to providing both trivial and substantial inconsistencies in the evidence offered, thereby demonstrating that the alibi is not to be believed. The novel findings of Study One demonstrated that a similar strategy is advocated for in the case of the alibi provider, in that cross-examination should actively encourage a defendant to *"move away" [Tom, p. 28, l. 14]* from a previously provided account,

thereby eliciting between-statement inconsistencies (Vredeveldt et al., 2014). This can be achieved using particular modes of questioning, such as leading, multiple, and closed question types, designed to probe the story in detail. Highlighting or generating even *"very minor" [Tom, p. 28, l. 21]* discrepancies were seen as integral in undermining the global credibility of the alibi in the eyes of the jury.

Consistency is strongly associated with credibility, in that alibis which are amended are viewed more sceptically by evaluators than those that are unchanged (Charman et al., 2019). Much of the existing alibi literature has focused on mock or actual police investigators' perceptions of the alibi provider (Culhane & Hosch, 2012; Dysart & Strange, 2012) and alibi witness (Price & Dahl, 2017). Culhane and Hosch (2012) found that suspects who changed their alibi were judged as more likely to be guilty, and with greater suspicion, than those who had maintained their statement. This finding is consistent with the beliefs of senior law enforcement officers, with 81% believing that a change to an alibi is indicative of a suspect having originally been lying (Dysart & Strange, 2012), and 90% of a student population also sharing this perspective (Culhane et al., 2008). With regards to the alibi witness, Price and Dahl (2017) found that participants made a clear distinction between degrees of inconsistency when judging alibi evidence where there was a five-year delay between event and recall. For example, where contradictions on the location and activity of the alibi were present between the suspect and alibi witness (defined in the study as major contradictions), this resulted in higher incidences of guilty verdicts for the suspect and reduced ratings of credibility, accuracy, and honesty for the alibi witness. Minor inconsistencies (defined by said authors as discrepancies concerning the alleged activity) were viewed less harshly by participants (Price & Dahl, 2017), perhaps acknowledging a degree of understanding on their part of the difficulties of alibi generation (also seen, to an extent, in Dysart & Strange, 2012; Portnoy et al., 2020).

Few studies have considered alibi testimonial inconsistencies within the context of the courtroom and mock juror decision-making. Delayed disclosure of an alibi (an ambush alibi: Fawcett, 2015) results in an inherently inconsistent defence (since the defendant's subsequent account as to their whereabouts differs from the original account), although with clear variances to the present study in that the

discrepancies have not occurred on-the-stand. Allison et al. (2020) examined the effect of timing of alibi disclosure on mock juror evaluations, operationalised as the pre-trial disclosure of an alibi one day or 19 days after setting of the trial date. The authors found that defendants with delayed disclosure of an alibi were viewed as significantly less trustworthy, although timing did not significantly affect mock jurors' perceptions as to verdict and alibi believability. Similarly, an ambush alibi was viewed by mock jurors as significantly less reliable than timely alibi disclosure, even when the former was supported by non-motivated witness evidence (Fawcett, 2015). Yet, Allison and Hawes (2023) found no meaningful effect of delayed disclosure on mock jurors' ratings as to alibi believability, nor perceptions of the defendant's character. Only one such study, Allison et al. (2023), has examined mock juror evaluations of alibi inconsistencies that occur contextually within the courtroom. Whilst (in)consistency had no notable effect on verdict, alibis with between-statement inconsistency (operationalised as different at trial to the account provided during the police investigation) were viewed by mock jurors as less believable, and resultingly the defendant as less credible, persuasive, honest, knowledgeable, and trustworthy. Substantiation of such findings was advocated for by the authors, using more ecologically valid materials than those used in their study (that is, a one-page case summary) (Allison et al., 2023).

Taken together, the aforementioned findings (e.g., Allison et al., 2020; Allison et al., 2023; Culhane & Hosch, 2012; Dysart & Strange, 2012; Price & Dahl, 2017) suggest that evaluators are sceptical of an alibi that is in some way inconsistent, believing it to be indicative of a deliberate attempt at deception (as per the consistency heuristic: Granhag & Strömwall, 2001; Strömwall et al., 2003; Vernham et al., 2020). Yet, this contradicts the body of literature that has steadily demonstrated that errors and inconsistencies in an alibi account are commonplace (Charman et al., 2019; Crozier et al., 2017; Laliberte et al., 2021; Leins & Charman, 2013; Matuku & Charman, 2020). Besides those initial findings demonstrated in Allison et al.'s (2023) research, little is currently known about how mock jurors evaluate alibis that are inconsistent when given on-the-stand and in retort to prosecutorial cross-examination. Yet, Study One demonstrated that a sample of barristers see the exploitation of alibi inconsistencies as a *"traditional method" [Maurice, p. 7, l. 17-18]* as *"the way you undermine someone's credibility is to look*

for inconsistencies" [Tom, p. 27, l. 34-35], thus is a technique likely to be encountered by jurors when assessing alibi veracity in real-world practice. This is further compounded by Heath et al. (2021), who demonstrated that such an approach featured prominently in cases of US wrongful convictions where an alibi defence was present. As such, whilst it may be seen by barristers as an effective method in undermining and discrediting an alibis believability, there is a very limited understanding as to what effect it has on mock jurors ability to accurately evaluate such a defence.

Previous Convictions

Behl and Kienzle (2022) note little attention has been paid to non-legal factors in the alibi literature (to reiterate, estimator variables out with of the alibi itself, such as a defendant's character and demeanour). Yet, the key findings from the thesis' first study demonstrate that the discreditation of a defendant's character was an effective means to *"indirectly attack" [Maurice, p. 16, l. 26]* the credibility of an alibi during cross-examination. Whilst there are clear rules pertaining to its relevance and admissibility, evidence of prior convictions (particularly those that demonstrate a similar pattern of offending behaviour) can make a defendant appear *"wholly unreliable" [Mary, p. 27, l. 23]* and it is therefore *"dead easy (…) to discredit" [Liz, p. 12, l. 22-23]* an alibi in this way. Part 11 (Sections 98-113) of the CJA 2003 permits the submission of bad character evidence in criminal proceedings for the defendant. This includes, under Section 101 (1) (d), the admission of the defendant's prior convictions which demonstrate a propensity for offences of the type with which they have been charged (Section 103 (2) CJA 2003). The CPS (2018a) explicitly state a background check for prior convictions should be completed for alibi witnesses, thus it is not inconceivable that this would be the case for the defendant also. Given the high incidence rate of repeat offending (HM Government, 2018; Taylor, 2022), defendant prior convictions could feasibly be admitted in trials involving an alibi defence in a notable number of cases.

The existing psychological literature, albeit not specific to alibis and some of which is dated, has found that the presence of prior convictions resulted in mock

jurors (Clary & Shaffer, 1985; Greene & Dodge, 1995; Pickel, 1995; Tanford & Cox, 1988; Wissler & Saks, 1985) and mock juries' (Hans & Doob, 1976; Lloyd-Bostock, 2000) being more likely to find the defendant guilty of the offence in question (although contrary findings and alternative explanations are also proposed: Honess & Matthews, 2012; Oswald et al., 2009; Schmittat et al., 2022; Schmittat, 2023). The defendant's criminal record contributed to guilty verdicts if their previous conviction were the same as the current offence (Green & Dodge, 1995), in addition to having an adverse impact on sentiments towards to the accused (e.g., defendant is seen as immoral, bad, and dislikeable) (Clary & Shaffer, 1985). Devine's (2012) "Director's Cut" Model notes that defendant prior conviction evidence may trigger stereotypical inferences in mock jurors that 'criminals' are frequently repeat offenders, as often depicted in the media, resulting in the consistent correlation seen between a prior offending history and conviction rates (Devine & Caughlin, 2014). However, little is known, if and how, these interact with alibi evidence, given the dearth of literature on the topic.

Allison and Brimacombe (2010) are the only (US) researchers to date that have specifically examined previous convictions within the alibi literature, utilising simulated police interviews regarding an alibi for the offence of robbery to present and manipulate a defendant's prior offending history. The findings demonstrated defendants convicted of the same offence previously were seen as more likely to be guilty when compared to a previous conviction for different types of crimes (physical assault and perjury). However, prior conviction evidence did not significantly impact on any of the ratings of the defendant's character traits. The is complicated in that negative inferences in general, as seen in salacious alibis (Allison et al., 2014; Allison & Hawes, 2023; Jung et al., 2013; Nieuwkamp et al., 2016), present a more complex picture: it is perhaps not the negative behaviour itself, but more the relevance of it to the offence in question that is key (Allison & Hawes, 2023). Thus, further experimental research on previous convictions is needed to draw more definitive findings, including the evaluation of prior offending within a criminal trial context in England and Wales.

Aim and Hypotheses

The novel findings of Study One established that the prosecution, to discredit and undermine a defendant and their alibi during cross-examination, should exploit alibi between-statement inconsistencies and discredit their character using prior conviction evidence (where available and admissible). These were central strategies designed to undermine the global credibility of the defence, with the expectation that the jury would concede with the prosecution as a result. Whilst alibis that are consistent within an investigative context are viewed more favourably by evaluators, for the most part, than those that are inconsistent (Culhane & Hosch, 2012; Dysart & Strange, 2012; Price & Dahl, 2017), little attention has been paid to the effect of alibi inconsistencies on mock juror evaluations and decision-making (besides one study by Allison et al., 2023). Similarly, the alibi literature has failed to fully address the effect of non-legal factors, such as a prior offending history, in cases involving an alibi defence. Yet, Allison and Brimacombe's (2010) findings (within a US context) demonstrated a prior conviction for a similar offence significantly increased the likelihood of mock jurors reaching a guilty verdict. To date, there has been no research to have examined an alibi where there are between-statement inconsistencies given on-the-stand and in response to barristerial cross-examination, and its interaction with a defendant's prior criminal record. As such, it is not yet known what effect, if any, these legal and non-legal factors have on jurors evaluations and decision-making within the courtroom. It is vital that research seeks to redress this paucity, since alibis are a leading contributory factor in US miscarriages of justice (Connors et al., 1996; Heath et al., 2021; Wells et al., 1998) and are relevant to individual instances of wrongful convictions within England and Wales (e.g., Sam Hallam: Evidence-Based Justice Lab, no date). Thus, an incomplete understanding as to the effect of such factors on mock juror evaluations and decision-making ultimately challenges the integrity and effectiveness of the CJS.

The aim of this study is to quantitatively examine the effect of barristerial cross-examination techniques, specifically exploiting alibi between-statement inconsistencies and submitting defendant bad character evidence in the form of previous convictions for similar offences, on mock jurors evaluations and decision-

making. The study will use a mock juror experimental paradigm, whereby jury-eligible participants will read an excerpt of a mock trial transcript (whereby the variables are manipulated) and complete a series of measures examining their verdict and evaluations of the alibi, defendant, and alibi witness. The effect of such variables on six specific character trait ratings will be examined, akin to previous research (Allison & Brimacombe, 2010; Culhane, 2005; Jung et al., 2013; Olson & Wells, 2004), to provide a quantifiable assessment as to their effect on mock jurors evaluations of the alibi provider and corroborator (Olson & Wells, 2004). Additionally, the effect of the participant demographic characteristics of age and gender on the dependent measures will be considered as part of an additional, exploratory analysis (see section within this chapter entitled *Supplementary Analysis*). Hypotheses, as detailed below, are proposed for some of the assessed measures. Others (for example, measures of certainty in verdict) are more exploratory in nature, thus predictions are not made.

Hypotheses

1. More guilty verdicts are predicted when cross-examination exploits inconsistencies in the alibi, resulting in a changed account, compared to when a consistent account is provided.
2. More guilty verdicts are predicted when cross-examination submits defendant bad character evidence in the form of previous convictions, compared to no previous convictions.
3. Mock jurors will rate alibi evidence as less believable when cross-examination exploits inconsistencies in the alibi, resulting in a changed account, than when a consistent account is provided.
4. Mock jurors will rate alibi evidence as less believable when cross-examination submits defendant previous convictions, than when no defendant previous convictions are submitted.
5. The defendant will be rated by mock jurors as more likely to have committed the offence when cross-examination exploits inconsistencies in the alibi, resulting in a changed account, than when a consistent account is provided.

6. The defendant will be rated by mock jurors as more likely to have committed the offence when cross-examination submits defendant previous convictions, than when no defendant previous convictions are submitted.
7. The defendant will be rated by mock jurors as less likely to be described as credible, honest, persuasive, knowledgeable, competent, and intelligent when cross-examination exploits inconsistencies in the alibi, resulting in a changed account, compared to when a consistent account is provided.
8. The defendant will be rated by mock jurors as less likely to be described as credible, honest, persuasive, knowledgeable, competent, and intelligent when cross-examination submits defendant previous convictions compared to no defendant previous convictions.

Method

Pilot Study

A small-scale pilot study was conducted with four participants (three that identified as male, and one that identified as female, all between the ages of 21 and 35 years old), recruited via opportunity sampling. The focus of the pilot study was to test the clarity and suitability of the materials: therefore, participants were asked to openly discuss their opinions, perceptions, and so forth of the materials whilst completing the study, with the results themselves being of lesser importance.

Pilot Materials

To ensure the validity of the materials used for the study, the trial transcript was based on a genuine case that had been heard before a criminal court in England[9]. To gather information on real-world criminal cases, a systematic search of the British and Irish Legal Information Institute (BAILII) database was conducted. As cases held within the BAILII database have previously been heard at trial, the criteria for prosecution had been satisfied and there was sufficient evidence present to merit it going before a criminal court, as per the Code for Crown Prosecutors (CPS, 2018c) criteria for pursing prosecution. The following search criteria for cases was used:

a. Alibi evidence, as the primary form of defence, where there was some degree of inconsistency between police statements/accounts given by the defendant.
b. Submission of bad character evidence by the prosecution, specifically previous conviction/s.
c. Case took place in England or Wales.
d. Case took place after 2003, following the introduction of the CJA 2003 and legalisation regarding the submission of bad character evidence.

[9] The same real-life case was used for both the pilot study and main study, albeit with some amendments to the trial transcripts in the latter iteration.

e. Sufficient information as to the nature of the offence, including the case for both the defending and prosecution counsels, provided.

A search of the database, with the criteria of alibi and bad character, resulted in 132 cases being retrieved. These were further filtered by results with a relevance rank rating of more than 2%, resulting in 62 cases. These were each reviewed, and five cases were shortlisted in line with the criteria (see Appendix 10 for shortlisting and selection process). The case chosen for the study was selected as it was evidentially equivocal in nature, in that there was evidence to support both the defence and prosecution's proposed version of events. In particular, the prosecution's case contained limited forensic evidence (only that of a partial footprint), which was a necessary consideration to avoid the CSI effect (Baskin & Sommers, 2010; Hawkins & Scheer, 2017; Klentz et al., 2020; Lodge & Zloteanu, 2020; Maeder et al., 2017; Mancini, 2013; Shelton et al., 2006). As such, it was anticipated that the limited forensic evidence present in this case would avoid this.

The case (*R. v South*, 2011) was a trial for the offence of burglary, in which a shared house was burgled, and several items were taken. The court judgement documentation summarised the prosecution and defence's case, as detailed.

> *At the trial the prosecution case was that the appellant had burgled the house. The prosecution relied on (1) the forensic evidence concerning the footmarks on the envelopes [found at the crime scene], which the forensic scientist said provided "moderately strong" evidence as coming from the footwear seized from the appellant. (2) The prosecution relied on the fact that the iPod which the victim had said was his and was taken from the house was found in the appellant's possessions upon arrest. (3) The prosecution was permitted to adduce "bad character" evidence of the appellant's previous convictions concerning dwelling house burglaries. The prosecution said that those convictions demonstrated a propensity to commit similar offences such as this one. (4) The prosecution relied upon the fact that the appellant had had the opportunity to put forward his alibi defence and an explanation of how the iPod came to be in his possession when he was arrested and cautioned but he had not done so. The defence case was that between 10.30 or 11am until about 4pm on 13 November 2009, the appellant had been at the house of* [witness name]*, helping him repair a motorcycle. The appellant said he had not been involved in the burglary. His evidence was that he had bought the iPod from a beggar who had asked £10 for it, saying*

> *that he (the beggar) had found it in a gutter. The appellant said in evidence that he had given the beggar £3 for it to "get him off my back"* (*R. v. South*, 2011, para. 9 & 10).

The index offence of burglary for the (pilot and main) study was unchanged from the original offence detailed in the real-world case of *R. v South* (2011). This ensured that the offence, and its evidence, was reflective of one that would merit being heard before a criminal (Crown) court (CPS, 2018c). Within the alibi literature, studies employing a similar mock juror paradigm have commonly used burglary as an index offence (see, for example, Allison et al., 2020; Allison et al., 2024; Maeder & Dempsey, 2012). Some attention has been paid to the type or seriousness of the offence used in cases involving an alibi defence (Allison et al., 2020; Hosch et al., 2011; Jung et al., 2013; Snow & Warren, 2018). The findings demonstrate that the more serious the crime, the longer custodial sentence that is recommended (Hosch et al., 2011; Jung et al., 2013) and the less believable the alibi is deemed to be (Snow & Warren, 2018). Although, Allison et al. (2020) found contradictory findings, with no significant effect of crime seriousness. Jung et al. (2013) found that longer prison sentences were recommend for cases involving a sexual offence compared to those of a non-sexual nature (although with no effect of crime type on verdict decisions, alibi believability ratings, or perceptions of the defendant). This was noted as consistent with the view that the more serious the crime, the more severe the punishment imposed, and suggestive that the varying nature of offences (and perhaps sexual offences, in particular) may have some influence on evaluations of the defence itself.

In the present study, burglary was used as the index offence as it is high volume crime, thus a common occurrence for courts. This was evident in that it was possible to access details of a real-world case of this type, that subsequently allowed stimulus materials to be devised that were of high ecological validity and realism. Given it was not feasible to examine every crime type, one offence needed to be selected, and burglary was deemed the most apt, even more so given its use in prior alibi literature (e.g., Allison et al., 2020; Allison et al., 2024; Maeder & Dempsey, 2012). Despite this, as burglary is an offence of lesser seriousness, it is possible that that in itself may (or may not) have had a discernible influence on the decision-making of participants. However, in the absence of any comparative

offence/s, it is not possible to make a definitive assertion either way (and could be of relevant consideration in future research).

Using the case details, fabricated trial transcripts were devised. Identifiable data were changed from the real case to ensure anonymity and minor details of the case were modernised (for instance, the stolen iPod was changed to an iPhone 6). The year of the offence was revised to 2017 (as opposed to 2009) and subsequent trial to 2018 (from 2010)[10], whilst the years in which the previous convictions were committed were also updated (whilst still maintaining the same period between the current and previous offences).

The transcripts related only to the defence's case, and pilot participants were instructed to consider the merits of the case only on the information detailed within the transcript. The rationale for providing participants with a section of transcript relating to the defence's evidence only, that is the alibi, was to isolate the variable of interest. Otherwise, presenting it as a full case may make it difficult to determine the effect of the alibi in the juror decision-making process. In summary, the transcripts included opening speeches by both the prosecution and defence, followed by the direct examination and cross-examination of the defendant and alibi witness, ending with closing speeches by both counsels. An alibi direction and a bad character direction, if applicable, were also delivered by the judge, taken directly from the Crown Court Compendium (Judicial College, 2018[11]). The presence nor impact of judicial directions has yet to be fully addressed within the alibi literature. Of note, Allison and Brimacombe (2010) found mixed results where judicial instructions are concerned (that is, a direction for prior conviction evidence appeared to be disregarded by mock jurors, yet increased alibi believability ratings), accordingly their efficacy is questionable. However, such directions were included to increase the realism and representation of the materials used.

[10] Note, the study took place in the year 2019-2020.

[11] The 2018 version of the Crown Court Compendium (Judicial College, 2018) was in circulation at the time the study's materials were devised. Thus, the 2018 iteration is referred to where the method/materials are concerned, otherwise more contemporariness versions are cited.

Pilot Design

The initial design on which the pilot study was based had two independent variables, each with two levels: alibi inconsistencies (absent/present) and defendant bad character evidence in the form of previous convictions for the same offences (absent/present), amounting to four experimental conditions. Alibi inconsistencies were manipulated in an exact replication of the real-world case: for the present condition, an alibi was not put forward by way of no comment in the first police interview two days after the alleged offence but submitted as a defence on the first day of the trial some months later (an ambush alibi: Fawcett, 2015). In the absent condition, an alibi was provided at police interview, with the same account being repeated at trial. For the latter variable, previous convictions for burglaries were presented as bad character evidence by the prosecution during cross-examination in the present condition, with no reference made to bad character evidence in the form of previous convictions in the absent condition. Pilot study participants were asked to complete the study as if they were assigned to the condition whereby both independent variables were present. They were, however, informed of the overall design of the research, including the absence of one or both variables in the other experimental conditions. The dependent variables, in questionnaire format, measured the effect of experimental manipulation on verdict, confidence in verdict, alibi believability, and the perceived consistency of the defendant's version of events. A fifth open-ended question asked participants what factors influenced how much they believed, or did not believe, the defendant's story.

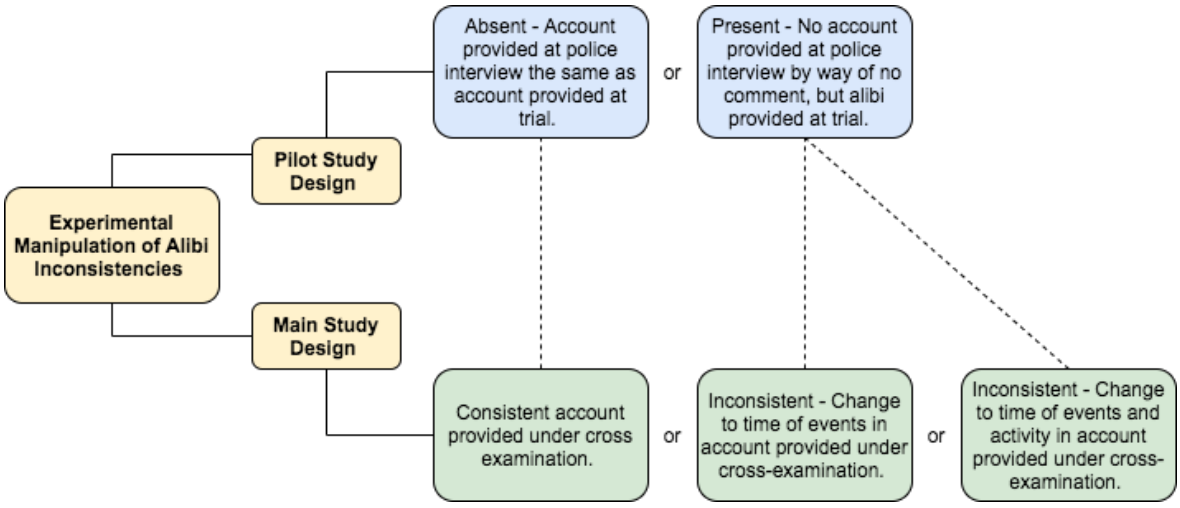
Pilot Outcomes

With regards to the alibi inconsistencies, participants found the nature of the discrepancy to be problematic: all participants noted that you wouldn't simply not say where you were at a given time and date two days prior, before subsequently recalling an alibi several months later, thus assuming that the defendant was guilty as a result. Furthermore, discussions with participants borne out of the pilot study noted that the experimental manipulation did not necessarily address the aim of the study, which was to examine the effect of cross-examination of alibi evidence

through the *exploitation* of inconsistencies, rather than the presentation of an ambush alibi (Fawcett, 2015) per se. As such, the transcripts for the main study were amended so that inconsistencies overtly occurred on-the-stand and in direct response to barristerial questioning during cross-examination. Thus, the independent variable for the main study contained three levels (rather than two, as per the pilot study), detailing either a consistent alibi, an inconsistent alibi with changes to time, or an inconsistent alibi with changes to time and activity. The revised independent variable resulted in some minor detractions from the real-life case however, not so much as to diminish from the overall benefits of using real-world case details. Figure 4 depicts a comparison of the experimental manipulation of alibi inconsistencies in the pilot study and in the main study (further details pertaining to the independent variables for the main study are discussed in the succeeding design section).

Figure 4

Comparison of Experimental Manipulation of Alibi Consistency in Pilot Study Design (Shown in Blue) and Main Study Design (Shown in Green)



For the dependent measure questionnaire, there was an open-ended question asking participants what factor/s influenced how much they believed, or did not believe, the defendant's story. However, participants in the pilot study provided only very brief responses to this question, instead expressing a clear

preference for numerical, closed questions. Therefore, to cover a range of relevant factors that may have impacted on believability, the dependent measures were amended to a similar format as that of previous alibi research (as discussed in further detail in the *Main Study* section: Allison & Brimacombe, 2010; Culhane, 2005; Jung et al., 2013; Olson & Wells, 2004).

Main Study

Design

The main study implemented a quantitative, 2 x 3 between-participants experimental design. Experimental manipulation took place via a written mock trial transcript, hosted online through the Manchester Metropolitan University Qualtrics platform, and participants were randomly allocated via Qualtrics to one of six experimental conditions. The rationale for the use of an experimental design over other means of studying juror decision-making (e.g., the use of archival data: Curley & Peddie, 2024) was its value in terms of internal validity and reliability, allowing the factors under consideration to be carefully manipulated and their effect clearly measured. Comparatively with archival data, it would not be possible to determine the effect of such factors on the outcome of the case due to the high degree of extraneous variables, coupled with the logistical barriers in accessing detailed real-world transcripts to cover a wide range of alibi types and characteristics. Furthermore, the use of an experimental mock juror paradigm is a commonly used and reported design within the academic literature pertaining to alibis (Allison, 2022). Whilst other means of primary data collection could have been used (e.g., interviews with mock jurors), the rich and complex information gained from such an approach would not have been best suited in addressing the aim of the present study.

There were two independent variables, the first (alibi consistency) with three levels and the second (previous convictions) with two levels. For the independent variable of alibi consistency, the nature of the between-statement inconsistencies was based on the findings of Strange et al. (2014), whereby the most frequently mis-recalled aspects of an alibi related to an account's timing and activity (44% and 32%, respectively). The variables, and levels, were as follows:

1. Exploitation of alibi between-statement inconsistencies during cross-examination:

1.1. Consistent account provided under cross-examination (abbreviated to CA for consistent).
1.2. Change to temporal details in account provided under cross-examination (abbreviated to IA – T for inconsistent account – temporal).
1.3. Change to temporal and activity details in account provided under cross-examination (abbreviated to IA – T & A for inconsistent account – temporal and activity).

2. Submission of defendant bad character evidence in the form of previous convictions for similar offences:

2.1. Absence of previous convictions (abbreviated to NPC for no previous convictions).
2.2. Presence of previous convictions (abbreviated to PC for previous convictions).

The dependent variables, in questionnaire format, measured the effect of experimental manipulation on verdict, certainty in verdict, ratings of alibi believability, likelihood of guilt, and evaluations of the defendant and alibi witness credibility, honesty, persuasiveness, knowledge, competency, and intelligence.

Participants

A total of 204 participants took part, with 34 in each condition. A priori power analysis using G*Power (version 3.1; Faul et al., 2007) was conducted for an ANOVA with six groups (with an alpha of .05 and power of .80), to establish minimum sample size requirements to detect a medium effect size. The power analysis identified that a minimum of 158 participants would be necessary, which was met and exceeded. The sample was predominantly female, with 154 participants identifying as female, 49 as male and one as non-binary. The mean age of participants was 29.82 (*SD* = 12.85), ranging from 18 to 72 years old. Just over half of the sample were students (51%), followed by 44% who were employed. The remainder were retired (2%), unemployed (1%), and unable to work (1%). The

average age of participants per occupational status was as follows: students (*M* = 21.14, *SD* = 4.12), employed (*M* = 31.16, *SD* = 10.86), retired (*M* = 68.00, *SD* = 3.87), unemployed (*M* = 27.00, *SD* = 1.41), and unable to work (*M* = 48.67, *SD* = 9.29). The attrition (dropout) rate was 20% (equivalent to 60 responses), with those incomplete responses being removed from the dataset and not included in the analysis. Attrition in online modes of data collection (e.g., surveys and questionnaires) is common, with research estimating this can range from 10% (Hoerger, 2010) up to 41% (Galesic, 2006) of the overall response rate.

Participants were recruited using both an opportunity and snowballing sampling method, targeted at both a student and community (i.e., non-student) population. Recruitment media in the form of a poster (Appendix 11) was used to identify participants. The recruitment media contained information pertaining to the aim of the study, a summary of its requirements (i.e., those eligible for jury duty), brief information on what would be involved and how long it would take to complete, a reminder that participation was voluntary and unobligated, and finally an anonymous, reusable hyperlink to access the study directly. Recruitment involved promotion of the study using said recruitment media via social media (X [Twitter]). The study was promoted from the principal researcher's professional X [Twitter] account (shared on eight occasions by the principal researcher, over a period of 11 weeks), in addition to being shared by supervisors and academic colleagues. Relevant parties, such as supervisors, School [Department] of Psychology, and Faculty of Health and Education, were 'tagged' in said posts to aid recruitment. The same posters, in paper format, were placed in two designated staff and student accessible areas for research recruitment on campus in Brooks Building at Manchester Metropolitan University for the duration of data collection. The study was also advertised on the Manchester Metropolitan University Psychology Research Participation Pool website (using the same information detailed on the recruitment media), which was accessible to approximately 1,400 students in the School [Department] of Psychology and who were awarded 20 participation points for taking part. As the research took place entirely online and anonymously, participants who wished to take part accessed the study using said hyperlink and were not required to directly contact or inform the principal researcher in order to partake.

Inclusion Criteria

To ensure a representative population, and one that reflects those individuals who would undertake real-world jury duty, participants were required to meet the requirements for jury service in England and Wales (Juries Act 1974). As such, participants must have met the following inclusion criteria to partake in the study:

a. Between the ages of 18 and 75 years old.
b. Have lived in the United Kingdom, the Channel Islands, or the Isle of Man for a period of at least five years, since the age of 13 years old.
c. Registered to vote in parliamentary or local government elections.
d. Have never received a suspended sentence, community order, or prison sentence for any length of time in the past 10 years.
e. Have never had, or still currently have, a serious mental health condition whereby they may be liable to be detained under the Mental Health Act 1983.

Participants were required to confirm, via the Consent Form, that they met the inclusion criteria or were excluded from participating in the study.

Materials

Mock Trial Transcripts

The trial transcripts (Appendix 15) were based on the same genuine case as in the pilot study, albeit amended in line with the outcomes from said pilot. There were six transcripts in total, one for each of the experimental conditions, which were reviewed by a practising criminal barrister to ensure they were reflective of real-world practice (consistent with Curley & Peddie's, 2024 recommendation for greater interdisciplinary collaboration for research of enhanced ecological validity).

In summary, each of the six transcripts included opening speeches by both the prosecution and defence, followed by the direct examination and cross-examination of the defendant and alibi witness, ending with closing speeches by

both counsels. The content of the cross-examination varied depending on which experimental condition participants had been randomly assigned to. In line with the Crown Court Compendium (Judicial College, 2018), the judge delivered an alibi direction and, if applicable, a bad character direction to close the transcript.

Opening Speeches

The opening speech by the prosecution introduced the barrister acting on behalf of the Crown and outlined their case against the defendant, including a summary of the offence details, a timeline of events (including date of offence, arrest, and charge), and the forensic evidence in the form of footprints in support of their case. The prosecution also referred to the principles of burden of proof and standard of proof. This section was unchanged across all conditions.

The defence's opening speech introduced the barrister representing the defendant, outlined their responsibility in the case, and briefly detailed the nature of the alibi defence. This was consistent across all conditions.

Direct Examination

The direct examination of the defendant detailed the alibi defence, including details of where he was when the offence was committed and who he alleges he was with at the time. There was reference as to how the defendant came into possession of one of the stolen items (that he acquired the item, an iPhone 6, from a beggar). This section included 11 questions and answers between the defendant and defence barrister.

The direct examination of the alibi witness corroborated the defendant's story, in that they were together repairing a motorcycle on the day and time the offence was committed. There were eight questions and answers between the witness and defence barrister.

As per the findings of Study One and existing literature on direct examination (e.g., Grant et al., 2015; Henderson et al., 2016; Kebbell et al., 2003; Morley, 2015; Webb et al., 2013, 2019), both the defendant and alibi witness were questioned using 5WH questions. The controlled narrative of both the alibi provider and alibi witness account were delivered in a sequential and chronological order, akin to that of a story (Mazzocco & Green, 2011; P. H. Miller, 2002; Rideout, 2008; Van Patten, 2012).

Cross-Examination

Following direct examination of the defendant, the prosecution barrister commenced cross-examination. As this was the section of the transcripts where manipulation took place, each one varied depending on the assigned condition. The number of questions asked, and answers given, ranged between eight and 15. The overall length of the transcripts ranged from 4,100 to 4,692 words (for the condition with a consistent alibi [CA] and no previous convictions [NPC], versus the condition with an inconsistent alibi with temporal and activity inconsistencies [IA - T & A] and defendant prior convictions [PC], respectively). For the conditions with an inconsistent alibi account with temporal discrepancies (IA – T) or temporal and activity inconsistencies, this amounted to an additional four (totalling 149 words) or five (amounting to 196 words) questions and responses, correspondingly. For the condition where defendant previous convictions were present (PC), this resulted in a further three questions and responses (197 words, in total) included in the transcript. Additional wording in the closing speeches and judicial instructions were included, where appropriate (an additional eight words for the two conditions with an inconsistent alibi, and a further 191 words where prior conviction evidence was present).

Manipulation check questions were included as a means of attention checking (Fiedler et al., 2021) for both independent variables, and mock jurors (totalling 32 participants) were excluded if they failed one or both of these. A similar number of participants were omitted across each of the six conditions, suggesting that concentration was broadly equivocal between experimental groups. Whilst the

numerical difference in questions and responses between conditions could be considered a confounding factor due to the differing amounts of attention and cognitive demand associated with some conditions, the only variances between transcripts related to the experimental manipulation of the factors under consideration. Such differences were unavoidable (for example, for the variable of defendant previous convictions for similar offences, this was either present or absent, thus the additional three questions and responses could only be included or excluded from the transcript), or kept to a minimum (e.g., presenting only the required amount of information to participants to make the (in)consistency explicit during cross-examination). On average, it took participants 16 minutes to complete the study (ranging from 14 minutes [in the IA – T & A + NPC and CA + PC conditions], to 18 minutes [the IA – T + NPC condition]), and there was no statistically significant difference[12] in the overall completion duration time between conditions. As such, regardless of whether participants were allocated to the condition(s) that contained additional wording, there was no difference in the time that it took to complete the study. In future, filler items could be included to ensure complete constancy across transcripts for all experimental conditions.

Cross-examination across all conditions, at the very least, referred to the defendant being in possession of one of the stolen items upon his arrest. This was the same as in the real case, which partly formed the prosecution's case against the defendant. Inferences were made, using an insinuating mode of questioning (Allen et al., 2015; Boon, 1999), as to the believability of this account, culminating in a statement alleging that the alibi defence was a false one.

In the consistent alibi (CA) account, there were no changes between the alibi provided by the defendant at his police interview and again on-the-stand (both in examination-in-chief and cross-examination). This was manipulated in the trial transcripts by the prosecution barrister probing the defendant on his alibi, in which his recall was an exact replication of the earlier accounts.

[12] $F(2, 198) = .312$, $p = .732$, partial $\eta 2 = 0.004$ (very small).

In the inconsistent alibi accounts with changes to temporal (IA – T) and temporal and activity (IA – T & A) details, the barrister probed the alibi in further detail during cross-examination (Stone, 1995), and, in doing so, the defendant recalled a different account in terms of timing (that he left his home at 9.00 on the morning of the offence to travel to his friend's house, rather than 10.00 as he had originally stated in the police interview and during examination-in-chief). In the IA – T & A condition, the defendant also stated that he watched television at his friend's house (which he had not stated in his prior account during examination-in-chief, despite being specifically asked regarding his engagement with other activities). Closed questions of a probing nature were used, designed to gather further details of an account that can then be used to test the account against other versions or facts (Boon, 1999; Stone, 1995). This was followed by a series of multiple and leading questions in which the barrister secures the defendant's commitment to a particular story or detail, as per the riveting technique, thereby intensifying the subsequent impact of the inconsistency (Boon, 1999; Stone, 1995). Finally, the inconsistency/ies were revealed, with insinuating questions used to put forward an alternative version of events to that of the defendant (i.e., the prosecution's case, that the defendant was in fact responsible for committing the offence), with a view to weakening the alibi evidence to the extent that the defence would be adversely affected (Allen et al., 2015; Boon, 1999; Stone, 1995). Relevant phrases or wording from the interviews with criminal barristers from Study One were incorporated into this section of the transcript for validity purposes.

For those conditions where bad character evidence in the form of previous convictions was present (PC), cross-examination referred to the defendant's multiple prior convictions for dwelling house burglaries under Section 101 (1) (d) of the CJA 2003. This was admitted as evidential material due to such convictions demonstrating a propensity for committing offences like the one in question and "is relevant to an important matter in issue between the defendant and the prosecution" (CJA 2003, Section 101 (1) (d)). Once such evidence had been admitted, the barrister undermined and discredited the defence's case by insinuating that the defendant's previous convictions make the credibility of his account for this offence questionable (Allen et al., 2015). Where prior conviction evidence was absent (NPC), no reference was made in the transcript to a lack of previous convictions.

Cross-examination of the alibi witness followed their examination-in-chief. The prosecution unequivocally highlighted the friendship between the defendant and witness, before implying that he was being dishonest in his account to support the defendant's false alibi. This approach is advocated for by Stone (1995) and recognised by Steele (2020): ensuring the relationship is made explicit to the court, before subsequently alleging that they are lying and do indeed know the true facts, even if there is no factual evidence to suggest this is the case (Ross, 2007). This remained unchanged across all conditions, as it applied whether the alibi inconsistencies or previous convictions were present or not. There were eight questions and answers in this section.

Closing Speeches

Closing speeches by both the prosecution and defence then followed. The prosecution reiterated the case against the defendant, with brief reference to the forensic evidence and the issues raised during cross-examination, closing by asking jurors to deliver a verdict of guilty. The barrister also reminded jurors that the burden of proof lies with the prosecution. There were minor variations in this section, depending on the variables manipulated within the cross-examination section.

The defence then delivered their closing speech, in which they asserted that the defendant did not commit the offence and asked the jurors to deliver a verdict of not guilty. The barrister reiterated that the defendant had an alibi, supported by a witness, that showed they were elsewhere at the time of the offence. The closing speech was unchanged across all conditions.

Judicial Directions

Across all experimental conditions, the transcript closed with an alibi direction delivered by the judge. This was a reminder that the burden of proof lies with the prosecution and that a false alibi is not necessarily indicative of guilt. Such a direction is consistent with the guidelines specified in Section 18.2 of the Crown Court Compendium (Judicial College, 2018).

In those conditions where previous convictions were present, a similar direction was also delivered by the judge in keeping with Section 12.6 of the Crown Court Compendium (Judicial College, 2018). The direction stated that it was for participants, acting as mock jurors, to decide whether the prior convictions admitted before the court demonstrated a propensity for the defendant to behave in such a way. They were informed such convictions could be used only in support of the prosecution's case and the defendant should not be convicted based wholly on such evidence. If mock jurors were unsure that the previous convictions demonstrated a propensity to commit offences of a similar nature, they should be disregarded.

Questionnaire

The questionnaire (Appendix 16), as a measure of the dependent variables, required participants to act in the role of a mock juror. The items on the questionnaire, bar verdict which was dichotomous (to reflect the real-world dichotomous choice available to jurors in England and Wales) and likelihood which was reverse scored, were worded in a manner whereby lower scores were of a negative connotation. Participants were first asked to deliver a verdict (either *guilty* or *not guilty*) and rate their certainty that the verdict was correct on an 11-point Likert-type scale (with 0 being *not at all certain* and 10 being *very certain*). Participants were then asked to rate the believability of the defendant's alibi on an 11-point Likert-type scale (0 being *I do not believe this defendant at all* and 10 being *I believe the defendant completely*), followed by how likely it was that the defendant was the individual who was responsible for committing the offence (where 0 was *very unlikely* and 10 was *very likely*). Both questions were also used in Allison and Brimacombe (2010) and Olson and Wells' (2004) research. Participants subsequently rated the defendant and alibi witness on character traits of credibility, honesty, persuasiveness, knowledge, competency, and intelligence, like that of Jung et al. (2013). This was done using a 10-point rating scale, where 1 is *not at all credible/honest etc.* and 10 is *very credible/honest etc.* Finally, two manipulator check questions for alibi account consistency and previous convictions were included, detailed on a separate page in Qualtrics once participants had completed

the dependent variable questionnaires. A total of 32 participants were excluded for having failed one or both manipulation check questions.

Procedure

As the study took place online[13], all participants accessed it directly via a hyperlink displayed on the recruitment media (accessed via X [Twitter], the Psychology Research Participation Pool website, or through on campus posters). In doing so, they were directed to the Manchester Metropolitan University Qualtrics platform, where the study was hosted in a series of linked webpages. It was estimated that the study would take up to 20 minutes, in total, to complete[14]. Participation was anonymous and no personally identifiable information was collected or stored.

Participants were initially provided with information about the purpose and nature of the study via the electronic Participant Information Form (Appendix 12) and were required to complete an online Consent Form (Appendix 13) before taking part. Participants were only permitted to continue having provided their consent (operationalised by clicking 'next' and continuing with the study, that they agreed to take part). Once participants had done so, they were required to create a participant identification code (for the purposes of withdrawing their data should they wish to do so). Following this, participants were asked to complete a demographic questionnaire (Appendix 14), detailing their gender, age, and occupational status, for descriptive purposes only.

Participants were randomly allocated, via Qualtrics, to one of the experimental conditions. Participants were presented with the trial transcript, which varied depending on the condition to which they had been assigned. The instructions detailed that it was a section of an overall trial so participants were asked to consider the merits of the case only on the information detailed within the

[13] As discussed in the methodology chapter, hosting the study online is a popular means of collecting data in psychological research (Newman et al., 2020). The use of online platforms has the benefits of accessibility, flexibility, and convenience, and is comparable to traditional paper-and-pencil methods (Weigold et al., 2013).

[14] As previously noted, the actual average duration time of the study was 16 minutes.

transcript and to refrain from considering other evidence that could conceivably be considered in a complete trial. Once participants had read the transcript, they were then required to complete a questionnaire. The instructions for the questionnaire outlined the role of a juror and reminded participants to read the questions carefully before answering. The questions, as detailed above, were then presented. Once participants had completed the questionnaire, debrief information (Appendix 17) was provided and the study was complete.

Results

The data was first screened, before being analysed using IBM SPSS Statistics (Version 26). Assumption testing and descriptive and inferential statistical analysis was performed, as per the dependent variables and associated hypotheses (where applicable[15]).

Verdict and Verdict Certainty

Hypothesis one proposed more guilty verdicts when cross-examination exploited inconsistencies in the alibi (changes to temporal details: IA – T and changes to temporal and activity details: IA – T & A), compared to when a consistent account (CA) was provided. Similarly, hypothesis two noted more guilty verdicts when defendant bad character evidence in the form of previous convictions was submitted (PC), compared to no previous convictions (NPC). A chi-square (χ^2) test of association (Field, 2018) was performed, to assess the distribution of guilty and not guilty verdicts. A binomial logistic regression was subsequently run, to determine the effects of the predictor variables of alibi consistency and defendant previous convictions (including interactions) on the outcome of verdict. The analysis is designed to predict the probability of a dichotomous variable (in this instance, guilty or not guilty) based on several independent variables (Clark-Canter, 2019).

As predicted, a chi-squared (χ^2) analysis found that most participants found the defendant guilty (67% or n = 138) compared to not guilty (n = 67), [χ^2 (1) = 25.412, p = < .001][16]. The frequency of verdict (shown in percentages) and verdict certainty across all experimental conditions and the decision reached is shown in Table 6. In summary, this demonstrates that an inconsistent alibi with both temporal and temporal and activity discrepancies (in the absence of defendant bad character evidence) resulted in more guilty verdicts compared to a consistent alibi. When bad

[15] Some dependent variables (for example, measures of certainty in verdict and evaluations of the alibi witnesses character) were exploratory in nature, thus predictions as to hypotheses were not made.

[16] The finding that 67% of participants believed the defendant to be guilty (and 33% did not) demonstrates that the chosen real-world case (*R. v South*, 2011) had sufficient ambiguity with regards to culpability, in that it was not overtly suggestive of one decision over another. This adds further weight to the enhanced validity of the stimulus used in this study and gives reason to be confident in the findings based on these materials.

character evidence in the form of previous convictions was submitted, the majority (76% to 82%) of mock jurors viewed the defendant as guilty, regardless of whether a consistent or inconsistent alibi was provided under cross-examination. This suggests bad character evidence, in general, carries more weight than that of an alibi defence.

A binomal logistic regression analysis was performed, results of which are shown in Table 7. Assumption testing for multicollinearity was performed, with no collinearity effects identified. There were no extreme outliers identified (assessed using standardised residuals more than ±3 standard deviations away from the mean). The logistic regression model was statistically significant, χ^2 (5) = 20.976, p = .001 and the resulting model was a good fit [*H-L* χ^2 (4) = .00, p = 1.00]. An alibi with between-statement inconsistencies in both time and activity was associated with a statistically significant increase in the likelihood of mock jurors providing a guilty verdict compared to a consistent alibi (p = .050, OR = 10.468, 95% CI: 1.004, 109.139). Where the defendant had previous convictions, the likelihood of participants providing a guilty verdict significantly increased (p = .002, OR = 5.250, 95% CI: 1.834, 15.030). The other predictors (CA and IA – T) were not statistically significant and there was no statistically significant interaction of the predictors on the outcome of verdict.

Table 6

Verdict and Certainty in Verdict by Condition and Verdict Reached

					Verdict Certainty per Condition and Verdict Reached			
	Verdict Frequency (%)		Verdict Certainty per Condition		Guilty		Not Guilty	
Variable[a]	Guilty	Not Guilty	*M*	*SD*	*M*	*SD*	*M*	*SD*
Consistent Alibi and No Previous Convictions (CA + NPC)	38.24	61.76	5.74	2.44	6.08	2.66	5.52	2.38
Inconsistent Alibi - Temporal and No Previous Convictions (IA – T + NPC)	58.82	41.18	6.09	1.80	6.80	1.44	5.07	1.82
Inconsistent Alibi – Temporal and Activity and No Previous Convictions (IA – T & A + NPC)	70.59	29.41	6.59	1.76	6.92	1.64	5.80	1.87
Consistent Alibi and Previous Convictions (CA + PC)	76.47	23.53	7.18	1.51	7.12	1.61	7.38	1.19
Inconsistent Alibi – Temporal and Previous Convictions (IA – T + PC)	79.41	20.59	6.41	1.31	6.70	1.24	5.29	.95
Inconsistent Alibi – Temporal and Activity and Previous Convictions (IA – T & A + PC)	82.35	17.65	7.26	2.35	7.71	1.68	5.17	3.87

Note. 0 = *not at all certain*, 10 = *very certain*

Table 7

Logistic Regression for Verdict

Predictors	*B*	*SE B*	Wald's χ^2	*df*	*p*	Odds Ratio
Constant	-2.138	.813	6.907	1	.009	.118
Alibi Consistency						
Consistent Alibi			4.023	2	.134	
Inconsistent Alibi – Temporal	1.501	1.152	1.698	1	.193	4.487
Inconsistent Alibi – Temporal and Activity	2.348	1.196	3.854	1	.050	10.468
Previous Convictions	1.658	.537	9.548	1	.002	5.250
Alibi Believability x Previous Convictions						
Consistent Alibi			1.659	2	.436	
Inconsistent Alibi – Temporal	-.665	.768	.750	1	.386	.514
Inconsistent Alibi – Temporal and Activity	-.993	.795	1.561	1	.212	.370

Note. Consistent alibi acts as the reference category coding for the predictor variable of alibi consistency.

Verdict certainty (on an 11-point Likert-type scale, where 0 was *not at all certain* and 10 was *very certain*) as a dependent variable was exploratory, therefore no hypotheses were offered. Total certainty scores ranged from 5.74 (*SD* = 2.44) in the CA + NPC condition, to 7.26 (*SD* = 2.35) in the IA – T & A + PC condition. A Mann Whitney *U* test was performed to compare verdict certainty across the two outcomes, guilty and not guilty. This is a non-parametric test for difference, often used as an alternative to an independent samples t-test, as was suitable in this case due to non-normally distributed data (Coolican, 2018). Across the whole sample, participants who found the defendant guilty (*M* = 6.98, *SD* = 1.69) were on average more certain that the verdict was correct compared to those who gave a not guilty verdict (*M* = 5.64, *SD* = 2.16), *U* = 6266, *z* = 4.397, *p* = <.001. This suggests that, where a not guilty verdict was given, some ambiguity was present (i.e., that not guilty may have meant unsure about the decision reached, in addition to not guilty, whereas guilty was definitively guilty).

A two-way between-subjects analysis of variance (ANOVA) was performed to examine the interaction effects of alibi consistency (CA, IA – T, and IA – T & A) and previous convictions (NPC and PC) on the continuous variable of verdict certainty (0: *not at all certain* to 10: *very certain*) (Field, 2018; Tabachnick & Fidell, 2014). Testing was performed to assess for the assumptions of the ANOVA. There were two extreme outliers detected (residual values of ±3 standard deviations away from the mean), at -3.34 and -3.87, which were kept in the analysis as interesting values within the distribution (Leys et al., 2019). Normality was assessed using skewness and kurtosis z-scores (statistical significance set at *p* = .01, a z-score of ±2.58) for each cell of the design. In the IA – T & A + PC condition, values were *z*(skew) = -3.85 and *z*(kurtosis) = 3.31. Levene's test for equality of variances assessed and violated the assumption of homogeneity of variances, *p* = .003. As the ANOVA is considered robust to violations of normality (Field, 2018; S. E. Maxwell & Delaney, 2004), the analysis was conducted despite the assumptions for normality not being met.

There was no statistically significant interaction between alibi consistency and previous convictions on verdict certainty, *F*(2, 198) = 1.527*, p* = .220, partial η2 = 0.15 (large). As such, an analysis of the main effects for alibi consistency and

previous convictions was performed. There was no statistically significant main effect of alibi consistency on verdict certainty, $F(2, 198) = 2.250$, $p = .108$, partial $\eta 2 = .022$ (small). There was a significant main effect of previous convictions on certainty in verdict, $F(1, 198) = 9.295$, $p = .003$, partial $\eta 2 = .045$ (small). The unweighted marginal means for no previous convictions was 6.14 (*SE* = 1.89) and 6.95 (*SE* = 1.89) for previous convictions, a mean difference of .814, 95% CI [.287, 1.340], $p = .003$. This indicates, when a defendant has previous convictions, mock jurors were more certain that their verdict was correct than for a defendant with no prior offending history.

Alibi Believability

Participants rated the alibi on how believable it was on an 11-point scale, where 0 was *I do not believe the defendant at all* and 10 was *I believe the defendant completely*. The average ratings for alibi believability (with corroboration in the form of a motivated familiar other: Olson & Wells, 2004) ranged from 4.76 (*SD* = 2.38) in the CA + NPC condition, to 2.68 (*SD* = 1.68) in the IA – T + PC condition. All mean ratings were on the lower end of the 0-10 scale, towards the *I do not believe the defendant at all*. The mean and standard deviations for the measures for each independent variable are shown in Table 8.

In hypotheses three and four, it was deemed alibi evidence would be rated by mock jurors as less believable when cross-examination exploited inconsistencies in the alibi and submitted evidence of the defendant's previous convictions. As such, an ANOVA was performed to assess whether there is a statistically significant interaction between two categorical independent variables (alibi between-statement inconsistencies and defendant prior convictions) in the case of a continuous dependent variable (Field, 2018; Tabachnick & Fidell, 2014). There was one extreme outlier detected, with a residual value of 3.28, which remained in the analysis (Leys et al., 2019). Normality was assessed using skewness and kurtosis z-scores, with all values being non-significant (at $p > .01$). Homogeneity of variances was achieved, as assessed using Levene's Test for equality of variances, $p = .119$.

There was no statistically significant interaction between alibi consistency and previous convictions on ratings of alibi believability, $F(2, 198) = .324$, $p = .724$, partial η2 = .003 (very small). Therefore, main effects analysis was performed for each of the independent variables, with all pairwise comparisons run. There was a significant main effect of alibi consistency on alibi believability ratings, $F(2, 198) = 3.228$, $p = .042$, partial η2 = .032 (small). The unweighted marginal means of ratings of alibi believability for a CA, IA – T, and IA – T & A for those defendant's with and without previous convictions were 4.02 (*SE* = 272), 3.10 (*SE* = .272), and 3.29 (*SE* = .272), respectively. There was one main effect approaching statistical significance, that of mean believability ratings for a CA and an IA - T, with a mean difference of .926, 95% CI [-.01, 185], $p = .051$. This indicated that there is a trend towards participants viewing an alibi which is consistent and unchanged as more believable than when an alibi where inconsistencies in timing are exploited during cross-examination, although this did not achieve statistical significance. As predicted (hypothesis four), there was a significant main effect of defendant previous convictions on alibi believability scores, $F(1, 198)$, $p < .001$, partial η2 = .063 (medium). The unweighted marginal mean for ratings of alibi believability (across all levels of alibi consistency) for defendant's with previous convictions was 2.90 (*SE* = .222), compared to a marginal mean of 4.04 (*SE* = .222) for those with no prior convictions, a statistically significant mean difference of -1.14, 95% CI [-176, -.52], $p < .001$. As anticipated, the alibis of defendants with previous convictions were seen as significantly less believable when compared to those with no prior convictions.

Table 8

Mean Ratings and Standard Deviations for Alibi Believability for Alibi Consistency and Previous Convictions

	Alibi Believability			
	No Previous Convictions		Previous Convictions	
Alibi Consistency	*M*	*SD*	*M*	*SD*
Consistent Alibi	4.76	2.38	3.29	2.32
Inconsistent Alibi – Temporal	3.53	2.14	2.68	1.68
Inconsistent Alibi – Temporal & Activity	3.85	2.39	2.74	2.48

Note. 0 = *I do not believe the defendant*, 10 = *I believe the defendant completely*.

Likelihood

For the measure of likelihood, participants were asked to rate how likely it was that the defendant was the individual responsible for committing the offence (where 0 was *very unlikely* and 10 was *very likely*). The lowest average likelihood rating was for the CA + NPC condition (M = 5.09, SD = 2.29). Conversely, the highest mean likelihood rating was for the IA – T & A + PC condition (M = 7.47, SD = 2.33). All mean ratings were within the top half of the scale, towards *very likely* [that the defendant was the individual who committed the offence]. Table 9 shows mean and standard deviations for likelihood ratings by variables.

A two-way between-subjects ANOVA was performed to examine the effects of alibi consistency and previous convictions for the measure of likelihood, as per the rationale (Field, 2018; Tabachnick & Fidell, 2014). It was predicted (hypotheses five and six) that the defendant would be rated as more likely to have committed the offence when alibi inconsistencies were exploited, and bad character evidence submitted. Assumption testing was conducted, which showed there were three extreme outliers with residual values more than ±3 standard deviations away from the mean, which were kept in the analysis (Leys et al., 2019). Two of the conditions (IA – T and IA – T & A) violated the assumptions of normality, z(skew) = -4.05 and z(kurtosis) = 5.56, p = .01, and z(skew) = -.3.76 and z(kurtosis) = 2.62, p = .01, respectively. Nevertheless, the ANOVA was conducted due to its robustness despite assumptions for normal distribution not being met (Field, 2018; S. E. Maxwell & Delaney, 2004). Levene's Test for Equality was used to assess homogeneity of variances, p = .244, therefore the assumption of homogeneity was met.

The analysis revealed there was a statistically significant interaction between alibi consistent and previous convictions on likelihood that the defendant was the individual responsible for committing the offence, F(2, 198) = 3.778, p = .025, partial η2 = .037 (small) (as depicted in Figure 5). Therefore, an analysis of main effects for each of the variables was performed, using pairwise comparisons and Bonferroni-adjusted p-values. For alibi consistency, there were two statistically

significant simple main effects where the defendant had no previous convictions: mean likelihood ratings for a CA was 5.09 (*SD* = 2.28) compared to 6.41 (*SD* = 1.63) for an IA - T, *p* = .014, and 6.65 (*SD* = 1.63) for an IA – T & A, *p* = .001. Thus, as predicted (hypothesis five), for an alibi where barristerial cross-examination exploited between-statement inconsistencies resulting in testimonial discrepancies, mock jurors were more likely to believe that the defendant was indeed the individual responsible for committing the offence. In terms of simple main effects for prior convictions, mean likelihood ratings for the CA – PC condition were 7.35 (*SD* = 1.68) and 5.09 (*SD* = 2.28) for NPC, a statistically significant mean difference of 2.26, 95% CI [1.35, 3.17], *F*(1, 198) = 24.058, *p* = <.001, partial η2 = .108 (medium). Regardless of the consistency of a defendant's alibi, the presence of prior convictions resulted in an increased belief that the defendant committed the offence in question (hypothesis six). There were no other significant simple main effects.

Table 9

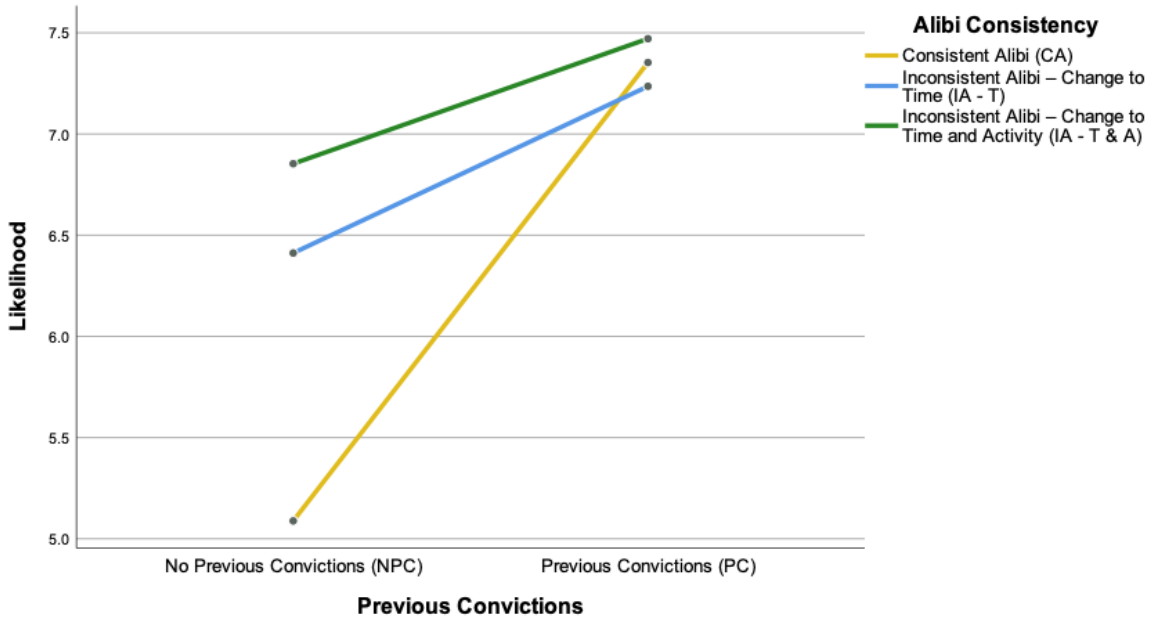
Mean and Standard Deviations for Likelihood for Alibi Consistency and Previous Convictions

	Likelihood			
	No Previous Convictions		Previous Convictions	
Alibi Consistency	*M*	*SD*	*M*	*SD*
Consistent Alibi	5.09	2.29	7.35	1.69
Inconsistent Alibi – Temporal	6.41	1.64	7.24	1.70
Inconsistent Alibi – Temporal & Activity	6.85	1.64	7.47	2.33

Note. 0 = *very unlikely*, 10 = *very likely.*

Figure 5

Effect of Alibi Consistency and Previous Convictions upon Likelihood



Defendant Character Traits

Participants scored the defendant on character traits of credibility, honesty, persuasiveness, knowledge, competency, and intelligence, using a 10-point rating scale (where 1 was *not at all credible/honest/persuasive* and so on and 10 was *very credible/honest/persuasive* etc.). Hypotheses seven and eight noted that mock jurors would rate the defendant as less likely to be described as credible, honest, persuasive, knowledgeable, competent, and intelligent when cross-examination exploited inconsistencies in the alibi, resulting in a changed account, and submitted defendant previous convictions. Table 10 displays the mean and standard deviations for all character trait ratings according to the manipulated variables, with significant main effects denoted.

A two-way multivariate analysis of variance (MANOVA) was run to determine the effects of alibi consistency and previous convictions on the defendant character

traits of credibility, honesty, persuasiveness, knowledge, competency, and intelligence. A MANOVA was best suited as a means of testing several combined dependent variables across the various conditions and is recommended as a conservative measure to avoid Type I error compared to multiple testing (Coolican, 2018). Parametric assumption testing for linearity, multicollinearity, univariate and multivariate outliers, normality, homogeneity of covariance matrices, and homogeneity of variances was performed. A linear relationship between the dependent variables was evident, assessed using a scatterplot. Pearson correlation indicated there was no evidence of multicollinearity ($|r| < 0.9$) for all cells of the design. There were three instances of extreme univariate outliers across all dependent variables, assessed using residual values. The MANOVA was conducted with and without the univariate outliers, with no differences in terms of the significance (or non-significance) of the results, thus said outliers were kept in the analysis. There was one multivariate outlier evident in the dataset, assessed using Mahalanobis distance (using a critical value of 22.46 for six dependent variables, as per Tabachnick & Fidell's, 2014 guidance), *MD* = 23.56. Again, the MANOVA was performed with and without the multivariate outlier, with the data kept in the analysis due to no significant difference in the findings because of its exclusion. In terms of normality, skewness z-scores (significance set at $p = .01$) indicated three cases of positive skewness. These were the honesty traits for an IA – T & A + NPC (z(skew) = 2.96) and for an IA – T + PC (z(skew) = 2.76), and for the competence trait for an IA – T & A + PC (z(skew) = 2.70). However, the analysis was conducted regardless due to the MANOVAs robustness to non-normality (J. H. Bray & S. E. Maxwell, 1985; Weinfurt, 1994). The assumption for homogeneity of covariance matrices was violated, measured using Box's M test ($p < .001$). However, the MANOVA was conducted using Pillai's criterion to evaluate multivariate significance as an alternative (Tabachnick & Fidell, 2014). Homogeneity of variances was achieved, assessed using Levene's Test ($p > .05$).

The interaction effect between alibi consistency and previous convictions on the combined defendant's character did not reach statistical significance, $F(12, 388) = .900$, $p = .547$, $V = .054$, partial η2 = .027 (small). There was a statistically significant main effect of both alibi consistency and previous convictions on the combined dependent variables [$F(12, 388) = 2.730$, $p = .001$, $V = .156$, partial η2 =

.78 (large) and $F(6, 193) = 3.721$, $p = .002$, $V = .104$, partial η2 = .104 (medium), respectively].

As the MANOVA demonstrated significant main effects for both independent variables, follow up univariate two-way ANOVAs were performed for the main effects of both independent variables (Field, 2018; Tabachnick & Fidell, 2014). As predicted (hypothesis seven), there was a statistically significant main effect of alibi consistency on credibility [$F(2, 198) = 10.283$, $p = < .001$, partial η2 = .094 (medium)], honesty [$F(2, 198) = 11.380$, $p = < .001$, partial η2 = .103 (medium)], knowledge [$F(2, 198) = 6.125$, $p = .003$, partial η2 = .058 (small)], competency [$F(2, 198) = 7.286$, $p = .001$, partial η2 = .069 (medium)], and intelligence [$F(2, 198) = 5.686$, $p = .004$, partial η2 = .054 (small)]. As anticipated (hypothesis eight), the independent variable of previous convictions had a significant main effect on all character ratings of the defendant: credibility [$F(1,198) = 20.830$, p = <.001, partial η2 = .095 (medium)], honesty [$F(1,198) = 12.588$, p = <.001, partial η2 = .060 (medium)], persuasiveness [$F(1,198) = 4.887$, p = .028, partial η2 = .024 (small)], knowledge [$F(1,198) = 11.282$, p = .001, partial η2 = .054 (small)], competence [$F(1,198) = 5.620$, p = .019, partial η2 = .028 (small)], and intelligence [$F(1,198) = 7.426$, p = .007, partial η2 = .036] (small).

Post hoc Tukey pairwise comparisons were run for the differences in mean defendant character ratings between the three levels of alibi consistency. Ratings of credibility were 1.21, 95% CI [.49, 1.93], $p = <.001$ and 1.19, 95% CI [.47, 1.91], $p = <.001$ higher in the CA condition compared to the IA – T and IA – T & A conditions, respectively. This means, when the defendant had a consistent alibi, they were evaluated by participants as more credible than if their alibi contained inconsistencies (with no significant differences between the two levels of alibi consistency). In terms of the character trait of honesty, in the IA – T and IA – T & A conditions, this resulted in lower mean ratings of -1.37, 95% CI [-2.11, -.62], $p = < .001$ and -1.22, 95% CI [-1.96, -.48], $p = < .001$ respectively, compared to the CA condition (with no significant mean differences between the inconsistent conditions). Thus, an inconsistent alibi resulted in lower ratings of the defendant's honesty compared to when their account was consistent in the details provided. For ratings of the defendant's knowledge there was only one significant mean difference, that

of the CA condition compared to the IA – T & A condition, .97, 95% CI [.30, 1.64], *p* = .002. The difference between a CA and an IA – T was approaching statistical significance (*p* = .059). This finding denoted that mock jurors perceived a defendant as more knowledgeable only when the alibi provided was consistent versus an account which had between-statement discrepancies in both temporal and activity features. Similar results to the findings for the first two character traits were reflected in how competent participants rated the defendant as. Lower ratings were provided for IA – T and IA – T & A compared to a CA, -1.00, 95% CI [-1.83, -.17], *p* = .013 and -1.26, 95% CI [-2.09, -.44], *p* = .001, respectively (with no significant differences between the inconsistent alibis). Finally, for ratings of the defendant's intelligence, there was only one significant mean difference, which was between a CA and an IA – T & A, 1.06, 95% CI [.31, 1.81], *p* = .003. As such, participants viewed a defendant who provided a consistent alibi as more intelligent than a defendant who provided an inconsistent account in both timing and activity during cross-examination (potentially explained by overt inconsistencies being associated with a deliberate, albeit failed, attempt at deception).

Two further exploratory analyses were run, to explore how defendant character traits predicted the independent variables of verdict and alibi believability. A binominal logistic regression analysis was performed to predict the probability of verdict outcome based on the predictors of character trait variables (Clark-Canter, 2019). Using the Box-Tidwell (1962) procedure for continuous independent variables, with a Bonferroni-corrected statistical significance value of .003846 applied as per all 13 terms in the model (Tabachnick & Fidell, 2014), all variables were found to be linearly related with respect of the logit of the dependent variable (*p* > .003846). The logistic regression model was statistically significant, $\chi 2(12) = 109.611$, *p* < .001, however the resulting model was not a good fit to the data (*H-L* $\chi^2 (8) = 19.094$, *p* = .014). As shown in Table 11, of the six predictors, only defendant honesty was statistically significant (p < .001, OR = .398, 95% CI: .269, .589). Lower ratings for honesty were associated with mock jurors providing more guilty verdicts. Multiple regression analysis using the 'Enter' method (Tabachnick & Fidell, 2014) was then performed, using the six defendant character traits as predictors and alibi believability as the (continuous) outcome, to explore how these traits predicted this

second key dependent variable. As previously noted, there was one unusual data point for alibi believability (as demonstrated using residual values, leverage values, and Cook's distance values), which was kept in the analysis. Linearity and homoscedasticity were evident, assessed using partial regression plots for each of the predictor variables and a visual plot inspection of residuals versus predicted values respectively. Independence of residuals was achieved, with a Durbin-Watson statistic of 1.938. There was no evidence of multicollinearity, with no tolerance values for the predictor values that exceeded 0.1. As assessed using a Q-Q plot, the assumption of normality was met. The multiple regression model statistically significantly predicted alibi believability, $F(6, 197) = 76.692$, $p < .001$, adj. $R^2 = .691$. Credibility, honesty, and persuasiveness were statistically significant predictors to the model, as shown in Table 12. Higher ratings of the defendant's credibility, honesty, and persuasiveness were associated with higher alibi believability scores.

Table 10

Mean and Standard Deviations for Defendant Character Traits across Alibi Consistency and Previous Convictions

Defendant Character Traits	Consistent Alibi				Inconsistent Alibi (Change to Time)				Inconsistent Alibi (Change to Time and Activity)			
	No Previous Convictions		Previous Convictions		No Previous Convictions		Previous Convictions		No Previous Convictions		Previous Convictions	
	M	*SD*	*M*	*SD*	*M*	*SD*	*M*	*SD*	*M*	*SD*	*M*	*SD*
Credibility ^** ^^**	5.21	2.01	3.82	1.91	3.65	1.39	2.97	1.45	4.00	2.02	2.65	1.79
Honesty ^** ^^**	5.24	2.06	3.85	1.71	3.44	1.60	2.91	1.56	3.74	2.14	2.91	1.87
Persuasiveness ^^*	4.21	2.03	3.88	1.98	3.82	2.02	3.00	1.54	3.79	2.23	3.09	2.11
Knowledge ^* ^^*	4.79	2.06	3.94	1.71	4.06	1.52	3.38	1.30	3.79	1.49	3.00	1.71
Competency ^* ^^*	5.53	2.22	5.03	2.25	4.65	1.72	3.91	1.55	4.41	2.15	3.62	2.23
Intelligence ^* ^^*	4.94	1.91	4.32	1.97	4.44	1.58	3.50	1.64	3.85	2.05	3.29	1.92

*Note. 1 = not at all, 10 = very. ^ = significant main effect of alibi consistency. ^^ = significant main effect of previous convictions. *p < .05. **p <.001.*

Table 11

Logistic Regression for Verdict per Defendant Character Trait

Predictors	*B*	*SE B*	Wald's χ^2	*df*	*p*	Odds Ratio
Constant	5.448	795	46.968	1	.000	232.332
Honesty	-.921	.200	21.260	1	.000	.398

Table 12

Multiple Regression for Alibi Believability per Defendant Character Trait

Alibi Believability	*B*	95% CI for *B*		*SE B*	β	R^2	ΔR^2
		LL	*UL*				
Model						.70	.69**
Constant	-.418	-.89	-.05	.24			
Credibility	.214*	.03	.39	.09	.18		
Honesty	.685**	.50	.87	.09	.58		
Persuasiveness	.159*	.03	.29	.07	.14		

Note. Model = 'Enter' method in SPSS Statistics. CI = confidence interval; *LL* = lower limit; *UL* = upper limit. *p < .05. **p <.001.

Alibi Witness Character Traits

Whilst neither the testimony nor character of the alibi witness was experimentally manipulated, it was of interest to examine whether the variables manipulated in relation to the defendant had any bearing on the character trait evaluations of credibility, honesty, persuasiveness, knowledge, competency, and intelligence for said witness (where 1 was *not at all credible/honest/persuasive* etc. and 10 was *very credible/honest/persuasive* etc.). As this analysis was exploratory in nature, no predictions were made. The lowest average score for participants evaluations as to the persuasiveness of the witness was 3.65 (*SD* = 1.82) for the IA – T + PC condition, with the highest average rating being 5.06 (*SD* = 2.06) for the CA + NPC condition. Means and standard deviations for each of the character trait ratings for the alibi witness are shown in Table 13, with significant main effects denoted.

Assumption testing for suitability to perform a MANOVA was performed, based on the rationale for testing several dependent variables at one time to reduce the risk of Type I error (Coolican, 2018). However, several correlations between dependent variables (assessed using Pearson correlation) were low. In this instance, running separate two-way ANOVA tests for each of the variables is recommend (Collican, 2019; Tabachnick & Fidell, 2014) and was thus performed for each of the alibi witness character traits. Assumption testing was performed for each test and assumptions met, unless otherwise stated.

There was no statistically significant interaction between alibi consistency and previous convictions on evaluations of the alibi witnesses persuasiveness, $F(2, 198) = .133$, $p = .875$, partial $\eta 2 = .001$ (very small). There was a statistically significant main effect of alibi consistency on alibi witness persuasiveness [$F(2, 198) = 3.143$, $p = .045$, partial $\eta 2 = .031$ (small)], however no significant main effect of previous convictions [$F(1, 198) = 3.596$, $p = .059$, partial $\eta 2 = .018$ (small)]. Pairwise comparisons showed a defendant with an alibi where there were temporal inconsistencies was associated with a mean witness persuasiveness rating -.853, 95% CI [.012, 1.694] lower than for a defendant with a consistent alibi, a difference which is statistically significant, $p = .046$. Thus, the inconsistency of a defendant's

alibi with regards to timing had a consequential impact on mock jurors evaluations of the persuasiveness of the alibi witness and their testimony. There were no other statistically significant main effects for any of the other independent variables.

Table 13

Mean and Standard Deviations for Alibi Witness Character Traits across Alibi Consistency and Previous Convictions

	Consistent Alibi				Inconsistent Alibi (Change to Time)				Inconsistent Alibi (Change to Time and Activity)			
	No Previous Convictions		Previous Convictions		No Previous Convictions		Previous Convictions		No Previous Convictions		Previous Convictions	
Witness Character Traits	*M*	*SD*	*M*	*SD*	*M*	*SD*	*M*	*SD*	*M*	*SD*	*M*	*SD*
Credibility	4.85	2.02	4.29	1.75	4.18	2.04	4.18	1.85	4.91	1.98	4.56	2.33
Honesty	5.18	1.99	4.41	1.99	4.09	1.85	4.24	1.52	4.50	2.16	4.62	2.28
Persuasiveness ^*	5.06	2.06	4.32	1.95	4.03	1.88	3.65	1.82	4.68	1.97	4.18	2.44
Knowledge	4.82	1.98	4.26	1.99	4.06	1.79	4.06	1.52	4.56	2.03	4.47	2.03
Competency	5.38	2.17	4.85	2.23	4.74	2.01	4.15	1.56	5.03	2.36	4.62	2.15
Intelligence	4.97	1.87	4.50	2.11	4.29	1.61	3.97	1.43	4.53	1.88	4.12	2.21

Note. 1 = *not at all*, 10 = *very.* ^ = significant main effect of alibi consistency. ^^ = significant main effect of previous convictions. *p < .05.

Supplementary Analysis

Overview

Whilst the existing alibi literature has considered the effect of the defendant or corroborators demographic characteristics on decision-making (see, for example, Fawcett & Winstanley, 2018; Maeder & Dempsey, 2013; Pozzulo et al., 2014), there is no research to date that had examined the effect of participant characteristics such as age and gender on their outcomes and evaluations within the context of a mock juror paradigm. Within jury research, the use of (often undergraduate) students as participants is commonplace (Krauss & Lieberman, 2017; Wiener et al., 2011) and considered appropriate within a stepped approach to juror and jury research (Curley & Peddie, 2024). As previously discussed, there is little or no difference in verdict decisions between student and community samples (B. H. Bornstein, 1999; B. H. Bornstein et al., 2017; Devine & Caughlin, 2014). However, students tend to be younger, more well-educated, possess contrary legal and political views (with older adults being more authoritarian and conservative in nature than those who are younger: Berg & Vidmar, 1975; B. H. Bornstein et al., 2020), and potentially have different cognitive capabilities (Weiten & Diamond, 1979) and receptiveness to (civil) evidence (McCabe & Krauss, 2011). Similarly, there exists some wider literature in the field which demonstrates that older mock jurors judge a defendant more harshly (where the self-inflicted nature of the defence varied, from substance misuse to a mental health condition: Higgins et al., 2010) and are less accurate in their source memory for trial information (for pre-trial publicity: Ruva & Hudak, 2011), compared to younger participants. As such, it is possible that factors associated with a participants age could potentially have an impact on the manner in which they evaluate (alibi) evidence within the context of a criminal trial.

With regards to gender, there is some literature (for example, Golding et al., 2007; Wayne et al., 2001) to suggest that evaluator gender is of relevance in cases involving sexual violence (whereby women are more likely to convict than men, potentially linked a stronger empathetic response towards the victim: Bottoms et al., 2014, although this relationship is disputed by others: Ellison & Munro, 2010). Yet,

it is unclear if and how this applies in the context of both alibi evidence and offences of a non-sexual nature (as in the present study, where the crime was that of burglary, and thus of a less serious and non-interpersonal nature). Similarly, whereas women and girls are more frequently victims of (sexual) violence compared to men (Schmid et al., 2024), the same is not true for burglary offences. Thus, females may not identify, empathise, and ultimately decide in favour of a victim of the same gender for burglary, in the same way that they might do for a crime of a sexual/violent nature.

The only alibi research of some relevance is by Nieuwkamp et al. (2018) on alibi detection rates, who found that police officers (56% of the sample were male, with a mean age of 45 and an average of 20 years policing experience) were more accurate at detecting truthful accounts when evaluating alibis. In contrast, students (in their study, mostly female [77%] and 21 years old on average) were better at identifying false alibis. Yet, the overall detection accuracy rate (60%) was comparable to other research (Culhane et al., 2013) where a solely student population had been used. Nieuwkamp et al. (2018) suggested that this was due to police officers and students focusing on different aspects of the alibi in their evaluation: the former were more concerned with corroboration and fabrication, whereas the latter placed greater emphasis on the verifiability of the evidence. Interestingly, however, the results demonstrated that students were superior to police officers at detecting inconsistencies in an alibi account. Thus, it could be postulated that mock jurors as evaluators may focus on different aspects of the evidence in their evaluation of alibis compared to the police, which in turn could potentially lead to differences in outcome measures as a function of participant demographic characteristics such as age and gender.

Whilst all participants in the present study met the eligibility criteria for jury duty, the demographic characteristics of those who took part was somewhat skewed towards those who were younger (51% were students, where the average age was 21 years old, compared to the overall mean age of 29 years old per all occupational statuses) and those who identified as female (75%, equating to 154 participants). As such, additional supplementary analysis was conducted to determine the effect of the demographic characteristics of mock juror age and gender on the dependent

variables of verdict, verdict certainty, likelihood of committing the offence, alibi believability, and defendant and witness character trait appraisals. As the analysis was exploratory in nature, no predictions were made.

Results

The data was analysed using IBM SPSS Statistics (Version 29). Assumption testing was performed and met, unless otherwise specified.

Verdict and Verdict Certainty

A binominal logistic regression for verdict using the Enter method, with evaluator age (in years) and gender (1 = female: 0 = non-female) as covariates and alibi consistency and defendant previous convictions as predictor variables, was performed. The logistic regression model for verdict with age and gender as covariates (Block 1) was not statistically significant, χ^2 (2) = 1.418, p = .492. The logistic regression model with alibi consistency and defendant previous convictions as predictor variables (Block 2) was statistically significant, χ^2 (4) = 20.184, p = <.001.

A hierarchical multiple regression[17] with the Enter method was performed to predict the dependent variable of verdict certainty based on the independent variables of alibi consistency and previous convictions, whilst accounting for the covariate influence of mock juror demographics. The model containing only age and gender to predict certainty in verdict was not statistically significant, R^2 = .001, F(2, 201) = .129, p = .879; adjusted R^2 = .-.009. The addition of alibi consistency and previous convictions resulted in a statistically significant increase in the prediction of verdict certainty, R^2 = .053, F(4, 199) = 2.808, p = .027; adjusted R^2 = .034.

[17] A series of hierarchical multiple regressions was performed for the dependent variables of verdict certainty, alibi believability, and likelihood (in comparison to the initial analysis, whereby a series of ANOVAs was performed). A(C)NOVAs and regressions are very similar analyses to one another (Field, 2016), however hierarchical multiple regressions were selected in this instance to allow for the covariates to be entered into the model separate to the independent variables, thereby controlling for any covariance influence.

Alibi Believability

A further hierarchical multiple regression was conducted to predict ratings of alibi believability based on alibi consistency and defendant prior convictions, whilst controlling for participant age and gender. With only the covariates entered, the model was not statistically significant, R^2 = .007, F(2, 201) = .706, p = .495; adjusted R^2 = .-.003. The full model with the inclusion of alibi consistency and previous convictions resulted in a statistically significant increase in the prediction of alibi believability, R^2 = .081, F(4, 199) = 4.381, p = .002; adjusted R^2 = .081.

Likelihood

A final hierarchical multiple regression as per the Enter method was performed to predict the likelihood that the defendant was individual who committed the offence in question (i.e., the participants' perception that the defendant was responsible, rather than the objective determination of guilt as reflected by the verdict measure) based upon the aforementioned independent variables and covariates. The model with evaluator age and gender as covariates did not significantly predict likelihood ratings, R^2 = .009, F(2, 201) = .937, p = .393; adjusted R^2 = .-.001, whereas the model with alibi consistency and prior convictions as independent variables was statistically significant, R^2 = .130, F(4, 199) = 7.409, p = <.001; adjusted R^2 = .112.

Defendant Character Traits

A multivariate analysis of covariance (MANCOVA) was performed to compare the effects of the independent variables of alibi consistency and previous convictions on the dependent variables of the defendant's character traits (credibility, honesty, persuasiveness, knowledge, competency, and intelligence), whilst controlling for the influence of participant age and gender. Age as a covariate on the combined dependent variables did reach significance, F(6, 191) = 2.790, p = .013, V = .081, partial η2 = .081 (medium), whereby as age increased, less favourable evaluations of the defendants character were reported. However, follow

up ANCOVAs (analysis of covariance) with Bonferroni-adjusted *p*-values were not statistically significant for any of the six defendant character traits. The covariate effect of gender across all dependent variables did not reach statistical significance, $F(6, 191) = 1.505$, $p = .178$, $V = .045$, partial η2 = .045 (small). There was a significant main effect for alibi consistency and previous convictions when controlling for age and gender [$F(12, 384) = 2.683$, $p = .002$, $V = .155$, partial η2 = .077 (medium) and $F(6, 191) = 3.485$, $p = .003$, $V = .099$, partial η2 = .099 (medium), respectively].

Alibi Witness Character Traits

As per the previously outlined rationale for performing a series of ANOVAs (as opposed to a MANOVA: Collican, 2019; Tabachnick & Fidell, 2014), a series of two-way ANCOVAs was conducted to compare the effects of alibi consistency and defendant prior convictions on the perceived character of the witness with regards to credibility, honesty, persuasiveness, knowledge, competency, and intelligence, whilst accounting for the influence of evaluator demographics. The covariant of participant age had a significant effect on the dependent variable of witness honesty [$F(1, 196) = 4.944$, $p = .027$, partial η2 = .025 (small)], whereby as evaluator age increased, ratings of perceived witness honesty decreased. Whilst age accounted for more of the variance than alibi consistency or prior convictions [19.095, η2 = .025, compared to 16.949, η2 = .022 and 1.530, η2 = .002, respectively], there was no significant effect on said independent variables when controlling for this covariate ($p = .114$ and $p = .530$, respectively). Gender did not have a statistically significant impact on perceived witness honesty, in isolation or when controlled for. All findings for the remaining dependent variables (witness credibility, persuasiveness, knowledge, competency, and intelligence), for the covariates of age and gender and accounting for their influence on the independent variables of alibi consistency and prior convictions (bar the previously reported significant finding with regards to the main effect of alibi consistency on perceived witness persuasiveness, $p = .045$), did not reach statistical significance.

Discussion

The findings of the supplementary analysis demonstrated that, for the most part, the participant demographics of age and gender had no statistically significant effect on their decision-making and evaluations as mock jurors. The only exceptions were for the defendant and witness character trait ratings, whereby there was an overall trend for those who were older to view the defendant as less favourable (however, adjusted follow up analyses revealed no significant effects of age on any of the appraisals of the defendant's character). Additionally, there was a significant effect of evaluator age on perceived witness honesty, and in the same direction (as participant age increased, evaluations of alibi witness honesty decreased), yet controlling for the covariate effect of mock juror age had no significant effect on the variables of alibi consistency and defendant prior convictions. Thus, it could be postulated that Nieuwkamp et al.'s (2018) findings that there were variances in alibi lie detection accuracy (and their subsequent emphasis on different alibi characteristics) between police and students could be as a function of differences in age, as opposed to occupation. Finally, all significant results relating to the analysis of the independent variables (as reported in the results section of this chapter) remained significant when age and gender as covariates was controlled for.

Since there is no existing alibi literature that has examined the effect of participant demographics on decision-making and outcomes within a mock juror paradigm, it is difficult to provide concrete theorisations for why this might be the case. It could be that participants, in their role as mock jurors, are able to appraise the evidence in a more objective manner (for the most part), regardless of underlying personal characteristics that could potentially impact on their decision-making (such as authoritarianism and political conservatism, which are associated with increasing age: Berg & Vidmar, 1975; B. H. Bornstein et al., 2020). Alternatively, it could be that scepticism and bias towards alibi evidence is so strong that it transcends other variables (i.e., all people are sceptical of alibis). It could also be that the mode of data collection (a mock juror paradigm hosted online, whereby experimental manipulation took place via an excerpt of a written trial transcript, followed by a series of measures to examine verdict and alibi, defendant, and witness evaluations)

is not the most appropriate context in which to explore the impact of such evaluator nuances and intricacies. Could it be that the demographic characteristics of mock jurors has an impact (or indeed, no impact at all) when a more representative trial medium, coupled with deliberative discussions, is employed (as seen in Study Three)? For example, there is some suggestion that older individuals are more experientially aware of age-related memory challenges than their younger counterparts (Magnussen et al., 2006; Wake et al., 2020), so could this potentially inform knowledge and thus possible deliberative discussion on the impact of memory processes (particularly in the case of inconsistent alibi evidence)? Regardless, it would be worthwhile for future alibi research (of both a quantitative and qualitative nature) to consider the (in)effect of evaluator demographics within their analyses, to determine whether the findings of the present study are replicated, or alternative results are identified.

Summary of Results

Several of the proposed hypotheses were supported by data analysis, as summarised in Table 14. A summary of the findings for the supplementary analysis are provided in Table 15.

Table 14

Summary of Hypotheses

	Hypothesis	Supported or Unsupported
1.	More guilty verdicts are predicted when cross-examination exploits inconsistencies in the alibi, resulting in a changed account, compared to when a consistent account is provided.	Partially Supported
2.	More guilty verdicts are predicted when cross-examination submits defendant bad character evidence in the form of previous convictions, compared to no previous convictions.	Supported
3.	Mock jurors will rate alibi evidence as less believable when cross-examination exploits inconsistencies in the alibi, resulting in a changed account, than when a consistent account is provided.	Unsupported
4.	Mock jurors will rate alibi evidence as less believable when cross-examination submits defendant previous convictions, than when no defendant previous convictions are submitted.	Supported

5.	The defendant will be rated by mock jurors as more likely to have committed the offence when cross-examination exploits inconsistencies in the alibi, resulting in a changed account, than when a consistent account is provided.	Supported
6.	The defendant will be rated by mock jurors as more likely to have committed the offence when cross-examination submits defendant previous convictions, than when no defendant previous convictions are submitted.	Supported
7.	The defendant will be rated by mock jurors as less likely to be described as credible, honest, persuasive, knowledgeable, competent, and intelligent when cross-examination exploits inconsistencies in the alibi, resulting in a changed account, compared to when a consistent account is provided.	Partially Supported
8.	The defendant will be rated by mock jurors as less likely to be described as credible, honest, persuasive, knowledgeable, competent, and intelligent when cross-examination submits defendant previous convictions compared to no defendant previous convictions.	Supported

Table 15

Summary of Findings for Supplementary Analysis

Measure	Outcome
Verdict and Verdict Certainty	Participant age or gender did not significantly predict verdict decisions and verdict certainty ratings.
Alibi Believability	Participant age or gender did not significantly predict alibi believability ratings.
Likelihood	Participant age or gender did not significantly predict likelihood ratings.
Defendant Character Traits	No significant effect of participant age and gender on defendant character trait ratings (on adjusted follow up analyses).
Alibi Witness Character Traits	Participant age only had a significant effect on witness honesty ratings, with older mock jurors viewing the witness as less honest than younger mock jurors.

Discussion

The aim of the study was to examine the effect of barristerial cross-examination techniques, specifically exploiting alibi between-statement inconsistencies and submitting defendant bad character evidence in the form of previous convictions for similar offences, on mock jurors evaluations and decision-making. A total of 204 jury-eligible participants, acting as mock jurors, read an excerpt of a mock trial transcript and completed a series of measures examining their verdict and evaluations of the alibi, defendant, and alibi witness. Taken together, the findings demonstrated that the cross-examination techniques of exploiting alibi inconsistencies and submitting defendant prior conviction evidence effected mock juror's decisions as to the defendant's culpability and evaluations of the defendant and their alibi defence. In particular:

1. The exploitation of alibi between-statement inconsistencies, occasioning temporal and activity discrepancies, and the submission of defendant bad character evidence in the form of previous convictions for similar offences, resulted in more guilty verdicts. Overall, for verdict, bad character evidence carried more weight than that of an alibi defence.
2. When cross-examination exploited inconsistencies in the defendant's alibi account, mock jurors were more likely to believe the defendant was indeed the individual responsible for committing the offence.
3. Defendants with previous convictions were seen by mock jurors to have less believable alibis and were more likely to have been responsible for committing the offence in question.
4. Compared to a consistent account, the exploitation of an inconsistent alibi during cross-examination resulted in mock jurors perceiving the defendant as being less credible, honest, and competent. An alibi with inconsistencies in terms of both timing and activity resulted in significantly lower ratings of their character in terms of honesty and intelligence, compared to that of a consistent alibi.
5. The submission of bad character evidence in the form of a prior offending history for similar offences resulted in participants viewing the defendant as less credible, honest, persuasive, knowledgeable, competent, and intelligent.

6. For the most part, there was no significant effect of barristerial cross-examination techniques on mock jurors evaluations of the alibi witness[18].
7. Supplementary, exploratory analysis revealed that the mock juror demographic characteristics of age and gender (as covariates) had no significant effect on predictions of verdict, verdict certainty, alibi believability, likelihood ratings, nor any effect on defendant character trait appraisals. Evaluators who were older perceived the defendant as less honest than younger participants (with no effect on any of the other witness character ratings).

Alibi (In)Consistency

Alibi inconsistencies, where barristerial cross-examination exploited discrepancies between alibi statements (in this instance, between the account provided during police interview and in direct examination, and the account provided during cross-examination), had a significant effect on mock juror's decision-making with regards to verdict. Specifically, participants were more likely to provide a guilty verdict when the alibi provided under cross-examination had temporal and activity inconsistencies, than for an alibi account which was consistent and unchanged. This finding is in keeping with the existing literature on alibi (in)consistency within an investigative context (Culhane & Hosch, 2012; Dysart & Strange, 2012; Price & Dahl, 2017), further adding to the evidence that alibi testimonial inconsistencies are indicative of guilt as seen in the perceptions of most law enforcement (Dysart & Strange, 2012) and student populations (Culhane et al., 2008). Thus, the cross-examination technique first proposed by barristers in Study One has been demonstrated to be effective, undermining and discrediting the alibi to the extent of it impacting on mock jurors culpability decisions. This empirical support for the findings of Study One is a significant advancement, as formerly the recommendation to exploit defendant testimonial inconsistencies was an unfounded technique in the evidence base (with the existing legal literature focusing only on alibi witnesses: Steele, 2020; Stone, 1995), and with no reference to its efficacy.

[18] Note, no experimental manipulation occurred in relation to the corroborator testimony.

The study's findings suggest mock jurors conform to the consistency heuristic (Granhag & Strömwall, 2001), at least to a degree, in their evaluation of the alibi defence, whereby consistency is erroneously viewed as indicative of truth-telling whilst inconsistency is suggestive of lying (Strömwall et al., 2003; Vernham et al., 2020). Thus, as the barristers in Study One noted, exploiting alibi inconsistencies through strategies such as leading, multiple, and closed questions, is an effective, albeit ill-informed, means in which to undermine and discredit the defence. This is concerning, given how frequently alibi errors and inconsistencies occur and often innocently due to issues with memory encoding, storage, and retrieval, rather than deliberate deception (Culhane et al., 2013; Charman et al., 2019; Crozier et al., 2017; Laliberte et al., 2021; Leins & Charman, 2013; Matuku & Charman, 2020; Strange et al., 2014). Given the incidence in which exploiting alibi inconsistencies were present in cases of wrongful convictions in the US (Heath et al., 2021), the findings cement the need for jurors and juries to be more accurately informed and educated as to the nuances of an alibi defence (than they would otherwise receive through barristerial examination, or existing judicial directions which are limited in nature).

It is worth noting, however, that there was no statistically significant difference between verdict decisions where the alibi was consistent compared to an inconsistent account with a change to temporal details. This is despite, in terms of likelihood, the significant interaction both alibi consistency and previous convictions had on mock jurors belief that the defendant was the individual responsible for committing the offence. That is, whilst mock jurors in this study believed that the defendant with an inconsistent alibi with temporal discrepancies was indeed more likely to have committed the offence, this did not necessarily translate for the verdict reached. It may be participants viewed this discrepancy as insufficient enough to warrant a guilty verdict. Price and Dahl (2017) found comparable findings, whereby minor inconsistencies had no significant impact on perceptions of the suspect's guilt. Similarly, Allison et al. (2023) found no meaningful effect on culpability decisions when between-statement inconsistencies (whom the defendant was with) were present or absent. As such, it could be tentatively suggested that relatively 'trivial' or 'minor' between-statement inconsistencies (whether that be the nature of the discrepancy itself and/or the number of inconsistencies) are viewed more forgivingly

by mock jurors. This may demonstrate some understanding on their part as to difficulties with alibi generation (seen, in part, by Dysart & Strange, 2012; Portnoy et al., 2020; Price & Dahl, 2017). Alternatively, it could be that participants believed the defendant was indeed guilty, however found it difficult to objectively satisfy reasonable doubt standards based on such 'negligible' details. Regardless, it is difficult to say with any degree of certainty given the absence of any rich qualitative data on mock jurors thoughts and feelings where alibi evidence is concerned (addressed in the thesis' third and final study, as found in Chapter Six).

Conversely, it could be the dichotomous nature of the verdict provided was insufficient in measuring relatively subtle differences in perceived culpability. This is supported by Olson and Wells (2004), who noted that such estimates of guilt are insensitive to measuring perceptions of alibis in some instances. As a means of providing a more salient measure, a continuous measure of guilt has been proposed (Allison et al., 2020) and indeed implemented (Hosch et al., 2011) in some of the alibi literature. However, this must be balanced against the applicability of research to real-world practice, whereby jurors and juries are asked to deliver a verdict based on only two options (guilty or not guilty). The latter was employed within the current study, to reflect the decision that would be reached by real-world jurors (B. H. Bornstein et al., 2017). Qualitative information as to the decision-making process (as per Study Three) would be useful to draw more concrete conclusions on the impact of between-statement inconsistencies. Alternatively, the temporal discrepancies could have been lacking in salience to participants, reflecting why verdict decisions lacked a clear distinction between conditions as predicted. Future research should seek to compare different types of between-statement inconsistencies given on-the-stand and in response to barristerial cross-examination, to generate a greater understanding as to the effect changes to an alibi account have on mock jurors' perceptions, evaluations, and decisions. For example, the number or types of incongruities (e.g., where the defendant was, or who they were with) may representant more fundamental changes to an alibi account, and thus may be judged more harshly in terms of culpability (and similarly, defence believability).

The findings of the current study showed that, whilst barristerial cross-examination techniques of exploiting alibi (in)consistencies significantly affected mock jurors evaluations of alibi believability, this was not supported post hoc. Lower ratings of believability were seen when the alibi was inconsistent in terms of temporal and activity features compared to a consistent alibi, although the trend did not reach statistically significant. Nevertheless, all average alibi believability ratings, regardless of alibi (in)consistency and defendant previous convictions, were at the lower end of the scale (towards *I do not believe the defendant at all*). This suggests mock jurors were sceptical of the alibi, supporting the broader scepticism levelled at such a defence (Gooderson, 1977; Olson, 2004; Olson & Wells, 2004; Sommers & Douglas, 2007; Steele, 2020), although insufficient enough to produce a meaningful effect (perhaps suggesting participants considered other reasons for the alibi being incorrect, such as deliberate deception to avoid disclosing a salacious alibi). Keeping et al. (2017) found that a change in an alibis details (e.g., timeline of offence or activity), manipulated as part of 32 vignettes examining five distinct alibi components, did not significantly predict mock police investigators ratings of alibi believability. In terms of an ambush alibi (Fawcett, 2015), Allison and Hawes (2023) found that early or late disclosure (one day or 20 working days post-trial date setting) had no significant effect on mock jurors' perceptions of an alibis believability. Contrastingly, however, Allison et al. (2023) found that alibis that were presented consistently were deemed to be more believable by mock jurors than those with between-statement inconsistencies. It is possible that, due to the global scepticism of the defence (Allison, 2022; Olson, 2004; Olson & Wells, 2004; Sommers & Douglas, 2007), it is difficult to discern differences in between-statement (in)consistencies regardless of experimental manipulation. The cross-examination techniques used by barristers (irrespective of alibi consistency) may serve to emphasise and exacerbate the alibis poor believability, supporting the underlying scepticism levelled at such a defence. Alternatively, and perhaps more positively, it could evidence that participants display some awareness of factors that may affect alibi generation (Dysart & Strange, 2012; Portnoy et al., 2020; Price & Dahl, 2017), or perhaps that participants followed the judicial directions on alibi evidence as instructed.

To provide a realistic and representative presentation of an alibi defence, one that was reflective of real-world practice, each trial transcript included judicial directions as to how alibi evidence should be used as per the Crown Court Compendium (Judicial College, 2018). As there is no evidence of a similar direction being used in past research, it is possible that the inclusion of this direction at the end of the trial, whereby the judge informed jurors that the burden of proof lies with the prosecution and that a false alibi is not necessarily indicative of guilt, may have had some limiting impact on decision-making as to verdict and ratings of alibi believability. For instance, whilst mock jurors in this study believed the defendant with an inconsistent alibi in terms of timing was more responsible for the offence compared to a consistent account (as evidenced by higher likelihood scores), this did not appear to meet their threshold as to the legal standard of proof for a guilty verdict. This is reassuring, suggesting that participants did indeed adhere to the principle of 'innocent until proven guilty'. It also supports Allison and Brimacombe's (2010) assertion that judicial instructions (although in their instance, related to prior conviction evidence) promotes greater consideration of alibi evidence than would be seen in their absence, as also seen in the alibi generation effect (Olson & Wells, 2012). Conversely, however, there is a large body of empirical data which robustly finds that jurors have difficultly comprehending judge's instructions and instructions have a very weak effect on juror and jury behaviour across a wide range of outcomes (e.g., Alvarez et al., 2016; Helm, 2021; Lieberman, 2009; Nietzel et al., 1999; Ogloff & Rose, 2005). Indeed, Allison and Brimacombe's (2010) study found that mock jurors failed to adhere to the judge's instructions when assessing the prior conviction evidence on which they were directed. Accordingly, the absence of any prior literature that has included, nor examined, the effect of alibi judicial instructions necessitates caution when promoting the efficacy of said directions, despite its clear importance for real-world practice. Future research should seek to manipulate the presence of judicial instructions on an alibi defence, and the order in which they are presented (for example, pre- and post-presentation of evidence), to examine its effects on mock juror's decision-making and evaluations. Given how sceptically an alibi is viewed in the courtroom (Gooderson, 1977; Sommers & Douglas, 2007; Steele, 2020), further qualitative understanding as to how jurors perceive and use judicial instructions pertaining to this defence would also be of value and importance to the CJS. In turn, such research could assist in developing evidence-based

guidance that facilitates jurors to evaluate alibis more openly and fairly, thereby preventing miscarriages of justice and promoting fair practice.

Where cross-examination by the prosecution exploited an inconsistent alibi, mock jurors evaluated the defendant as significantly less credible, honest, and competent compared to a defendant with an alibi which was consistent in nature (with the differences between the two levels of inconsistency not reaching statistical significance). The present study also found an inconsistent alibi with only a change in timing and activity resulted in lower ratings of the defendant's knowledge and intelligence compared to that of an unchanged account. Similar findings were replicated in Allison et al.'s (2023) study, whereby the presence of alibi inconsistencies resulted in more negative appraisals of the defendant's credibility, honesty, persuasiveness, knowledgeability, and trustworthiness than that of a consistent alibi. In terms of the trait evaluation of honesty, it is worth postulating why this may be the case for future research to redress: if a defendant changes his alibi to such an extent, is he seen as imprudent for trying to deceive the court? Alternatively, is poor memory associated with low(er) intelligence? Specifically, a rating of the strength of the defendant's memory would be a logical extension for future studies.

Of the defendant's character traits, only honesty predicted verdict outcome, with more guilty verdicts being associated with lower ratings of the defendant's honesty. Trait evaluations of the suspect/defendant's honesty (Allison et al., 2020; Culhane & Hosch, 2012), in addition to believability (Culhane & Hosch, 2012) and credibility (Allison et al., 2020; Allison et al., 2023), have significantly predicted verdict in previous research. In terms of how believable the defendant's alibi was, the character traits of credibility, honesty, and persuasiveness predicted lower believability ratings. This is in keeping with previous findings, whereby higher credibility, honesty, persuasiveness, trustworthiness, and knowledgeability (Allison et al., 2020; Allison et al., 2023) are associated with higher ratings of the alibis believability. Although there are some variances in the terminology used (for example, the traits of credibility and believability are used interchangeably in prior literature), these character traits appear to be central components as to the

believability of an alibi defence, findings further maintained by the outcomes of the present study.

Previous Convictions

The novel findings of Study One demonstrated that the admissible submission of defendant bad character evidence in the form of prior convictions is advantageous to the prosecution as a means of *"indirectly attack*[ing]*" [Maurice, p. 16, l. 26]* and discrediting an alibis credibility. Yet little empirical attention has been paid to non-legal factors within the alibi literature (Behl & Kienzle, 2022), despite the conceivable likelihood for such evidence to be admitted given the high incidence of repeat offending (HM Government, 2018; Taylor, 2022). As predicted, submission of the defendant's prior convictions during cross-examination affected mock juror's decision-making in terms of verdict and their evaluations of the alibi defence and defendant. Thus, such findings validate the prosecution strategy first noted in Study One, demonstrating its effectiveness in a sample of jury-eligible mock jurors, in that they use this to detrimentally appraise the credibility and reliability of the defendant and their alibi. In turn, this majorly advances the current nascent understanding as to the effect of barristerial cross-examination techniques on mock juror decision-making and evaluations where alibi evidence is concerned.

Such findings are consistent with only one existing study to have explored prior convictions within the alibi literature (Allison & Brimacombe, 2010), who found that defendants convicted of the same crime previously were viewed as more likely to be guilty and have less believable alibis than those convicted of a dissimilar offence. It is worth noting that the present study utilised a different offence to that of Allison and Brimacombe (2010), yet yielded similar findings, thus widening the narrow understanding as to how bad character evidence has a consequential impact on evaluations of the defendant and their alibi defence. Furthermore, such negative character inferences are in keeping with wider previous research (not related to alibis per se: Clary & Shaffer, 1985; Greene & Dodge, 1995), which found that reference to the defendant's criminal record for similar offences via trial testimonial evidence and cross-examination resulted in adverse evaluations of the defendant.

A defendant's prior criminal history has consistently been related to mock jurors being more conviction-prone, a finding which is considered "very reliable, with good convergence across lab and field studies" (Devine, 2012, p. 99). Devine and Caughlin's (2014) meta-analysis identified a modest positive correlation between defendant prior criminal record and mock juror judgements of guilt. Whilst this is not specific to cases involving an alibi defence, indeed the present study and Allison and Brimacombe (2010) is the only research to have done so, it highlights a consistent finding amongst the wider literature.

Devine and Caughlin (2014) suggest the relationship between previous convictions and conviction proneness is in part moderated by two factors: offence similarity and the way such information is conveyed. A prior conviction which is similar or the same as the index offence results in greater inferences of guilt compared to previous offences of a dissimilar nature (Allison & Brimacombe, 2010; Green & Dodge, 1995; Hans & Doob, 1976; Lloyd-Bostock, 2000; Pickel, 1995; Wissler & Saks, 1985). The current findings are consistent with this, as the defendant in the case had several previous convictions of a similar nature (burglary and dwelling house burglary, although there was no comparative dissimilar offence/s in the current study). Secondly, the way information as to the defendant's offending history is conveyed is important in terms of capturing the impact of this factor within the literature (Devine & Caughlin, 2014). The amount of information provided, and the manner and emphasis placed on a defendant's prior criminal record, varies significantly across studies. This is, in part, due to methodological factors relating to trial characteristics within such studies. In the current study, the prior offending history of the defendant was overt to mock jurors since it was a specific technique employed during prosecutorial cross-examination. However, in past research, information on a defendant's prior criminal record ranges from a fleeting mention as part of a brief, written case summary (Green & Dodge, 1995), to inadvertent mention during witness testimony in an audiotaped trial (Pickel, 1995), to part of the case commentary and judge's summary in a video-recorded mock trial (Lloyd-Bostock, 2000). Thus, one of the strengths of the present study is that the prior convictions were made salient to mock jurors, since such evidence may not be considered or even acknowledged without it being emphasised by the prosecution

barrister. In turn, this allowed for a more objective assessment than previously offered as to how such strategies impact on mock jurors verdicts and evaluations.

For validity purposes, the materials used for this study were based on a genuine offence (*R. v South*, 2011) that had been heard before a criminal court in England and Wales, thus the number of previous convictions that the defendant had were unchanged from the original case. Given that the defendant had multiple previous convictions for similar offences, this could have potentially unduly influenced mock jurors appraisals that the defendant was less believable and therefore more culpable than a defendant with fewer prior convictions. Previous research (Allison & Brimacombe, 2010) has only examined one previous conviction of the alibi provider, therefore it would be wise for future research to additionally examine the effect of a single prior conviction for a defendant with an alibi defence within the specific context of barristerial cross-examination techniques. Yet, the legislative framework (Part 11, Sections 98-113, of the CJA 2003) that forms the gateways by which such evidence can be admitted before a court is complex, with the guidance provided by the Court of Appeal in the case of *R. v Hanson* (2011, para. 9) stating that:

> *there is no minimum number of events necessary to demonstrate such a propensity. The fewer the number of convictions the weaker is likely to be the evidence of propensity. A single previous conviction for an offence of the same description or category will often not show propensity.*

Given the prohibitive legal threshold that must be met for this evidence to be admitted, the significant offending history in the real-world case used in this study reflects the high level of relevance and value it must hold to be permitted as admissible evidential material. Thus, the current research represents a realistic presentation of admissible prior conviction evidence in England and Wales, further strengthening the cogency of the study's findings and outcomes. As such, whilst examining the effect of a single previous conviction would be useful for comparative experimental purposes, this may not necessarily reflect the use of bad character evidence in real-world practice.

Devine and Caughlin (2014) highlight defendant criminal history as one of the characteristics which inform jurors judgements about verdict via existing cognitive structures. Of note is the notion of stereotypical-driven inferences about 'criminals', knowledge often gleaned from the media. Typical depictions (for example, that 'criminals' are often repeat offenders) are incorporated into jurors stereotypes, resulting in a predisposition for these stereotypes to be triggered when a version of events that is consistent with these beliefs is proposed by the prosecution during cross-examination. In turn, this preferred story is difficult to counteract in the face of alternative stories by the defence and subsequently directly impacts upon juror's guilty verdict preferences (Devine & Caughlin, 2014). The findings of the current study support the notion that mock jurors utilise stereotypical views that prior convictions demonstrate a propensity to commit to similar offences in relation to their evaluation of the alibi defence and the defendant (although this cannot be established definitively, in the absence of qualitative data to support this). Such results are consistent with the "Director's Cut" Model (Devine, 2012), in that that knowledge of a prior offending history triggers jurors stereotypical views of 'criminals', which are of relevance to perceptions of the defendant and their defence, and ultimately judgements of culpability. The perception of continuity in criminal behaviour lends itself to the creation of a story by jurors consistent with the defendant being responsible, and thus the alibi of weak credibility. Substantiation as to the perception and use of stereotypes where prior conviction evidence is concerned could be achieved through the gathering of detailed, rich data using a qualitative methodology, particularly since it is recognised that such evidence must be considered within the wider narrative generated by jurors and juries (Schmittat, 2023).

Alibi Witness Evaluations

Although the alibi witness (the defendant's friend, thus a motivated familiar other: Olson & Wells, 2004) and their account remained consistent across all conditions of the study (that is, there was no experimental manipulation of any factors associated with the corroborator), it was of interest to explore what effect, if any, the defendant's alibi and offending history had on evaluations of the witnesses

character. In doing so, it was encouraging that, for the most part, the defendant's (in)consistent alibi and the presence or absence of prior convictions had no effect on mock jurors evaluations of the witness character. There were no significant differences (bar one, persuasiveness) between ratings of the alibi witness character when alibi between-statement inconsistencies and bad character evidence were manipulated, suggesting that participants were able to judge the character of the corroborator distinct from that of the defendant and their evidence. With regards to the demographic characteristics of participants, only age had a notable effect on perceived witness honesty (although there was no subsequent significant effect of alibi consistency or previous convictions on perceptions of the corroborators honesty when age was controlled for).

Yet, there was little difference across all witness character ratings regardless of alibi consistency and prior convictions, with all ratings falling between 3 and 5 on a scale of 1 to 10 (where 1 was *not at all credible/honest/persuasive* etc. and 10 was *very credible/honest/persuasive* etc.). This is in keeping with how participants in this study viewed the character of the defendant, whereby defendant character traits fell between 2 and 5 on the aforementioned scale. Thus, mock jurors did not view the alibi witness (indeed, nor the defendant) particularly highly in terms of the assessed character traits. In cross-examining the alibi witness, the prosecution made explicit reference to the existing relationship between the pair, alleging that the corroborator was being deliberately deceptive in his account to support the defendant's false alibi, as per the advocated approach to alibi witness cross-examination (Steele, 2020; Stone, 1995). Corroborating alibi evidence from a motivated familiar other has consistently been viewed more negatively by evaluators than that of non-motivated witness (Allison & Kollar, 2023; Culhane & Hosch, 2004; Eastwood et al., 2020; Hosch et al., 2011; Olson & Wells, 2004; Pozzulo et al., 2012). Fawcett (2015) found that motivated and non-motivated alibi witnesses were deemed to be of poor reliability, with motivated alibi witnesses who support an ambush alibi seen as the least reliable testimony. It is possible that mock jurors may have also assessed the within-group (in)consistency (Leins et al., 2011) of the alibi provider and witness, particularly since consistency between alibi accounts was the most frequent self-reported measure of veracity used by mock police evaluators (Strömwall et al., 2003) and across multiple alibi statements (Vernham et al., 2020).

This is despite it being based on the inaccurate belief that inconsistency is indicative of deceit (Granhag & Strömwall, 2000). Thus, it could be that the sceptical nature by which mock jurors viewed the defendant and their alibi may have had a consequential impact on evaluations of the character of the alibi witness. By extension, if the defendant was believed to be deceitful, then it was assumed that the alibi witness must also have been dishonest.

Limitations

As with all juror decision-making research (Curley & Peddie, 2024), this study comes with limitations. A little over half (51%) of those who participated were students and most (75%) were female, thus the overall sample was somewhat skewed towards those who were younger (albeit the other significant proportion were employed [44%], and the average age of participants was 29 years old) and who identified as female. As a countermeasure, all participants met the eligibility criteria for jury duty. Whilst research shows that decision-making with regards to verdict does not differ between student and community samples (B. H. Bornstein, 1999; B. H. Bornstein et al., 2017; Devine & Caughlin, 2014), inherent differences do exist in terms of the two populations (for example, age, education, and legal and political views) that may impact on the manner in which they approach and evaluate the evidence (such as authoritarianism: Berg & Vidmar, 1975, cognitive capabilities: Weiten & Diamond, 1979, and [civil] evidence receptiveness: McCabe & Krauss, 2011). Similarly, for gender, there is some evidence to suggest that this demographic characteristic impacts on decision-making in cases involving sexual violence (Bottoms et al., 2014; Golding et al., 2007; Wayne et al., 2001), although it is unclear whether this extends to non-sexual offences (such as burglary, as in this case). Thus, it could be that other undetermined factors such as these may have had some discernible impact on some or all of the findings within this research. However, supplementary analysis on the evaluator characteristics of age and gender revealed that, bar perceived witness honesty, such factors had no significant impact on participant's decision-making and evaluations in this study. Future alibi research could seek to measure, control, and explore these factors further within their analyses.

In spite of the use, in part, of a student sample, a considerable proportion of juror and jury decision-making research continues to recruit and use students as participants (Krauss & Lieberman, 2017; Wiener et al., 2011). Furthermore, 85% of professionals (e.g., juror researchers and journal editorial board members) within this area rated studies which employ students as mock jurors to be an acceptable practice and research worthy of publication (Lieberman et al., 2016). Curley and Peddie (2024) recognise that student samples (with the benefits of ease of access) would be appropriate within a stepped approach to research within this field, subsequently supplementing their use with more representative, community populations to improve the overall representativeness and ecologically validity of the findings (as addressed, in noticeable part, in Study Three).

Summary and Conclusions

To summarise, the aim of the study was to examine the effect of barristerial cross-examination techniques, specifically exploiting alibi between-statement inconsistencies and submitting defendant bad character evidence in the form of previous convictions for similar offences, on mock jurors evaluations and decision-making. Alibis are one of the leading contributory factors in cases of US wrongful convictions (Connors et al., 1996; Heath et al., 2021; Wells et al., 1998), and present within instances in England and Wales (e.g., Sam Hallam: Evidence-Based Justice Lab), yet little attention has been paid to such legal and non-legal factors in the relevant literature (besides Allison et al., 2023; Allison & Brimacombe, 2010), making an incomplete understanding a challenge to the CJS' ability to deliver fair and effective justice. Indeed, none of which has concurrently examined an alibi with between-statement inconsistencies, provided within a mock trial context and in retort to cross-examination, and its relationship with a defendant's prior offending history. Broadly, the study's findings demonstrate that the cross-examination techniques, first identified in Study One, are indeed effective in undermining and discrediting the defendant and their alibi defence in terms of culpability, alibi believability, likelihood, and character trait evaluations. Yet, such cross-examination techniques appear to successfully exploit ill-informed heuristics (Granhag & Strömwall, 2001; Strömwall et al., 2003; Vernham et al., 2020) and stereotypes (Devine, 2012; Devine &

Caughlin, 2014), further complicating the abilities of mock jurors to assess the veracity of an alibi defence accurately and informatively.

Beyond the scope of the thesis, future research should vary the amount and manner of alibi between-statement inconsistencies given on-the-stand, the number and nature of prior convictions the defendant has, and the inclusion, content, and order of alibi judicial instructions. Yet, the stark absence of any existing rich qualitative data on the understanding and perceptions of mock jurors where alibi evidence is concerned, produced as a function of deliberations and thus a collective decision-making process, is of disquiet and must be redressed as a priority (as explored in Study Three, detailed in Chapter Six). This will then allow for evidence-based, psychological recommendations for the judicial system to be made, intended to improve knowledge and understanding of alibis for all those concerned. Resultingly, it is recommended that consideration should be given to whether devising and disseminating psychological knowledge on alibis with jurors and juries, as a function of expert guidance or psychologically informed judicial directions, is successful in mitigating some of negative evaluations demonstrated by the present study's findings.

Chapter Six: Study Three - Mock Juries' Understanding, Perceptions, and Use of Alibi Evidence During Deliberations

In real-world practice, a jury would reach a verdict as to culpability based upon group deliberations. The importance of understanding the process and dynamics involved in assessing the value and credibility of alibi evidence cannot be underestimated, as findings of jury simulation research that are both robust and representative have strong implications and applications to the courts and wider CJS (B. H. Bornstein et al., 2017; Curley & Peddie, 2024; Nuñez et al., 2011; Wiener et al., 2011). This chapter details the third and final study of the thesis (likewise referred to as Study Three), which aims to explore mock jurors and juries' understanding, perceptions, and use of alibis during deliberations within the context of a simulated criminal trial.

Introduction

One area within the alibi literature that has received little empirical attention before now, besides one recent study by Allison et al. (2023) and a handful of studies concerned with the interconnected aspect of ambush alibis (Allison et al., 2020; Allison & Hawes, 2023; Fawcett, 2015), is concerned with alibis where inconsistencies are presented in court. Similarly, Behl and Kienzle (2022) recognise that, whilst quantitative alibi research has predominately focused on the effects of system variables on mock jurors decision-making, little consideration has been paid to the impact of estimator, non-legal factors. Allison and Brimacombe (2010), as the only study to do so, examined the effect of defendant prior convictions (amongst other variables) on mock juror decision-making, demonstrating that evidence of similar offending behaviour has a significant detrimental impact on the outcome of verdict. Yet, the findings of Study One evidenced that the exploitation of alibi inconsistencies, coupled with the submission of defendant bad character evidence in the form of previous convictions (where applicable), are central techniques that may be used in real-world practice to undermine and discredit an alibi defence in court. Given jurors in practice may be therefore exposed to such approaches when assessing an alibis veracity in court, the second of the thesis' studies redressed said

paucity. The research quantifiably examined the effect of alibi between-statement inconsistencies given on-the-stand and in response to barristerial cross-examination, coupled with its interaction with defendant prior conviction evidence, on mock juror decision-making and evaluations. The results demonstrated that said techniques are effective in damaging the integrity of both the defendant and defence, appearing to advantageously exploit mock jurors ill-informed heuristics on the (in)consistency of alibis (Granhag & Strömwall, 2001; Strömwall et al., 2003; Vernham et al., 2020) and views on stereotypical offending behaviour (Devine, 2012; Devine & Caughlin, 2014). Gaining a greater understanding on *why* such decisions are made, providing a voice (Creswell, 2014) to those responsible for determining verdict and exploring how said legal and non-legal factors are negotiated within the deliberative process, would be of significant value to the current evidence base.

The predominant methodological approach within the alibi literature where mock juror and jury decision-making is concerned has been quantitative in nature (Allison, 2022). This approach has its benefits, in that individual, mock juror paradigms can provide important insights as an initial foray into a subject matter (as seen in Study Two) (Curley & Peddie, 2024; Diamond, 1997; Wiener et al., 2011), particularly given the nascence of alibi research compared to other prominent causes of wrongful convictions (Connors et al., 1996; Heath et al., 2021; Sauerland, 2017; Wells et al., 1998). Yet, to date, there has been no research within the field that has implemented a qualitative, mock jury methodological paradigm. Accordingly, there is an entirely absent understanding as to how mock jurors and juries' think, feel, view, and negotiate alibis as part of the deliberative process. This is concerning, given real-world juries make collective decisions as to culpability as a product of group dialogue and discussion. Allison (2022) noted that, to improve the generalisability and application of empirical findings to the wider CJS, research should focus on evaluating alibis as a function of a jury, rather than relying solely on studies examining individual, juror decision-making. An alibi should also be evaluated as a defence within the context of a more representative trial medium (Allison, 2022), instead of as a singular piece of evidence presented as a short, written case summary or vignette and with no deliberative aspect (as seen in, for example, Allison et al., 2012; Allison & Hawes, 2023; Jung et al., 2013, although

with some exceptions: Allison & Brimacombe, 2010; M. K. Miller et al., 2011). Thus, it is imperative that research seeks to redress this paucity by gaining a greater understanding as to how mock jurors and juries' react to and negotiate alibi evidence within deliberations, using real-world barristerial cross-examination techniques (exploiting alibi inconsistencies and defendant prior conviction evidence, as evidenced in Study One and deemed effective in Study Two) and a more realistic trial medium presentation and sample for enhanced representativeness and ecological validity (see Chapter Three for a more detailed consideration as to the rationale for this). In turn, this will provide a greater understanding as to the process, discussions, and dynamics involved in evaluating an alibi defence and thereby permit recommendations to be made for the generation and implementation of evidence-based directions and recommendations for the CJS.

Aims and Research Questions

The aim of the study is to qualitatively explore mock juries' understanding, perceptions, and use of alibi evidence within the context of deliberations in a simulated criminal trial. A further aim of the research is to explore what mock juries' perceptions are during deliberations when cross-examination uses barristerial cross-examination techniques to exploit between-statement inconsistencies in the alibi evidence, resulting in a change to the defendant's account in terms of timing and activity, and defendant bad character evidence in the form of previous convictions for similar offences is submitted. The research is exploratory in nature and intends to understand how mock jurors and juries' think, feel, view, and negotiate alibis as part of the deliberative process, providing a voice (Creswell, 2014) to those responsibly for collectively determining culpability. In doing so, it incorporates several important and novel components that address key questions around the use of alibi evidence in the CJS:

1. To date, there has been no research that has implemented a qualitative methodology to explore how mock jurors and juries perceive and use alibis in the context of deliberative processes. As such, it is currently unknown how jurors and juries react and negotiate alibis during deliberations and what role,

if any, factors such as evidential recall, deliberative discussion, and individual and/or group biases have on the use of such evidence within a simulated criminal trial.

2. There is an absence of rich data considering the views and perceptions of mock jurors and juries' when barristerial cross-examination strategies, specifically exploiting alibi between-statement inconsistencies and discrediting of the defendant's character through prior conviction evidence, are employed within a mock jury paradigm.
3. There is a paucity of alibi literature that has used representative trial mediums (for example, a video-recorded trial re-enactment) and samples to explore the presentation and evaluation of such a defence.

Together, this research also builds upon the findings of Study One and Two. Firstly, the study utilises the key findings from Study One that demonstrate barristers may use the exploitation of inconsistencies and discrediting of defendants as core techniques for dealing with alibi evidence in court. Secondly, Study Two found that exploitation by the prosecution of alibi between-statement inconsistencies and defendant prior conviction evidence during cross-examination negatively affected mock jurors' perceptions and decision-making. This study also aims to build upon the findings of the thesis' second study (Curley & Peddie's, 2024; Diamond, 1997; Wiener et al., 2011), through the use of real-world cross-examination strategies, a more realistic trial presentation medium and sample, and the inclusion of deliberations.

The research questions to be addressed in this study are:

1. How do mock jurors and juries' perceive and use alibi evidence in the deliberative process?

2. What role do the barristerial cross-examination techniques of exploiting alibi between-statement inconsistencies and discrediting the defendant through prior conviction evidence have within mock jurors and juries' understanding and perceptions of alibi evidence?

Method

Design

The study used a qualitative research methodology in which mock juries' viewed a video recording of a trial re-enactment before taking part in mock deliberations. Groups of six jury-eligible participants, together forming a mock jury, watched pre-recorded video footage of a simulated criminal trial based on a real case for the offence of burglary. An alibi, supported by an alibi witness (a motivated familiar other: Olson & Wells, 2004), was the defence used by the defendant. During cross-examination, the prosecution used barristerial cross-examination strategies to exploit inconsistencies in the alibi evidence resulting in the defendant changing details in his story in terms of the timing of events and the activity he was undertaking (referred to as temporal and activity details, respectively). The prosecution also submitted defendant bad character evidence in the form of prior convictions for residential house burglaries to demonstrate a propensity to commit similar offences. After viewing the trial re-enactment, participants deliberated in their juries to reach a verdict as to culpability (guilty or not guilty). The deliberations were video and audio recorded, before being transcribed verbatim and qualitatively analysed using reflexive TA (Braun & Clarke, 2022a).

Participants

A total of 24 participants, forming four six-person mock juries', took part in the study. Whilst it is acknowledged that a real-world jury would contain 12 members, Kerr and MacCoun (1985) and Saks (1977) found no significant effect of group size on verdict outcome in a comparison of six-person and 12-person juries. Furthermore, Saks and Marti's (1997) meta-analysis of jury size concluded that there was no significant impact on verdict outcome between six and 12-person juries, with Devine et al.'s (2001) meta-analysis noting that jury size itself had no impact on the verdict produced. The practice of using six-person mock juries' has been implemented in research exploring other legal and non-legal factors (for example, racial diversity: Hakstian et al., 2023, expert testimony: Parrott et al., 2015,

and juror bias: Ruva & Guenther, 2017). The perceptions of professionals involved in jury research found that 60% of survey respondents noted that six-person mock juries' were considered to be the minimally acceptable size (indeed, only 6% reported that more than six jurors were needed) (Lieberman et al., 2016). The same study found that 32% believed six-person mock juries' to be "ideal" for research within the field (Lieberman et al., 2016, p. 495). Thus, mock juries' in the present study included six participants, thereby achieving an appropriate balance between real-world systems (where 12 individuals are legally compelled to attend court on a specified day and time), and research practices (whereby logistical challenges in coordinating 12 volunteers to attend an agreed location at the same time as one another is rather more difficult).

Whilst sample size within qualitative research is a widely considered and much contested issue (as discussed in Chapter Three: Terry et al., 2017), Braun and Clarke's (2013) sample size recommendations for focus groups (perhaps the most akin to that of a mock jury paradigm) within a project of this scale is between three and six groups (each comprising of four to eight participants). Thus, based on this indicative sample size recommendation, the number of participants who took part in the study were within this established range. However, arguably more important, the research has significant value in terms of information power (Malterud et al., 2016). The study provided the previously unheard voice (Creswell, 2014) of mock jurors and juries', producing data that considers how participants think, feel, view, and negotiate alibis within the deliberative process. With regards to the dimensions that determine information power (Malterud et al., 2016), the study had a narrow, focused aim based upon established theoretical underpinnings, with quality dialogue between participants using a case-specific analytic approach designed to gather detailed narratives, thereby reducing the sample size needed. However, this was weighted against a requirement for a degree of sample specificity (participants were required to meet the eligibility criteria for jury duty), thus a larger sample size would be appropriate. Taken together, the size of the sample was apposite for the focus and scope of the study.

The sample (see Appendix 27 for a table listing individual participant demographic information and group guilt decision) was predominantly female, with

16 participants identifying as female and eight as male. The age ranged from 18 to 66 years old, with a mean age of 38.12 (*SD* = 18.63). The majority (*n* = 18) of participants self-identified as White British, with three identifying as Pakistani, two of Mixed or Multiple Ethnic Groups and one as Black African. Fifty percent (*n* = 12) of participants were employed, whilst the remaining were students (37%, *n* = 9), retired (8%, *n* = 2), or unable to work (4%, *n* = 1). Only two participants reported they had previously served on a real-world jury, with the majority stating they had not (*n* = 20) or did not provide a response (*n* = 2).

As in the second study, to ensure a representative sample of participants akin to those who would undertake real-world jury duty, participants were required to meet the requirements for jury service in England and Wales (Juries Act 1974) (a list of the inclusion criteria used can be found in Chapter Five). Participants were required to confirm, via the Consent Form, that they had met the inclusion criteria or were otherwise excluded from partaking in the research.

The sampling method involved the recruitment of participants from both student and community populations. Self-selecting participants were recruited voluntarily via convenience sampling (Robinson, 2014), in which available participants who met the requirements for jury service (Juries Act 1974) were recruited. Snowball sampling (Biernacki & Waldorf, 1981; Coolican, 2018; King et al., 2018) was also employed. Participants were allocated to a mock jury depending on their expressed preference and availability to take part in the study and on a first-come, first-served basis. As would be in the case of real juries, no steps were taken to alter the demographics within or across the groups.

Recruitment media (a poster: Appendix 19) was used to assist with promotion, which contained brief information on the study's requirements, procedure, and time commitment involved. In order to recruit those from community samples, the study was promoted using said recruitment media on the researcher's professional X [Twitter] account (on seven occasions over a 12-week period, which included 'tagging' other relevant parties to assist with recruitment) and via word-of-mouth advertisement. To access student populations, the same posters (in paper form) were displayed on campus in two designated areas for research recruitment

(accessible by both staff and students) in Brooks Building at Manchester Metropolitan University, for the entirety of the data collection period. The study was also promoted to students in the School [Department] of Psychology at Manchester Metropolitan University via the Psychology Research Participation Pool website (accessible to a population of approximately 1,400 students) and other advertisement mediums (for example, the use of learning platforms, and promotion during teaching sessions and departmental events). Participants were incentivised to take part through the opportunity to be entered into a draw to win a nominal non-cash prize. Those recruited via the Psychology Research Participation Pool were awarded 120 points for taking part. Participants were asked to contact the researcher via email if they wished to take part and were provided with a copy of the Participant Information Form (Appendix 20) on expressing interest.

Materials

The trial re-enactment was a video and audio recording of a scripted mock criminal trial, which lasted for 27 minutes in total. This was intended to be a streamlined version of a criminal trial in its entirety, presented visually as would be the case in a real trial, thus increasing the validity of the presentation medium (B. H. Bornstein et al., 2017).

Case Details

The trial re-enactment was based upon the same real-world offence as in the thesis' second study (the case of *R. v South*, 2011)[19], purposely chosen to gather a rich understanding of the reasoning behind the decisions and evaluations demonstrated in Study Two. In doing so, it also provided continuity across the entire thesis: the key themes relating to barristerial cross-examination strategies used in alibi evidence were identified in Study One, which were quantitively examined in relation to mock juror decision-making in Study Two, and finally qualitatively explored during mock jury deliberations in this final study.

[19] A summary of the case details, and information on how the case was selected based upon a systematic search of the BAILII database, can be found in Chapter Five.

Trial Transcript

Using the aforementioned case details and the trial transcripts from Study Two as a basis, a fictitious trial transcript (Appendix 25) was devised that portrayed a complete, yet condensed, criminal trial.[20] In summary, the transcript included judge's opening remarks and defendant plea, opening speeches by both the prosecution and defence, the prosecution's case (which included direct and cross-examination of the complainant and forensic scientist), followed by the defence's case (including examination-in-chief and cross-examination of the defendant as the alibi provider and the alibi witness), before ending with closing speeches by both counsels. Once all evidence had been heard, and in line with the Crown Court Compendium (Judicial College, 2018[21]), the judge delivered an alibi direction and bad character direction. Finally, the judge summarised the case and asked that the mock jury deliberated to reach a unanimous verdict. Relevant phrases or wording from Study One's interviews were incorporated into the transcript, as appropriate.

The transcript used in this study differed somewhat from the trial transcripts used in the second study, in that testimony pertaining to the prosecution's version of events were provided (in the form of examination and cross-examination of the complainant and forensic scientist). Whilst details on the prosecution's evidence was referred to in Study Two's transcripts, these testimonial accounts were included in the re-enactment to ensure a criminal trial in its entirety was presented. Additional judge's instructions relating to the role of the jury and the deliberative process were also included at the beginning and end of the re-enactment (which were not required for the transcripts used in Study Two, as that study focused on individual, mock juror decision-making).

Opening Speeches and Plea

[20] As in Study Two, identifiable data was changed, and minor case details were modernised or updated. Minor changes to the case based on the pilot study in Study Two were also maintained for this study, details on which can be found in Chapter Five.

[21] As noted in Chapter Five, the 2018 version of the Crown Court Compendium (Judicial College, 2018) was in circulation at the time the study's materials were devised. Thus, the 2018 iteration is referred to where the method/materials are concerned, otherwise more contemporariness versions are cited.

The judge opened the case by asking the usher to read the charge (that of burglary) to the defendant, and for the defendant to respond with his plea (not guilty). The judge then provided opening remarks, informing the mock jury as to their role in the case, including that they should try the defendant based only on the evidence heard in court. The remarks were taken directly from Section 3.1 of the Crown Court Compendium (Judicial College, 2018), although some sections (e.g., the prohibition of internet searches relating to the trial or parties) were removed as they were irrelevant for the purposes of this research.

Following this, opening speeches by the prosecution and defence were delivered. The prosecution introduced themselves as acting on behalf of the Crown and outlined their case against the defendant. This included a summary of the offence details and timeline and the evidence in support of their case, with reference to the principles of burden of proof and standard of proof. The defence introduced themselves as representing the defendant, including their responsibilities in the case, and outlined the nature of the alibi defence.

Prosecution Case

The prosecution opened with direct examination of the complainant, the individual whose shared home was burgled by the alleged defendant. In their examination-in-chief, the complainant stated that she was asleep upstairs in the property when it was burgled, coming downstairs mid-afternoon to find the front door open, with glass smashed and a footmark evident on the envelopes below the letterbox. The prosecuting barrister asked the complainant as to her and other residents' use of the front door to enter and leave the property, to clarify whether the footprint attributed to the defendant's footwear could have made by herself or others. This was consistent with the real case, whereby the occupants of the property stated they did not habitually use the front door, using the back door instead.

During the complainant's cross-examination, the defence alleged that the footmark found on the envelopes could potentially have been made by one of the residents of the household, exploiting the fact that the complainant stated that she

could not be entirely certain that this was not the case. In instances where the complainant is not an eyewitness to the offence, as in this case, cross-examination aims to exploit the evidence as mistaken on one or more relevant points (Ross, 2007). The aim of this approach is to sow reasonable doubt as to the reliability of the evidence, particularly on occasions where it is not possible to establish their entire account or testimony as mistaken or erroneous.

Following this, the prosecution admitted forensic evidence in the form of the partial footprint found on envelopes beneath the entered door of the property. The direct examination of the forensic scientist first outlined her experience in forensic footwear evidence, before providing testimony detailing the features of the partial footwear impression examined, the frequency of contact with such footwear in her experience, a statement relating to burglars' frequent use of sports trainers, and finally her subjective opinion on the probability that the footprint found on the envelopes was made by the defendant. This was deemed as being of moderately strong support for the suggestion that the defendant's trainer (seized at the time of his arrest) had made the imprint on the envelopes. The forensic evidence detailed in this section was a direct replication of the real case information and was in keeping with the guidelines (*R. v T*, 2010) for forensic footwear evidence. This states that the examiner ensures it is clear to the court that the viewpoint provided is subjective and based on their professional experience, avoiding the use of terms such as scientific when making evaluations which may give an impression of accuracy and objectivity that is not yet present within the expertise of footwear and footprint analysis.

The defence subsequently cross-examined the forensic scientist on the subjective nature of the conclusions drawn, highlighting the limited precision and objectivity of the evidence and the near 50% probability that the footprint was not from the defendant at all. As advocated by Stone (1995), cross-examination of an expert witness who provides an opinion should focus on challenging the inferences made or the probability of the conclusions drawn, with a view to weakening the strength of such evidence.

Defence Case

The defence's case opened with direct examination of the defendant, whereby the defence of alibi was admitted. This referenced that the defendant had been at the home of a friend at the time of the burglary, helping him with repairs to a motorcycle. The defendant's account also provided an explanation as to how he came into possession of one of the stolen items, in that he acquired it from a beggar. 5WH questions were employed during examination-in-chief (of both the alibi provider and witness), providing a sequential yet controlled narrative account, reflective of a story (Grant et al., 2015; Henderson et al., 2016; Kebbell et al., 2003; Morley, 2015; Webb et al., 2013, 2019).

The prosecution then cross-examined the defendant, probing the details of the alibi to test the account against other versions or facts (Boon, 1999). In doing so, the defendant recalled a different account to that of the police interview and examination-in-chief, thus revealing inconsistencies in the temporal and activity aspects of the alibi (during cross-examination, the defendant stated he left his home at 9.00 on the morning of the offence to travel to his friend's house, rather than 10.00 as he had previously stated, and that he had also watched television at his friend's house, which he had not specified in his prior accounts). A series of leading, multiple, and closed were employed, confirming the defendant's commitment to such dissimilarities through the riveting technique, thus weakening the alibi defence, before using insinuating questions to suggest that the defendant was in fact lying and had committed the offence in question (Allen et al., 2015; Boon, 1999; Stone, 1995). Bad character evidence in the form of the defendant's previous convictions for dwelling house burglaries, as per Section 101 (1) (d) of the CJA 2003, was also admitted during cross-examination to demonstrate a propensity for committing offences like the one in question. In doing so, the credibility of defence's case was undermined and discredited by insinuating that the defendant's account was questionable due to such convictions (Allen et al., 2015), culminating in the prosecution alleging that the alibi defence was provided dishonestly.

The defence's case also included direct examination of the alibi witness who corroborated the defendant's story, in that they were together repairing a motorcycle

at the time the offence was committed and thus he was not responsible for the offence in question. Cross-examination of the alibi witness by the prosecution highlighted the relationship between the defendant and witness, making this explicit before the court (Steele, 2020; Stone, 1995). Following this, to further undermine the alibi evidence, the prosecution alleged that the witness was being dishonest in his account to corroborate his friend's false alibi (Ross, 2007; Stone, 1995).

Closing Speeches

After all evidence had been heard, closing speeches by both the prosecution and defence were delivered. The prosecution reiterated the case against the defendant, with reference to the forensic evidence in support of their case, the inconsistencies with the alibi defence and the defendant's bad character, closing by asking the jury to deliver a verdict of guilty. As previously mentioned in their opening remarks, the barrister reminded the jury that the burden of proof lies with the prosecution. The defence then asserted that the defendant did not commit the offence, as he has an alibi corroborated by a witness to demonstrate he was elsewhere at the time, and asked the jury to deliver a verdict of not guilty.

Judicial Directions

Following the closing speeches, the judge delivered directions to the jury pertaining to the alibi defence and the defendant's previous convictions. Such directions were taken directly from the examples set out in Section 18.2 and Section 12.6 of the Crown Court Compendium (Judicial College, 2018), respectively. The alibi direction reiterated that the burden of proof lies with the prosecution and that a false alibi is not necessarily indicative of guilt. The direction for prior convictions as evidence of propensity stated that the prosecution admitted this to demonstrate that the defendant's tendency to commit similar offences, however it was for the mock jury to decide whether this was in fact the case. If they were sure, the previous convictions could only be used to support their case, and the defendant should not be convicted based wholly on such evidence. If they were unsure that this was the case, they were instructed to disregard the previous convictions as evidence.

Finally, in keeping with the Ministry of Justice (MoJ) Criminal Practice Directions (2015), the judge summarised the prosecution and defence's case against the defendant and reminded the jury of their responsibilities with regards to the principle of reasonable doubt[22]. As detailed in Section 21.1 of the Crown Court Compendium (Judicial College, 2018), the judge directed the mock jury to deliver a unanimous verdict, noting that, whilst a majority verdict is possible, this should not be considered unless further instructed. They were also advised as to how to run the discussions, specifically that they should identify a foreperson to guide discussions and deliver the verdict, and to consider the views of all jurors to reach a decision that they all agree on. The mock jury was then dismissed by the judge for deliberations.

Trial Re-Enactment

The trial re-enactment footage was professionally video and audio-recorded in the mock courtroom at Manchester Metropolitan University. As noted in Chapter Three, pre-recorded video footage of a simulated criminal trial was used in the present study for the benefits of external and ecological validity, supplementing and triangulating the findings of Study Two as per the stepped approach to jury research (Curley & Peddie, 2024). In this instance, a representative trial presentation medium was deemed more apt than other means (such as a written trial transcript which, whilst is of value in terms of greater experimental control and convenience, is less reflective of how real-world juries would see and hear evidence in practice: B. H. Bornstein, 2017; Pezdek et al., 2010). Eight sector-experienced professional actors were used, covering the roles of the judge, prosecution barrister, defence barrister, usher, defendant, alibi witness, complainant, and forensic scientist, who played scripted roles according to the trial transcript. Actors were required to sign a Consent Form (Appendix 21), confirming that they agreed to the footage being viewed by participants as part of the study, for teaching purposes, and in potential future research.

[22] The term 'beyond reasonable doubt' was updated in subsequent versions of the Crown Court Compendium (Judicial College, 2023) to instead juries should be 'satisfied that they are sure'. However, at the time the materials were devised, the Crown Court Compendium (Judicial College, 2018) and the preceding statement was still in use.

Data Collection

Process

Upon expressing interest via email, participants were provided a copy of the Participant Information Form (which, amongst other information on the study, contained details of the eligibility criteria), in addition to details pertaining to the dates and times the study was taking place[23]. As participants were voluntarily self-selecting to take part in the study, they were provided with a minimum of 24 hours to decide whether they wished to participate. Email contact between the principal researcher and participants took place in order to arrange attendance at the sessions for data collection. Participants were allocated to a mock jury based upon their expressed preference and availability, and on a first-come, first-served basis. As previously noted, no steps were taken to alter the demographics of participants within or between groups. For viability purposes, the study only took place if the mock juries' contained six participants per group. This minimum group size was achieved for each of the four juries', and there were no instances in which participants did not attend the allotted session or withdrew during/after participation in the study.

The study took place in pre-booked meeting rooms, either on campus at Manchester Metropolitan University premises or outside of the university, which had large-screen projection equipment to allow for the video footage of the trial re-enactment to be displayed. The study lasted for up to 120 minutes in its entirety: this included 30 minutes for viewing of the trial re-enactment and up to 60 minutes for deliberations, whilst the remaining time allowed for completion of the relevant documentation and a break if required.

[23] As previously noted in the methodology chapter, all data collection for this study took place in person. The original procedure permitted the study to take place synchronously using remote, online technology (to accommodate restrictions relating to COVID-19), with its benefits in terms of accessibility and flexibility for scheduling, interaction, and data capturing (Fox, 2017; P. Hanna & Mwale, 2017). However, this mode of data collection failed to yield any interest from potential participants and the procedure was altered to accommodate both in-person and/or remote modes of data collection (with only the latter proving successful).

At the start of the study, participants were asked to read the Participant Information Form and provided with an opportunity to ask any questions. If they met the eligibility criteria and wished to take part, participants were required to complete and sign two copies of the Consent Form (Appendix 22) and were allocated a pre-determined participant number (e.g., P1), which was documented on all participant-facing information for the purposes of pseudo-anonymity and data withdrawal. Participants were provided with a badge displaying their participant number, which allowed fellow participants to refer to them directly during deliberations but without using their name. Participants were asked to complete a demographic questionnaire (Appendix 23), detailing their gender, age, ethnicity, occupational status, and previous real-world jury experience.

Participants, together as a group in their mock jury, viewed the trial re-enactment. Once the footage had been viewed, mock juries' were instructed that they had up to 60 minutes to deliberate to reach a unanimous verdict[24] and were advised to identify a foreperson, who could then alert the principal researcher once a verdict had been reached. The researcher left the room whilst deliberations took place, with deliberations being video and audio recorded using two camcorders and a Dictaphone. Deliberations ranged from 15 minutes to 42 minutes in length, with the average deliberation time being 32 minutes (*SD* = 12.30) long. Once the mock jury foreperson verbally informed the principal researcher (who was waiting outside the room) that a verdict had been reached, the principal researcher returned to the room for the decision to be delivered and recorded. Once the verdict had been delivered, debrief information (Appendix 26) was provided and the opportunity for participants to ask questions was offered.

Standardised instructions (Appendix 24) were provided to participants before viewing the trial re-enactment footage, and pre- and post-deliberations, to ensure consistency in directions across the groups. In summary, prior to viewing the video footage, participants were informed that it was a simulated criminal trial based on a genuine burglary case and provided with an opportunity to ask questions. No

[24] The procedure allowed for a majority verdict to be accepted, in the event a unanimous verdict could not be reached after 50 minutes of deliberations. However, all mock juries reached a verdict on which they all agreed and thus this was not utilised.

specific direction was provided as to whether participants could make notes, or not, whilst viewing the mock trial. In advance of deliberations, participants were informed of their role as a mock jury and provided with 'ground rules' to ensure the discussions took place without issue. Once a decision had been reached and delivered, participants were thanked for their participation and reminded of their obligations with regards to confidentiality.

Data Analysis

The deliberations were transcribed verbatim by the principal researcher, using an adapted version of Poland's (2001) transcription notation system (the same as in Study One: Appendix 8). Reflexive TA, using Braun and Clarke's (2022a) six-step recursive process for exploring patterns across a dataset, was used to address the study's research questions. Both paper and electronic versions of the transcribed deliberations were used over the course of the analysis, in addition to Mind View 6.0 (mind mapping software that allows for the visual representation of ideas) and NVivo in the latter stages. A more detailed consideration as to methodology is discussed in Chapter Three.

Firstly, in the familiarisation phase of reflexive TA, the transcripts were read multiple times to ensure immersion in the data. General notes on the entire dataset were made for reflection purposes. Moving on to the second phase, coding, each of the transcripts were systematically reviewed to construct both inductive and deductive codes based upon relevant ideas and concepts related to the study's research questions. The codes created in the early stages of this stage required some refinement, as the codes and code labels were initially too broad to fully reflect the analytic meaning within the data. Substituting electronic for paper transcripts was particularly beneficial in this phase. Initially, the codes were mostly semantic, reflecting the surface meaning of the extracts, with a stronger focus on exploring more latent codes considered in subsequent rounds of coding. In the third phase, clustering of similar codes into initial candidate themes was performed based upon shared patterns of meaning centred around a core concept. Several refinements were involved in this stage, to reflect meaningful, coherent, and boundaried

provisional themes. Visual mapping, both by hand and using Mind View 6.0, was used to explore relationships between themes. Phase four involved the development and refinement of themes, assessing the suitability of the initial themes against the coded excerpts and the entire dataset. Again, the initial themes required some revisions, particularly in relation to identifying clear boundaries for the constructed shared meanings. The construction of an overarching theme (Braun & Clarke, 2022a, 2022b) was particularly beneficial in this stage, identifying a unifying concept that wove all the themes and subthemes together into a more coherent story of the data. The fifth stage, that of the refining, defining, and naming of themes, involved creating a brief synopsis of the core concepts for each of the themes and subthemes. This stage was done in consultation with supervisors, to ensure the themes' coherence within the overall story of the data. In the fourth and fifth phases, NVivo was particularly useful as a means of attributing extracts from the dataset to revised and refined themes and subthemes, with more ease compared to traditional paper-based approaches. The sixth and final stage of the process involved writing up of the combined analysis and discussion section to articulate the story of the data in relation to the study's research questions.

Analysis and Discussion

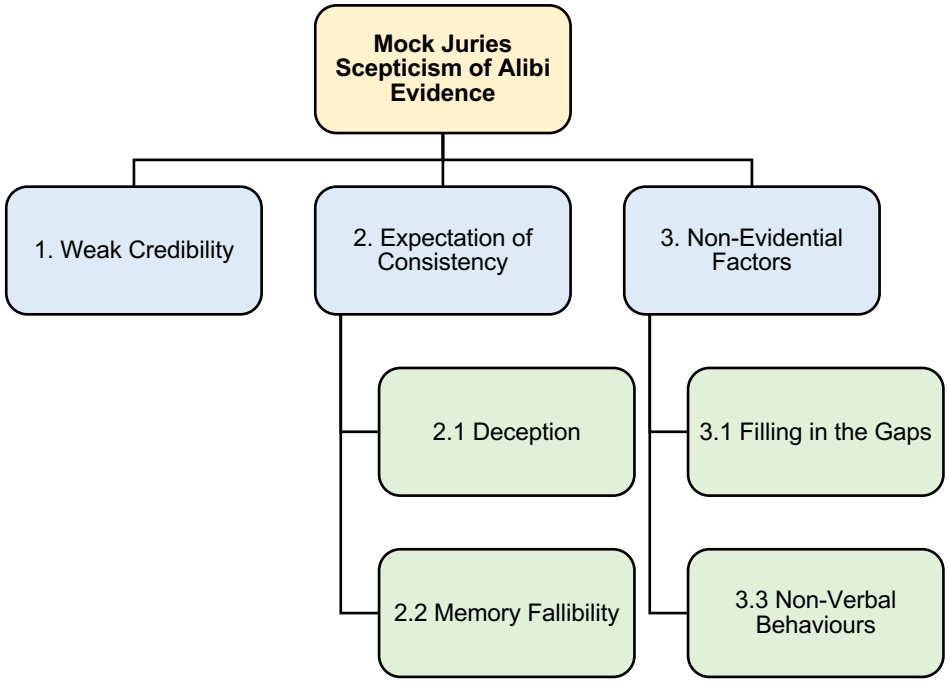
The aim of the study was to explore mock juries' understanding, perceptions, and use of alibi evidence within the context of deliberations in a simulated criminal trial. The study addressed how mock jurors and juries' perceive and use alibi evidence in the deliberative process, and what role barristerial cross-examination techniques of exploiting alibi between-statement inconsistencies (resulting in changes in terms of temporal and activity related details) and discrediting the defendant through prior conviction evidence for similar offences have within mock jurors and juries' understanding and perceptions of alibi evidence. Four six-person mock juries' (from hereon in referred to as Jury A, B, C, and D) viewed video footage of a trial re-enactment for the offence of burglary, before taking part in mock deliberations. The deliberations were video and audio recorded and transcribed verbatim, and analysed using reflexive TA (Braun & Clarke, 2022a).

As depicted in Figure 6, one overarching theme and three themes were constructed, with the latter two having subthemes[25]. The overarching theme, that is the unifying concept that anchors all the themes together (Braun & Clarke, 2022a, 2022b), was that of the sceptical nature in which mock juries' and jurors understood, perceived, and used alibi evidence during deliberations. This scepticism was present not only in the language used to describe the alibi throughout deliberations, describing it as *"very loose" [PP6, Jury A, p. 1, l.3]*, "*flaky" [PP18, Jury C, p. 34, l. 17]*, *"very dodgy" [P22, Jury D, p. 17, l. 15]*, and not *"a credible story at all" [PP19, Jury D, p. 17, l. 13]*, but the underlying narrative by which participants regarded and reacted to the defence and ultimately used it when deciding upon a verdict. The three constructed themes reflect factors which contributed to or caused the scepticism evidenced during deliberations: the perceived weak credibility of the defence, the clear expectation for consistency in recall and relaying of the alibi, and lastly the role and impact of extra-legal, non-evidential factors on their decision-making.

[25] Verbatim quotes are used in support of the analysis and discussion of the data for all themes and subthemes. Quotes are referenced according to the participant number (abbreviated to PP), jury number, transcript page number (abbreviated to p.) and line number (abbreviated to l.), for example [*PP1, Jury A, p. 3, l. 13]*.

Figure 6

Visual Representation of Overarching Theme (Shown in Yellow), Themes (Shown in Blue) and Subthemes (Shown in Green)



With regards to verdict, all mock juries' reached a unanimous verdict: Jury A and B reached a verdict of not guilty, whereas Jury C and D reached a verdict of guilty. It is worth noting that, for the two former juries, the verdict was reached more because *"of a lack of evidence, rather than he's not guilty" [PP11, Jury B, p. 25, l. 1-2]* as *"there isn't ENOUGH to potentially send him to prison" [PP2, Jury A, p. 13, l. 1-2]*. This suggests that, whilst those juries believed the defendant was indeed responsible for the offence, the standard of proof was insufficient enough in their opinion to warrant a guilty verdict.

Theme 1: Weak Credibility

The weak credibility of the alibi, in terms of its perceived vagueness and the apparent ease at which the mock jurors and juries' believed the evidence could be (falsely) generated and corroborated, was central to the overall scepticism levelled at the defence. Participants believed the nature and details of the alibi were *"vague*

intentionally" [PP8, Jury B, p. 23, l. 16], and thus *"all made up" [PP17, Jury C, p. 5, l. 20]*, in a deliberate attempt to deceive the court. The corroboration of the defendant's account by his friend (a motivated familiar other: Olson & Wells, 2004) was perceived as similarly *"VERY vague" [PP21, Jury D, p. 8, l. 4]* and reliant only on *"his word" [PP2, Jury A, p. 3, l. 1-2]*, thus making him not *"a credible witness for an alibi" [PP15, Jury C, p. 38, l. 8]*.

> *Erm (…) the credibility of his alibi, I don't think his alibi is credible at all [PP23, Jury D, p. 24, l. 4-5].*

> *You know, keep it as vague as possible. Fixed your bike, that's it. They didn't even go into much detail about exactly what they did. Did they mention a tyre and something else? (…) I thought that's kind of standard stuff for a bike isn't it? Like you can say that and not be questioned too much about that [PP8, Jury B, p. 23, l. 19-26].*

> *They probably never even went to the house and fixed the bike. He's just said to his mate "look (…) I've been in a bit of trouble" or whatever, "can you just say you were with me?" and never thought anything would come of it [PP18, Jury C, p. 16, l. 2-5].*

Mock jurors and juries' perceived the person evidence provided by the alibi witness to be lacking in credibility for two reasons: firstly, the length of time the individuals had known one another for and thus the established relationship between the pair and secondly, the reason or motive for corroborating an alibi in such an instance.

> *Did he say exactly how many YEARS he'd known him? [PP2] He said he didn't know, a couple of years maybe [PP5, Jury A, p. 3, l. 5-6].*

> *But then, would you lie for your mate for that? What's he getting out of it? What's his friend getting out of it? [PP18, Jury C, p. 8, l. 15-17].*

So much so, several mock jurors believed that the alibi witness was in some way involved in the commission of the offence themselves. This ranged from that *"his friend was the lookout" [PP17, Jury C, p. 17, l. 2-3]*, to the defendant and witness *"shared the goods and the money" [PP14, Jury C, p. 8, l. 25]*, or even that *"maybe it was James* [alibi witness] *that did the burglary (…) maybe he's covering for him" [PP8, Jury B, p. 27, l. 21-24]*.

I've just got a feeling his mate's in on it [PP14, Jury C, p. 16, l. 17].

Yeah he could have been part of it and that's what he's said (…) you know that's why he's give him an alibi because he was there [PP15, Jury C, p. 13, l. 23-25].

In keeping with Olson and Wells' (2004) believability taxonomy, the alibi literature has consistently demonstrated that mock jurors (and indeed, law enforcement: Dysart & Strange, 2012) view alibis corroborated by motivated witnesses as significantly less credible compared to that of non-motivated, unrelated witnesses (e.g., Allison & Kollar, 2023; Culhane & Hosch, 2004; Eastwood et al., 2020; Hosch et al., 2011; Pozzulo et al., 2012), and alibis corroborated by non-motivated others resulting in more favourable verdicts for the defendant (Culhane & Hosch, 2004; Pozzulo et al., 2012). Thus, it was unsurprising that mock jurors in this study expressed a similar view and judged the alibi defence in a likewise sceptical manner. It was noteworthy that some participants, in questioning the reason why the witness corroborated the seemingly weak alibi, believed he did so by some way of compensation or even to conceal his own involvement in the offence itself. This is a key finding, serving to provide a qualitative explanation as to *why* the alibi witness was evaluated as being unreliable in Study Two, and extends beyond the traditional viewpoints that alibis are corroborated by motivated witnesses by means of kinship (Hamilton, 1964) and reciprocal altruism (Trivers, 1971). The language used by participants when discussing this reflects that it is conjecture, with Participant 14 even acknowledging it as *"a feeling" [PP14, Jury C, p. 16, l. 17]* rather than a viewpoint that has any evidential basis, yet this still forms a noteworthy component in their discourse as to the credibility of the defence.

The absence of any physical evidence to further corroborate the defendant's account also contributed to the weak credibility and the perceived ease at which mock jurors and juries' believed the alibi could be fabricated. Indeed, some participants discussed person evidence as being *"not conclusive (…) not factual" [PP11, Jury B, p. 19, l. 25]* and that the police investigating the offence should have done more to collect *"check*[able]*" [PP12, Jury B, p.9, l. 4]* evidence to prove or disprove the alibi in that "*they need to like extend the investigation" [PP3, Jury A, p. 9, l. 12]* as *"they need more EVIDENCE" [PP6, Jury A, p. 9, l. 13]*.

> *I feel like that would be easy to check though, because surely (…) I don't know, he would register something with his bike as being wrong or he would've bought parts to fix it so they would be charges on the friend's credit card for whatever stuff you'd need to fix it (…) I mean obviously that still doesn't show that it was on the date, but it shows that the bike was fixed at some point. And you could see when they bought it and how soon it was but (…) I don't know, I feel like that's something you could just check [PP12, Jury B, p. 9, l. 4-17].*

> *I wonder if there were any street cameras? You know to maybe check if they'd been ON the bike or see if it's- [P8] Or even seen him walking to his friend's house- [P9, Jury B, p. 9, l. 18-20].*

Physical evidence, particularly evidence which is considered difficult to fabricate (for example, CCTV), is considered the most credible alibi corroboration (Nieuwkamp et al., 2018; Olson & Wells, 2004; Sargent & Bradfield, 2004). Physical corroboration has been associated with increased ratings of alibi believability (Allison et al., 2020; Jung et al., 2013) and defendant trustworthiness (Allison & Hawes, 2023). However, the ability to recall and produce physical evidence to corroborate an alibi is considered a relative rarity (Dysart & Strange, 2012; Heath et al., 2021; Turtle & Burke, 2003). Innocent mock suspects demonstrate a poor ability to recall all types of physical evidence available to them (Matuku & Charman, 2020), and only 29% (Culhane et al., 2008) and 16% (Culhane et al., 2013) can provide physical corroboration in support of their alibi defence. Whilst the literature recognises the ability for even an innocent individual to provide corroborating physical evidence is limited, this does not seem to be reflected in participant's understandings as to the intricacies of this defence. Mock jurors and juries' expected that the defendant and/or witness should be able to reliably produce such evidence, and that the police as the investigating authority should be able to access said corroboration with ease. This is despite well documented issues relating to poor quality and the potential for misidentification in CCTV footage (Brookman & Jones, 2022; Davis et al., 2018; Davis & Valentine, 2008; Keval & Sasse, 2008; Porter, 2011; Seckiner et al., 2018). The superiority by which physical evidence is perceived could also be evidence of the CSI effect (Baskin & Sommers, 2010; Mancini, 2013; Shelton et al., 2006), consistent with the view that physical evidence is seen to be of a higher calibre compared to other evidential material (Hawkins & Scheer, 2017;

Maeder et al., 2017, although see Klentz et al., 2020; Lodge & Zloteanu, 2020 for contrary evidence).

The expectation for the presence of physical corroboration in alibis is unrealistic on the part of mock jurors and juries' (akin to laypersons unrealistic expectations of non-motivated witnesses: Warren et al., 2022), yet its absence is noteworthy in contributing to its perceived weak credibility and the overall scepticism of the defence despite its expected absence (Culhane et al., 2008; Culhane et al., 2013). Future research would benefit from exploring whether similar findings are evidenced when using varying contextual characteristics (acknowledging the continuing discussion as to the generalisability and transferability of knowledge when using qualitative methodologies and reflexive TA: Braun & Clarke, 2022a; King et al., 2019; Terry et al., 2021). For example, would mock juries' react with a similar level of scepticism towards alibis where corroboration takes the form of physical evidence or an account from a non-motivated individual? This should be done as part of a large-scale qualitative consideration of how mock juries' understand, perceive, and use alibi evidence within the context of deliberations, providing a voice (Creswell, 2014) to those that have previously been overlooked within the alibi literature. Research on a similar scale has been seen in other areas of jury simulation research (Chalmers et al., 2022; Ellison & Munro, 2010; Willmott et al., 2018): for example, Ellison and Munro (2010), in examining deliberative processes for cases concerned with sexual offences, used nine different scripted trial reconstructions across a large sample of mock juries'. As such, research examining alibi evidence on a similar scale would be both warranted and worthwhile.

Theme 2: Expectation of Consistency

Mock jurors and juries' expressed a clear expectation that the internal details of the alibi defence should be recalled and relayed consistently at any given time point. Consistency was not solely limited to the expectation for between-statement consistency (perhaps unsurprising that this was noted, given the barristerial cross-examination technique of exploiting inconsistencies was concerned with between-statement discrepancies by the defendant in term of temporal and activity details),

but extended beyond this to include within-group consistency (Leins et al., 2011) for the alibi provider and witness. This theme was constructed as having two subthemes, each concerned with how consistency was construed within deliberations: firstly, the notion that inconsistency was indicative of deception. Secondly, the recognition by some mock jurors that alibi memory is indeed fallible and may in some way negate the expectation for consistency. The two facets of the theme are opposing to one other, representing differing and conflicting perspectives.

Subtheme 2.1: Deception

As per the expectation of consistency, participants across all juries expressed the view that any element of inconsistency in the alibi defence, however trivial, was indicative of a deliberate attempt by the account provider to deceive. Mock jurors and jurors believed that an alibi should be a *"fool proof story" [PP13, Jury A, p. 15, l. 25-26]* and any element of discrepancy was *"fishy" [PP4, Jury A, p. 3, l. 11]* and suggested that *"the alibi is a lie" [PP13, Jury C, p. 25, l. 11]*. This view was most prominent in the juries that found the defendant guilty (Juries C and D), suggestive of it being a particularly influential factor in determining culpability, yet to a much less extent in the first of the two juries (who, of relevance, found the defendant not guilty). As per the findings of Study Two, this demonstrates that the barristerial cross-examination technique of exploiting alibi inconsistencies is effective (at least, in some instances) is undermining and discrediting the defence so that it succumbs to evidence suggestive of the defendant being responsible for the offence.

The alibi account provided by the defendant during the trial re-enactment contained between-statement inconsistencies in terms of temporal and activity related details. Participants in Juries A, C, and D commented that the one-hour timing discrepancy between alibi accounts was not only significant but substantial, whilst mock jurors in Jury D believed that the two activities (fixing a motorcycle or watching television) were of *"stark difference" [PP23, Jury D, p. 14, l. 23]* to one another and thus could not be easily confused.

> *I'm also going off his own evidence, Michael Wilson's* [defendant's] *own evidence about the time difference. How he said 10 o'clock and*

then he said nine o'clock. And he said he was just confused as to his statement he'd given to the police in the first place. Erm so I think if (…) my thoughts on that is, if you were certain you hadn't done it, I certainly wouldn't be mixed up with my times of when I'd left my home at [PP20, Jury D, p. 2, l. 20-16].

Because it's like a really big difference between half nine and half 10. (…) It's not like it's only 10 or 15 minutes [PP4, Jury A, p. 3, l. 15-18].

I think fixing a motorbike is very specific and you would know that that's what you were doing for the entirety of the time that you were supposedly at your friend's house for. I don't think you could get that mixed up, fixing a bike and sitting watching the tele [*sic*] *[PP24, Jury D, p. 19, l. 21-26].*

The expectation for consistency across all aspects of the alibi, with any discrepancies being indicative of a deliberate attempt at deception, is at odds with the literature on alibi generation (Cardenas et al., 2021; Crozier et al., 2017; Laliberte et al., 2021; Olson & Charman, 2012; Strange et al., 2014). Strange et al. (2014) found less than 50% of truthful alibi accounts were consistent after a one-week delay between first and second recall. Of note, 60% of alibis were partially or entirely inconsistent in terms of the activity recalled, whilst 66% of accounts were partly or completely inconsistent with regards to timing. Similarly, Cardenas et al. (2021) found that 38% of alibis recalled after a time delay (of, on average, eight days) were partially or entirely inconsistent, and activity details were recalled slightly less consistently compared to details pertaining to setting and person domains of the account. Despite this, there is a misconception amongst evaluators that alibis should remain entirely consistent and accurate (Culhane & Hosch, 2012; Dysart & Strange, 2012; Price & Dahl, 2017) in keeping with the consistency heuristic (Granhag & Strömwall, 2001), despite well-recognised memory limitations (Fisher et al., 2013; Hudson et al., 2020) and indeed evidence to the contrary (Fisher et al., 2009; Fisher et al., 2013). As such, these findings are the first to qualitatively support the view that (at least some) mock jurors and juries' view inconsistent alibis as dishonest, in the same way as laypersons and police investigators, and is thus a factor that can be exploited to the prosecution's advantage during cross-examination. Whilst other (quantitative) research has indeed alluded to it (the findings of Study Two, and Allison et al., 2023), this is the first to have it from those

directly responsible for determining (mock) culpability that deception is derived from inconsistency.

It is interesting that some participants in Juries C and D commented not only on between-statement consistency as an indicator of deception, but also on within-group consistency, that is the constancy within statements provided by two or more individuals (Leins et al., 2011).

> *Between half past 10 and 11 o'clock is a good gap. If he was there and he's saying 10.30, why didn't his friend say he got to mine just after 10.30? He said between 10.30 and 11.00 [PP13, Jury C, p. 14, l. 24-27].*

> *You'd have got your story RIGHT, that's what I'm saying. If you're giving an alibi for someone, you would say the same thing [PP13, Jury C, p. 25, l. 6-8].*

> *You know, their stories have started to split apart a bit over time, so I don't believe it. I don't believe that there's any truth in it at all [PP23, Jury D, p. 20, l. 26-28].*

The evidence provided by the alibi witness was exactly as is in *R. v South* (2011), the real-world offence on which the trial transcript and subsequent re-enactment was based. The 30-minute window in which the witness stated the defendant arrived at his house was consistent with the defendant's original, unchanged account prior to cross-examination (stating he arrived at approximately 10.30). Despite this arrival time being outside of the time that the offence allegedly took place (between 12.30 and 15.30), some participants still expected this minor detail to be consistent within the two accounts provided. As such, mock jurors expected specific details of the alibi to be entirely consistent across accounts provided by both the defendant and corroborator, even down to a relatively negligible detail such as the exact time of arrival, despite this being a factor more likely to be present in deceitful alibis compared to truthful accounts (Sakrisvold et al., 2017). Strömwall et al. (2003) found evidence of the consistency heuristic (Granhag & Strömwall, 2001) with observers asked to judge the veracity of alibis provided by pairs, with 90% of participants agreeing that, if two suspect's statements were inconsistent, this suggested they were lying. In fact, evaluators used within-

group consistency of an alibi as a subjective cue to deception more often than consistency within the same statement provided by one individual. More recently, Vernham et al. (2020) found that observers used within-group consistency to assess veracity across multiple alibi statements, which is problematic as it is based on the stereotypical, inaccurate belief that inconsistency is indicative of deceit. The findings of this study are novel and suggest some mock jurors and juries' are sensitive to both between-statement and within-group (in)consistencies of an alibi, relying on the consistency heuristic (Granhag & Strömwall, 2000) across both domains to inaccurately assess the veracity of the defence.

Some expressed an almost idealistic view of alibi recall and relay, in that both the defendant and witness should *"know what* [they] *were doing" [PP19, Jury D, p. 15, l. 6]* and be able to *"remember details" [PP3, Jury A, p. 3, l. 14]* when asked. In their view, an inability to accurately remember and consistently convey said account was viewed with scepticism.

> *Especially if you were being accused of doing something. You would know, in your own mind, what it was that you were DOING at that time. I don't think that's the type of thing you would easily forget [PP23, Jury D, p. 14, l. 1-4].*

> *BUT if you were giving an alibi for somebody, you would know EXACTLY what time they came BECAUSE you'd know they were coming [PP13, Jury D, p. 24, l. 19-22].*

As previously noted, alibi generation is difficult and frequently contains errors and inconsistencies (Cardenas et al., 2021; Laliberte et al., 2021; Olson & Charman, 2012; Strange et al., 2014). Evaluators may heuristically perceive the process of alibi generation and corroboration to be relatively simple (Abbott, 2016; Olson & Wells, 2012), hence judge an alibi on this basis. Thus, when an alibi does not meet this expectation (as in this instance, where inconsistencies were present), this supports the sceptical nature in which the defence is viewed (Olson, 2004; Olson & Wells, 2004; Sommers & Douglas, 2007; Allison, 2022) and verifies the belief that the account is a dishonest one. The idealistic nature by which jurors assessed and evaluated the defence in this study suggests that, together with the practice of generating their own alibi (Olson & Wells, 2012), greater information and education

may be useful for juries to assist them in more accurately assessing the credibility of an alibi. This could be recommended as a function of expert evidence, with future research also needed to consider the content, timing, and source of the information provided, or updating current judicial guidelines to implement mandatory, evidence-based judicial directions designed to convey basic, psychological knowledge on the subject matter. Similarly (as per Study One), improved knowledge and understanding on the part of judicial practitioners may alleviate or mitigate for the conveyance of such unrealistic expectations during the examination of such evidence.

Subtheme 2.2: Memory Fallibility

Whilst mock jurors and juries' expressed an expectation for consistency (as per the theme), this was juxtaposed with the recognition by some that the fallibility and fragility of memory may, at least to some degree, explain why alibis may not always be entirely reliable, as recognised within this subtheme. Some participants in this study identified several shortcomings of memory involved in recalling and relaying an alibi, including, but not limited to, a lack of salience at encoding, memory decay, individual differences in retention, and overreliance on schemas during generation. Such factors were discussed at length in Jury B (who ultimately found the defendant not guilty), enough that some participants felt (in)consistency should not be used to assess veracity. Yet, whilst expressed by a minority of those in Juries C and D, such views did little to challenge or change the opinion of the wider group who believed that discrepancies were indicative of deception.

> *But if you're getting interviewed by the police, you're not going to remember. The main reason you go somewhere (…) you know, whenever I go to my mate's house to play music, we're probably going to chill, have a cup of coffee, watch TV at some point. It's not like you'd say all the other stuff, do you know what I mean? [PP6, Jury A, p. 4, l. 10-15].*

> *Again I think, if you were to ask me, what did you do on this day six months ago? There would definitely be inconsistences because for me, like I can't remember that. So the fact there are inconsistencies (…) you have to remember that you are stood in a courtroom, on trial. Like you are going to be nervous and I would definitely like blurt out*

> *things that aren't right. So (pause) again, there's too much doubt for me. I don't think (pause) that you can (…) yeah I think discount those inconsistencies [PP9, Jury B, p. 5, l. 19-28].*

> *I think it's a personal thing though. Like I always know the timing of stuff. (…) It just depends on the person I guess? [PP4, Jury A, p. 3-4, l. 26-27, 5].*

> *And if that was the ONLY thing, then I would say you would have to allow for thinking 'well if you've watched the tele* [*sic*] *at his house every time you go, then that day you might have just jumped to automatically recalling that you'd watched the tele* [*sic*] *because that's what you always do'. But if that was the ONLY thing [PP21, Jury D, p. 15, l. 7-12].*

The existing literature acknowledges several obstacles and barriers when generating an alibi which, in turn, impact on how the defence is perceived by evaluators (Burke et al., 2007; Charman et al., 2019; Crozier et al., 2017). Firstly, memory does not work like a video camera: recording events minute-by-minute as they occur, storing them to be readily available any time after (Belli & Loftus, 1996; Clifasefi et al., 2007), despite the common misconception amongst laypersons that this is indeed the case (Lacy & Stark, 2013; Simons & Chabris, 2011, although see Brewin et al., 2019 for a more nuanced perspective). Unless the event is particularly noteworthy, everyday *"mundane" [PP12, Jury B, p. 7, l. 8]* activities are unlikely to be encoded, making it particularly difficult when asked to recall an alibi as the provider may simply not remember (Brewer, 1988; Crozier et al., 2017; Kassam et al., 2009; Tourangeau, 2000). Even if an event was encoded at the time of occurring, memory is prone to decay and will be rapidly forgotten or rendered inaccessible if not readily accessed (Lacy & Stark, 2013; Pertzov et al., 2017; Schacter, 1999). Some participants recognised that this may be the case: *"like when you're going about your day, you're not logging everything in your head" [PP11, Jury B, p. 15, l. 19-20]* and, particularly an *"everyday thing" [PP10, Jury B, p. 6, l. 23]* such as watching the television, may be particularly *"easy to forget" [PP11, Jury B, p. 6, l. 26]*. In the absence of a strong memory, mock jurors suggested that alibi providers and witnesses may resort to conjecture by, for example, *"both guessing at what time they turned up" [PP17, Jury C, p. 16, l. 1]*. Additionally, some participants recognised individual differences in the ability to accurately retain events pertaining to an alibi defence, perhaps best summed up as *"maybe they've BOTH got bad memories"*

[PP16, Jury C, p. 28, l. 21-22]. Interestingly, in Jury A, Participant 1 asked their fellow mock jurors to recall what time they left the house that morning, to demonstrate the individualistic nature of memory (also evidence of subtheme 3.1: *Filling in the Gaps*). Two participants (4 and 5) were able to recall the exact time they left the house, whilst the remaining four stated they *"wouldn't know" [PP6, Jury A, p. 3, l. 24]* or *"would have no idea" [PP2, Jury A, p. 4, l. 2]*, suggesting that the act of generating an alibi promotes greater acceptance of the weak alibi of others and could potentially be an effective technique employed by the defence (Olson & Wells, 2012).

Benton et al. (2006) and Magnussen et al. (2009) found, in relation to eyewitness memory, jurors knowledge of such processes (for example, memory decay and confidence-accuracy relationship) was limited. However, Desmarais and Read's (2011) meta-analysis suggested a more promising picture, reporting that some aspects of memory fallibility may be within jurors lay understanding of the subject matter. In relation to alibi evidence, Portnoy et al. (2020) found that whilst, on average, survey respondents reported the likelihood of a truthful alibi containing errors as low, the most frequently cited reason for errors was due to impaired memory processes. Free-text responses indicated that some respondents believed innocent suspects may not encode details of the event due to not realising its importance at the time or may simply forget aspects over time. Olson and Wells' (2012) proposed the alibi generation effect, in that the actual experience of generating an alibi and the resulting difficulties in doing so resulted in higher believability ratings of a mock suspect's alibi (compared to those who evaluated the alibi first, before generating an alibi). This may potentially increase understanding and empathy towards the defendant, improving mock jurors and juries' ability to evaluate the alibi defence in a more informed and objective manner (as partly seen in Price & Dahl, 2017). Taken together, this finding is the first to qualitatively support the notion that mock jurors may demonstrate a degree of understanding as to the limitations of memory when generating an alibi and use this to judge the veracity of an alibi accordingly.

Alternatively, some literature suggests that omissions or errors in an alibi account are perceived negatively by laypersons and judiciaries (Culhane & Hosch,

2012; Dysart & Strange, 2012, Price & Dahl, 2017). It could be postulated that knowledge and understanding of memory processes may differ between individuals, perhaps as a function of juror characteristics (see Appendix 27 for a table of participant demographic information), such as educational attainment (all participants bar one in Jury B were university students, although memory would only be a subject addressed in particular programmes[26]) or age (the most prominent voice for this view in Jury C, Participant 17, was over the age of 60, who may be more experientially aware of the well-established age-related challenges with memory: Magnussen et al., 2006; Wake et al., 2020). Participant demographics were examined as part of the *Supplementary Analysis* in Study Two and, whilst age and gender had no significant effect for the most part, it was noted that such factors may potentially be more influential within the context of deliberative discussions. Additionally, factors related to the deliberations themselves, for example the style of deliberation (verdict-driven versus evidence-driven) and faction size effect (the number of jurors who exert an influence, e.g., minority or majority), may also impact on the discussion and transference of such information (Devine, 2012). Greater understanding as to the degree of knowledge laypersons and mock jurors possess about alibis, particularly memory in alibi generation (of relevance, laypersons possess a limited knowledge and understanding of eyewitness memory: Benton et al., 2006; Magnussen et al., 2009), and how this is applied and used within evaluation and decision-making as per mock juror and/or jury decision-making, is worthy of future exploration. Large-scale surveys (Simons & Chabris, 2011, see also Desmarais & Read, 2011) have been conducted within the eyewitness literature, thus a similar approach could be adopted for future alibi research.

A small number of mock jurors recognised that alibi providers and witnesses, in the absence of any or complete memory of the critical events, may rely on scripts or schemas of what they would have typically been doing, as per the Schema Disconfirmation Model (Charman et al., 2019). One mock juror in Jury D noted that the alibi provider may have *"jumped to automatically recalling"* an event because *"that's what you always do" [PP21, Jury D, p. 15, l. 10-11]*. In Jury C, Participant 13 commented that the witness may have been giving *"an excuse for a different day*

[26] Note, educational attainment was not collated as part of the demographic information collected.

that he's there because he CAN'T remember the times (…) which means that he's not giving an alibi for the day of the burglary" [PP13, Jury C, p. 24-25, l. 27-2]. Reliance on schemas is problematic, however, when details which depart from the schema are not reported, potentially leading to an inaccurate or entirely false alibi (Crozier et al., 2017; Leins & Charman, 2013). Leins and Charman's (2013) findings demonstrate that alibis may be based on schemas, which caused high accuracy in recall when the critical event was consistent with the schema, but significantly lower accuracy when the occurrence was schema-inconsistent (82% versus 11%, respectively). A delay between encoding and retrieval accounts for even greater difficulties in alibi generation (Cardenas et al., 2021; Strange et al., 2014), whilst countermeasures such as mental reinstatement and reverse-order instructions were insufficient in increasing accuracy of alibi recall (Eastwood et al., 2021; Matuku & Charman, 2020). As such, whilst this factor was noted by only a relatively small number of participants, it was noteworthy that at least some mock jurors recognised the impact of the overreliance on scripts or schemas in alibi generation when evaluating the evidence.

Theme 3: Non-Evidential Factors

Despite instructions from the judge that their responsibility as a jury was to try the defendant based only on the evidence heard in court, thus reaching a verdict based only on their views as to the facts of the case, there was a clear use of non-evidential factors during deliberations. This is broadly defined as extra-legal aspects or attributes outside of the evidence that contributed to the overarching scepticism of alibi evidence, and ultimately impacted on the decisions made as to culpability. Few participants acknowledged or questioned the admissibility of such factors (for exception, see Participant 17's questioning as to non-verbal behaviours being permissible as evidence), with most juries seamlessly discussing these together with evidence in the case and ultimately weaving these into their proposed narrative as to the events that occurred. The use of non-evidential factors was evident in three distinct subthemes, which are as follows: filling in the gaps, using stereotypes, and accrediting non-verbal behaviours.

Subtheme 3.1: Filling in the Gaps

The first use of non-evidential factors was demonstratable when faced with what mock jurors and juries' perceived to be *"just not enough information" [PP3, Jury A, p. 12, l. 15]*, in that participants made use of their own experiences, assumptions, and expectations to make sense of the alibi evidence (as seen, in part, in subtheme 2.2: *Memory Fallibility*, where participants drew upon their own experiences as a demonstration of memory differences).

> *And what we don't know is if the police went and checked to see if there was a bike that'd been fixed. We don't know that much. Based on what we know erm (…), we just have to go with that [PP21, Jury D, p. 19, l. 28-31].*

> *It's hard isn't it? Because we're making those assumptions [PP10]. Yeah. Because there's a lack of information [PP8, Jury B, p. 21, l. 25-27].*

Within the Story Model (Pennington & Hastie, 1986, 1988, 1992), the coherence of the story depends on its completeness: that is the degree to which the story contains all the required parts. Expectations as to what makes a complete story allow jurors to assess when aspects of the explanation are absent, thereby allowing inferences to be drawn and comparisons made based on existing prior knowledge (Pennington & Hastie, 1992). As such, this suggests the perceived (in)completeness of the account is of relevance to mock jurors and juries' assessment of an alibis credibility.

One commonality amongst deliberations was that participants assessed the veracity of the defence (that of repairing a motorcycle) based upon their own knowledge and skills of such an activity. This was despite, in some instances, mock jurors confusion as to the fundamental details of the alibi defence (i.e., whether the alibi referred to a bicycle or motorcycle).

> *I was just going to say, like for that length of time he was there for. What was it, about three or four hours? (…) That's a good amount. For a bicycle though? [PP11] No it takes hours to fix a bicycle [PP9].*

> *It depends on your skill level I guess. But if you're doing it yourself, you would assume you have ENOUGH sort of knowledge on how to do it? [PP11, Jury B, p. 10-21].*
>
> *But then the thing is as well, they said they were fixing a bike tyre and a chain. Does anybody know how to fix a bike? How long would it take to do that? [PP18, Jury C, p. 13, l. 26-28].*
>
> *But if you are fixing a bike, it always never turns out right. You always think 'it'll only take half an hour' and it turns three hours later and you're still there trying to fix it [P17, Jury C, p. 16, l. 6-8].*

Some mock jurors (for example, Participants 6, 11, and 17) conveyed more understanding as to the intricacies of repairing a motorcycle, compared to others who expressed very limited, if any, knowledge of how to do so. B. H. Bornstein and Greene (2011) and Curley et al. (2022) note that the way jurors understand trial information is by filtering it through their own personal expectations and experiences and may rely on cognitive heuristics when making judgements about evidence on which they possess little expertise on. It may be that participants with little knowledge or experience of how to repair a motorcycle perceived this to be relatively easy, based on ill conceived, pre-conceived scripts (Devine, 2012) of such a task. In this instance, mock jurors may have believed the length of time that the defendant reported to be at the witnesses house for did not equate to the time or skills required for such a task and thus viewed the details of the defence suspiciously. Conversely, the minority of participants with experience or knowledge in this area may have been more understanding as to the complexities of such a job, thereby reflecting this in their perceptions and potential leniency (M. K. Miller et al., 2011) towards the alibi account.

In keeping with the Story Model (Pennington & Hastie, 1986, 1988, 1992), this perhaps reflects the mock juries' attempting to construct a complete narrative to assess the believability and acceptability of the defendant's proposed version of events. This finding is noteworthy, as there is an absence of any extant literature on the topic (Behl & Kienzle, 2022), yet it remains difficult to comprehensively establish and compare what role and impact, if any, reliance on cognitive heuristics has on mock jury decision-making when it comes to alibis. Whilst reliance on schemas appears commonplace in the generation of an alibi (see the Schema

Disconfirmation Model: Charman et al., 2019), if and how evaluators use their own scripts and schemas to assess the believability of the defence is underexplored (bar the noteworthy findings of this study). Nevertheless, this raises broader questions as to jury selection and judicial instructions: if jurors and juries possess preconceptions and biases which may negatively affect their ability to objectively assess evidential material, how can this potential risk to the integrity of the CJS be negated? Future research in this area would benefit from, firstly, greater use of mock jury paradigms involving deliberations to assess whether this finding is seen in other studies of a similar vein. Secondly, research which considers whether educating and informing jurors as to the intricacies of an alibi defence, and the use of judicial instructions to guide juries in their decision-making, would be beneficial in addressing this nascent area of the literature. In turn, it is recommended that consideration should be given as to how jurors and juries could be more reliably informed and educated on alibi evidence, including the value and feasibility of expert testimony on the subject matter and the importance of psychologically informed, mandatory judicial directions pertaining to the defence.

Subtheme 3.2: Stereotypes

Stereotypical views, as part of the broader use of non-evidential factors, were evidenced by participants throughout deliberations. This was particularly apparent in participant's discussions as to the use and value of the prosecution's defendant prior conviction evidence, as strategised during barristerial cross-examination. This centred on whether mock jurors conformed to the stereotypical driven inference of 'criminals' as those that offend repeatedly.

> *As well as the similar convictions. I think which just (…) I think adds MORE weight behind the fact that he is willing (…) to commit burglary, he has done in the past and it doesn't seem like it won't stop him in future [PP24, Jury D, p. 24, l. 18-21].*

Some mock jurors conformed to this stereotype, believing that past offending behaviour of a similar or same nature was indicative of responsibility for the offence in question. Indeed, one jury member was even challenged on this view in that they were *"making some assumptions" [P1, Jury A, p. 7, l. 17]*, which was acknowledged

yet simultaneously dismissed as *"you have to work with what you've got" [P6, Jury A, p. 7, l. 18-19]*.

> *Suspect, isn't it? (…) Anybody who was not (…) erm (…) you know, that way inclined (…) his character, he's a wrong'un* [*sic*] *isn't he? Because he's burgled. So he's going to buy a phone for £3. So from a character sort of (…) viewpoint, I think he's been a bad'un* [*sic*] *[P18, Jury C, p. 7, l. 22-28].*

> *The fact that he's done it before and he's been convicted of doing that before. You know (…) I think it's really just pointing one way for me [PP23, Jury D, p. 12, l. 25-27].*

Conversely, some mock jurors believed the defendant was *"due the benefit of the doubt" [P16, Jury C, p. 8, l. 1]*, in that *"being previously guilty doesn't mean that they've proved that he's guilty of this" [P9, Jury B, p. 4, l. 17-18]*.

> *Because like people change. It could have been that he's changed since 2005*[27] *because he was definitely guilty (…) who's to say he did it now purely because of his previous convictions? [P11, Jury B, p. 5, l. 9-12].*

> *You cannot take it by past, you've got to take it in the here and now haven't you? [15, Jury C, p. 21, l. 8-9].*

The similarity of the offending behaviour between the current offence and the previous *"convictions for similar or the same offences" [PP24, Jury D, p. 11, l. 22-23]*, in addition to the length of time between the two, were factors explored when assessing the value of such evidence. Whilst the similarity in offending behaviour appeared to be accepted amongst participants, perceptions on the time between the index and previous offences varied from being perceived as *"spread over a large time"* and therefore *"doesn't necessarily mean anything" [PP11, Jury B, p. 4, l.9-11]*, to the opinion that *"some never change" [PP17, Jury C, p. 20, l.12]* and therefore the time elapsed was irrelevant. The findings of Study Two demonstrated that prior conviction evidence, to *"indirectly attack" [Maurice, p. 16, l. 26]* an alibis credibility, is an effective cross-examination technique that significantly impacts on mock jurors

[27] As discussed later in this subtheme, information pertaining to the date of the previous conviction was incorrectly recalled by Participants 11 and 12.

verdict and evaluations of the defendant (and the persuasiveness of the witness). Allison and Brimacombe (2010), the only other research to have explored prior conviction evidence within the alibi literature, found that defendants previously convicted for the same offence resulted in higher ratings of perceived guilt compared to a dissimilar offence. Similar findings have been demonstrated in the wider mock investigator (Schmittat et al., 2022), juror (Green & Dodge, 1995; Pickel, 1995; Wissler & Saks, 1985), and jury (Hans & Doob, 1976; Lloyd-Bostock, 2000) research. Yet, some studies suggest offence similarity has no impact on verdict when using more representative trial mediums (e.g., Honess & Matthews, 2012), or the effect is moderated by other factors when considered within the wider evidential narrative (Schmittat et al., 2022; Schmittat, 2023). Less attention has been paid in the literature to the time between offences (Oswald et al., 2009), however Lloyd-Bostock (2000) found both recent and older offences (18 months or 5 years previous) of a similar nature negatively impacted on perceptions of likely guilty in mock jurors post-deliberation.

Devine's (2012) multi-level integrative theory of juror and jury decision-making recognises that prior criminal history may feature in a stereotypical perception of an offender and, when activated during trial (e.g., in response to barristerial cross-examination techniques), results in jurors perceiving that the defendant is responsible for the offence in question. As such, it could be suggested that some participants possessed this stereotypical-driven inference that all offenders commit multiple crimes (or were indeed encouraged to think so, because of cross-examination or other potential contributors such as the defendant's appearance etc.), whereas others didn't, hence the juxtaposition in views amongst juries and the subsequent differences in the use and value of such evidence within deliberations.

However, the realistic trial re-enactment and the use of mock jury deliberations in this study perhaps reflects a more complex picture as to the presence and impact of stereotypical-drive inferences. Some participants expressed concern as to the prejudicial nature of the prior conviction evidence and thus did not consider it *"strong enough (…) to be used as evidence for me" [PP11, Jury B, p. 4,*

l. 22-23], whilst others believed such information shouldn't be admitted as evidential material based on their knowledge of judicial processes.

> *Because I've been on jury service before but I thought you couldn't get that information, on what they've done before. (…) So that's making me a bit concerned that they've disclosed that and he's openly admitted (…) that he used to do these things before and now he doesn't, do you know what I mean? So I don't know if that's been put in there or not, whether we should know that or whether we should discount that altogether and just focus on the evidence that we've got [PP18, Jury C, p. 20-21, l. 19-3].*

This view is supported by Honess and Mathews (2012), whose findings demonstrated diverse mock jurors' perceptions of prior conviction evidence within individual interviews and jury deliberations using real-world trial simulations. Some expressed sympathetic views towards the defendant and their actions, compared to others who argued against this. This indicates that, whilst undermining and discrediting an alibi through bad character evidence plays into stereotypes of typical criminal behaviour evidenced by some, the relationship is perhaps not as simple and one-directional as previously suggested. Yet, it should be noted that not all participants accurately recalled information relating to prior convictions (for example, Participants 11 and 12 in Jury B mis-recalled that the defendant had a more recent prior conviction in 2015, instead believing he was only a suspect for the offence). Research examining individual mock jurors memory suggests recall of evidence is often incomplete and imprecise (Fitzgerald, 2000; Lorek et al., 2019). In turn, mis-recollected evidence during deliberations exposes others to such misinformation (Pritchard & Keenan, 2002; Ruva & Guenther, 2015; Thorley et al., 2020), and can result in collective memory conformity (Wright et al., 2000). This may have potentially influenced the impact of stereotypical-driven inferences within this study (for example, if recalled correctly, participants in Jury B may have been more inclined to demonstrate stronger, negative views of the defendant).

Subtheme 3.3: Non-Verbal Behaviours

The final non-evidential factor discussed by participants was that of non-verbal behaviours of the alibi provider and alibi witness (albeit predominantly the

latter) on-the-stand. Several aspects of their presentation were commented on by all mock juries', including eye movements, head movements, and body language.

> *He just seemed like he just wasn't saying everything that he was thinking. I don't know. He was blinking a lot… [PP2, Jury A, p. 1, l. 19-20].*

> *Well you know when they BOTH went into the box, they sort of like [looks from side to side]. (…) His friend did exactly the same as he did. Sort of like kept looking and (…) you know, when they went in [PP15, Jury C, p. 12, l. 4-12].*

> *I mean, just from the body language. I know they're actors, but I just felt like they did look quite nervous, the defendant and his friend. They seemed quite nervous and a bit panicky and I wonder (…) I was wondering whether that's influencing me… [PP8, Jury B, p. 7, l. 19-23].*

In turn, participants commented on their perceptions as to the underlying motive or reason for such behaviour. This ranged from being *"awkward" [P5, Jury A, p. 1, l. 18]* and *"flustered" [P15, Jury C, p. 37, l. 11]*, to *"defensive" [P11, Jury B, p. 8, l. 7]* and *"shifty" [PP18, Jury C, p. 13, l. 2]*, with one participant simply stating *"I didn't like the friend's body language" [PP8, Jury D, p. 8, l. 5]*. Indeed, *"shifty"* was the term used most frequently by mock jurors (as stated by Participants 8, 9, 12, 16, 17, and 18) to describe the witness' presentation in Juries B and C. The use of such language suggests a belief that those concerned were being deliberately deceptive, evidenced by their suspicious behaviour.

> *The friend seemed a bit shifty when he was giving his evidence [PP12, Jury B, p. 22, l. 13-14].*

> *I think he looked a bit (…) shifty his friend [PP18, Jury C, p. 13, l. 2].*

The non-verbal behaviours of the alibi provider and witness could have acted as a form of confirmation bias (Lord et al., 1979; Nickerson, 1998), leading to peripheral processing (ELM: Petty & Cacioppo, 1986) of the alibi defence. Rassin et al. (2010) proposed that, due to the nature of the CJS, judicial decision-makers are inherently disposed to look for information that confirms guilt as opposed to alternative evidence which may suggest a more innocent explanation. In this

instance, the seemingly ‘shifty’ behaviour of the defendant and witness could have construed as indicative of deliberate deception. Whilst Charman et al. (2009) found that pre-conceived beliefs about a defendant’s guilt resulted in a tendency for mock jurors to seek and perceive evidential confirmation for this, Charman et al. (2013) recognised that biased judgements also extend to jurors integration of multiple sources of evidence to form one cohesive narrative used to determine verdict. Furthermore, the alibi scepticism hypothesis (Olson, 2004) supports the notion that evaluators are predisposed to be sceptical of alibi evidence, lending strength to this interpretation. As such, it may be that the mock juries’ drew upon multiple sources of evidential and non-evidential factors to reach the overarching scepticism of alibi evidence (i.e., the defence was perceived as weak due its ease of fabrication, inconsistencies, and prior conviction evidence, as previously discussed, further confirmed by the suspicious presentation of the defendant and witness).

Countering this, participants could have been using non-verbal behaviours to assess the accuracy and truthfulness of the alibi provided. The literature on non-verbal cues, such as blinking, head movements, and body language, to assess account veracity and detect deception is comprehensive (see, for an overview, Bond et al., 2015; Bond Jr & DePaulo, 2006, 2008; DePaulo et al., 2003; Vrij, 2008). Vrij and Turgeon (2018, p. 232) noted that non-verbal behaviours have “little or nothing to do with a witness’s truthfulness or credibility”, further supported by Vrij et al. (2019) who concluded that non-verbal cues to deception are weak and unreliable. Despite this, there exists a widespread misconception amongst legal professionals and laypersons that stereotypical non-verbal behaviours such as those are indeed indicative of deception (Bogaard et al., 2016; Strömwall et al., 2003; The Global Deception Team, 2006). Regarding deception detection within a criminal trial context (Denault & Dunbar, 2019), McKimmie et al. (2014) found mock jurors assessment as to the strength of eyewitness evidence was negatively impacted by the stereotypically deceptive demeanour of a witness. Similarly, Chalmers et al. (2022) found that mock juries’ relied heavily on (inaccurate) credibility cues pertaining to the delivery of witness testimony, including body language (e.g., gaze aversion) and perceived nervousness.

Vrij and Turgeon (2018) and Chalmers et al. (2022) proposed that juries need clear education and instructions as to how not to use an individual's non-verbal behaviour and demeanour to assess veracity, although Bogaard and Meijer (2022) found instructions to ignore said cues did little to encourage evaluators to focus on verbal information only. As such, in absence of such guidance, it may be that mock jurors erroneous beliefs as to the demeanour and presentation of a deceptive defendant and witness caused or contributed to the negative perceptions of the alibi evidence. Future research should focus on an objective analysis of the verbal and non-verbal presentation of alibi provider and witnesses, to determine what effect such factors have on mock juror and jury decision-making.

The (in)admissibility of non-verbal behaviours as factual evidence was raised as an issue by only one participant (and agreed with by one other) across all deliberations. Despite this, the assertion to disregard such a non-evidential factor was ignored by their fellow jurors and thus appeared to have little to no impact within deliberations and decision-making.

> *P17: But do you (…) are you supposed to take that into account, just because he's shifty? (…) It isn't evidence is it? It's not evidence [PP17, Jury C, p. 22, l. 1-4].*

In this instance, it could be that the minority faction expressed by Participant 17 exerted little or no normative social influence over the wider group. In the absence of fellow supporters as to their view, a minority faction's effect on jury decision-making is consigned to be of informational influence only (that is, the communication of information designed to change the belief of others based upon the content and quality of the argument) (Deutsch & Gerard, 1955; Devine, 2012; Tanford & Penrod, 1986). Whilst the juror's argument was indeed factually correct, the absence of a forceful argument was insufficient in warranting a change in views from their fellow jurors. This, yet again, highlights the importance of ensuring mock juries' possess the relevant information and knowledge to accurately assess the value and credibility of the evidence provided when reaching a verdict.

To be reflective of real-world practice, the trial reconstruction contained remarks and directions from the judge at the beginning and ending of the case,

including an alibi direction as per the Crown Court Compendium (Judicial College, 2018). However, it was difficult to discern if participants listened to and understood the directions they had been given (or were, indeed, counterproductive). The mere fact that non-evidential factors were used to guide their decision-making would suggest otherwise, despite being instructed by the judge in his opening remarks that the jury should 'try the defendant based only on the evidence you hear in court'. This is consistent with a large body of research that has consistently found jurors have difficulties comprehending such instructions, and ultimately do not use them in their decision-making (Allison & Brimacombe, 2010; Alvarez et al., 2016; Helm, 2021; Lieberman, 2009; Nietzel et al., 1999; Ogloff & Rose, 2005). Conversely, there was perhaps some indication that two of the juries (Jury A and B) understood the standard of proof principle, in that they delivered a verdict of not guilty on the basis *"of a lack of evidence" [PP11, Jury B, p. 25, l. 1]*, despite a belief to the contrary. Whilst the mock jurors and juries' understood to some degree the overarching principles concerning evidential proof, this was compounded by a generally poor knowledge and understanding as to the nuances of alibi evidence. Therefore, future research would benefit from exploring what impact judges' instructions on the (correct) use of alibi evidence have on juror and jury decision-making, manipulating the presence, content, and timing of said information, to potentially counter the use of non-evidential factors during deliberations. In turn, this puts forward a strong argument as to a recommendation for the mandatory use of judges' instructions when a defence of alibi is used in court. Similarly, informing and educating participants on alibi evidence (for example, as part of the psychologically informed directions or through distinct expert testimony on the subject matter) should be considered to maximise fairness when evaluating alibi evidence in the CJS.

Limitations

Whilst the study has clear strengths in terms of representativeness and ecological validity, it is not without its limitations. The materials comprised of video and audio recorded trial re-enactment footage, lasting 27 minutes long, designed to present a streamlined, yet complete, version of a trial in its entirety. In doing so, the central arguments and evidence (an alibi defence, corroborated by a witness, versus

subjective forensic footwear evidence) were presented from the real-world case of *R. v South* (2011). As alibi evidence was the factor of interest, its sole presence as the defence was intended to ensure participant's discussions centred on this (as opposed to a different case, where the occurrence of varying evidence and multiple witnesses, experts etc. may have resulted in longer video footage, but diluted discussions about the alibi itself as other evidential material may have been considered in more depth). Whilst the trial re-enactment was of substantial value in terms of offering a representative and ecologically valid means of presenting trial information (B. H. Bornstein et al., 2017), and one that is reflective of real-world practice, it obviously cannot replace the often lengthy and complex trial proceedings that real-life juries are required to observe. However, this means of trial presentation medium is a significant development from what currently exists within the alibi literature (which has predominantly employed brief written case summaries or vignettes within a quantitative methodology: Allison, 2022). Furthermore, it is in keeping with the time length of other trial re-enactments within the wider field of jury research (see, for example, Willmott et al., 2018, whose condensed video footage lasted for 25 minutes).

Professional sector-experienced actors were used for all (eight) roles within the simulated criminal trial. The gender and appearance of the actors, and the quality of acting, could have been a potential confounding factor, with some evidence to suggest that barristerial gender, attractiveness, and presentation style may impact on mock and real-world juror perceptions and decision-making (Hahn & Clayton, 1996; Trahan & Stewart, 2011). However, the effect of such factors is difficult to control for, in both a research environment and in real-life, thus it could potentially impact (or indeed, not impact) on the outcomes in both instances. Similarly, professional actors were used to maximise the realism of the materials and to offset this potential limitation.

Relatedly, the use of trial re-enactment footage limited the materials to the presentation of only one real-world case (*R. v South*, 2011), for the offence of burglary. As previously discussed (albeit in the context of Study Two), there is a potential that the less serious nature of the crime may, or indeed may not, have had a discernible impact on the verdict decisions made (Allison et al., 2020; Hosch et

al., 2011; Jung et al., 2013; Snow & Warren, 2018). In turn, the use of only one offence type poses some challenges in terms of the transferability (Braun & Clarke, 2022a) of the analysis beyond the crime of burglary, together with the interplay the offence might have had with other juror-related extraneous factors (as discussed later in this *Limitations* section). However, the nature of the research was exploratory, given it is the first study of its kind, and not intended to strive for fully generalisable data and findings. Furthermore, there are some elements of the case that have wider applicability beyond the offence itself (for instance, the inconsistent nature of the alibi and the presence of corroboration in the form of a motivated familiar other: Olson & Wells, 2004). Yet, the type and seriousness of the offence itself is a factor worthy of consideration and potential exploration as part of future qualitative research.

The average length of deliberations was 32 minutes (ranging from 15 to 42 minutes long). Again, the length of these deliberations is likely to be significantly less than the time real-world juries would spend in discussion to reach a verdict. Yet, existing research (Ormston et al., 2019) found it difficult to discern the relationship between (mock) deliberation length and the quality of discussion had. This large-scale Scottish mock jury study found that the mean duration for mock deliberations (of 12- or 15-person juries) was 45 minutes, with no clear reasoning for why some deliberated longer than others (although longer discussions were noted to lack organisation and structure to the deliberative process, whilst others contained juror/s with strong, opposing opinions) (Ormston et al., 2019). Thus, this suggests that deliberations that are longer in length are not, in itself, suggestive of discussions of a more superior quality.

Whilst the size of the sample itself was appropriate given the scale and scope of this exploratory thesis (as previously discussed: Braun & Clarke, 2013), it remains relatively small in comparison to other juror and jury decision-making literature (see, for example, Chalmers et al., 2022; Ellison & Munro, 2010; Willmott et al., 2018). However, the rich data produced was appropriate and sufficient for the method of qualitative data analysis employed (reflexive TA: Braun & Clarke, 2022a). Furthermore, the novel findings possess important value in terms of information power (Malterud et al., 2016), offering a previously unheard voice (Creswell, 2014)

to mock jurors and juries' on how they think, feel, view, and negotiate alibis within the deliberative process. Likewise, participants took part voluntarily (compared to real-world jurors, who are legally obliged to partake), thus this dispositional bias may have had some impact on the findings. This is particularly as some (Robinson, 2014) suggest that those who participate in qualitative (interview-based) research may differ in terms of gender, personality characteristics, engagement, motivation, and so forth. Yet, as participants cannot be obliged to take part in (jury, or any other) research in the same way they can be for real-world jury duty, self-selection offers the most appropriate and pragmatic means of recruitment (Ellison & Munro, 2015; Robinson, 2014). Indeed, recent statistics (University of Birmingham, 2024) suggest that most people (96%, out of 1000 respondents) recognise the importance of jury service, and 87% would take part in jury duty if summoned, suggesting that the present study's sample may not be in any way more motivated than actual jurors.

Finally, whilst jury deliberations should be the "endpoint of every programme of research focused on juror decision-making" (Curley & Peddie, 2024, p. 198) due to its high ecological validity, the inclusion of these introduces the possibility that extraneous factors could have influenced the deliberative discussions. Curley and Peddie (2024), in their critique of Ormston et al.'s (2019) paper, note that the presence of deliberations could have unduly prejudiced how post-deliberation verdicts were reached due to extraneous factors related to the characteristics and personality of other jury members. In turn, this could provide a possible explanation for why there was some variability in verdicts across the four mock juries' in this study (with two juries' delivering a verdict of guilty, and other two deciding on not guilty: see Appendix 27 for individual participant demographic information and group guilt decision). Whilst juries' are responsible for hearing the evidence and applying the law in order to reach a decision, it cannot be ignored that individuals will do so differently (and indeed, emphasises the importance of jurors being randomly selected). Similarly, cases heard by juries' in the real-world are unlikely to be unambiguous: instead, cases may be complex, unclear, and equivocal, and evidence will likely be understood and interpreted differently depending on individual juror characteristics. The equal variance in verdict decisions evident in the present study is perhaps reflective of a realistic case and a varied sample, in that there was not one overt outcome. This variability is also reflected within the analysis of the

data (see, for example, a postulation of the role of juror characteristics such as educational attainment and age in subtheme 2.2: *Memory Fallibility*). However, it should be noted that the decision itself was of lesser importance than the decision-making process in this instance, included to reflect real-world practice and to offer an 'endpoint' to the deliberative discussions. It is also difficult to control or mitigate for the presence and impact of such factors within deliberative processes and is perhaps *more* reflective of the constitution of a real-world jury in England and Wales, where such factors are similarly not controlled for. In turn, this reinforces the inherent function and purpose of juries' in practice, whereby a range of viewpoints and perspectives are likely to be offered and considered by individuals of varying backgrounds, characteristics, and dispositions. As such, the weighted value in terms of representativeness and ecological validity of including mock jury deliberations within research of this nature far outweighs the exclusion of them for this reason alone.

Summary and Conclusions

To summarise, the study addressed how mock jurors and juries' used alibi evidence in the deliberation process, and what role barristerial cross-examination strategies of exploiting alibi between-statement inconsistencies and discrediting the defendant through prior conviction evidence have within mock jurors and juries' understanding and perceptions of alibi evidence. The findings provide novel support not only for the sceptical nature in which alibis are viewed by mock jurors and juries', particularly when the evidence is perceived as being vague, supported by easily fabricated person evidence, and lacking in any physical corroboration, but also specifics as to *why* such scepticism arises. Participants demonstrated an idealistic expectation for consistency across all aspects of an alibi, with any inconsistencies being indicative of deception, yet some also encouragingly expressed a degree of understanding as to memory limitations in alibi generation. Both findings are amongst the first to demonstrate this within the context of a mock jury paradigm. The analysis resulted in novel findings illustrating that alibi evidence is simultaneously perceived and evaluated through the lens of non-evidential factors. Mock jurors and juries' relied on non-evidential factors, assessing the alibi based

upon their own experiences, assumptions, and expectations and making use of stereotypes on criminal behaviour to assess the use and value of defendant prior conviction evidence. Participants also focused on the non-verbal behaviours of the defendant and witness, as confirmation bias of their already existing beliefs and/or to assess alibi veracity.

This research is the first of its kind to explore how mock jurors and juries' think, feel, view, and negotiate alibis as part of the deliberative process, employing a representative trial medium (a video-recorded condensed yet complete trial re-enactment, based on a real-world offence previously heard before the court in England and Wales) and a sample of jury-eligible participants to explore the presentation and evaluation of such a defence. In doing so, the research redresses a clear paucity in the alibi literature: providing a voice (Creswell, 2014) to the perspective of those within a mock jury paradigm that has thus far been overlooked. As per the real-world barristerial cross-examination techniques identified in Study One, the research builds upon the findings of Study Two to demonstrate that the core strategies for dealing with alibi evidence in court impact on both mock juror and jury perceptions, evaluations, and decision-making. Thus, it provides an integrative and triangulated understanding as to both *why* and *how* the presentation of alibi evidence in court impacts on the evaluation of the defence.

Like the considerations discussed in both Study One and Two, this study cements the need for greater knowledge and understanding from all parties in the courtroom as to the nuances of an alibi defence. Greater awareness and handling of alibi evidence by barristers is needed, to ensure unrealistic, inaccurate portrayals and expectations for this defence are not communicated during criminal proceedings (and indeed used to the prosecutions advantage, as seen in this case). Likewise, jurors and juries need to be better informed as to what psychological research tells us is typical of an alibi account (for example, that it is and commonly corroborated by family and friends, and frequently inconsistently recalled and relayed), rather than what they erroneously believe to be the case. This could be implemented through, for example, expert evidence, thus there is a clear need to explore the role of expert testimony for alibi evidence within a mock juror and jury paradigm. Similarly, the use of mandatory, psychologically informed judicial

instructions designed to better educate and direct jurors and juries as to potential issues concerning an alibi defence (in a similar vein as seen with eyewitness identification: Judicial College, 2023) should be considered, explored as a function of ecologically valid mock jury paradigms. This study, together with novel findings of both Study One and Two, provide a clear basis on which to suggest robust recommendations to the CJS designed to improve legal practitioners, jurors, and juries understanding and knowledge as to the nuances of an alibi defence.

Chapter Seven: General Discussion

Taken together, the thesis provides a greater understanding as to the courtroom presentation and evaluation of alibi evidence in England and Wales. This final chapter will revisit the aim and objectives of the thesis, outlining how these have been achieved. Directions and recommendations for future research and practice within the CJS will be discussed. Finally, concluding remarks will be provided to close.

Thesis Aim and Objectives

Despite its prominence as a defence in cases of US wrongful convictions (Connors et al., 1996; Heath et al., 2021; Wells et al., 1998), and its presence in cases involving miscarriages of justice in England and Wales (e.g., Sam Hallam: Evidence-Based Justice Lab, no date), research pertaining to alibi evidence is in its infancy (Burke & Marion, 2012; Kienzle & Behl, 2022; Olson & Morgan, 2022). This contrasts with the sheer volume of existing psychological research in other leading contributory factors to miscarriages of justice, such as eyewitness memory (Sauerland, 2017). It is vital this paucity is redressed to ensure a fair, equitable, and assured CJS for all concerned. In turn, this provides not only improved psychological knowledge and understanding of the defence, but also opportunities to identify and disseminate practical recommendations for the CJS, with the intention of mitigating for wrongful convictions where alibis are concerned.

The overall aim of the thesis was to provide an integrated, mixed methodological investigation of the presentation and evaluation of alibi evidence in the courtroom within the jurisdictional context of the CJS in England and Wales. This was achieved through the completion of three distinct, yet inter-linked, studies, using a multistage mixed methods framework (Fetters et al., 2013), to examine the related and interdependent elements of how alibis are perceived and presented by criminal barristers and subsequently evaluated by mock jurors and juries' during criminal trial proceedings. Together, the research allowed for the triangulation (Denzin, 1978; Flick, 2018) of findings with regards to establishing and evaluating the impact of alibi

presentation in court. The thesis achieved the three overarching objectives it set out to (as found in Chapter One), each of which will be discussed in turn.

Objective One

The first objective, exploring how criminal barristers' present alibi evidence in the courtroom, was achieved by Study One. This study was the first of its kind to explore criminal barristers' perceptions and experiences of alibi evidence within the context of the legal system of England and Wales. Prior to its advent, little empirical attention had been paid to the arguments, approaches, techniques, and strategies implemented by such judicial practitioners when presenting and examining alibi evidence in court. This is despite its significance on the discussions and decisions had by jurors and juries, as confirmed by the findings of both Study Two and Three. Correspondingly, achieving this first objective was crucial in attaining the subsequent two thesis objectives, given the limited legal guidance on examination and cross-examination of alibi evidence in court (besides Steele, 2020; Stone, 1995, which focus on alibi witness/es). Thus, the knowledge gained as per this objective allowed for the integrative implementation of real-world barristerial techniques in the second and third study, which would not have been achieved otherwise.

The findings demonstrated that barristers were sceptical and distrustful of alibi evidence, consistent with the views of police investigators, US attorneys, and mock jurors and juries' (e.g., Dysart & Strange, 2012; Epstein, 1964; Levine & C. Miller, 2021, together with the findings of Study Two and Three). This is perhaps to be expected, given their professional experiences with weak alibi evidence (that is, corroborated by motivated witnesses), and as a natural by-product of their occupational skills and competencies. The knowledge gained as per this objective demonstrates that the presentation of alibi evidence, at least from the defence's perspective, is one of a controlled and considered narrative that presents the defence in the most favourable manner possible. This is in keeping with the Story Model (Pennington & Hastie, 1986, 1988, 1992) and "Director's Cut" Model (Devine, 2012), whereby jurors comprehend complex trial information by constructing several narratives as to what occurred, suggestive of the defence using this approach

advantageously. Conversely, cross-examination seeks to undermine and discredit the defence using two specific techniques: the exploitation of alibi between-statement inconsistencies through a variety of questioning modes (such as leading, multiple, and closed questions), coupled with the discreditation of the defendant and/or alibi witnesses manner, demeanour, or character (for example, through the admission of prior conviction evidence, where applicable). In providing an understanding as to the presentation and evaluation of alibi evidence in the courtroom, consistent with the overarching aim of the thesis, the effectiveness and impact of such cross-examination techniques on mock juror and jury evaluations, perceptions, and decisions were addressed in Study Two and Three.

Collectively, the study's findings evidence that barristerial knowledge of alibi evidence is, at best, varied and, at worst, somewhat mistaken and inaccurate. There was some promising awareness as to the fallibility of memory for alibis, yet this was negated by the inaccurate belief that all accounts provided should be entirely consistent and unchanged (contrary to psychological research that suggests otherwise: Cardenas et al., 2021; Leins & Charman, 2013; Olson & Charman, 2012; Strange et al., 2014). Resultingly, alibi inconsistencies were suggestive of deception, as per the consistency heuristic (Granhag & Strömwall, 2001; Strömwall et al., 2003; Vernham et al., 2020), and would be presented to the court as a defence of weak credibility and thus the defendant as guilty. Given the integral role barristers play in the presentation and examination of evidence, this poses a risk that such misinformation is conveyed in court (indeed, to the prosecution's advantage), thereby limiting evaluators ability to accurately assess the veracity of an alibi defence. This is concerning, given the potential this has for trial processes that are unfair and prejudicial to defendants.

In achieving the first of the thesis' objectives, this emphasises the need to ensure that the barristerial profession as a whole is reliably informed as to the current psychological understanding of the subject matter (for instance, that errors and discrepancies are to be expected and are not necessarily indicative of deliberate deception: Laliberte et al., 2021; Leins & Charman, 2013; Matuku & Charman, 2020; Strange et al., 2014). This is recommended as a function of psychologically informed guidance and training, designed to improve practitioners'

awareness and handling of alibi evidence in court. Whilst prosecution barristers may be reluctant to alter or entirely discontinue with the use of an established cross-examination technique in the exploitation of inconsistencies, highlighting the prevalence of alibis in false convictions could be advantageous in convincing the profession as to the practical and ethical implications for avoiding critiquing the defence based on (in)consistency. For instance, the Court of Appeal noted in the case of Sam Hallam that "the appellant's failed alibi was consistent with faulty recollection and a dysfunctional lifestyle, and that it was not a deliberate lie" (*R. v Hallam*, 2012, para 78). Targeting defence barristers, specifically, could afford them with evidence to defend a weak alibi with reference to the academic literature on memory fallibility, for example (and as a countermeasure to the [likely] case theory proposed by the prosecution). It is further suggested (as discussed later in this chapter), substantiated by the findings of Study Two and Three, that jurors and juries must be better informed and educated as to the nuances of an alibi defence, to ensure an objective assessment as to its veracity that is unimpeded by the techniques used to undermine the defence in court (accurately, or otherwise).

Objective Two

Attained by the findings of both Study Two and Three, the second thesis objective addressed the impact of the manner of courtroom presentation of alibi evidence on mock jurors and juries' evaluations and perceptions of alibi evidence. To restate, Study Two implemented a mock juror experimental paradigm to examine the effect of barristerial cross-examination techniques, namely exploiting alibi between-statement inconsistencies and the submission of defendant prior conviction evidence for similar offences, on mock jurors evaluations and decision-making. In a similar vein, one of the aims of Study Three was to explore the role of the same cross-examination techniques on mock jurors and juries' understanding and perceptions of alibi evidence within the context of deliberations in a mock jury framework. Such studies were sequentially informed by the real-world cross-examination techniques identified in Study One, evidencing that a small sample of barristers undermine and discredit an alibi in court by exploiting inconsistencies in the defence and questioning a defendant's character using whichever means

appropriate. In turn, this allowed for the generation and implementation of stimulus materials in the second and third study that accurately reflected real-world barristerial techniques that may be used in the examination of alibi evidence (and without said findings, would not have been possible to do). Using paradigms that followed Diamond (1999) and Wiener et al.'s (2011) recommended two-phase procedure for juror and jury decision-making research (alike Curley & Peddie's, 2024 stepped approach), Study Three built upon the initial, novel findings of Study Two through the employment of a more representative trial presentation medium and sample, coupled with the inclusion of deliberative processes. All three studies were integral in achieving this second thesis objective, and ultimately the novel discoveries made in the thesis, providing an integrated understanding as to *how* and *why* mock jurors and juries' evaluations and perceptions of alibis are impacted by the way it is presented in court.

In achieving the second objective, the results of Study Two demonstrated that such cross-examination techniques negatively impacted on mock jurors evaluations of the defence with regards to verdict, certainty in verdict, likelihood of committing the offence, alibi believability, and lastly defendant character trait appraisals. Age and gender, as evaluator demographic characteristics, had no significant impact (bar perceived witness honesty) on mock jurors decision-making and evaluations. Thus, such barristerial strategies, as first evidenced in the first of the thesis' studies, are indeed effective in discrediting and undermining both the alibi defence and the defendant from the perspective of mock jurors. The results of Study Two alluded to the notion that the way alibis are presented by barristers exploits ill-informed heuristics (Granhag & Strömwall, 2001; Strömwall et al., 2003; Vernham et al., 2020) regarding the relationship between alibi (in)consistency and deception. In addition, where defendant prior convictions are concerned, it suggests such techniques play in to stereotypical-driven inferences regarding the continuity of offending behaviour (Devine, 2012; Devine & Caughlin, 2014). The findings of Study Three confirmed said allusions, demonstrating that most mock jurors and juries' do indeed inaccurately believe that any element of inconsistency between and within alibi accounts equates to a deliberate attempt at deception. Similarly, the same study demonstrated that mock jurors and juries' clearly consider several non-evidential factors when assessing the veracity of an alibi defence, including whether

stereotypical views regarding repeat offending is of relevance to the use and value of the prosecution's defendant prior conviction evidence. As such, the findings of both studies are complementary and integrative of one another, resulting in a mixed methodological understanding not previously demonstrated in the alibi literature.

The findings borne out of accomplishing the second objective evidence that much work is still needed to improve understanding on the part of both judicial practitioners and jurors/juries as to how the presentation of alibi evidence by barristers has the potential to significantly impact on the evaluations, and ultimately decisions, made by those responsible for determining culpability. For instance, the collective findings of the three individual studies that together form the thesis demonstrate that barristers (deliberately or unwittingly) use expected and commonplace (Laliberte et al., 2021; Leins & Charman, 2013; Matuku & Charman, 2020; Strange et al., 2014) alibi inconsistencies to undermine the credibility of the defence. Subsequently, mock juries' conformed and considered such discrepancies at length during deliberations, with between-statement inconsistencies with temporal and activity discrepancies (coupled with prior conviction evidence) resulting in significantly more guilty verdicts by mock jurors. The expectation for entirely consistent and unchanged recall and retelling of an alibi is idealistic and unrealistic, yet in the face of barristerial cross-examination techniques designed to highlight and undermine the defence using such very means, it is difficult for jurors and juries to accurately assess the veracity of an alibi. Thus, the transmission of ill-informed, erroneous information, from barristers to jurors and juries (and potentially to/from other important judicial practitioners, such as judges), is liable to have an adverse influence on defendants with an alibi defence and potentially increase the risk of miscarriages of justice. As such, consideration must be given as to how the presentation and examination of alibi evidence in court by barristers could be developed and enriched, and how jurors and juries could be more reliably informed as to an evidence-based, psychological understanding of the defence.

Objective Three

The final thesis objective, as met by Study Three and sequentially informed by Study One and Two, considered how mock jurors and juries' use alibi evidence in the deliberative process when reaching a verdict. To reiterate, the third study explored mock juries' understanding, perceptions, and use of alibi evidence within deliberations when using a mock jury paradigm. In particularly, it qualitatively addressed how mock jurors and juries' think, feel, view, and negotiate alibis within the deliberative process, providing their previously unheard voice (Creswell, 2014) on the subject matter. The study, and indeed objective, was innovative for several reasons and addressed several outstanding questions regarding the CJS' use of alibi evidence. Firstly, the research was the first within the alibi literature to implement a qualitative methodology, generating data that allowed for analysis as to how mock jurors and juries' react to and negotiate alibi evidence during deliberations. This approach has previously been overlooked within the field, despite its clear resemblance to real-world practice in how verdicts are decided. As previously noted, the findings expanded on the results of Study Two by exploring deliberative discussions when barristerial cross-examination techniques exploited alibi inconsistencies and submitted defendant prior conviction evidence. Thus, it provided an integrative understanding as to *why* the appraisals evidenced in Study Two may have been determined. Lastly, there is little alibi research that has sought to strengthen the ecological validity and representativeness of the trial presentation medium and samples used, thus this was redressed as per the third objective through its implementation of real-world cross-examination techniques (as per the findings of Study One), a simulated criminal trial with a sample of improved realism, and the inclusion of deliberative discussions.

The knowledge gained in achieving the third and final objective demonstrated that, whilst an alibi is integral evidence within deliberations, it forms a central, yet poorly understood, criminal defence. This was evident in, for example, the idealistic and unrealistic expectations mock jurors and juries' possessed for such evidence (seen in its apparent ease of fabrication and expected corroboration with physical evidence, despite empirical evidence to the contrary: e.g., Allison et al., 2020; Culhane & Hosch, 2004; Jung et al., 2013; Pozzulo et al., 2012). Furthermore, mock jurors and juries' were overarchingly sceptical of such evidence, informed by a limited and often erroneous understanding as to the defence, and over relied on

non-evidential factors, such as evaluating the alibi based on their own experiences, assumptions, and expectations, to assess the veracity of the defence. The novel findings provide a significant contribution to the subject matter, offering a greater understanding as to the deliberative discussions had where an alibi defence is concerned, expanding considerably on the current psychological understanding of alibis. Such findings compliment the assertions that are often implicit in quantitative research (including that of Study Two) that, for example, mock jurors and juries' do indeed conform to the inaccurate belief (as per the consistency heuristic: Granhag & Strömwall, 2001) that an inconsistent alibi between and within accounts is indicative of deception. Yet, the novel finding that some jurors (as indeed some barristers, as evidenced in Study One) display a degree of understanding as to the fallibility of alibi memory within a mock jury paradigm is of relevance for future practice directions (as considered in the subsequent section). In doing so, the variation in knowledge evident cements the need for greater, psychologically informed education on alibis to be implemented and to be done so consistently (that is, in every case involving an alibi defence). Relying solely on knowledge that some jurors may possess (coupled with their ability to communicate this [in]effectively with others), or depending on the discretionary use of an alibi direction by the judge to accurately educate a jury, poses significant challenges to the ability of the CJS to administer justice effectively and fairly.

Limitations

To summarise the thesis' limitations (the limitations for each of the three individual studies are discussed in greater detail in the relevant empirical chapters), these broadly centre on the extent to which the research is reflective of real-world jury duty, together with the degree to which the findings are generalisable or transferable to other contexts. In the former, the recruitment and demographics of those who participated in the research (i.e., self-selecting and [some] from a predominantly female student sample in Study Two and Three), together with the representativeness of the trial presentation mediums and deliberative processes (i.e., presenting a condensed version of a complete trial, accompanied by shortened deliberations, in Study Three), means the research cannot be entirely representative

of real-world practice. For the latter, whilst the sample sizes in Study One and Three were appropriate given the scale and scope of this exploratory thesis, the number of participants remained small comparatively. Furthermore, whilst the use of a real-world case in Study Two and Three was beneficial for the benefits of validity, the materials concerned only one offence of lesser seriousness (that of burglary) and thus poses some challenges in terms of generalisability or transferability beyond this crime type. There is also the possibility that other extraneous factors (e.g., three participants being dual-employed as practicing barristers and academics in Study One, and the impact that juror characteristics, personalities, and motivations may have had on deliberative discussions in the final study) had some undue and indiscernible impact of the findings. Despite this, the strengths of the thesis in terms of an improved and integrative understanding of under-researched and unexplored areas within the alibi literature is of greater weight and value than its limitations.

Future Directions and Recommendations

Several directions for future empirical research that are beyond the scope of the thesis have been proposed (as considered in each of the relevant chapters), with the most pertinent proposals detailed in Table 16. The future research directions contribute further, individually and collectively, to a more comprehensive understanding as to the courtroom presentation and evaluation of alibi evidence that expands and substantiates the thesis' novel and original findings. In turn, such directions are designed to contribute to the interconnected recommendations for the CJS borne out of the thesis, as latterly discussed.

In summary, the recommended directions for future research encompass the expansion on the thesis' objectives to obtain a large-scale, mixed methodological understanding as to how alibi evidence is presented and subsequently evaluated in court. One of the overarching outcomes from the thesis is that barristers, jurors, and juries have, at best, an assorted understanding of alibi evidence and, at worst, a poor and ill-informed awareness. Thus, to advance, it is imperative that future research seeks to cognise on a more sizable scale what is known and understood about alibis from the perspective of judicial practitioners (as conveyers and

facilitators of evidence presentation) and jurors and juries (as evidence evaluators and decision makers). As evidenced by the thesis' findings, consideration must also be given to other factors that may impede the accurate evaluation of an alibi defence, such as barristerial cross-examination techniques, judicial instructions, and non-evidential factors, given its interaction with how decisions as to culpability are negotiated and made. In turn, such research could be used to strengthen the psychological evidence base pertaining to alibis, allowing for evidence-based recommendations to be made to improve processes and procedures within the CJS.

Table 16

Summary of Proposed Future Research Directions as per Corresponding Thesis Study

Study	Proposed Future Research Directions
Study 1	To compliment the findings of Study One, to undertake a large-scale, detailed review (e.g., a survey) on the perceptions, beliefs, experiences, and approaches to alibi evidence of barristers within the legal system in England and Wales. This should seek to reflect a wealth of professional practice experience, from trainee to highly qualified and specialised barristers, designed to provide a detailed and wide-ranging reflection as to the current awareness and handling of alibi evidence in court.
Study 1	Improved knowledge as to the effectiveness and impact of defence techniques, strategies, and questioning when presenting alibi evidence on mock juror and jury evaluations and decision-making.
Study 2 and 3	To develop the current understanding as to the impact of alibi between-statement inconsistencies (such as different types and/or number of discrepancies), as given on-the-stand and in response to barristerial cross-examination, on (mock) juror and jury perceptions, evaluations, processes, and decision-making. For comparative purposes, consideration as to the nature and number of the prior convictions the defendant has would also be worthwhile to examine using both a mock juror and jury paradigm.
Study 2 and 3	Attention must be paid to exploring how (mock) jurors and juries attend, perceive, and use judicial directions when appraising an alibi defence, and what impact such instructions have on their evaluations and decision-making. This should consider the presence, content, and order of judicial instructions for an alibi defence and its effects on mock jurors and juries' perceptions, evaluations, and decision-making.
Study 3	To conduct a large-scale, qualitative exploration of mock jurors and juries' understanding, perception, and use of alibi evidence within deliberative processes, using varying contextual characteristics (e.g., different types of offence types and corroborating evidence). Besides Study Three, research in this field has neglected the rich, detailed, and complex findings that can be generated from qualitative research, thereby providing a voice (Creswell, 2014) to (mock) jurors and juries that would otherwise not be heard.
Study 3	Greater understanding should be gained as to laypersons (as potential jurors), mock jurors, and mock juries' baseline understanding of alibi evidence, including their knowledge on memory in alibi generation. In turn, consideration as to how such knowledge is applied and used in the when evaluating such a defence within the context of a mock juror and/or jury paradigm would be beneficial.

Study	Proposed Future Research Directions
Study 3	To consider the impact of non-evidential factors, such as verbal and non-verbal presentation of the alibi provider and witness/es, on mock juror and jury decision-making. The novel findings of Study Three demonstrated such aspects are of relevance when mock jurors and juries' negotiate an alibi defence during deliberations, thus further understanding would be beneficial.

The collective findings of the thesis emphasise several directions and recommendations for future practice, concerned with how the CJS could be enriched to ensure the accurate and objective presentation and appraisal of alibi evidence. In turn, these intend to mitigate for potential wrongful convictions, thereby ensuring a judicial system that upholds its values of fairness, neutrality, and integrity. The practice directions and recommendations are summarised in Table 17.

Table 17

Summary of Proposed Practice Directions and Recommendations

Proposed Practice Directions and Recommendations
1. Improved awareness and handling of alibi evidence by barristers at all levels and specialisms is needed, implemented as a function of a mandatory programme of psychologically informed guidance and training. Consideration should be given to the implementation of general guidance and education, together with training targeting prosecution and defence barristers specifically, designed to ensure an encompassing and accurate representation of alibis in court.
2. Jurors and juries should be better informed and educated as to the nuances of an alibi defence. Consideration should be given to the value, feasibility, and efficacy of expert testimony on the subject matter.
3. Current judicial directions pertaining to alibi evidence should be reviewed and updated, reflecting a broader and more evidence-based, psychologically informed understanding of the subject matter. Alibi directions should be made mandatory, as opposed to the current discretionary practice.

The legal system in England and Wales is currently ripe for reform, particularly given the recent Bar strikes due to the state of what has been described as a “crumbling” (The Law Society, 2022, para. 1) CJS (CBA, 2022). As part of the governmental review, the Independent Review of Criminal Legal Aid (Bellamy, 2021), chaired by Sir Christopher Bellamy K[Q]C, advocated for several recommendations designed to address longstanding issues regarding the effectiveness, sustainability, and transparency of the CJS. In doing so, such measures should ensure equal, effective, and fair access to justice for all. Some of Sir Bellamy’s recommendations include greater training, support, and funding for trainee barristers, in addition to qualified barristers having access to “systems of feedback, even informal, so that advocates can learn and be aware of areas for improvement” (Bellamy, 2021, p. 148).

With this in mind (coupled with a further large-scale, comprehensive review into the awareness and handling of alibis by legal professionals of varying practice experience), a package of compulsory guidance and training should be designed and implemented within the CJS to ensure such professionals are reliably informed as to the nuances of an alibi defence, thereby preventing or limiting the transference of erroneous information during evidence (cross-)examination. In the same way training (albeit discretionary) on inaccurate beliefs about eyewitness memory is recommended for barristers and judges (Houses of Parliament, Parliamentary Office of Science and Technology, 2019), similar education should be devised and delivered to improve awareness and handling of alibi evidence in court, particularly given both factors are leading contributors to miscarriages of justice (Sauerland, 2017). The content of such guidance and training could cover, for example, the prevalence of alibis in wrongful convictions cases, material pertaining to memory for alibis and its associated difficulties, issues related to (in)consistent alibi generation, recall, and relay, and the ethical and practical implications of reproducing inaccurate stereotypes in court. Consideration should be given to the implementation of general guidance for the profession, coupled with training targeting those barristers that act for the prosecution or defence. As previously noted, educating prosecution barristers may convince them as to the value of not perpetuating inaccurate stereotypes in mitigating for miscarriages of justice. Informing defence advocates allows for consideration as to how to accurately present alibi evidence with reference to the memory fallibility literature, countering the expected approach to cross-examination taken by the prosecution. Similarly, consideration as to specific approaches that may be beneficial in aiding the effective presentation of an alibi account, as considered in Chapter 4 (e.g., narrative storytelling, affording defendants an opportunity to provide an explanation for a defence of poor quality, and encouraging jurors to generate their own alibi, as per the alibi generation effect: Olson & Wells, 2012), could also be considered (subject to future research findings). Regardless, such education should be suitable for both trainee and qualified barristers, in addition to those in other relevant non-practicing roles (such as teaching, as per some participants in Study One), ensuring knowledge and practice is shared accurately and consistently amongst all practitioners. Similarly, opportunities to promote and educate barristers on the subject matter could be facilitated through the Inns as Continuing Professional Development, in a

comparable manner to the recent member event held by the Middle Temple on the "fallibility of eyewitness evidence, memory, and oral testimony" (The Honourable Society of the Middle Temple, no date, "Lessons Learned During Covid-19: The Importance of Witness Preparation: Event Details" section). In doing so, it is imperative that there is strong interdisciplinary working between the fields of psychology and law to ensure all guidance and training is reliably informed by evidence-based literature on the topic, and delivered with comprehensive and considerable psychological input and involvement.

Given the considerable responsibility jurors and juries have in determining a verdict, it is imperative that efforts are made to ensure they possess the relevant information and knowledge to accurately assess the value and weight of the defence offered. As such, consideration must be given to reviewing how best to inform and educate jurors and juries as to the nuances of alibis. There are some that recommend expert testimony be employed to educate jurors and juries (and more widely, judges) on memory in cases involving eyewitness testimony (Loftus, 2019; Pezdek & Reisberg, 2022). Thus, similar recommendations could be implemented for cases involving an alibi defence, albeit with expert evidence admitted at the discretion of the preceding judge. The thesis' combined findings demonstrate that mock jurors and juries' diverse, and often misinformed and erroneous, understanding of alibi evidence is problematic in assessing the veracity of an alibi (as seen in Study 3, for example, where mock jurors and juries' relied heavily on non-evidential factors when considering the evidence, rather than the nature of the defence itself). Expert testimony on the current psychological knowledge pertaining to alibi evidence, tailored to consider relevant factors of the case at hand, may be beneficial to impartially and independently assist the court to understand matters relevant in their appraisal of the defence (BPS, 2021d).

A final practice recommendation borne out of the thesis' findings is that the current guidelines for judicial instructions in cases involving an alibi defence should be reviewed and amended to reflect the current psychological knowledge on the subject matter. Particular attention should be paid to the importance and value of these being made mandatory. Whilst the Crown Court Compendium (Judicial College, 2023) details an advised alibi direction, if and how these are implemented

in real-world practice may be fragmentary and inconsistently applied. Furthermore, the adequacy of the current instructions to adequately inform jurors and juries as to the complex nature of alibis is questionable, particularly since they were devised prior to the advent of alibi research. For example, the judicial guidance states an alibi direction must be considered in instances of "any change from an earlier notified alibi" (Judicial College, 2023, "18-2, para. 8 (3)" section), however these instructions do not adequately address *why* such changes may have occurred. This contrasts with the Turnbull guidelines (CPS, 2018b; *R. v Turnbull*, 1977) for eyewitness memory, where information can be provided to jurors by a judge that aims to "debunks memory myths, lists potential influential encoding factors or explains evidence discrepancies … to improve the evaluation of the testimony" (Houses of Parliament, Parliamentary Office of Science and Technology, 2019, p. 2).

In a similar vein, the current provision in England and Wales for judicial directions in cases involving rape within intimate relationships has been criticised for failing to provide contextual information as to the dynamic and complexities of sexual violence, resulting in the use of stereotypical generalisations by the defence that undermine a complainant's perceived credibility by the jury (Ellison, 2019). Hudspith et al.'s (2024) systematic review of rape myth education found mixed findings: for example, judicial instructions pertaining to delayed reporting and the complainant's courtroom demeanour resulted in reduced reference and relevance of such factors during mock deliberations (Ellison & Munro, 2009). However, Nitschke et al. (2023) found that, whilst judge's instructions relating to complainant credibility reduced the influence of stereotypes on mock juror evaluations, it increased their scepticism of the complainant overall (contrary to the alibi generation effect, where generating an alibi reduced scepticism towards the defence: Olson & Wells, 2012, thereby demonstrating the importance of judicial instructions). Comprehensive judicial information designed to counter rape myths have been recommended (Leverick, 2020), with a consultation underway at the time of writing by the Law Commission (no date) to (in part) consider how judicial directions could be improved to better inform jurors and thus minimise the (un)intended impact of such misconceptions on jury decision-making. Given the expected recommendations for reform to be proposed because of said consultation, it is not

inconceivable that similar considerations and proposals for change could be considered in the case of alibi evidence.

It could be the case that judges hold similar well-intentioned, yet perhaps ill-informed, views as to the perceived likelihood and reasoning for (in)consistent alibi evidence as barristers (as seen in Study One) and mock jurors and juries' (as evidenced by Study Two and Three) (and would perhaps be a topic worthy of future exploratory research, beyond the scope of this thesis). Such opinions could potentially be cascaded down from judge to jury during criminal proceedings, further compounded by the way the defence is undermined during barristerial cross-examination, impacting on how such evidence is perceived and used during deliberations and ultimately the decision made as to culpability. Thus, revising judicial instructions to encompass an evidence-based and psychologically informed understanding of alibi evidence is of importance, thereby providing a form of educative training to jurors and juries beyond that of the existing direction. This could involve the provision of a prepared statement to be read by the judge to the court, conveying basic information on alibi memory processes and with reference as to why such evidence may not be seen as particularly reliable (e.g., weak corroborating evidence or an account containing inconsistencies) but is not necessarily indicative of fallaciousness or deliberate deception. Like the assertion that directions for witness testimony should be given early (i.e., before the evidence is called, to reduce the impact of confirmation bias) (Helm, 2021), this could similarly be implemented for alibi evidence (subject to findings pertaining to the order and effectiveness of judicial instructions, as per the proposed future research directions). In turn, this provides an opportunity to accurately educate jurors and jurors as to the nuances of alibi evidence, allowing them to assess its credibility as a defence from a more informed perspective.

Concluding Remarks

An alibi has the potential to be a defence responsible for vindicating or (conceivably, erroneously) convicting a defendant of the offence in question (Allison, 2022; Burke et al., 2007; Jung et al., 2013). This is emphasised by the fact alibis

feature prominently in cases of US wrongful convictions (Connors et al., 1996; Heath et al., 2021; Wells et al., 1998), and are present in instances of miscarriages of justice in England and Wales (e.g., as seen in the case of Sam Hallam: Evidence-Based Justice Lab, no date). Yet, despite its clear implications for real-world practice, the psychological literature is nascent (Burke & Marion, 2012; Kienzle & Behl, 2022; Olson & Morgan, 2022). Contrastingly, other leading contributory factors to miscarriages of justice such as eyewitness memory are heavily researched (Sauerland, 2017), subsequently resulting in evidence-based guidelines for the CJS (e.g., Turnbull directions: CPS, 2018b; *R. v Turnbull*, 1977), none of which exist for alibi evidence. Thus, to ensure a legal system that is effective, fair, and equitable for all concerned, thereby mitigating for potential of wrongful convictions, it is imperative that psychological research seeks to redress how alibis are presented and evaluated in the courtroom.

Together, the thesis provides an integrative understanding as to the way alibi evidence is presented in court in England and Wales, and the subsequent impact such presentation has on mock jurors and juries' evaluations, perceptions, and decision-making. Drawing on the strengths of a mixed methodological approach (Creamer & Reeping, 2020; Creswell, 2010, 2014; Tashakkori et al., 2013), the thesis has generated novel findings that collectively provide a concerted and triangulated understanding of such discrete, yet interconnected, aspects. Such findings make a significant contribution to the existing evidence base, producing knowledge that is of value to judicial practitioners, juries, and the CJS, and with clear recommendations and implications for criminal practice and policy.

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Appendices

Appendix 1: Study One Ethical Approval Letters

MANCHESTER METROPOLITAN UNIVERSITY
FACULTY OF HEALTH, PSYCHOLOGY AND SOCIAL CARE

M E M O R A N D U M

FACULTY ACADEMIC ETHICS COMMITTEE

Manchester Metropolitan University

To: Katie Clark

From: Prof Carol Haigh

Date: 14/05/2015

Subject: Ethics Application 1289

Title: An Investigation Into the Presentation and Evaluation of Alibi Evidence in the Courtroom

---

Thank you for your application for ethical approval.

The Faculty Academic Ethics Committee review process has recommended approval of your ethics application. This approval is granted for 42 months for full-time students or staff and 60 months for part-time students. Extensions to the approval period can be requested.

If your research changes you might need to seek ethical approval for the amendments. Please request an amendment form.

We wish you every success with your project.

Prof Carol Haigh and Prof Jois Stansfield
Chair and Deputy Chair
Faculty Academic Ethics Committee

MANCHESTER METROPOLITAN UNIVERSITY
FACULTY OF HEALTH, PSYCHOLOGY AND SOCIAL CARE

M E M O R A N D U M

FACULTY ACADEMIC ETHICS COMMITTEE

Manchester Metropolitan University

To: Katie Clark

From: Prof Carol Haigh

Date: 21.12.2015

Subject: Amendments to Ethics Application 1289

Title: An Investigation Into the Presentation and Evaluation of Alibi Evidence in the Courtroom

---

Thank you for your application for an amendment to your original ethical approval.

The Faculty Academic Ethics Committee review process has recommended approval of your amendment. This approval is granted for 42 months for full-time students or staff and 60 months for part-time students. Extensions to the approval period can be requested.

If your research changes you might need to seek ethical approval for the amendments. Please request an amendment form.

We wish you every success with your project.

Prof Carol Haigh and Prof Jois Stansfield
Chair and Deputy Chair
Faculty Academic Ethics Committee

MANCHESTER METROPOLITAN UNIVERSITY
FACULTY OF HEALTH, PSYCHOLOGY AND SOCIAL CARE

M E M O R A N D U M

FACULTY ACADEMIC ETHICS COMMITTEE

Manchester Metropolitan University

To: Katie Clark

From: Prof Carol Haigh

Date: 05/10/2015

Subject: Ethics Application

Title: An Investigation Into the Presentation and Evaluation of Alibi Evidence in the Courtroom.

Thank you for your application for an amendment to your original ethical approval.

The Faculty Academic Ethics Committee review process has recommended approval of your amendment. This approval is granted for 42 months for full-time students or staff and 60 months for part-time students. Extensions to the approval period can be requested.

If your research changes you might need to seek ethical approval for the amendments. Please request an amendment form.

We wish you every success with your project.

Prof Carol Haigh and Prof Jois Stansfield
Chair and Deputy Chair
Faculty Academic Ethics Committee

Appendix 2: Study One Facilitator Consent

From: [redacted]
Subject: RE: PhD Research
Date: 8 March 2015 at 20:37:06 GMT
To: Katie Clark
Cc: [redacted]

Dear Katie,

It is fine to access the relevant staff. I have copied in [redacted] who leads the BPTC (the course on which the barristers teach). Hopefully [redacted] will oblige by forwarding an email from you to the team.

Best wishes,
[redacted]

From: [redacted]
Subject: RE: PhD Research
Date: 28 May 2015 at 20:32:18 BST
To: Katie Clark

Hi Katie
I am happy to pass on information to teaching colleagues - I tend to have connections with chambers rather than law firms although I can think of a few people that may be able to help.
Just let me know what you need.
Kind regards
[redacted]

Appendix 3: Study One Recruitment Media

Manchester Metropolitan University

Department of Psychology

An Investigation Into the Presentation and Evaluation of Alibi Evidence in the Courtroom

My name is Katie Clark and I'm a PhD student within the Department of Psychology at Manchester Metropolitan University. The aim of my research is to gain a greater understanding of the experiences and approaches of criminal barristers in the presentation and evaluation of alibi evidence within courtroom proceedings. There is very little psychological research on this topic, and it has implications for the way in which juries and jurors comprehend alibi evidence in legal proceedings.

I am recruiting qualified criminal barristers who are currently practising, or have previously practised, within England and Wales. You are not expected to have a large amount of experience with alibi evidence, as your thoughts and experiences are both of interest.

If you wish to be involved in the research, you will be required to complete an individual interview to discuss your practises as a criminal barrister with regards to alibi evidence. The interview will be undertaken at a convenient time and location for you, will last for 1 to 1.5 hours and will be audio recorded.

Should you wish to participate, or would like further details, please do not hesitate to contact me via email on katie.clark2@stu.mmu.ac.uk.

Manchester Metropolitan University

Department of Psychology

An Investigation Into the Presentation and Evaluation of Alibi Evidence in the Courtroom

My name is Katie Clark and I'm a PhD student within the Department of Psychology at Manchester Metropolitan University. The aim of my research is to gain a greater understanding of the experiences and approaches of criminal barristers in the presentation and evaluation of alibi evidence within courtroom proceedings. There is very little psychological research on this topic, and it has implications for the way in which juries and jurors comprehend alibi evidence in legal proceedings.

I am recruiting qualified criminal barristers who are currently practising, or have previously practised, within England and Wales. You are not expected to have a large amount of experience with alibi evidence, as your thoughts and experiences are both of interest.

If you wish to be involved in the research, you will be required to complete an individual interview to discuss your practises as a criminal barrister with regards to alibi evidence. This can either be done in person, or via online video communication programmes (i.e. FaceTime or Skype). The interview will be undertaken at a convenient time for you, will last for approximately 30 minutes and will be audio recorded.

The research has been approved by Manchester Metropolitan University's Ethics Committee, and is therefore deemed to be ethically sound.

Should you wish to participate, or would like further details, please do not hesitate to contact me via email on katie.clark2@stu.mmu.ac.uk**.**

Appendix 4: Study One Participant Information Form

PARTICIPANT INFORMATION

Title of Research: An Investigation Into the Presentation and Evaluation of Alibi Evidence in the Courtroom

Name of Researcher: Katie Clark

Participant Identification Number:

Manchester Metropolitan University

I would like to invite you to take part in the above research, which forms part of my PhD at Manchester Metropolitan University. Before you decide whether you wish to participate, you need to understand why the research is being undertaken and what it will involve. Please take the time to read the information carefully, and ask any questions you may have.

What is the purpose of the research?

The aim of the research is to gain a greater understanding of the experiences and approaches of criminal barristers in the presentation and evaluation of alibi evidence within legal proceedings. It will explore perspectives on such evidence, and the approaches utilised when examining and cross-examining alibis within the courtroom.

The methods employed by both defence and prosecution barristers when examining and cross-examining such evidence have obvious implications for the way in which others (particularly juries, and jurors) comprehend such evidence, yet this has never been fully addressed within psychological research. As such, the researcher's PhD is two-fold and will also include a consideration as to how varying presentations of alibi evidence impact upon jury decision-making.

Why have I been invited?

You have been invited to participate because you are a qualified criminal barrister, who are currently practising or have previously practised, in England and Wales.

What will happen if I participate?

If you agree to be involved in the research, you will be required to complete an individual interview with the researcher. This will involve discussing your practises as a criminal barrister with regards to alibi evidence. The interview will be undertaken at a convenient time and location for you. It will last for 1 to 1.5 hours, will be audio recorded and subsequently transcribed.

If you choose to participate, you will be given a copy of this participant information and requested to complete a consent form (which you will also be provided with a copy of for your records).

Do I have to participate?

You are under no obligation to take part in the research; your participation is entirely voluntary.

Should you wish to withdraw from the research, you are free to do so without providing reason. Your data will be removed, and will not be used. You can withdraw by contacting the researcher, via the contact details below, up to three weeks after participation (by which time analysis will have taken place).

What are the benefits of taking part?

We cannot promise the research will be of benefit to you, but the information we gather will help to gain a further understanding of the approaches utilised by defence and prosecution barristers in instances in which alibi evidence is present.

Are there any risks involved?

There are no risks expected to be experienced as a result of participating in the research.

Will my participation be kept confidential?

The research has been approved by Manchester Metropolitan University's Ethics Committee, and is therefore deemed to be ethically sound.

Your participation will be anonymous, and you will be referred to by a pseudonym (your individual participation number). At no point will any personal or identifiable information be used.

The consent form you complete will be scanned on to a computer, using secure scanning facilities, thus allowing the original copies to be confidentially disposed of. The audio recordings, and subsequent transcriptions, of the interview will be stored securely (whether that be lockable storage cabinets, or on an encrypted password protected computer). All data provided will be stored for a period of five years, in line with the Data Protection Act 1998.

What will happen to the results of the research?

Anonymised excerpts of the transcribed interview will be used within the PhD thesis, and in the event of dissemination of the research in academic and professional publications and presentations. You will be referred to by a pseudonym only and the audio recordings will be not be utilised.

Who should I contact?

Should you wish to speak to the researcher, you can contact her via 14060246@stu.mmu.ac.uk.

Should you have any issues you wish to discuss with someone other than the researcher, you are free to contact her Director of Studies Dr Hannah Fawcett on h.fawcett@mmu.ac.uk.

Appendix 5: Study One Consent Form

CONSENT FORM

Title of Research: An Investigation Into the Presentation and Evaluation of Alibi Evidence in the Courtroom

Name of Researcher: Katie Clark

Participant Identification Number:

I, the undersigned, confirm that (please tick box as appropriate):

I have read and understand the information sheet for the above research.	☐
I have had the opportunity to ask questions and have had these answered satisfactorily.	☐
I understand my participation is voluntary and I can withdraw from the research, without reason. If I wish to withdraw, I will do up to three weeks after partaking in the interview (by which time analysis will have been completed).	☐
I understand that my completed consent form will be scanned, and stored securely, in electronic format for a period of five years.	☐
I understand that the interview will be audio recorded and it will be stored securely for a period of five years.	☐
I understand the interview will be transcribed, and will be analysed as part of the research.	☐
I understand that my participation is anonymous, and I will be referred to by a pseudonym only. All personal or identifiable information will be removed from the transcription.	☐
I understand that written extracts of the interview will be included in the research report, and I am aware they may also be included in the event of journal, conference or other forms of publication.	☐
I agree to participate in the above research.	☐

Participant

_____	_____	_____
Name of Participant	Signature	Date

Researcher

_____	_____	_____
Name of Researcher	Signature	Date

Appendix 6: Study One Interview Schedule

Thank You for Participating

Firstly, I just wanted to thank you for coming along today and taking part in the interview.

Overview of Reason for Interview

This interview forms part of my PhD here at MMU. The aim of the research is to gain a greater understanding of the experiences and approaches of criminal barristers in the presentation and evaluation of alibi evidence within legal proceedings. It will explore perspectives on such evidence, and the approaches utilised when examining and cross-examining alibis within the courtroom.

You have been invited to partake because you are a qualified criminal barrister, who are currently practising or have previously practised, in England and Wales.

Interview Procedures

The interview should last approximately one hour, and will be recorded using two devices - the Dictaphone and laptop. The recordings of the interview will be transcribed verbatim and analysed as part of my research.

Ethics

Your participation will be anonymous, and you will referred to by a pseudonym only. At no point will any personal or identifiable information be used.

As detailed in your participant information sheet, all data collected as part of the interview (scanned consent form, audio recordings and transcriptions of the interview) will be stored securely (locked filling cabinets or password protected, encrypted files on my computer).

You are free to withdraw at any point, from now up until three weeks after today (by which time analysis will have been completed). My email address is recorded on the participant information sheet, alongside my director of studies details too.

Breaks and Refreshments

Feel free to take a break at any time, and there's some water there should you need some.

Questions?

Have you got any questions before we start?

Opening Questions

1. How many years had you been at the bar?
2. What qualifications do you have?
3. Did you primarily work for the prosecution or defence, or both?
4. Did you specialise in any particular offences/cases?

Experiences and Perceptions of Alibis

1. What is your understanding of alibi evidence?
2. How often do you encounter alibi evidence in practise?
3. Can you think of any example/s of cases where alibi evidence was presented?
4. What are your personal views on alibi evidence?
5. Can you outline any training you have received on alibi evidence?

Attitudes towards Reliability and Believability of Alibis

1. What would you deem to be a reliable/believable/strong alibi?
2. What would you deem to be an unreliable/unbelievable/weak alibi?
3. How often do defendants provide physical evidence for their alibis?
4. What is the most common physical evidence provided?
    - *Prison records?*
    - *Video surveillance?*
    - *Receipts?*
    - *Phone records?*
    - *Photographs?*
5. How often do defendants provide witnesses to support their alibis?
6. What relation to the defendant are the witnesses most often in your experience?
    - *Partners/family?*
    - *Friends?*
    - *Acquaintances?*
    - *Strangers?*

Approaches/Techniques/Modes of Questioning in Court

1. How would you present alibi evidence in court (defence and/or prosecution)?
2. How would you challenge alibi evidence in court (defence and/or prosecution)?
    - *Character/motivation of witness?*
    - *Relationship to defendant?*
    - *Identify discrepancies in account?*
3. Are there any particular styles of questioning you would use when presenting/challenging alibi evidence?
    - *Leading questions (imply expected response)?*
    - *Directive leading questions (strongly imply expected response)?*
    - *Negative questions (include word not)?*
    - *Double negative questions (include word not twice)?*

    - *Multi-part questions?*
    - *Complex vocabulary?*
4. What, in your opinion, are the most effective styles of questioning?
5. How do you think juries/jurors view alibi evidence?
    - *Reliability?*
    - *Accuracy?*
    - *Believability?*
6. How would jurors react to various styles of questioning?
    - *Verdict?*

Appendix 7: Study One Debrief Information

DEBRIEF INFORMATION

Title of Research: An Investigation Into the Presentation and Evaluation of Alibi Evidence in the Courtroom

Name of Researcher: Katie Clark

Participant Identification Number:

Manchester Metropolitan University

Thank you for participating in my research; your participation is much appreciated. Please do not hesitate to contact me should you have any further questions.

What is the purpose of the research?

The aim of the research is to explore criminal barristers experiences, attitudes and approaches towards alibis and how such evidence would be utilised within the courtroom. There is very little psychological research on such a topic, and it has implications for the way in which juries and jurors comprehend alibi evidence in legal proceedings. This study will form part of wider research that examines the techniques and strategies utilised by criminal barristers when presenting alibi evidence, and the impact it has upon juror decision-making.

What will happen to my results?

Using the audio recording of the interview, it will be transcribed and subsequently analysed in order to identify the experiences, attitudes and approaches of barristers with regards to alibi evidence.

Anonymised excerpts of your transcribed interview will be used within the PhD thesis, and may also be included in the event of dissemination of the research.

How will my data be stored?

Your completed consent form will be scanned on to a computer, using secure scanning facilities, thus allowing the original copies to be confidentially disposed of. The audio recordings, and subsequent transcriptions, of the interview will be stored securely (whether that be lockable storage cabinets, or on an encrypted password protected computer).

All data provided will be stored for a period of five years, in line with the Data Protection Act 1998.

What if I wish to withdraw?

You are free to withdraw from the research, without giving reason, up to three weeks after partaking in the interview (by which time analysis will have been completed). Should you wish to do, so please contact the researcher and provide your participation number (as detailed above).

Who should I contact?

Should you wish to speak to the researcher, you can contact her via 14060246@stu.mmu.ac.uk.

Should you have any issues you wish to discuss with someone other than the researcher, you are free to contact her Director of Studies Dr Hannah Fawcett on h.fawcett@mmu.ac.uk.

Appendix 8: Transcription Guide

General Points

- Number the lines *(page layout – line numbers – restart each page)* and adjust margins to wide *(page layout – margins – wide)* so that there is space either side of the text.
- In each interview, there is two people talking - the interviewer (always a female voice) and the barrister (either a female or male voice).
- Indicate the person talking – if interviewer call *interviewer*, if barrister call as participant number i.e. *QNPB1 (see participant number on bottom of page).*
- Change any names/locations etc. to anonymise the transcripts (remove phrase and replace with *name/place name removed for reasons of confidentiality).*

Transcript Key - Based on Poland (2001)

- It's important that the transcripts are verbatim accounts of what happened during the interviews, and shouldn't be 'tided up' so they look better on paper.

Feature	Representation	Example
Non-Specific Speech (e.g., mmhm, erm, er)	Detail in the text (no need for brackets etc.).	QNPB1: But that's erm you have to act in the interest of your client.
Emphasised/ Louder Comments	Capital letters.	QNPB1: I would be LOOKING if there's ANY WAY of showing that that person was not there.
Pauses	Use series of dots (…) to indicate pauses of less than 2 seconds. Use (pause) for 2-3 second breaks, and use (long pause) for pauses of 4 seconds or more.	QNPB1: And if they simply say (pause) you know classically (…) the phrase from the TV 'you've got no alibi' because you were at home asleep.
Interruptions	Hyphen at the point of interruption.	QNPB1: There was a big criminal gang actually-
Overlapping Speech	Use a hyphen at the end *(see interruptions)*, also use (overlap) at the start of the overlapping speech and (end of overlap) when finished.	Interviewer: Ok. So, as you said, in that case it was about proving that everyone was there- QNPB1: (overlap) Mmhm. Interviewer: in that (end of overlap) vehicle.
Audibility Problems	Indicate in square brackets any material that is inaudible. If the material is difficult to hear but think you have worked out what is being said, indicate the text is guessed by using a question mark.	QNPB1: I haven't done myself but I've heard about them in other cases or [inaudible] friends who are at the bar. QNPB1: On what the [defence?] says.
Laughing, Coughing or Similar	Round brackets.	QNPB1: Just give us an idea what you're going to say (laughs).
Tone of Voice	If the tone of the voice of the person speaking affects how the text will be understood when it is written down, put this in round brackets.	QNPB1: Because it would be very easy for them to say 'well it's wasn't me' (sarcasm).

Feature	Representation	Example
Direct Speech/Paraphrasing Others	Use quotation marks to indicate where other's speech is quoted.	QNPB1: If your client says "I didn't do it, I was not there, I was over there" then you have to put that forward.

Appendix 9: Study Two Ethical Approval Letters

17/04/2019
Project Title: An Investigation Into the Presentation and Evaluation of Alibi Evidence in the Courtroom

EthOS Reference Number: 0328

Ethical Opinion

Dear Katie Mcmillan,

The above application was reviewed by the Health, Psychology and Social Care Research Ethics and Governance Committee and, on the 17/04/2019, was given a favourable ethical opinion. The approval is in place until 01/10/2020 .

Conditions of favourable ethical opinion
We are trying to find out whether contacting staff and students for research recruitment through their MMU email address is acceptable under GDPR.
As this is currently unclear, please contact Kate Townsend - Research Degrees Manager - to discuss the possibility of circulating recruitment information in the PGR students' newsletter.

Application Documents

Document Type	File Name	Date	Version
Additional Documentation	Demographic Questionnaire	03/02/2019	V1
Additional Documentation	Condition One Transcript	03/02/2019	V1
Additional Documentation	Condition Two Transcript	03/02/2019	V1
Additional Documentation	Condition Three Transcript	03/02/2019	V1
Additional Documentation	Condition Four Transcript	03/02/2019	V1
Additional Documentation	Dependent Measure Questionnaire	03/02/2019	V1
Recruitment Media	Recruitment Media Amended	07/03/2019	V2
Additional Documentation	ID Code Questionnaire Amended	07/03/2019	V2
Project Proposal	Project Proposal Amended (EthOS ID - 328)	07/03/2019	V2
Consent Form	Consent Form V3	09/04/2019	V3
Information Sheet	Participant Information V3	09/04/2019	V3
Additional Documentation	Debrief Information V3	09/04/2019	V3

The Health, Psychology and Social Care Research Ethics and Governance Committee favourable ethical opinion is granted with the following conditions

Adherence to Manchester Metropolitan University's Policies and procedures

This ethical approval is conditional on adherence to Manchester Metropolitan University's Policies, Procedures, guidance and Standard Operating procedures. These can be found on the Manchester Metropolitan University Research Ethics and Governance webpages.

Amendments

If you wish to make a change to this approved application, you will be required to submit an amendment. Please visit the Manchester Metropolitan University Research Ethics and Governance webpages or contact your Faculty research officer for advice around how to do this.

We wish you every success with your project.

HPSC Research Ethics and Governance Committee

22/07/2019
Project Title: An Investigation Into the Presentation and Evaluation of Alibi Evidence in the Courtroom

EthOS Reference Number: 0328

Ethical Opinion

Dear Katie Mcmillan,

The above amendment was reviewed by the Health, Psychology and Social Care Research Ethics and Governance Committee and, on the 22/07/2019, was given a favourable ethical opinion. The approval is in place until 01/10/2020 .

Conditions of favourable ethical opinion

Application Documents

Document Type	File Name	Date	Version
Additional Documentation	Dependent Measure Questionnaire V2	05/07/2019	V2
Additional Documentation	Condition One Transcript	05/07/2019	V2
Additional Documentation	Condition Two Transcript	05/07/2019	V2
Additional Documentation	Condition Three Transcript	05/07/2019	V2
Additional Documentation	Condition Four Transcript	05/07/2019	V2
Additional Documentation	Condition Five Transcript	05/07/2019	V2
Additional Documentation	Condition Six Transcript	05/07/2019	V2

The Health, Psychology and Social Care Research Ethics and Governance Committee favourable ethical opinion is granted with the following conditions

Adherence to Manchester Metropolitan University's Policies and procedures

This ethical approval is conditional on adherence to Manchester Metropolitan University's Policies, Procedures, guidance and Standard Operating procedures. These can be found on the Manchester Metropolitan University Research Ethics and Governance webpages.

Amendments

If you wish to make further changes to this approved application, you will be required to submit an amendment. Please visit the Manchester Metropolitan University Research Ethics and Governance webpages or contact your Faculty research officer for advice around how to do this.

We wish you every success with your project.

HPSC Research Ethics and Governance Committee

Manchester Metropolitan University

05/11/2019
Project Title: An Investigation Into the Presentation and Evaluation of Alibi Evidence in the Courtroom

EthOS Reference Number: 0328

Ethical Opinion

Dear Katie Mcmillan,

The above amendment was reviewed by the Health, Psychology and Social Care Research Ethics and Governance Committee and, on the 05/11/2019, was given a favourable ethical opinion. The approval is in place until 01/10/2020 .

Conditions of favourable ethical opinion

Application Documents

Document Type	File Name	Date	Version
Additional Documentation	Dependent Measure Questionnaire V3	10/10/2019	V3

The Health, Psychology and Social Care Research Ethics and Governance Committee favourable ethical opinion is granted with the following conditions

Adherence to Manchester Metropolitan University's Policies and procedures

This ethical approval is conditional on adherence to Manchester Metropolitan University's Policies, Procedures, guidance and Standard Operating procedures. These can be found on the Manchester Metropolitan University Research Ethics and Governance webpages.

Amendments

If you wish to make further changes to this approved application, you will be required to submit an amendment. Please visit the Manchester Metropolitan University Research Ethics and Governance webpages or contact your Faculty research officer for advice around how to do this.

We wish you every success with your project.

HPSC Research Ethics and Governance Committee

Appendix 10: Study Two Case Shortlisting and Selection Process

A systematic search of the legal database British and Irish Legal Information Institute (BAILII) was conducted, with the following search criteria:

a. Alibi evidence, as the primary form of defence, where there was some degree of inconsistency between police statements/accounts given by the defendant.
b. Submission of bad character evidence by the prosecution, specifically previous conviction/s.
c. Case took place in England or Wales.
d. Case took place after 2003, following the introduction of the Criminal Justice Act 2003 and new legalisation regarding the submission of bad character evidence.
e. Sufficient information present as to the nature of the offence, including the case for both the defending and prosecution counsels.

A search of the BAILII database, with the criteria of alibi [AND] bad character, resulted in 132 cases. These were further filtered by results with a relevance rank rating of more than 2%, resulting in 62 cases. These were each reviewed and five cases were shortlisted in line with the aforementioned criteria.

The case chosen, *R. v South* (2011), was selected as it was evidentially equivocal in nature, in that there was evidence to support both the defence and prosecution's proposed version of events.

Search database: British and Irish Legal Information Institute (BAILII)

Search terms: alibi [AND] bad character

Total documents found in BAILII database: 132

Total documents with relevance rank rating of more than 2%: 62

Case Details	Relevance Rating	Shortlisting	Comments
South, R. v [2011] EWCA Crim 754 (18 March 2011) ([2011] EWCA Crim 754; From England and Wales Court of Appeal (Criminal Division) Decisions)	8%	Shortlisted	Appropriate case, sufficient detail provided and evidentially equivocal in nature.
Ali v R [2010] EWCA Crim 1619 (12 July 2010) ([2010] EWCA Crim 1619; From England and Wales Court of Appeal (Criminal Division) Decisions)	8%	Excluded	Nature of case is too complex.
Brown & Ors, R. v [2017] EWCA Crim 167 (17 February 2017) ([2017] EWCA Crim 167; From England and Wales Court of Appeal (Criminal Division) Decisions)	6%	Shortlisted	Appropriate case but may be lacking in sufficient detail on the nature of alibi.
Marsh, R v [2009] EWCA Crim 2696 (21 December 2009) ([2009] EWCA Crim 2696; From England and Wales Court of Appeal (Criminal Division) Decisions)	6%	Excluded	Case is of a graphic nature.
Verdol, R. v [2015] EWCA Crim 502 (03 March 2015) ([2015] EWCA Crim 502; From England and Wales Court of Appeal (Criminal Division) Decisions)	5%	Excluded	Case involves sexual offences.
Shah v R. [2015] EWCA Crim 1250 (14 July 2015) ([2015] EWCA Crim 1250; From England and Wales Court of Appeal (Criminal Division) Decisions)	5%	Excluded	Nature of case is too complex.
Hay, R. v [2017] EWCA Crim 1851 (03 November 2017) ([2017] EWCA Crim 1851; From England and Wales Court of Appeal (Criminal Division) Decisions)	5%	Shortlisted	Appropriate case and sufficient detail, however case involves co-defendants.

Case Details	Relevance Rating	Shortlisting	Comments
Dobson, R. v [2008] EWCA Crim 435 (15 February 2008) ([2008] EWCA Crim 435; From England and Wales Court of Appeal (Criminal Division) Decisions)	5%	Excluded	Joint enterprise, so case involves multiple defendants.
Gjikokaj, R v [2014] EWCA Crim 386 (11 March 2014) ([2014] EWCA Crim 386; From England and Wales Court of Appeal (Criminal Division) Decisions)	5%	Excluded	Nature of case is too complex.
Eastlake & Anor, R. v [2007] EWCA Crim 603 (08 February 2007) ([2007] EWCA Crim 603; From England and Wales Court of Appeal (Criminal Division) Decisions)	5%	Excluded	Appropriate case, however alibi does not contain inconsistencies.
Percival & Anor, R v [2010] EWCA Crim 1326 (18 June 2010) ([2010] EWCA Crim 1326; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Nature of case is too complex. Case involves multiple trials.
Foster, R. v [2009] EWCA Crim 353 (10 February 2009) ([2009] EWCA Crim 353; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Alibi does not contain inconsistencies.
Bradley, R v [2005] EWCA Crim 20 (14 January 2005) ([2005] EWCA Crim 20; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Alibi does not contain inconsistencies.
Hall -Chung, R. v [2007] EWCA Crim 3429 (26 July 2007) ([2007] EWCA Crim 3429; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Lacks sufficient detail on bad character evidence.
Adams, R v Andrew [2007] EWCA Crim 1 (12 January 2007) ([2007] 1 Cr App R 34, [2007] 1 Cr App Rep 34, [2007] EWCA Crim 1; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Nature of case is too complex.

Case Details	Relevance Rating	Shortlisting	Comments
Cavagnuolo, R. [2017] EWCA Crim 2383 (8 September 2017) ([2017] EWCA Crim 2383; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Case does not involve alibi evidence.
RG v R. [2015] EWCA Crim 715 (01 May 2015) ([2015] EWCA Crim 715; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Case involves sexual offences.
George, R. v [2006] EWCA Crim 1652 (09 June 2006) ([2006] EWCA Crim 1652; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Case involves sexual offences.
Harty, R. v [2016] EWCA Crim 345 (12 February 2016) ([2016] EWCA Crim 345; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Alibi does not contain inconsistencies.
Purcell, R. v [2007] EWCA Crim 2604 (09 October 2007) ([2007] EWCA Crim 2604; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Alibi does not contain inconsistencies.
Hunter & Ors v R. [2015] EWCA Crim 631 (16 April 2015) ((2015) 179 JP 487, 179 JP 487, [2015] 1 WLR 5367, [2015] 2 Cr App R 9, [2015] EWCA Crim 631, [2015] WLR 5367, [2015] WLR(D) 176; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Case involves good character evidence, not bad character evidence.
Beeton, R v [2008] EWCA Crim 1421 (6 June 2008) ([2008] EWCA Crim 1421, [2009] 1 Cr App R (S) 46, [2009] 1 Cr App Rep (S) 46; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Case involves sexual offences.
Jamieson & Anor, R. v [2003] EWCA Crim 193 (07 February 2003) ([2003] EWCA Crim 193; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Shortlisted	Appropriate case but potentially too complex in nature.

Case Details	Relevance Rating	Shortlisting	Comments
Bryon, R. v [2015] EWCA Crim 997 (22 April 2015) ([2015] EWCA Crim 997, [2015] WLR(D) 180; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Alibi does not contain inconsistencies.
Campbell, R v [2016] EWCA Crim 597 (13 April 2016) ([2016] EWCA Crim 597; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Case involves sexual offences.
McEwan, R. v [2011] EWCA Crim 1026 (29 March 2011) ([2011] EWCA Crim 1026; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Case does not include bad character evidence.
Kelly v R [2015] EWCA Crim 817 (15 May 2015) ([2015] EWCA Crim 817; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	Nature of case is too complex.
Synnott & Ors, R v [2011] EWCA Crim 578 (16 March 2011) ([2011] EWCA Crim 578; From England and Wales Court of Appeal (Criminal Division) Decisions)	4%	Excluded	First trial before the introduction of the Criminal Justice Act 2003.
Catalyst Investment Group Ltd v Lewinsohn & Ors [2009] EWHC 1964 (Ch) (31 July 2009) ([2009] EWHC 1964 (Ch), [2010] 1 All ER (Comm) 751, [2010] 1 Ch 218, [2010] 2 WLR 839, [2010] Bus LR 350, [2010] Ch 218; From England and Wales High Court (Chancery Division) Decisions)	4%	Excluded	Chancery division.
Vincent & Anor v R [2007] EWCA Crim 3 (26 January 2007) ([2007] EWCA Crim 3; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Nature of case is too complex.
Welsh & Ors, R. v [2013] EWCA Crim 409 (12 March 2013) ([2013] EWCA Crim 409; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Shortlisted	Appropriate case but may be lacking in sufficient detail on the nature of alibi.

Case Details	Relevance Rating	Shortlisting	Comments
Spittle, R v [2008] EWCA Crim 2537 (8 October 2008) ([2008] EWCA Crim 2537, [2009] RTR 14; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Alibi does not contain inconsistencies.
Morgans, R v [2015] EWCA Crim 1997 (4 November 2015) ([2015] EWCA Crim 1997; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case does not involve alibi evidence.
Blake & Ors, R v [2010] EW Misc 6 (CrimC) (31 March 2010) ([2010] EW Misc 6 (CrimC); From English and Welsh Courts - Miscellaneous)	3%	Excluded	Case does not include bad character evidence.
Munford, R. v [2015] EWCA Crim 619 (18 March 2015) ([2015] EWCA Crim 619; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case does not involve alibi evidence.
Avorgah v R [2015] EWCA Crim 1186 (07 July 2015) ([2015] EWCA Crim 1186; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case does not involve alibi evidence.
Lunkulu & Ors v R. [2015] EWCA Crim 1350 (07 August 2015) ([2015] EWCA Crim 1350; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case does not involve alibi evidence.
Doyle & Ors, R v [2017] EWCA Crim 340 (8 February 2017) ([2017] EWCA Crim 340; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Alibi does not contain inconsistencies.
Singh, R. v [2006] EWCA Crim 660 (23 February 2006) ([2006] 1 WLR 1564, [2006] Crim LR 647, [2006] EWCA Crim 660, [2006] WLR 1564; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Alibi does not contain inconsistencies.
Weir & Ors, R. v [2005] EWCA Crim 2866 (11 November 2005) ([2005] 1 WLR 1885, [2005] EWCA Crim 2866, [2005] WLR 1885, [2006] 1 Cr App R 19,	3%	Excluded	Case involves sexual offences.

Case Details	Relevance Rating	Shortlisting	Comments
[2006] 1 Cr App Rep 19, [2006] 1 WLR 1885, [2006] 2 All ER570, [2006] Crim LR 433, [2006] WLR 1885; From England and Wales Court of Appeal (Criminal Division) Decisions)			
C v R. [2011] EWCA Crim 1607 (29 June 2011) ([2011] EWCA Crim 1607; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case involves sexual offences.
Ahmed, R, v [2018] EWCA Crim 739 (17 April 2018) ([2018] EWCA Crim 739, [2018] WLR(D) 244; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case does not involve alibi evidence.
Crossland, R v [2013] EWCA Crim 2313 (22 November 2013) ([2013] EWCA Crim 2313; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case involves sexual offences.
George v R [2007] EWCA Crim 2722 (15 November 2007) ([2007] EWCA Crim 2722; From England and Wales Court of Appeal (Civil Division) Decisions)	3%	Excluded	Unsafe verdict.
Toussaint-Collins, R v [2009] EWCA Crim 316 (27 January 2009) ([2009] EWCA Crim 316; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Alibi does not contain inconsistencies.
Tully & Anor, R. v [2006] EWCA Crim 2270 (16 March 2006) ((2007) 171 JP 25, (2007) 171 JPN 306, [2006] EWCA Crim 2270; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Defendant does not offer evidence/testimony.
S, R. v [2006] EWCA Crim 756 (06 March 2006) ((2006) 170 JP 434, 170 JP 434, [2006] 2 Cr App R 23, [2006] 2 Cr App Rep 23, [2006] EWCA Crim 756,	3%	Excluded	Case involves sexual offences.

Case Details	Relevance Rating	Shortlisting	Comments
[2007] Crim LR 296; From England and Wales Court of Appeal (Criminal Division) Decisions)			
Leslie B, R. v [2006] EWCA Crim 2150 (28 July 2006) ([2006] EWCA Crim2150; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case involves sexual offences.
Garland, R v [2016] EWCA Crim 1743 (21 November 2016) ([2016] EWCA Crim 1743, [2016] WLR(D) 618, [2017] 4 WLR 117, [2017] Crim LR 402; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Alibi does not contain inconsistencies.
Sadiq & Anor, R. v [2009] EWCA Crim 712 (16 January 2009) ([2009] EWCA Crim 712; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Alibi does not contain inconsistencies.
Boulton v R. [2007] EWCA Crim 942 (26 April 2007) ([2007] EWCA Crim 942; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case involves sexual offences.
Azam & Ors, R. v [2006] EWCA Crim 161 (22 February 2006) ([2006] EWCA Crim 161; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case does not include bad character evidence.
Mayende & Ors, R v [2015] EWCA Crim 1566 (25 September 2015) ([2015] EWCA Crim 1566; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case involves sexual offences.
Heibner, R. v (Rev 1) [2014] EWCA Crim 102 (23 January 2014) ([2014] EWCA Crim 102; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case does not include bad character evidence.

Case Details	Relevance Rating	Shortlisting	Comments
Sirrs & Anor, R v [2006] EWCA Crim 3185 (15 December 2006) ([2006] EWCA Crim 3185; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Nature of case is too complex.
Mateza, R. v [2011] EWCA Crim 2587 (28 June 2011) ([2011] EWCA Crim 2587; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Alibi does not contain inconsistencies.
Williams v R [2014] EWCA Crim 1862 (19 September 2014) ([2014] EWCA Crim 1862; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Alibi does not contain inconsistencies.
Randall, R v [2003] EWCA Crim 436 (21 February 2003) ([2003] EWCA Crim 436; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case does not involve alibi evidence.
McAfee & Anor, R. v [2006] EWCA Crim 2914 (10 November 2006) ([2006] EWCA Crim 2914; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case does not involve alibi evidence.
Williams, R v [2012] EWCA Crim 2385 (26 October 2012) ([2012] EWCA Crim 2385; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Case does not involve alibi evidence.
Solomon & Ors, R v [2016] EWCA Crim 95 (23 March 2016) ([2016] EWCA Crim 95; From England and Wales Court of Appeal (Criminal Division) Decisions)	3%	Excluded	Alibi does not contain inconsistencies.

Appendix 11: Study Two Recruitment Media

Manchester Metropolitan University
Department of Psychology

Manchester Metropolitan University

My name is Katie McMillan and I am a PhD student within the Department of Psychology at Manchester Metropolitan University. The aim of the current study is to explore the views of jurors within a criminal trial.

I am recruiting jury-eligible participants to complete a short online study. You will be asked to read an excerpt of a criminal trial for burglary, which is based on a genuine case. This will be followed by a questionnaire in which you will be asked to reach a verdict as to whether the defendant is guilty or not, followed by a series of questions about the decision you have made. The study should take approximately 20 minutes to complete.

You are under no obligation to take part in the study and your participation is entirely voluntary.

Students within the Department of Psychology will be granted 20 SONA credits for taking part.

If you wish to participate in the study, it can be accessed via the following link:

https://mmu.eu.qualtrics.com/jfe/form/SV_2otRUWQqZDxpLPn

Should you require any further details, please do not hesitate to contact me via email on katie.mcmillan2@stu.mmu.ac.uk.

Appendix 12: Study Two Participant Information Form

Participant Information

My name is Katie McMillan and this study forms part of my PhD at Manchester Metropolitan University. Before you decide whether you wish to participate, you need to understand why the research is being undertaken and what it will involve. Please take the time to read the information carefully. You can contact the researcher, using the contact details below, should you have any further questions.

What is the purpose of the study?

The study aims to explore the views of jurors in the context of a criminal trial.

What will happen if I participate?

The study involves you acting as though you are a juror. You will be asked to read an excerpt of a transcript of a criminal trial, based on a genuine case for the alleged offence of burglary. You will be asked to reach a verdict as to whether the defendant is guilty or not, followed by a series of questions about the decision you have made.

The study should take approximately 20 minutes to complete.

Are there any inclusion criteria?

In order to participate in this study, you must meet the criteria for jury service (as specified in the Juries Act 1974). You must be:

Between the ages of 18 and 75 years old

Have lived in the United Kingdom, the Channel Islands or the Isle of Man for a period of at least five years, since the age of 13 years old

Registered to vote in parliamentary or local government elections

Have never received a suspended sentence, community order or prison sentence for any length of time in the past 10 years

Have never had, or still currently have, a serious mental health condition that may be liable to be detained under the Mental Health Act 1983

Do I have to participate?

You are under no obligation to take part in the study; your participation is entirely voluntary.

Should you wish to withdraw from the research, you are free to do so without providing reason and without being penalised. You can do so by either navigating away from the webpage or, once you have completed the questionnaire, by contacting the researcher up to one week after participation. You will be asked to create an identification code before completing the study, which you will need to quote in any correspondence in the event of withdrawing from the research. Failure to provide a valid identification code will not allow the researcher to trace your responses and remove them, so they will still be included in data analysis and write up of the project.

Are there any benefits to taking part?

Although you may find participating interesting, there are no direct benefits in taking part.

Are there any risks involved?

There are no risks anticipated with participating in this study that are beyond those encountered in everyday life. However, if you experience any distress following participation, you are encouraged to contact the researcher to inform her of this.

Who has reviewed the project?

The study has been reviewed and approved by the Manchester Metropolitan University Faculty of Health, Psychology and Social Care Research Ethics and Governance Committee.

Will my data be identifiable and how will it be stored?

The information you provide is confidential and anonymous and no personal identifiable information (including name, IP address and geolocation) will be stored.

The data collected for this study will be stored securely and only the researchers conducting this study will have access to these data.

At the end of the study, all data will be kept securely in a password protected computer and the files themselves will be encrypted (that is no-one other than the research team will be able to access them).

All data provided will be stored for a period of ten years, in line with the General Data Protection Regulation 2018.

What will happen to my data?

Manchester Metropolitan University is the sponsor for this study based in the United Kingdom. We will be using information from you in order to undertake this study and will act as the data controller for this study. This means that we are responsible for looking after your information and using it properly. Manchester Metropolitan University will keep information for 10 years after the study has finished.

Your rights to access, change or move your information are limited, as we need to manage your information in specific ways in order for the research to be reliable and accurate. If you withdraw from the study, we will keep the information about you that we have already obtained (but will destroy the research data). To safeguard your rights, we will use the minimum personally-identifiable information possible.

You can find out more about how we use your information by contacting ethics@mmu.ac.uk.

As a university we use personally-identifiable information to conduct research and our legal basis for processing personal data is a 'public task'. As a publicly-funded organisation, we have to ensure that it is in the public interest when we use personally-identifiable information from people who have agreed to take part in research. This means that when you agree to take part in a research study, we will use your data in the ways needed to conduct and analyse the research study.

Research should serve the public interest, which means that we have to demonstrate that our research serves the interests of society as a whole. We do this by following the British Psychological Society (2018) Code of Ethics and Conduct and the British Psychological Society (2014) Code of Human Research Ethics.

If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter. If you are not satisfied with our response or believe we are processing your personal data in a way that is not lawful you can complain to the Information Commissioner's Office (ICO).

Our Data Protection Officer is Christopher Woolley (contact C.Woolley@mmu.ac.uk or legal@mmu.ac.uk).

What will happen to the results of the research?

Your responses to the closed questions will be pooled with other participants answers for data analysis. Your individual results will not be referred to.

The overall findings of the study will be included in the written PhD thesis. The findings may be disseminated in the event of journal, conference or other forms of publication.

Who should I contact?

If you have any questions about the study, please contact the principal researcher:

Katie McMillan
PhD Student
Email: katie.mcmillan2@stu.mmu.ac.uk
Department of Psychology │Manchester Metropolitan University │Manchester │M15 6GX

Should you have any issues you wish to discuss with someone other than the researcher, you are free to contact the Director of Studies:

Emma Tarpey
Director of Studies
Tel: +44 (0)161 247 2526 | Email: e.tarpey@mmu.ac.uk
Department of Psychology │Manchester Metropolitan University │Manchester │M15 6GX

Complaints

If you wish to make a complaint or raise concerns about any aspect of this study and do not want to speak to the researcher, you can contact:

Professor Juliet Goldbart
Faculty Head of Research Ethics and Governance
Tel: +44 (0)161 247 2578 │Email: j.goldbart@mmu.ac.uk
Faculty of Health, Psychology and Social Care│Manchester Metropolitan University │Manchester │M15 6GX

Thank you for taking the time to read this information.

Appendix 13: Study Two Consent Form

Consent Form

By agreeing to take part, I confirm that:

I have read and understood the participant information and fully understand what is expected of me within this study. *[tick box]*

I am over the age of 18 years old and I meet the requirements for jury duty (as previously listed). *[tick box]*

I understand my participation is voluntary and I can withdraw from the research up until one week after taking part, without giving any reason, without my legal rights being affected in any way. *[tick box]*

I understand that in order for my data to be withdrawn, I will need to contact the researcher via email within one week of taking part, with the inclusion of the code I have created as part of my participation. *[tick box]*

I understand that failure to provide a valid code will not allow the researcher to trace my responses and remove them and they will still be included in the analysis and write up of the project. *[tick box]*

I understand that my data will remain strictly confidential and anonymous and no personal identifiable information (including name, IP address and geolocation) will be stored. *[tick box]*

I understand that only the research team will have access to the anonymised raw data. *[tick box]*

I understand that my responses to the questions will be pooled with other participants answers for data analysis and my individual results will not be referred to. *[tick box]*

I understand that the results of the study will be included in the PhD thesis and will be included in the event of journal, conference or other forms of publication. *[tick box]*

I understand that all data provided will be stored for a period of ten years, in line with the General Data Protection Regulation 2018. *[tick box]*

By clicking → , you agree to take part in the study. *[next button]*

Appendix 14: Study Two Demographic Questionnaire

Participant Number:

Please complete this demographic questionnaire, stating your response in the space provided.

What is your gender?

Male ☐

Female ☐

Non-binary ☐

Third gender ☐

Prefer to self-describe _____

Prefer not to say ☐

What is your age? _____

What is your occupational status?

Employed ☐

Unemployed ☐

Student ☐

Retired ☐

Unable to work ☐

Prefer not to say ☐

Appendix 15: Study Two Trial Transcripts

Participant Instructions

The following is an excerpt of a transcript of a criminal trial for the alleged offence of burglary by the defendant Mr Michael Wilson. You will first read opening speeches, followed by the examination-in-chief and cross-examination of the defendant and witness, ending with closing speeches by both counsels.

The excerpt is a section of the overall trial. You should consider the merits of the case only on the information detailed within the transcript and refrain from considering other evidence that would conceivably be considered in a complete trial.

Please read the transcript carefully and ensure that you understand all of the evidence before proceeding further.

Condition(s) with Consistent Alibi and No Previous Convictions

Opening Speeches

Mr Taylor [Prosecution]

My name is Mr Taylor and I am representing the prosecution, on behalf of the Crown, in the case of R v Wilson on the 6th of September 2018.

The case is that, on the 13th of November 2017 between the hours of 12.30 and 15.30, the property of 67 Richmond Road in Manchester was burgled. A plastic money jar, aftershave, perfume, an iPhone 6, an X-Box, a camera and a black rucksack were stolen. Two of the residents of the house were asleep upstairs during that time. At 15.30, one of the residents, Mr Spencer Hughes, came downstairs to find that the glass pane to the front door, just above the lock, had been smashed and the door had been opened. He subsequently discovered that the items had been taken, and he called the police. On the floor below the letterbox of the door, there were some envelopes which had footmarks on them. These envelopes were taken by the police and forensically examined.

The defendant, Mr Michael Wilson, was arrested in respect of this case on the 15th of November 2017, and his clothing, shoes and possessions were taken by the police. Among his possessions, police found an iPhone 6. The following day, the victim Mr Hughes identified the iPhone as his and the one that had been stolen in the burglary. Furthermore, the forensic evidence concerning the footmarks on the envelopes provide moderately strong evidence as coming from the footwear seized from the defendant on the day of his arrest. Mr Wilson was subsequently charged, on the

23rd of December 2017, with burglary under Section 9 of the Theft Act 1968. The prosecution allege that it was Mr Michael Wilson who burgled 67 Richmond Road, in which he stole all of the aforementioned items.

The burden of proof lies with the prosecution; the Crown brings this case against the defendant, and it is for the Crown to prove. The defendant does not need to prove anything. It is the prosecution's duty to demonstrate, beyond reasonable doubt, that Michael Wilson committed the offence of burglary.

Mrs Clark [Defence] I, Mrs Clark, am representing the defence and acting on behalf of the defendant Mr Michael Wilson.

Mr Wilson pleads not guilty to burglary. He asserts that, on the day in question, he was at a friend's house repairing a motorcycle and was not involved in the burglary. Mr Wilson provided this account at the first opportunity, on the day of his arrest on the 15th of November 2017. His alibi is supported by his friend Mr James Lewis, who will testify on Mr Wilson's behalf. Mr Wilson states that he came in to possession of the iPhone having bought it from a beggar on the 14th of November 2017.

Defence Examination-in-Chief of Defendant

Mrs Clark [Defence] Please state your full name.

Mr Wilson [Defendant] Michael David Wilson.

Mrs Clark [Defence] Mr Wilson, where were you on the 13th of November 2017?

Mr Wilson [Defendant] I was at home, at 13 Pallister Court, on the morning. I left at around 10.00 to go to my friend's house and then I left for home at around 16.00.

Mrs Clark [Defence] What is the name of your friend?

Mr Wilson [Defendant] James Lewis.

Mrs Clark [Defence] When did you arrive at Mr Lewis' house Mr Wilson?

Mr Wilson [Defendant] I left my house at around 10.00 and walked for about 25 to 30 minutes to James' house so I must have got there at about 10.30.

Mrs Clark [Defence] And what were you doing at Mr Lewis' house during that time?

Mr Wilson [Defendant] We were fixing James' bike. It needed a new tyre and the chain had to be fixed so we did that.

Mrs Clark [Defence] Did you leave Mr Lewis' house during the hours of 10.30 and 16.00 on Monday 13th of November?

Mr Wilson [Defendant] No.

Mrs Clark [Defence] Besides motorcycle repairs, did you do anything else that day Mr Wilson?

Mr Wilson [Defendant] No, we just did that.

Mrs Clark [Defence] Did you commit the burglary that you are charged with Mr Wilson?

Mr Wilson [Defendant] No I did not. I was with James at his house the whole time.

Mrs Clark [Defence] Mr Wilson, how did you come in to possession of the iPhone 6 that was found on your arrest on the 15th of November 2017?

Mr Wilson [Defendant] I bought it from a beggar the day before.

Mrs Clark [Defence] Why did you buy this item from a beggar Mr Wilson?

Mr Wilson [Defendant] Well he'd been hassling me to buy it for £10, saying he'd found it in a gutter. He kept following me so I offered him £3 for it and he gave me it for that.

Mrs Clark [Defence] Why did you offer him money for it in the first place?

Mr Wilson [Defendant] I just wanted to get him off my back.

Mrs Clark [Defence] Were you aware at the time that the item was stolen Mr Wilson?

Mr Wilson [Defendant] Definitely not, I wouldn't have bought it if I'd known that.

Mrs Clark [Defence] Thank you, Mr Wilson. That concludes my examination-in-chief, Your Honour.

Prosecution Cross-Examination of Defendant

Mr Taylor [Prosecution] Mr Wilson, can you remind the court where you allege that you were between the hours of 12.30 and 15.30 on Tuesday 13th of November 2017?

Mr Wilson [Defendant] I was at James' house. We fixed the tyre and chain on his bike and then I went home at around 16.00.

Mr Taylor [Prosecution] What did you do on the morning in question, prior to going to James' house, Mr Wilson?

Mr Wilson [Defendant] I got up at around 8.00 to get ready. I left my house at around 10.00 and walked to James house from there.

Mr Taylor [Prosecution] So you left your house at 10.00 and walked to James house, where you fixed his bike, before leaving at 16.00. Is that correct Mr Wilson?

Mr Wilson [Defendant] Yes.

Mr Taylor [Prosecution] Are you sure about that?

Mr Wilson [Defendant] Yes.

Mr Taylor [Prosecution] So you spent six and a half hours at James Lewis' house fixing a bike, is this what your defence is Mr Wilson?

Mr Wilson [Defendant] Yes that's right.

Mr Taylor [Prosecution] You state that you acquired the stolen iPhone that was found in your possession on arrest from a beggar on the street. So you are maintaining this vague, and somewhat dubious, version of events. Is that correct?

Mr Wilson [Defendant] Yes, because it's what happened.

Mr Taylor [Prosecution] Mr Wilson, do you accept that this may not be at all believable to the court?

Mr Wilson I'm telling the truth.

[Defendant]

Mr Taylor [Prosecution] Is it not, in fact, that your alibi of fixing a motorcycle with Mr Lewis is indeed false and that you did the commit the burglary you are charged with?

Mr Wilson [Defendant] No, I didn't do it.

Mr Taylor [Prosecution] No more questions your Honour.

Defence Examination-in-Chief of Witness

Mrs Clark [Defence] Please state your full name for the purposes of the court.

Mr Lewis [Witness] My name is Mr James Lewis.

Mrs Clark [Defence] Mr Lewis, what is your relationship to the defendant Michael Wilson?

Mr Lewis [Witness] We are friends.

Mrs Clark [Defence] How long have you known Mr Wilson for?

Mr Lewis [Witness] I don't know exactly but we've been friends for at least a few years I'd say.

Mrs Clark [Defence] Where were you on the 13th of November 2017?

Mr Lewis [Witness] I was at home all day.

Mrs Clark [Defence] Who did you see on the day in question Mr Lewis?

Mr Lewis [Witness] Michael came to my house at around 10.30 on that morning as he'd agreed to help me fix my bike.

Mrs Clark [Defence] What time did Mr Wilson leave your house?

Mr Lewis [Witness] He left around teatime, so around 16.00.

Mrs Clark [Defence] Did Mr Wilson leave your house anytime between the hours you have stated?

Mr Lewis [Witness] No.

Mrs Clark [Defence] To your knowledge, did Mr Wilson commit the burglary he is charged with?

Mr Lewis [Witness] No he couldn't have done it as he was with me.

Mrs Clark [Defence] Thank you, Mr Lewis. No further questions Your Honour.

Prosecution Cross-Examination of Witness

Mr Taylor [Prosecution] How would you describe your relationship with the defendant?

Mr Lewis [Witness] I would say we're good friends, we've known each other for a while now.

Mr Taylor [Prosecution] As good friends then, would you be willing to lie for him Mr Lewis?

Mr Lewis [Witness] Well it depends on the situation. I wouldn't lie for him to the police though.

Mr Taylor [Prosecution] So you wouldn't lie for to him to say prevent him being charged with a crime that in fact he committed?

Mr Lewis [Witness] No I wouldn't.

Mr Taylor [Prosecution] Has the defendant ever told you he committed the burglary at Richmond Road?

Mr Lewis [Witness] No.

Mr Taylor [Prosecution] What is your understanding of how Mr Wilson come in to possession of the stolen iPhone?

Mr Lewis [Witness] He told me he bought it off a beggar on the street.

Mr Taylor [Prosecution] Do you believe Mr Wilson's version of events?

Mr Lewis [Witness] Well yes, if that's where he's saying he got it from.

Mr Taylor [Prosecution] Are you supporting Mr Wilson's alibi because you're his friend or because it is the truth of what occurred on that day?

Mr Lewis [Witness] It's the truth, he was with me fixing my bike.

Mr Taylor [Prosecution] So you are supporting, on oath, Mr Wilson's rather questionable defence?

Mr Lewis [Witness] Yes I am, because it's what happened.

Mr Taylor [Prosecution] I have no further questions Your Honour.

Closing Speeches

Mr Taylor [Prosecution] The prosecution's case is that Michael Wilson burgled the property on Richmond Road on the 13th of November 2017 and stole a number of items, including aftershave, a camera, an X-Box, an iPhone 6 and a black rucksack. He is charged with burglary under Section 9 of the Theft Act 1968.

To remind you, the burden of proof lies with the prosecution. If you are absolutely certain that Mr Wilson is guilty, then you must convict. However, if there is any doubt in your mind as to whether he committed this act, you must deliver a verdict of not guilty.

Mr Wilson alleges that that he did not commit this act, as he was with a friend, Mr James Lewis, repairing a motorcycle at the time. His alibi is simply not believable. Furthermore, there is moderately strong forensic evidence from the footmarks found on the envelope, in addition to one of the stolen items, an iPhone, being found in Mr Wilson's possession on his arrest. His account of buying this from a beggar is frankly preposterous. With this in mind, I ask that you deliver a verdict of guilty.

Mrs Clark [Defence] The defence assert that Mr Michael Wilson did not commit the burglary he is charged with, as he was at the house of his friend Mr James Lewis at the time the offence was committed. This account is supported by Mr Lewis, who has testified on behalf of the defendant. As such, I ask you to find Mr Wilson not guilty.

Judge's Instructions

Judge Williams [Judge]	The defence is one of alibi. That is to say Michael Wilson says that he was not at the scene but elsewhere when the crime was being committed. Because it is for the prosecution to prove Mr Wilson's guilt, he does not have to prove that he was at his friend James Lewis' house: it is for the prosecution to prove that he was at the property of 67 Richmond Road. If the prosecution does prove that Mr Wilson's alibi is false, that does not in itself mean that he is guilty. It is something which you may take into account, but you should bear in mind that sometimes an innocent person who fears that the truth will not be believed may instead invent an alibi. If, after considering all of the evidence, you are sure that Mr Wilson is guilty, your verdict must be guilty. If you are not sure that Mr Wilson is guilty, your verdict must be not guilty.

Condition(s) with Inconsistent Alibi and Previous Convictions

Yellow = inconsistent account - temporal

Blue = inconsistent account - temporal and activity [including yellow text]

Green = previous convictions

Opening Speeches

Mr Taylor [Prosecution]	My name is Mr Taylor and I am representing the prosecution, on behalf of the Crown, in the case of R v Wilson on the 6th of September 2018. The case is that, on the 13th of November 2017 between the hours of 12.30 and 15.30, the property of 67 Richmond Road in Manchester was burgled. A plastic money jar, aftershave, perfume, an iPhone 6, an X-Box, a camera and a black rucksack were stolen. Two of the residents of the house were asleep upstairs during that time. At 15.30, one of the residents, Mr Spencer Hughes, came downstairs to find that the glass pane to the front door, just above the lock, had been smashed and the door had been opened. He subsequently discovered that the items had been taken, and he called the police. On the floor below the letterbox of the door, there were some envelopes which had footmarks on them. These envelopes were taken by the police and forensically examined. The defendant, Mr Michael Wilson, was arrested in respect of this case on the 15th of November 2017, and his clothing, shoes and possessions were taken by the police. Among his possessions,

police found an iPhone 6. The following day, the victim Mr Hughes identified the iPhone as his and the one that had been stolen in the burglary. Furthermore, the forensic evidence concerning the footmarks on the envelopes provide moderately strong evidence as coming from the footwear seized from the defendant on the day of his arrest. Mr Wilson was subsequently charged, on the 23rd of December 2017, with burglary under Section 9 of the Theft Act 1968. The prosecution allege that it was Mr Michael Wilson who burgled 67 Richmond Road, in which he stole all of the aforementioned items.

The burden of proof lies with the prosecution; the Crown brings this case against the defendant, and it is for the Crown to prove. The defendant does not need to prove anything. It is the prosecution's duty to demonstrate, beyond reasonable doubt, that Michael Wilson committed the offence of burglary.

Mrs Clark [Defence] I, Mrs Clark, am representing the defence and acting on behalf of the defendant Mr Michael Wilson.

Mr Wilson pleads not guilty to burglary. He asserts that, on the day in question, he was at a friend's house repairing a motorcycle and was not involved in the burglary. Mr Wilson provided this account at the first opportunity, on the day of his arrest on the 15th of November 2017. His alibi is supported by his friend Mr James Lewis, who will testify on Mr Wilson's behalf. Mr Wilson states that he came in to possession of the iPhone having bought it from a beggar on the 14th of November 2017.

Defence Examination-in-Chief of Defendant

Mrs Clark [Defence] Please state your full name.

Mr Wilson [Defendant] Michael David Wilson.

Mrs Clark [Defence] Mr Wilson, where were you on the 13th of November 2017?

Mr Wilson [Defendant] I was at home, at 13 Pallister Court, on the morning. I left at around 10.00 to go to my friend's house and then I left for home at around 16.00.

Mrs Clark [Defence] What is the name of your friend?

Mr Wilson [Defendant] James Lewis.

Mrs Clark [Defence] When did you arrive at Mr Lewis' house Mr Wilson?

Mr Wilson [Defendant] I left my house at around 10.00 and walked for about 25 to 30 minutes to James' house so I must have got there at about 10.30.

Mrs Clark [Defence] And what were you doing at Mr Lewis' house during that time?

Mr Wilson [Defendant] We were fixing James' bike. It needed a new tyre and the chain had to be fixed so we did that.

Mrs Clark [Defence] Did you leave Mr Lewis' house during the hours of 10.30 and 16.00 on Monday 13th of November?

Mr Wilson [Defendant] No.

Mrs Clark [Defence] Besides motorcycle repairs, did you do anything else that day Mr Wilson?

Mr Wilson [Defendant] No, we just did that.

Mrs Clark [Defence] Did you commit the burglary that you are charged with Mr Wilson?

Mr Wilson [Defendant] No I did not. I was with James at his house the whole time.

Mrs Clark [Defence] Mr Wilson, how did you come in to possession of the iPhone 6 that was found on your arrest on the 15th of November 2017?

Mr Wilson [Defendant] I bought it from a beggar the day before.

Mrs Clark [Defence] Why did you buy this item from a beggar Mr Wilson?

Mr Wilson [Defendant] Well he'd been hassling me to buy it for £10, saying he'd found it in a gutter. He kept following me so I offered him £3 for it and he gave me it for that.

Mrs Clark [Defence] Why did you offer him money for it in the first place?

Mr Wilson [Defendant] I just wanted to get him off my back.

Mrs Clark Were you aware at the time that the item was stolen Mr Wilson?

[Defence]

Mr Wilson [Defendant] Definitely not, I wouldn't have bought it if I'd known that.

Mrs Clark [Defence] Thank you, Mr Wilson. That concludes my examination-in-chief, Your Honour.

Prosecution Cross-Examination of Defendant

Mr Taylor [Prosecution] Mr Wilson, can you remind the court where you allege that you were between the hours of 12.30 and 15.30 on Tuesday 13th of November 2017?

Mr Wilson [Defendant] I was at James' house. We watched some television and then fixed the tyre and chain on his bike and then I went home at around 16.00.

Mr Taylor [Prosecution] What did you do on the morning in question, prior to going to James' house, Mr Wilson?

Mr Wilson [Defendant] I got up at around 8.00 to get ready. I left my house at around 9.00 and walked to James house from there.

Mr Taylor [Prosecution] So you left your house at 9.00 and walked to James house, where you watched TV and fixed his bike, before leaving at 16.00. Is that correct Mr Wilson?

Mr Wilson [Defendant] Yes.

Mr Taylor [Prosecution] Are you sure about that?

Mr Wilson [Defendant] Yes.

Mr Taylor [Prosecution] Can I take you back to both your police interview on the 15th of November 2017, and the account you provided earlier in this trial, in which you stated you left your house at 10.00.

Mr Wilson [Defendant] Sorry I got it wrong, I meant to say 10.00.

Mr Taylor [Prosecution] Can I also take you back to your earlier accounts, in which you did not mention that you had watched television at James' house, only that you helped him with motorcycle repairs.

Mr Wilson [Defendant] I must be mistaken; it must have been a different time when we watched TV.

Mr Taylor [Prosecution]	Well which one is it Mr Wilson, the version you told you told the police two days after the offence and during examination-in-chief, or the account you are telling the court now?
Mr Wilson [Defendant]	It's definitely the one I told the police, I just got confused.
Mr Taylor [Prosecution]	The inconsistencies between your accounts would suggest you're lying Mr Wilson, do you agree?
Mr Wilson [Defendant]	I'm not lying, I didn't do it.
Mr Taylor [Prosecution]	Mr Wilson, is the reason for the inconsistencies between your accounts not in fact that your alibi is a sham and this is your attempt to bolster a false defence?
Mr Wilson [Defendant]	I'm telling the truth, I didn't do the burglary.
Mr Taylor [Prosecution]	You state that you acquired the stolen iPhone that was found in your possession on arrest from a beggar on the street. So you are maintaining this vague, and somewhat dubious, version of events. Is that correct?
Mr Wilson [Defendant]	Yes, because it's what happened.
Mr Taylor [Prosecution]	Mr Wilson, do you accept that this may not be at all believable to the court?
Mr Wilson [Defendant]	I'm telling the truth.
Mr Taylor [Prosecution]	Is it not, in fact, that your alibi of fixing a motorcycle with Mr Lewis is indeed false and that you did the commit the burglary you are charged with?
Mr Wilson [Defendant]	No, I didn't do it.
Mr Taylor [Prosecution]	Under Section 101(1)(d) of the Criminal Justice Act 2003, the prosecution is admitting evidence of the defendant's bad character in the form of previous convictions. Between March 2005 and July 2010, Mr Wilson has three previous convictions for dwelling house burglaries and one conviction for attempted dwelling house burglary in October 2015. Mr Wilson, can you confirm that this is correct?
Mr Wilson [Defendant]	Yes.

Mr Taylor [Prosecution]	The prosecution is admitting these convictions to demonstrate that Mr Wilson has a propensity to commit similar offences such as the one he is on trial for. In light of this, I again ask you whether you expect the court to believe that you did not commit the burglary at Richmond Road?
Mr Wilson [Defendant]	I didn't do the burglary. I know I've done things like that before, but I didn't do this one.
Mr Taylor [Prosecution]	Despite your previous convictions for dwelling house burglaries, you are maintaining your version of events that you didn't commit this offence because you were fixing a bike? And that you came in to possession of one of the stolen items because you bought it from a beggar?
Mr Wilson [Defendant]	Yes. I know I've got previous convictions for similar things but I honestly didn't do this one.
Mr Taylor [Prosecution]	No more questions your Honour.

Defence Examination-in-Chief of Witness

Mrs Clark [Defence]	Please state your full name for the purposes of the court.
Mr Lewis [Witness]	My name is Mr James Lewis.
Mrs Clark [Defence]	Mr Lewis, what is your relationship to the defendant Michael Wilson?
Mr Lewis [Witness]	We are friends.
Mrs Clark [Defence]	How long have you known Mr Wilson for?
Mr Lewis [Witness]	I don't know exactly but we've been friends for at least a few years I'd say.
Mrs Clark [Defence]	Where were you on the 13th of November 2017?
Mr Lewis [Witness]	I was at home all day.
Mrs Clark [Defence]	Who did you see on the day in question Mr Lewis?

Mr Lewis [Witness] Michael came to my house at around 10.30 on that morning as he'd agreed to help me fix my bike.

Mrs Clark [Defence] What time did Mr Wilson leave your house?

Mr Lewis [Witness] He left around teatime, so around 16.00.

Mrs Clark [Defence] Did Mr Wilson leave your house anytime between the hours you have stated?

Mr Lewis [Witness] No.

Mrs Clark [Defence] To your knowledge, did Mr Wilson commit the burglary he is charged with?

Mr Lewis [Witness] No he couldn't have done it as he was with me.

Mrs Clark [Defence] Thank you, Mr Lewis. No further questions Your Honour.

Prosecution Cross-Examination of Witness

Mr Taylor [Prosecution] How would you describe your relationship with the defendant?

Mr Lewis [Witness] I would say we're good friends, we've known each other for a while now.

Mr Taylor [Prosecution] As good friends then, would you be willing to lie for him Mr Lewis?

Mr Lewis [Witness] Well it depends on the situation. I wouldn't lie for him to the police though.

Mr Taylor [Prosecution] So you wouldn't lie for to him to say prevent him being charged with a crime that in fact he committed?

Mr Lewis [Witness] No I wouldn't.

Mr Taylor [Prosecution] Has the defendant ever told you he committed the burglary at Richmond Road?

Mr Lewis [Witness] No.

Mr Taylor [Prosecution] What is your understanding of how Mr Wilson come in to possession of the stolen iPhone?

Mr Lewis [Witness] He told me he bought it off a beggar on the street.

Mr Taylor [Prosecution] Do you believe Mr Wilson's version of events?

Mr Lewis [Witness] Well yes, if that's where he's saying he got it from.

Mr Taylor [Prosecution] Are you supporting Mr Wilson's alibi because you're his friend or because it is the truth of what occurred on that day?

Mr Lewis [Witness] It's the truth, he was with me fixing my bike.

Mr Taylor [Prosecution] So you are supporting, on oath, Mr Wilson's rather questionable defence?

Mr Lewis [Witness] Yes I am, because it's what happened.

Mr Taylor [Prosecution] I have no further questions Your Honour.

Closing Speeches

Mr Taylor [Prosecution] The prosecution's case is that Michael Wilson burgled the property on Richmond Road on the 13th of November 2017 and stole a number of items, including aftershave, a camera, an X-Box, an iPhone 6 and a black rucksack. He is charged with burglary under Section 9 of the Theft Act 1968.

To remind you, the burden of proof lies with the prosecution. If you are absolutely certain that Mr Wilson is guilty, then you must convict. However, if there is any doubt in your mind as to whether he committed this act, you must deliver a verdict of not guilty.

Mr Wilson alleges that that he did not commit this act, as he was with a friend, Mr James Lewis, repairing a motorcycle at the time. His alibi is inconsistent and simply not believable. Furthermore, there is moderately strong forensic evidence from the footmarks found on the envelope, in addition to one of the stolen items, an iPhone, being found in Mr Wilson's possession on his arrest. His account of buying this from a beggar is frankly preposterous. Mr Wilson also has convictions for dwelling house burglaries,

demonstrating a propensity to commit similar offences such as this one. With this in mind, I ask that you deliver a verdict of guilty.

Mrs Clark [Defence]

The defence assert that Mr Michael Wilson did not commit the burglary he is charged with, as he was at the house of his friend Mr James Lewis at the time the offence was committed. This account is supported by Mr Lewis, who has testified on behalf of the defendant. As such, I ask you to find Mr Wilson not guilty.

Judge's Instructions

Judge Williams [Judge]

The defence is one of alibi. That is to say Michael Wilson says that he was not at the scene but elsewhere when the crime was being committed. Because it is for the prosecution to prove Mr Wilson's guilt, he does not have to prove that he was at his friend James Lewis' house: it is for the prosecution to prove that he was at the property of 67 Richmond Road.

If the prosecution does prove that Mr Wilson's alibi is false, that does not in itself mean that he is guilty. It is something which you may take into account, but you should bear in mind that sometimes an innocent person who fears that the truth will not be believed may instead invent an alibi.

You have heard that Mr Wilson has previous convictions for dwelling house burglaries. You heard this because the prosecution say that they show he has a tendency to commit offences of this type. It is for you to decide whether these previous convictions do in fact show that Mr Wilson has a tendency to behave in this way.

If you are not sure that Mr Wilson's previous convictions show that he has such a tendency then you must ignore them: they are of no relevance to the issues in the case. But if you are sure that they do show such a tendency then this may support the prosecution case. It is for you to say whether it does and if so to what extent. But the fact that someone has burgled in the past does not prove that he did so on this occasion. Mr Wilson's previous convictions may only be used as some support for the prosecution case. You must not convict him wholly or mainly because of them.

If, after considering all of the evidence, you are sure that Mr Wilson is guilty, your verdict must be guilty. If you are not sure that Mr Wilson is guilty, your verdict must be not guilty.

Appendix 16: Study Two Questionnaire

Jurors are responsible for deciding whether, based on the facts of the case, a defendant is guilty or not guilty of the offence for which he or she has been charged. They must reach a verdict by considering only the evidence presented in court.

You will now be asked a series of questions about the transcript you have read, which concern the defendant Mr Michael Wilson. Please read each question carefully before answering.

I believe the defendant is:

Guilty ☐

Not guilty ☐

How certain are you that your decision is correct?

0 = Not at all certain 10 = Very certain

0	1	2	3	4	5	6	7	8	9	10

How much do you believe the defendant's alibi?

0 = I do not believe the defendant at all 10 = I believe the defendant completely

0	1	2	3	4	5	6	7	8	9	10

How likely is it that the defendant was the person who committed the offence?

0 = Very unlikely 10 = Very likely

0	1	2	3	4	5	6	7	8	9	10

How credible would you describe the defendant as?

1 = Not at all credible 10 = Very credible

1	2	3	4	5	6	7	8	9	10

How honest would you describe the defendant as?

1 = Not at all honest 10 = Very honest

1	2	3	4	5	6	7	8	9	10

How persuasive would you describe the defendant as?

1 = Not at all persuasive 10 = Very persuasive

1	2	3	4	5	6	7	8	9	10

How knowledgeable would you describe the defendant as?

1 = Not at all knowledgeable 10 = Very knowledgeable

1	2	3	4	5	6	7	8	9	10

How competent would you describe the defendant as?

1 = Not at all competent 10 = Very competent

1	2	3	4	5	6	7	8	9	10

How intelligent would you describe the defendant as?

1 = Not at all intelligent 10 = Very intelligent

[PAGE BREAK]

You will now be asked a series of questions about the transcript you have read, which concern the alibi witness Mr James Lewis. Please read each question carefully before answering.

How credible would you describe the alibi witness as?

1 = Not at all credible 10 = Very credible

1	2	3	4	5	6	7	8	9	10

How honest would you describe the alibi witness as?

1 = Not at all honest 10 = Very honest

1	2	3	4	5	6	7	8	9	10

How persuasive would you describe the alibi witness as?

1 = Not at all persuasive 10 = Very persuasive

1	2	3	4	5	6	7	8	9	10

How knowledgeable would you describe the alibi witness as?

1 = Not at all knowledgeable 10 = Very knowledgeable

1	2	3	4	5	6	7	8	9	10

How competent would you describe the alibi witness as?

1 = Not at all competent 10 = Very competent

1	2	3	4	5	6	7	8	9	10

How intelligent would you describe the alibi witness as?

1 = Not at all intelligent 10 = Very intelligent

1	2	3	4	5	6	7	8	9	10

[PAGE BREAK]

Based on the information provided in the transcript, did the defendant, Mr Michael Wilson, change his account?

Yes ☐

No ☐

Based on the information provided in the transcript, did the defendant, Mr Michael Wilson, have previous convictions?

Yes ☐

No ☐

Appendix 17: Study Two Debrief Information

Debrief Information

Thank you for participating in the study; your participation is much appreciated.

What is the purpose of the study?

The study is exploring the decision-making and perceptions of mock jurors on alibi evidence. The transcript was based on a genuine criminal trial for the offence of burglary, in which the defendant used alibi evidence as their defence.

What will happen to my results?

Your responses to the questions will be pooled with other participants answers for data analysis. Your individual results will not be referred to.

The overall findings of the study will be included in the PhD thesis. The findings may be disseminated in the event of journal, conference or other forms of publication.

Will my data be identifiable and how will it be stored?

The information you provided is confidential and anonymous and no personal identifiable information (including name, IP address and geolocation) will be stored.

The data collected for this study will be stored securely and only the researchers conducting this study will have access to the data.

All data will be kept securely in a password protected computer and the files themselves will be encrypted (that is no-one other than the research team will be able to access them).

All data provided will be stored for a period of ten years, in line with the General Data Protection Regulation 2018.

What if I wish to withdraw?

You are free to withdraw from the research, without giving reason and without being penalised, up to one week after taking part. Should you wish to do so, you can contact the researcher, using the contact details provided below, with the inclusion of the code you created as part of your participation. Failure to provide a valid code will not allow the researcher to trace your responses and remove them and they will still be included in the analysis and write up of the study.

Who should I contact?

If you have any questions about the study, please contact the principal researcher:

Katie McMillan
PhD Student
Email: katie.mcmillan2@stu.mmu.ac.uk
Department of Psychology │Manchester Metropolitan University │Manchester │M15 6GX

Should you have any issues you wish to discuss with someone other than the researcher, you are free to contact the Director of Studies:

Emma Tarpey
Director of Studies
Tel: +44 (0)161 247 2526 | Email: e.tarpey@mmu.ac.uk
Department of Psychology │Manchester Metropolitan University │Manchester │M15 6GX

Appendix 18: Study Three Ethical Approval Letters

17/09/2019
Project Title: A Qualitative Exploration of Alibi Evidence in Jury Deliberations

EthOS Reference Number: 9832

Ethical Opinion

Dear Katie Mcmillan,

The above application was reviewed by the Health, Psychology and Social Care Research Ethics and Governance Committee and, on the 17/09/2019, was given a favourable ethical opinion. The approval is in place until 01/10/2020 .

Conditions of favourable ethical opinion

Application Documents

Document Type	File Name	Date	Version
Additional Documentation	P3 Demographic Questionnaire	26/07/2019	V1
Additional Documentation	P3 Trial Transcript	26/07/2019	V1
Additional Documentation	Exhibit ET1 and ET2	26/07/2019	V1
Additional Documentation	P3 Participant Standard Instructions	26/07/2019	V1
Additional Documentation	P3 Debrief Form	26/07/2019	V1
Consent Form	P3 Consent Form	20/08/2019	V2
Information Sheet	P3 Participant Information Sheet	20/08/2019	V2
Consent Form	P3 Actor Consent Form	20/08/2019	V2
Recruitment Media	P3 Actor Recruitment Media [Electronic]	20/08/2019	V2
Recruitment Media	P3 Actor Recruitment Media [Paper]	20/08/2019	V2
Recruitment Media	P3 Recruitment Media [Electronic]	20/08/2019	V2
Recruitment Media	P3 Recruitment Media [Paper]	20/08/2019	V2
Project Protocol	P3 Project Proposal V3	20/08/2019	V3

The Health, Psychology and Social Care Research Ethics and Governance Committee favourable ethical opinion is granted with the following conditions

Adherence to Manchester Metropolitan University's Policies and procedures

This ethical approval is conditional on adherence to Manchester Metropolitan University's Policies, Procedures, guidance and Standard Operating procedures. These can be found on the Manchester Metropolitan University Research Ethics and Governance webpages.

Amendments

If you wish to make a change to this approved application, you will be required to submit an amendment. Please visit the Manchester Metropolitan University Research Ethics and Governance webpages or contact your Faculty research officer for advice around how to do this.

We wish you every success with your project.

HPSC Research Ethics and Governance Committee

19/12/2019
Project Title: A Qualitative Exploration of Alibi Evidence in Jury Deliberations

EthOS Reference Number: 9832

Ethical Opinion

Dear Katie Mcmillan,

The above amendment was reviewed by the Health, Psychology and Social Care Research Ethics and Governance Committee and, on the 19/12/2019, was given a favourable ethical opinion. The approval is in place until 01/10/2020 .

Conditions of favourable ethical opinion
** Please add the ethical approval number to the recruitment media

Application Documents

Document Type	File Name	Date	Version
Additional Documentation	P3 Actor Consent Form V2	18/12/2019	V2
Additional Documentation	P3 Actor Recruitment Media [Paper] V2	18/12/2019	V2
Additional Documentation	P3 Actor Recruitment Media [Electronic] V2	18/12/2019	V2

The Health, Psychology and Social Care Research Ethics and Governance Committee favourable ethical opinion is granted with the following conditions

Adherence to Manchester Metropolitan University's Policies and procedures

This ethical approval is conditional on adherence to Manchester Metropolitan University's Policies, Procedures, guidance and Standard Operating procedures. These can be found on the Manchester Metropolitan University Research Ethics and Governance webpages.

Amendments

If you wish to make further changes to this approved application, you will be required to submit an amendment. Please visit the Manchester Metropolitan University Research Ethics and Governance webpages or contact your Faculty research officer for advice around how to do this.

We wish you every success with your project.

HPSC Research Ethics and Governance Committee

HPSC Research Ethics and Governance Committee

For help with this application, please first contact your Faculty Research Officer. Their details can be found here

18/05/2021
Project Title: A Qualitative Exploration of Alibi Evidence in Jury Deliberations

EthOS Reference Number: 9832

Ethical Opinion

Dear Katie Mcmillan,

The above amendment was reviewed by the Health, Psychology and Social Care Research Ethics and Governance Committee and, on the 18/05/2021, was given a favourable ethical opinion. The approval is in place until 18/10/2022 .

Conditions of favourable ethical opinion

Application Documents

Document Type	File Name	Date	Version
Additional Documentation	P3 Demographic Questionnaire V1.1	13/05/2021	1.1
Additional Documentation	P3 Participant Standard Instructions V1.1	13/05/2021	1.1
Additional Documentation	P3 Recruitment Media [Electronic] V1.1	13/05/2021	1.1
Additional Documentation	P3 Recruitment Media [Paper] V1.1	13/05/2021	1.1
Additional Documentation	P3 Demographic Questionnaire V1.1 (Qualtrics Version)	13/05/2021	1.1
Additional Documentation	P3 Participant Information Sheet V1.2	13/05/2021	1.2
Additional Documentation	P3 Consent Form V1.2	13/05/2021	1.2
Additional Documentation	P3 Debrief Form V1.2	13/05/2021	1.2
Additional Documentation	P3 Project Protocol V4	13/05/2021	4

The Health, Psychology and Social Care Research Ethics and Governance Committee favourable ethical opinion is granted with the following conditions

Adherence to Manchester Metropolitan University's Policies and procedures

This ethical approval is conditional on adherence to Manchester Metropolitan University's Policies, Procedures, guidance and Standard Operating procedures. These can be found on the Manchester Metropolitan University Research Ethics and Governance webpages.

Amendments

If you wish to make further changes to this approved application, you will be required to submit an amendment. Please visit the Manchester Metropolitan University Research Ethics and Governance webpages or contact your Faculty research officer for advice around how to do this.

We wish you every success with your project.

HPSC Research Ethics and Governance Committee

HPSC Research Ethics and Governance Committee

For help with this application, please first contact your Faculty Research Officer. Their details can be found here

02/09/2021
Project Title: A Qualitative Exploration of Alibi Evidence in Jury Deliberations

EthOS Reference Number: 9832

Ethical Opinion

Dear Katie Mcmillan,

The above amendment was reviewed by the Health, Psychology and Social Care Research Ethics and Governance Committee and, on the 02/09/2021, was given a favourable ethical opinion. The approval is in place until 18/10/2022 .

Conditions of favourable ethical opinion

Application Documents

Document Type	File Name	Date	Version
Additional Documentation	Demographic Questionnaire V1.1 [Online]	13/05/2021	1.1
Additional Documentation	Participant Standard Instructions V1.1 [Online]	13/05/2021	1.1
Additional Documentation	Debrief Form V1.2 [Online]	13/05/2021	1.2
Additional Documentation	Recruitment Media [Paper] V1.2	24/08/2021	1.2
Additional Documentation	Recruitment Media [Electronic] V1.2	24/08/2021	1.2
Additional Documentation	Demographic Questionnaire V1.2 [In Person]	24/08/2021	1.2
Additional Documentation	Participant Standard Instructions V1.2 [In Person]	24/08/2021	1.2
Additional Documentation	Debrief Form V1.3 [In Person]	24/08/2021	1.3
Additional Documentation	Project Protocol V5	24/08/2021	5
Additional Documentation	Participant Information Sheet V1.4 [In Person]	02/09/2021	1.4
Additional Documentation	Participant Information Sheet V1.3 [Online]	02/09/2021	1.3
Additional Documentation	Consent Form V1.4 [In Person]	02/09/2021	1.4
Additional Documentation	Consent Form V1.3 [Online]	02/09/2021	1.3

The Health, Psychology and Social Care Research Ethics and Governance Committee favourable ethical opinion is granted with the following conditions

Adherence to Manchester Metropolitan University's Policies and procedures

This ethical approval is conditional on adherence to Manchester Metropolitan University's Policies, Procedures, guidance and Standard Operating procedures. These can be found on the Manchester Metropolitan University Research Ethics and Governance webpages.

Amendments

If you wish to make further changes to this approved application, you will be required to submit an amendment. Please visit the Manchester Metropolitan University Research Ethics and Governance webpages or contact your Faculty research officer for advice around how to do this.

We wish you every success with your project.

HPSC Research Ethics and Governance Committee

HPSC Research Ethics and Governance Committee

Appendix 19: Study Three Recruitment Media

Manchester Metropolitan University

Do you want to take part in jury research?

My name is Katie McMillan and I am a PhD student in the Department of Psychology at Manchester Metropolitan University.

I am recruiting jury-eligible participants to take part in a study where you will be allocated to a group with five other participants, who together will form a jury.

You will watch a video of a simulated criminal trial, before deliberating in order to reach a verdict. The deliberations will be video and audio recorded for use in qualitative data analysis.

The study will take place either in person or online (using Microsoft Teams) and will last for up to two hours.

Participants will be entered into a draw to win a £25 Amazon voucher.

Should you require further details, or wish to take part, please contact me via email on katie.mcmillan2@stu.mmu.ac.uk.

The study has been approved by the Manchester Metropolitan University Faculty of Health, Psychology and Social Care Research Ethics and Governance Committee. Ethical Approval Number (EthOS):9832.

Version 1.2 Date: 24th August 2021

Appendix 20: Study Three Participant Information Form

Manchester Metropolitan University

Participant Information Form

A Qualitative Exploration of Alibi Evidence in Jury Deliberations

Before you decide whether you wish to participate, you need to understand why the research is being undertaken and what it will involve. Please take the time to read the information carefully and ask any questions you may have.

Invitation to research

My name is Katie McMillan and this study forms part of my PhD at Manchester Metropolitan University.

The study aims to explore the views of mock juries in the context of a hypothetical criminal trial. Trial by jury is a central component of the Criminal Justice System in England and Wales. Juries are responsible for determining the innocence or guilt of a defendant, based upon the evidence presented during court proceedings.

Why have I been invited?

You are invited to take part in a study that involves you acting as though you are a member of a jury in court.

In order to participate in this study, you must meet the criteria for jury service as specified in the Juries Act 1974. You must be:

1. Between the ages of 18 and 75 years old.
2. Have lived in the United Kingdom, the Channel Islands or the Isle of Man for a period of at least five years, since the age of 13 years old.
3. Registered to vote in parliamentary or local government elections.
4. Have never received a suspended sentence, community order or prison sentence for any length of time in the past 10 years.
5. Have never had, or still currently have, a serious mental health condition that may be liable to be detained under the Mental Health Act 1983.

Do I have to take part?

It is up to you to decide. We will describe the study and go through the information sheet, which we will give to you. We will then ask you to sign a consent form to show you agreed to take part. You are free to withdraw at any time, without giving a reason, up to two weeks after participation.

You will be provided with a participant number once you have consented to taking part, which you will need to quote in correspondence in the event of withdrawing from the research. In the event of withdrawing, all data you have provided up until the point of withdrawal will be used in the study. This is because of the nature of the group deliberations, in that removal of data will impact the understanding of how a verdict has been arrived at. Your data will be retained and used as described in parts 7 and 8.

What will I be asked to do?

Before taking part, you will be asked to sign a consent form and complete a short questionnaire. This covers five questions on your gender, age, ethnicity, occupational status and previous jury duty experience and is known as the 'demographic' questionnaire. Following this, you will form a group with five other participants, who together will become a mock jury. You will watch a video of a simulated criminal trial based on a genuine case for the offence of burglary, where you will hear both the prosecution and defence's evidence. After hearing the judge's instructions, you will be asked to deliberate within your jury in order to reach a verdict. Once you have reached a verdict with your fellow jurors, the spokesperson will deliver the verdict. The deliberations will be video and audio recorded and transcribed verbatim for data analysis. It is expected that the study will last for up to 2 hours in total.

Due to the nature of group discussions, your identity will be known to other people taking part in the study. You are asked to maintain confidentiality of information shared over the course of this study. You should not discuss the identity of fellow participants and/or information discussed as part of the study with anyone besides the Principal Investigator.

Are there any risks if I participate?

As the study will last for up 2 hours, there may be some interference with your normal activities.

As part of the trial reconstruction, there will be an account of the offence of burglary. This is based on a genuine case heard before a court in England and Wales. Should you anticipate that this may cause you any distress, it is advised that you do not participate in this research.

Should the experience bring up difficult feelings, or leaves you feeling distressed, you are encouraged to speak to the Principal Investigator. Contact details of relevant organisations are provided at the end of this form should you require any additional advice or support.

Are there any advantages if I participate?

Participants are offered the opportunity to be entered into a prize draw to win a £25 Amazon voucher. Participants recruited via Manchester Metropolitan University's Psychology Research Participation Pool will be awarded participation points for taking part in the study.

What will happen with the data I provide?

When you agree to participate in this research, we will collect from you personally-identifiable information.

The Manchester Metropolitan University ('the University') is the Data Controller in respect of this research and any personal data that you provide as a research participant. The University is registered with the Information Commissioner's Office (ICO), and manages personal data in accordance with the General Data Protection Regulation (GDPR) and the University's Data Protection Policy.

We collect personal data as part of this research (such as name, email addresses and demographic information on gender, age, ethnicity, occupational status and previous jury duty). As a public authority acting in the public interest we rely upon the 'public task' lawful basis. When we collect special category data (such as medical information or ethnicity) we rely upon the research and archiving purposes in the public interest lawful basis.

Your rights to access, change or move your information are limited, as we need to manage your information in specific ways in order for the research to be reliable and accurate. If you withdraw from the study, we will keep the information about you that we have already obtained.

We will not share your personal data collected in this form with any third parties. If your data is shared this will be under the terms of a Research Collaboration Agreement which defines use, and agrees confidentiality and information security provisions. It is the University's policy to only publish anonymised data unless you have given your explicit written consent to be identified in the research.

The University never sells personal data to third parties. For further information about use of your personal data and your data protection rights please see the University's Data Protection pages.

All email correspondence will be via the Principal Investigator's academic email account and will be deleted four weeks after the end of data collection. All research data will be stored on the Principal Investigator's Manchester Metropolitan University's OneDrive, in password protected files, and only the Principal Investigator conducting this study and her supervisory team will have access to this data. The consent forms and demographic information will be stored separately from the research data, and for 10 years after the end of the project and deleted thereafter. The video and audio recordings of deliberations and the anonymised transcripts will be stored separately from one another, and for 10 years after the end of the project and deleted thereafter.

The typed transcripts of the deliberations will be made anonymous by removing any identifying information. The Principal Investigator will anonymise the data by removing any reference to personal information (e.g., names and locations) before proceeding with analysis. You will be referred to by your participant number only. A separate password protected file will keep a record of the links between personal information and anonymised data (e.g., participant numbers and real names).

What will happen to the results of the research study?

Anonymised excerpts of the transcribed deliberations will be used within data analysis for the PhD thesis, and may also be included in the event of dissemination by journal, conference or other forms of publication or output. The video and audio recordings of the deliberations will not be shared.

Who has reviewed this research project?

The study has been reviewed and approved by the Manchester Metropolitan University Faculty of Health, Psychology and Social Care Research Ethics and Governance Committee.

Who do I contact if I have concerns about this study or I wish to complain?

If you have any questions about the study, please contact the Principal Investigator:
Katie McMillan
Principal Investigator
Email: katie.mcmillan2@stu.mmu.ac.uk
Department of Psychology | Faculty of Health, Psychology and Social Care | Manchester Metropolitan University | Manchester | M15 6GX

Should you have any issues you wish to discuss with someone other than the Principal Investigator, you are free to contact the Principal Supervisor:

Dr Emma Tarpey
Principal Supervisor
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If you wish to make a complaint or raise concerns about any aspect of this study and do not want to speak to the Principal Investigator or her Principal Supervisor, you can contact:

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If you wish to make a complaint about the way which your personal data is being or has been processed, or you believe a personal data breach incident has occurred, please contact our Data Protection Officer, who will investigate:

The Data Protection Officer | Legal Services | All Saints Building | Grosvenor Square | Manchester | M15 6BH
Telephone: +44 (0)161 247 3884 | Email: dataprotection@mmu.ac.uk

You also have a right to complain to the Information Commissioner's Office (ICO) about the way in which we process your personal data. You can make a complaint using the ICO's website. However, we do encourage you to expend our internal complaints processes via our Data Protection Officer prior to making contact with the ICO.

If you require additional support, this may be available from the services listed below:

Samaritans
Offers support for anyone experiencing distress.
Telephone: 116 123 | Email: jo@samaritans.org | Website: www.samaritans.org

Victim Support
Offers free and confidential support for anyone affected by crime in England and Wales.
Telephone: 0808 1689 111 | Website: www.victimsupport.org.uk

Thank you for considering participating in this project.

Appendix 21: Study Three Actor Consent Form

Manchester Metropolitan University

ACTOR CONSENT FORM

Role:

Thank you for agreeing to participate as an actor in the research.

The purpose of the study is to understand how mock juries perceive alibi evidence in the context of a simulated criminal trial for the offence of burglary. Your role will be as one of the actors within a video and audio-recorded mock trial, where you will act a particular part (as specified above) according to a script. Groups of six jury-eligible participants, together forming a jury, will be recruited from North-East and North-West England. The mock juries will view this footage and deliberate in order to reach a verdict for the offence in question. The recording will also be used for teaching purposes and in future research.

Before you take part, we ask that you *mark each box with your initials if you agree*. If you have any questions or queries before signing the consent form, please speak to the principal researcher.

1. I confirm that I understand the purpose of my role as an actor in this study and fully understand what is expected of me. ☐
2. I confirm that I have had the opportunity to ask questions and to have them answered. ☐
3. I understand that the video and audio recording will be viewed by groups of participants acting as a mock jury in the study. ☐
4. I understand that the video and audio recording will also be used for teaching purposes and in future research. ☐
5. I understand hard copies of the completed consent form will be scanned, making them in to electronic copies, with the hard copies being destroyed. I understand that the electronic consent form will be stored securely for a period of ten years, in line with the General Data Protection Regulation 2018. ☐
6. I understand my participation is voluntary and I can withdraw from the study up until one week after taking part, without giving any reason, and without my legal rights being affected in any way. ☐

7. I understand that the video and audio recording will be stored securely for a period of ten years, in line with the General Data Protection Regulation 2018. ☐

8. I consent to take part as an actor in the study. ☐

Actor

_____	_____	_____
Name of Actor	*Signature*	*Date*

Principal Researcher

_____	_____	_____
Name of Researcher	*Signature*	*Date*

Appendix 22: Study Three Participant Consent Form

Manchester Metropolitan University

Consent Form

A Qualitative Exploration of Alibi Evidence in Jury Deliberations

Participant Number:

	Please tick your chosen answer	YES	NO
1.	I confirm that I have read the Participant Information Form (version 1.4, dated 2nd September 2021) for the above study.	☐	☐
2.	I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.	☐	☐
3.	I meet the requirements for jury duty (as listed on the Participant Information Form).	☐	☐
4.	I understand that my participation is voluntary and that I am free to withdraw at any time up until two weeks after taking part, without giving reason.	☐	☐
5.	I understand that, in order to withdraw, I will need to contact the Principal Researcher via email within two weeks of taking part, with the inclusion of my participant number (as detailed above, and on the Debrief Form).	☐	☐
6.	I understand, in the event of withdrawing, all data provided up until the point of withdrawal will be used in the study.	☐	☐
7.	I agree to my participation being audio recorded for analysis. No audio clips will be published without my express consent.	☐	☐
8.	I agree to my participation being video recorded for analysis. No video clips will be published without my express consent.	☐	☐
9.	I understand and agree that my words may be quoted anonymously in research outputs.	☐	☐

10.	I understand all research data will be stored on the Principal Investigator's Manchester Metropolitan University's OneDrive and for a period of 10 years after the end of the project, and deleted thereafter.	☐	☐
11.	I agree to participate in the project to the extent of the activities described to me in the above Participant Information Form.	☐	☐

Participant

_____ _____ _____

Name of Participant *Signature* *Date*

Name of Person Taking Consent

_____ _____ _____

Name of Person Taking Consent *Signature* *Date*

If you wish to be entered into a prize draw to win a £25 Amazon voucher, please provide an email address you can be contacted on in the event that you win.

_____

Email Address for Prize Draw

Appendix 23: Study Three Demographic Questionnaire

Manchester Metropolitan University

DEMOGRAPHIC QUESTIONNAIRE

Participant Number:

Please complete this questionnaire, stating your response in the space provided.

1. What is your gender?

   Male ☐

   Female ☐

   Non-binary ☐

   Third gender ☐

   Prefer to self-describe _____

   Prefer not to say ☐

2. What is your age?

   _____

3. What is your ethnicity?

   _____

4. What is your occupational status?

Employed ☐

Unemployed ☐

Student ☐

Retired ☐

Unable to work ☐

Prefer not to say ☐

5. Have you previously completed real-world jury service?

Yes ☐

No ☐

Prefer not to say ☐

Appendix 24: Study Three Standardised Instructions

Manchester Metropolitan University

Standardised Instructions for Participants

A Qualitative Exploration of Alibi Evidence in Jury Deliberations

It is assumed, at this point, that participants would have read the Participant Information Form and completed the consent form.

Standardised Instructions Prior to Mock Trial Footage

Welcome. My name is Katie McMillan and I am a PhD student in the Department of Psychology and the Principal Investigator for this research. Thank you for taking part, I really appreciate your time.

You will first be shown a video of a simulated criminal trial based on a genuine case for the offence of burglary, where you will hear both the prosecution and defence's evidence and the Judge's instructions. Following this, you will take part in a group discussion in the form of deliberations in order to reach a verdict. Once you have reached a verdict with your fellow jurors, the foreperson will deliver the verdict.

Please note, due to the nature of group discussions, your identity will be known to other people taking part in the study. You are asked to maintain confidentiality of information shared over the course of this study. You should not talk about the identity of fellow participants and/or information discussed as part of the study with anyone besides the Principal Investigator.

Does anyone have any questions before we begin?

The video will now begin.

Standardised Instructions Prior to Deliberations

Now that you have watched the mock trial footage, you have up to 60 minutes to deliberate in order to reach a unanimous verdict of guilty or not guilty. You are advised to identify a foreperson to guide discussions. The deliberations will be video and audio recorded using both camcorders and a personal Dictaphone.

I (the Principal Investigator) will remain outside of the room and will not be participating in the discussions. Once a verdict has been reached, the foreperson should indicate to the researcher that the deliberations are over. The researcher will then return to the room and the foreperson can deliver the verdict.

There are some ground rules, to ensure the deliberations run smoothly:

- Please be polite and respectful to one another.
- Everyone is encouraged to participate in the discussions.
- There are no right or wrong answers, and everyone is encouraged to share their points of view, even if it differs from what others have said.
- You do not have to discuss any topics that you may find upsetting or distressing.
- It is asked that only one person speaks at a time and to avoid speaking over another.
- It is requested that mobile phones are on silent to prevent disruptions. If you do need to respond to a call, please leave the room and re-join as quickly as you can.

Once again, does anyone have any questions before we begin?

The recording will now begin.

Standardised Instructions for Majority Verdict

If you find that you cannot all agree on a verdict, a verdict on which fewer than 6 of you agree will now be accepted. However, in order to accept such a verdict, whether of guilty or not guilty, at least 5 of you must agree: that is to say there must be a majority of 5 to 1.

Please now continue with your deliberations.

Standardised Instructions Following Verdict

Thank you for delivering your verdict and for taking part in the deliberations.

Written debrief information will now be provided.

Does anyone have any questions?

You are reminded that, due to the nature of group discussions, your identity is known to other people taking part in the study. You are asked to maintain confidentiality of information shared over the course of this study. You should not talk about the identity of fellow participants and/or information discussed as part of the study with anyone besides the Principal Investigator.

Thank you for participating in the study, your input was invaluable.

The recording will now be stopped.

Appendix 25: Study Three Trial Transcript

Roles

Judge – Judge Williams

Usher

Prosecution Barrister – Mr/Ms Taylor

Complainant – Mr Spencer Hughes

Forensic Scientist – Mr/Ms Edward/Eleanor Thomas

Defence Barrister – Mr/Mrs Clark

Defendant – Mr Michael Wilson

Alibi Witness – Mr James Lewis

[All members of the court to be sat in their allocated seating in the court room, prior to commencing. Filming begins.]

Usher: All rise for the Honourable Judge Williams.

[All members of the court stand as the Judge enters the room and takes up his/her position. The Judge sits and everyone else follows.]

Judge: Thank you. Please read the charge to the defendant.

[Defendant stands in the dock and faces the Judge. Usher also stands.]

Usher: Your Honour, this case, heard on the 6th of September 2018, is The Crown against Mr Michael Wilson. He appears before you charged with burglary that occurred on the 13th of November 2017. How do you plead?

Defendant: Not guilty.

[Usher and defendant sit.]

Judge: By serving on this jury, you are fulfilling a very important service. This means you have some important responsibilities. As a juror you have taken an oath or affirmation to try the defendant based only on the evidence you hear in court. The jury's tasks are to weigh up the evidence, decide what has been proved and what has not and return a verdict based of their view of the facts and what the judge will tell them about the law. Is the prosecution ready to begin?

Prosecution: Yes, Your Honour.

Judge: Is the defence ready to begin?

Defence: Yes, Your Honour.

Judge: Very well, the prosecution may present their opening statements.

[The prosecution stands for opening speech.]

Prosecution: Your Honour, members of the jury, my name is Mr/Ms Taylor and I am representing the Crown in this case. The case is that, on the 13th of November 2017 between the hours of 12.30 and 15.30, the property of 67 Richmond Road in Manchester was burgled. A plastic money jar, aftershave, perfume, an iPhone 6, an X-Box, a camera and a black rucksack were stolen. Two of the residents of the house were asleep upstairs during that time. At 15.30, one of the residents, Mr Spencer Hughes, came downstairs to find that the glass pane to the front door, just above the lock, had been smashed and the door had been opened. He subsequently discovered that the items had been taken, and he called the police. On the floor below the letterbox of the door, there were some envelopes which had a footmark on them. These envelopes were taken by the police and forensically examined.

The defendant, Mr Michael Wilson, was arrested in respect of this case on the 15th of November 2017, and his clothing, shoes and possessions were taken by the police. Among his possessions, police found an iPhone 6. The following day, the complainant Mr Hughes identified the iPhone as his and the one that had been stolen in the burglary. Furthermore, the forensic evidence concerning the footmark on the envelopes provide moderately strong evidence as coming from the footwear seized from the defendant on the day of his arrest.

Mr Wilson was subsequently charged, on the 23rd of December 2017, with burglary under Section 9 of the Theft Act 1968. The prosecution allege that it was Mr Michael Wilson who burgled 67 Richmond Road, in which he stole all of the aforementioned items.

The burden of proof lies with the prosecution; the Crown brings this case against the defendant, and it is for the Crown to prove. The defendant does not need to prove anything. It is the prosecution's duty to demonstrate, beyond reasonable doubt, that Michael Wilson committed the offence of burglary.

[The prosecution sits.]

[The defence stands for opening speech/statement of issue.]

Defence: I, Mr/Mrs Clark, am representing the defence and acting on behalf of the defendant Mr Michael Wilson.

Mr Wilson pleads not guilty to burglary. He asserts that, on the day in question, he was at a friend's house repairing a motorcycle and was not involved in the burglary. Mr Wilson provided this account at the first opportunity, on the day of his arrest on the 15th of November 2017. His alibi is supported by his friend Mr James Lewis, who will testify on Mr Wilson's behalf. Mr Wilson states that he came in to possession of the iPhone having bought it from a beggar on the 14th of November 2017.

[The defence sits.]

Judge: The prosecution may begin presenting their evidence.

[The prosecution stands for examination-in-chief.]

Prosecution: Your Honour, members of the jury, I call the complainant to the stand, Mr Spencer Hughes.

[The usher leaves the courtroom to collect the complainant, before returning shortly after accompanied by the complainant. The usher leads them to the witness box, before returning to his/her desk. Both remain standing.]

Usher: Please read the affirmation.

[Complainant recites pre-agreed oath.]

Complainant: I do solemnly sincerely and truly declare and affirm that the evidence I shall give be the truth, the whole truth and nothing but the truth.

[Usher sits and complainant remains standing.]

Prosecution: Please state your full name and address.

Complainant: Spencer Hughes. 67 Richmond Road, Manchester.

Prosecution: Mr Hughes, could you tell the court where you were on the 13th of November 2017 between the hours of 12:30 and 15:30?

Complainant: I was at home, upstairs in my bedroom.

Prosecution: What were you doing during that time?

Complainant: I feel asleep at 12:30, and I was asleep for about three hours. I woke up at 15:30 and went downstairs for a drink of water.

Prosecution: What happened when you came downstairs Mr Hughes?

Complainant: I came downstairs and noticed that the front door was open and the glass on the door had been smashed. There were envelopes on the floor, underneath the letterbox, and there was a footmark on them.

Prosecution: You said that the glass on the door had been smashed, what part of the door had been smashed?

Complainant: It was the glass panel on the left-hand side, above the lock.

Prosecution: In terms of the footmark on the envelopes Mr Hughes, is it possible that these could have been made by one of the residents of 67 Richmond Road?
Complainant: No. We don't usually use the front door to come in and out, we use the back door.

Prosecution: What did you do when you found the front door open and the glass panel smashed?

Complainant: I thought someone must have broken in, so I checked the living room and kitchen to see if anything had been taken.

Prosecution: What did you find on searching the living room and kitchen Mr Hughes?

Complainant: I found that my black rucksack, with my camera and iPhone and in it, was missing. The X-Box from the living room had been taken, and a money jar, aftershave and perfume were missing from the kitchen.

Prosecution: After you found these items to be missing Mr Hughes, what did you do?

Complainant: I phoned the police straight away.

Prosecution: On the 16th of November, you attended Greenoaks Police Station to identify an iPhone. Is that correct?

Complainant: Yes. It was my iPhone, the one that had been taken.

Prosecution: Thank you Mr Hughes. No further questions Your Honour.

[The prosecution sits.]

[The defence stands for cross-examination.]

Defence: Mr Hughes, you say that you don't usually use the front door to enter and exit your home, is that correct?

Complainant: Yes, we use the back door instead.

Defence: Do you use the front door at all on entering and exiting your home?

Complainant: Rarely, the back door is easier.

Defence: But either yourself, or the other two residents of 67 Richmond Road, do sometimes use the front door?

Complainant: I suppose so.

Defence: So is it possible that the footprint found on the envelopes below the letterbox could have been made by either yourself or one of the other two residents Mr Hughes?

Complainant: I doubt it, I don't think the footprint was there before we were burgled.

Defence: You don't think so? So you aren't certain that that isn't the case?

Complainant: I can't be certain, no, but I don't think they would have been made by one of us.

Defence: Mr Hughes, could it be that you have simply forgotten that yourself or one or the other residents used the front door and left the footmark on the envelopes?

Complainant: No, I don't think that's what happened.

Defence: But you're not completely certain?

Complainant: I can't be certain but I'm sure they weren't made by one of us.

Defence: No further questions Your Honour.

[The prosecution stands for re-examination.]

Prosecution: No further questions Your Honour.

[The prosecution remains standing for examination-in-chief.]

[The usher stands and leads the complainant out of the witness box and accompanies them out of the courtroom, before returning and taking their seat.]

Prosecution: Your Honour, members of the jury, I now call forensic scientist Edward/Eleanor Thomas.

[The usher leaves the courtroom to collect the forensic scientist, before returning shortly after accompanied by the forensic scientist. The usher leads them to the witness box, before returning to his/her desk. Both remain standing.]

Usher: Please read the affirmation.

[Forensic scientist recites pre-agreed oath.]

Forensic Scientist: I do solemnly sincerely and truly declare and affirm that the evidence I shall give be the truth, the whole truth and nothing but the truth.
[Usher sits and forensic scientist remains standing.]

Prosecution: Please state your full name and relevant qualifications and experience.

Forensic Scientist: Mr/Ms Edward/Eleanor Thomas. I am a forensic scientist employed by Manchester Police. I have been a forensic scientist since 1982 *[amend date to reflect age of actor, if necessary]* and I specialise in forensic footwear evidence. I have been involved in numerous cases concerned with footwear analysis and comparison of footwear impressions.

Prosecution: Thank you. Your Honour, members of the jury, I refer you to a photograph of Exhibit ET1 and ET2. ET1 shows envelopes taken from the crime scene, with a partial footprint visible. ET2 shows the footprint from the footwear seized from the defendant at the time of his arrest, 15th of November 2017.

[Prosecution displays two photographs to the court; ET1 showing envelopes with a partial footmark on and ET2 showing a footprint of a trainer.]

Prosecution: Mr/Ms Thomas, please could you explain to the court the evidence you examined as part of this case?

Forensic Scientist: On the 1st of December 2017, I analysed two white C5 envelopes, each measuring 162mm by 229mm, which had a partial footwear impression on them. I also analysed a set of trainers seized from the defendant on the day of his arrest.

Prosecution: What were your findings Mr/Ms Thomas?

Forensic Scientist: The footwear impression on the envelope were in agreement with the size, pattern, detailed alignment and degree of wear with the left trainer seized from the defendant at the time of his arrest. In particular, the zigzag bar pattern and curved tramline were similar.

Prosecution: What conclusion did you make about the shoe size of the footwear impression on the envelope?

Forensic Scientist: The footwear impression was of a size 8 or 9. It was not a size 10 or above, or below a size 8. The defendant's trainer was a size 9, which was consistent with the shoe size of the footwear impression.

Prosecution: How often have you encountered this type of footwear in your work?

Forensic Scientist: In my time as a forensic examiner of footwear impressions, I have encountered the type of footwear seized from the defendant in 2% of the cases I have dealt with.

Prosecution: In your experience, do individuals who commit burglaries wear such types of footwear?

Forensic Scientist: In my experience, burglars frequently use sports trainers.

Prosecution: What is your opinion with regards to the probability the defendant's footwear made the impression on the envelopes taken from 67 Richmond Road Mr/Ms Thomas?

Forensic Scientist: My opinion is based on experience and is therefore subjective. However, the footwear impression provides moderately strong support for the proposition that the defendant's trainer had made the imprint on the envelopes.

Prosecution: What does the term 'moderately strong support' mean Mr/Ms Thomas?

Forensic Scientist: This expression reflects a probability of the footprint having been made by the shoes of the defendant. This is based on a five-point logarithmic scale, where the statement 'moderately strong support' is referred to as considerably more than a 50% probability. Moderately strong support reflects a higher probability than the phrase 'weak support' or 'limited support' but is less than the term 'extremely strong support'.

Prosecution: Thank you Mr/Ms Thomas. That concludes my examination-in-chief Your Honour.

[The prosecution sits.]

[The defence stands for cross-examination.]

Defence: Mr/Ms Hughes, your evidence is based on opinion, is that correct?

Forensic Scientist: Yes, that is correct.

Defence: Can you explain to the court how scientific forensic footwear analysis is?

Forensic Scientist: The evidence concerning forensic footwear evidence cannot yet make scientific evaluations, therefore the opinion provided is subjective and based on my experience within this area.

Defence: So why exactly can you not make scientific evaluations Mr/Ms Thomas?

Forensic Scientist: At present, there is not yet a scientific degree of precision and objectivity in this area of expertise.

Defence: So you cannot be absolutely certain that the footwear you examined from the defendant matches the footwear impression on the envelopes?

Forensic Scientist: No. I can only say that it provides moderately strong support for the proposition that the defendant's trainer made the imprint on the envelopes.

Defence: And by that you mean, there is only more than a 50% probability that the footprint matches the defendant's footwear? So there is nearly a 50% chance that it isn't the defendant's footwear?

Forensic Scientist: Yes.

Defence: So your analysis of the footprint impression cannot prove that the defendant's trainer was the one that made the footwear impression on the envelopes at Richmond Road?

Forensic Scientist: It cannot prove the matter, it can only provide moderately strong support for the proposition.

Defence: In fact, there is nearly a 50% chance that it isn't the defendant's footwear at all?

Forensic Scientist: Yes, however there is more than a 50% probability that it is the footwear seized from the defendant at the time of his arrest.

Defence: No further questions Your Honour.

[The defence sits.]

[The prosecution stands for re-examination.]

Prosecution: No further questions and no further evidence Your honour.

[The prosecution sits.]

[The usher stands and leads the forensic scientist out of the witness box and accompanies them out of the courtroom, before returning and taking their seat.]

[The defence stands for examination-in-chief.]

Defence: Your Honour, members of the jury, I first call the defendant to give evidence.

[The defendant stands in defendant box. Usher also stands for affirmation.]

Usher: Please read the affirmation.

[Defendant recites pre-agreed oath.]

Defendant: I do solemnly sincerely and truly declare and affirm that the evidence I shall give be the truth, the whole truth and nothing but the truth.

[Usher sits and defendant and defence barrister remain standing.]

Defence: Please state your full name and address.

Defendant: Michael David Wilson. 13 Pallister Court, Manchester.

Defence: Mr Wilson, where were you on the 13th of November 2017?

Defendant: I was at home, at 13 Pallister Court, on the morning. I left at around 10.00 to go to my friend's house and then I came back home at around 16.00.

Defence: What is the name of your friend?

Defendant: James Lewis.

Defence: When did you arrive at Mr Lewis' house Mr Wilson?

Defendant: I left my house at around 10.00 and walked for about 25 to 30 minutes to James' house so I must have got there at about 10.30.

Defence: And what were you doing at Mr Lewis' house during that time?

Defendant: We were fixing James' bike. It needed a new tyre and the chain had to be fixed so we did that.

Defence: Did you leave Mr Lewis' house during the hours of 10.30 and 16.00 on Monday 13th of November?

Defendant: No.

Defence: Besides motorcycle repairs, did you do anything else that day Mr Wilson?

Defendant: No, we just did that.

Defence: Did you commit the burglary that you are charged with Mr Wilson?

Defendant: No I did not. I was with James at his house the whole time.

Defence: Mr Wilson, how did you come in to possession of the iPhone 6 that was found on your arrest on the 15th of November 2017?

Defendant: I bought it from a beggar the day before.

Defence: Why did you buy this item from a beggar Mr Wilson?

Defendant: Well he'd been hassling me to buy it for £10, saying he'd found it in a gutter. He kept following me so I offered him £3 for it and he gave me it for that.

Defence: Why did you offer him money for it in the first place?

Defendant: I just wanted to get him off my back.

Defence: Were you aware at the time that the item was stolen Mr Wilson?

Defendant: Definitely not, I wouldn't have bought it if I'd known that.

Defence: Your Honour, members of the jury, for your information the beggar Mr Wilson refers to could not be located by the police during their investigation. Thank you, Mr Wilson. That concludes my examination-in-chief.

[The defence sits. The defendant remains standing.]

[The prosecution stands for cross-examination.]

Prosecution: Mr Wilson, can you remind the court where you allege that you were between the hours of 12.30 and 15.30 on Tuesday 13th of November 2017?

Defendant: I was at James' house. We watched some television and then fixed the tyre and chain on his bike and then I went home at around 16.00.

Prosecution: What did you do on the morning in question, prior to going to James' house, Mr Wilson?

Defendant: I got up at around 8.00 to get ready. I left my house at around 9.00 and walked to James house from there.

Prosecution: So you left your house at 9.00 and walked to James house, where you watched TV and fixed his bike, before leaving at 16.00. Is that correct Mr Wilson?

Defendant: Yes.

Prosecution: Are you sure about that?

Defendant: Yes.

Prosecution: Can I take you back to both your police interview on the 15th of November 2017, and the account you provided earlier in this trial, in which you stated you left your house at 10.00.

Defendant: Sorry I got it wrong, I meant to say 10.00.

Prosecution: Can I also take you back to your earlier accounts, in which you did not mention that you had watched television at James' house, only that you helped him with motorcycle repairs.

Defendant: I must be mistaken; it must have been a different time when we watched TV.

Prosecution: Well which one is it Mr Wilson, the version you told you told the police two days after the offence and during examination-in-chief, or the account you are telling the court now?

Defendant: It's definitely the one I told the police, I just got confused.

Prosecution: The inconsistencies between your accounts would suggest you're lying Mr Wilson, do you agree?

Defendant: I'm not lying, I didn't do it.

Prosecution: Mr Wilson, is the reason for the inconsistencies between your accounts not in fact that your alibi is a sham and this is your attempt to bolster a false defence?

Defendant: I'm telling the truth, I didn't do the burglary.

Prosecution: You state that you acquired the stolen iPhone that was found in your possession on arrest from a beggar on the street, yet this beggar could not be found by the police. So you are maintaining this vague, and somewhat dubious, version of events. Is that correct?

Defendant: Yes, because it's what happened.

Prosecution: Mr Wilson, do you accept that this may not be at all believable to the court?

Defendant: I'm telling the truth.

Prosecution: Is it not, in fact, that your alibi of fixing a motorcycle with Mr Lewis is indeed false and that you did the commit the burglary you are charged with?

Defendant: No, I didn't do it.

Prosecution: Under Section 101(1)(d) of the Criminal Justice Act 2003, the prosecution is admitting evidence of the defendant's bad character in the form of previous convictions. Between March 2005 and July 2010, Mr Wilson has three

previous convictions for dwelling house burglaries and one conviction for attempted dwelling house burglary in October 2015. Mr Wilson, can you confirm that this is correct?

Defendant: Yes.

Prosecution: The prosecution is admitting these convictions to demonstrate that Mr Wilson has a propensity to commit similar offences such as the one he is on trial for. In light of this, I again ask you whether you expect the court to believe that you did not commit the burglary at Richmond Road?

Defendant: I didn't do the burglary. I know I've done things like that before, but I didn't do this one.

Prosecution: Despite your previous convictions for dwelling house burglaries, you are maintaining your version of events that you didn't commit this offence because you were fixing a bike? And that you came in to possession of one of the stolen items because you bought it from a beggar?

Defendant: Yes. I know I've got previous convictions for similar things but I honestly didn't do this one.

Prosecution: No more questions your Honour.

[The prosecution sits. The defendant remains standing.]

[The defence stands for re-examination.]

Defence: No further questions Your Honour.

[The defendant sits, remaining in defendant box. The defence remains standing for examination-in-chief.]

Defence: I now call the alibi witness Your Honour, Mr James Lewis.

[The usher leaves the courtroom to collect the alibi witness, before returning shortly after accompanied by the witness. The usher leads them to the witness box, before returning to his/her desk. Both remain standing.]

Usher: Please recite the affirmation.

[Alibi witness recites pre-agreed oath.]

Alibi Witness: I do solemnly sincerely and truly declare and affirm that the evidence I shall give be the truth, the whole truth and nothing but the truth.

[Usher sits and alibi witness remains standing.]
Defence: Please state your full name and address for the purposes of the court.

Alibi Witness: My name is Mr James Lewis. My address is 89 Ancona Road, Manchester.

Defence: Mr Lewis, what is your relationship to the defendant Michael Wilson?

Alibi Witness: We are friends.

Defence: How long have you known Mr Wilson for?

Alibi Witness: I don't know exactly but we've been friends for at least a few years I'd say.

Defence: Where were you on the 13th of November 2017?

Alibi Witness: I was at home all day.

Defence: Who did you see on the day in question Mr Lewis?

Alibi Witness: Michael came to my house between 10.30 and 11.00 on that morning as he'd agreed to help me fix my bike.

Defence: What time did Mr Wilson leave your house?

Alibi Witness: He left around teatime, so between 16.00 and 16.30.

Defence: Did Mr Wilson leave your house anytime between the hours you have stated?

Alibi Witness: No.

Defence: To your knowledge, did Mr Wilson commit the burglary he is charged with?

Alibi Witness: No he couldn't have done it as he was with me.

Defence: Thank you, Mr Lewis. No further questions Your Honour.

[The defence sits. The alibi witness remains standing.]

[The prosecution stands for cross-examination.]

Prosecution: How would you describe your relationship with the defendant?

Alibi Witness: I would say we're good friends, we've known each other for a while now.

Prosecution: As good friends then, would you be willing to lie for him Mr Lewis?

Alibi Witness: Well it depends on the situation. I wouldn't lie for him to the police though.

Prosecution: So you wouldn't lie for to him to say prevent him being charged with a crime that in fact he committed?

Alibi Witness: No I wouldn't.

Prosecution: Has the defendant ever told you he committed the burglary at Richmond Road?

Alibi Witness: No.

Prosecution: What is your understanding of how Mr Wilson come in to possession of the stolen iPhone?

Alibi Witness: He told me he bought it off a beggar on the street.

Prosecution: Do you believe Mr Wilson's version of events?

Alibi Witness: Well yes, if that's where he's saying he got it from.

Prosecution: Are you supporting Mr Wilson's alibi because you're his friend or because it is the truth of what occurred on that day?

Alibi Witness: It's the truth, he was with me fixing my bike.

Prosecution: So you are supporting, on oath, Mr Wilson's rather questionable defence?

Alibi Witness: Yes I am, because it's what happened.

Prosecution: I have no further questions Your Honour.

[The defence stands for re-examination.]

Defence: No further questions and no further evidence to present Your Honour.

[The defence sits.]

Judge: If all evidence has been presented, you may now provide your closing statements. Prosecution, you may begin.

[The prosecution stands.]

Prosecution: The prosecution's case is that Michael Wilson burgled the property on Richmond Road on the 13th of November 2017 and stole a number of items, including aftershave, a camera, an X-Box, an iPhone 6 and a black rucksack. He is charged with burglary under Section 9 of the Theft Act 1968.

To remind you, the burden of proof lies with the prosecution. If you are absolutely certain that Mr Wilson is guilty, then you must convict. However, if there is any

doubt in your mind as to whether he committed this act, you must deliver a verdict of not guilty.

Mr Wilson alleges that that he did not commit this act, as he was with a friend, Mr James Lewis, repairing a motorcycle at the time. His alibi is inconsistent and simply not believable. Furthermore, there is moderately strong forensic evidence from the footmark found on the envelope, in addition to one of the stolen items, an iPhone, being found in Mr Wilson's possession on his arrest. His account of buying this from a beggar is frankly preposterous. Mr Wilson also has convictions for dwelling house burglaries, demonstrating a propensity to commit similar offences such as this one. With this in mind, I ask that you deliver a verdict of guilty.

[The prosecution sits.]

[The defence stands.]

Defence: The defence assert that Mr Michael Wilson did not commit the burglary he is charged with, as he was at the house of his friend Mr James Lewis at the time the offence was committed. Mr Wilson provided this account at the first opportunity, on the day of his arrest on the 15th of November 2017. This account is supported by Mr Lewis, who has testified on behalf of the defendant. Mr Wilson states that he came in to possession of the iPhone having bought it from a beggar on the 14th of November 2017. As such, I ask you to find Mr Wilson not guilty.

[The defence sits.]

Judge: The defence is one of alibi. That is to say Michael Wilson says that he was not at the scene but elsewhere when the crime was being committed. Because it is for the prosecution to prove Mr Wilson's guilt, he does not have to prove that he was at his friend James Lewis' house: it is for the prosecution to prove that he was at the property of 67 Richmond Road.

If the prosecution does prove that Mr Wilson's alibi is false, that does not in itself mean that he is guilty. It is something which you may take into account, but you should bear in mind that sometimes an innocent person who fears that the truth will not be believed may instead invent an alibi.

You have also heard that Mr Wilson has previous convictions for dwelling house burglaries. You heard this because the prosecution say that they show he has a tendency to commit offences of this type. It is for you to decide whether these previous convictions do in fact show that Mr Wilson has a tendency to behave in this way.

If you are not sure that Mr Wilson's previous convictions show that he has such a tendency then you must ignore them: they are of no relevance to the issues in the case. But if you are sure that they do show such a tendency then this may support the prosecution case. It is for you to say whether it does and if so to what extent. But the fact that someone has burgled in the past does not prove that he did so on this occasion. Mr Wilson's previous convictions may only be used as some support

for the prosecution case. You must not convict him wholly or mainly because of them.

The prosecution's case is that Mr Michael Wilson burgled 67 Richmond Road on the 13th of November 2017 and stole a number of items from the property. The complainant, Mr Spencer Hughes, provided his account to the court. The prosecution admitted forensic evidence, which provides moderately strong support for the proposition that the defendant's trainer made the imprint on the envelopes found at the property. The defence is one of alibi, an account which is corroborated by an alibi witness, who testified on behalf of Mr Wilson.

I must ask you to be aware of the principle of reasonable doubt during your consideration of the evidence. It must be proved beyond reasonable doubt that the defendant was responsible for the offence in question and, in the event of uncertainty, then you must find the defendant not guilty. It is solely the evidence presented during the course of this trial which you must base your decisions on. If, after considering all of the evidence, you are sure that Mr Wilson is guilty, your verdict must be guilty. If you are not sure that Mr Wilson is guilty, your verdict must be not guilty.

As you have reviewed the facts of the case and heard all appropriate evidence, I will now ask you to retire in order to deliberate and reach a verdict regarding the defendant's guilt for the offence in question. It is important that you try to reach a verdict which is unanimous: that is to say a verdict on which you all agree. As you may know, the law permits me, in certain circumstances, to accept a verdict which is not the verdict of you all. Those circumstances have not as yet arisen, so that when you retire I must ask you to reach a verdict upon which each one of you is agreed. Should, however, the time come when it is possible for me to accept a majority verdict, you will be given a further direction.

It is entirely up to you how you run your discussions, but you may find it helpful to select one of your number to chair them, so that everyone is able to have their say. When you begin your discussions, a number of different views may be expressed on particular topics but if you each then listen to the views of others, experience shows that in almost all cases juries are able to reach a verdict with which they are all able to agree.

When you have reached your verdict, one of you – usually referred to as "the foreman", though of course this may be a man or a woman – to stand, and that person will then speak on behalf of you all.

Thank you for your work on the case, you may now retire.

[The usher rises.]

Usher: All rise for the Honourable Judge Smith.

[All members of the court rise. The Judge exits the room, before filming ceases.]

Appendix 26: Study Three Debrief Information

Manchester Metropolitan University

Participant Debrief Form

A Qualitative Exploration of Alibi Evidence in Jury Deliberations

Participant Number:

Thank you for taking part in the study; your participation is much appreciated. Please do not hesitate to contact me if you have any further questions or wish to discuss a matter further.

1. What is the purpose of the study?

The study is exploring the understanding and perceptions of alibi evidence in mock juries during deliberations. Furthermore, the study is exploring what mock juries' perceptions are when the alibi is inconsistent, and the defendant has previous convictions which demonstrate a likelihood to commit a similar offence.

2. What happens now?

A transcript of the mock jury deliberations will be typed up in the weeks following the study. You are free to withdraw from the research, without giving reason, up to two weeks after taking part. Should you wish to do so, you can contact the researcher, using the contact details provided below, with the inclusion of your participant number (as documented on this form). In the event of withdrawing, all data you have provided up until the point of withdrawal will be used in the study. This is because of the nature of the group deliberations, in that removal of data will impact the understanding of how a verdict has been arrived at. Your data will be retained and used as described in parts 3 and 4.

3. Will my data be identifiable and how will it be stored?

All research data will be stored on the Principal Investigator's Manchester Metropolitan University's OneDrive, in password protected files, and only the Principal Investigator conducting this study and her supervisory team will have access to this data. The consent forms and demographic information will be stored separately from the research data, and for 10 years after the end of the project and deleted thereafter. The video and audio recordings of deliberations and the anonymised transcripts will be stored separately from one another, and for 10 years after the end of the project and deleted thereafter.

The typed transcripts of the deliberations will be made anonymous by removing any identifying information. The Principal Investigator will anonymise the data by removing any reference to personal information (e.g., names and locations) before proceeding with analysis. You will be referred to by your participant number only. A separate password protected file will keep a record of the links between personal information and anonymised data (e.g., participant numbers and real names).

4. What will happen to my data?

Anonymised excerpts of the transcribed deliberations will be used within data analysis for the PhD thesis, and may also be included in the event of dissemination by journal, conference or other forms of publication or output. The video and audio recordings of the deliberations will not be shared.

5. What if I need to speak with someone after taking part?

I hope you found taking part in this study to be an interesting experience. If, however, the experience has brought up difficult feelings, or left you feeling distressed, you are encouraged to contact me or the Principal Supervisor so that appropriate support options can be identified for you.

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Additional support may also be available from the services listed below:

Samaritans
Offers support for anyone experiencing distress.
Telephone: 116 123 | Email: jo@samaritans.org | Website: www.samaritans.org

Victim Support
Offers free and confidential support for anyone affected by crime in England and Wales.
Telephone: 0808 1689 111 | Website: www.victimsupport.org.uk

Finally, if you have any further questions, or want an update on the research, please feel free to contact me using the details provided above.

Thank you again for taking part, your input was invaluable.

Appendix 27 - Study 3 Participant Demographic Information

Jury	Participant Number	Gender	Age	Ethnicity	Occupational Status	Previous Jury Service	Verdict
A	1	Male	18	White British	Student	No	Not Guilty
	2	Female	20	Mixed White and Black African	Employed	No	
	3	Female	20	Black British	Student	No	
	4	Female	21	Pakistani	Employed	No	
	5	Female	20	White British	Student	-	
	6	Male	24	Mixed	Student	No	
B	7	Female	20	Pakistani	Student	No	Not Guilty
	8	Female	42	Pakistani	Employed	No	
	9	Female	27	White British	Student	No	
	10	Female	20	White British	Student	No	
	11	Female	18	White British	Student	No	
	12	Female	19	White British	Student	No	
C	13	Female	60	White British	Employed	No	Guilty
	14	Male	62	White British	Employed	No	
	15	Female	64	White British	Unable to Work	No	
	16	Female	52	White British	Employed	No	
	17	Male	62	White British	Employed	No	
	18	Female	54	White British	Employed	Yes	

D	19	Male	66	White British	Retired	Yes	Guilty
	20	Female	66	White British	Retired	-	
	21	Female	45	White British	Employed	No	
	22	Male	33	White British	Employed	No	
	23	Male	50	White British	Employed	No	
	24	Male	32	White British	Employed	No	

Published Material

British Psychological Society Psychology Postgraduate Affairs Group (PsyPAG) Quarterly (Issue 106, March 2018): Alibi Evidence in the Courtroom: Perceptions and Experiences from the Bar (Accepted Manuscript)

Alibi Evidence in the Courtroom: Perceptions and Experiences from the Bar

Abstract

In the United Kingdom there is little known about the way in which criminal barristers, those directly responsible for examining and cross-examining evidence in the courtroom, perceive alibi testimony. In-depth, semi-structured interviews were conducted with four qualified criminal barristers and subject to thematic analysis. Preliminary analysis identifies a number of key themes central to barrister's perceptions and experiences of alibi evidence, three of which will be discussed. Research in to this unchartered area aims to yield greater knowledge as to how criminal barristers understand, perceive and approach alibis in the courtroom, to ultimately inform real-life practice.

Introduction

An alibi is a claim that a defendant was elsewhere at the time an alleged offence was committed (Criminal Procedure and Investigations Act 1996). Much of the interest in alibis has derived from miscarriages of justice, in which defendants have been wrongly convicted of an offence despite them offering an alibi as a defence during their trial. The alibi provided has been perceived by juries to be 'weak', or entirely false, thereby contributing to innocent individuals being convicted of an offence they have not committed (US Department of Justice, 1996). Despite the damaging impact this has (not only to individuals involved, but to the wider administration of justice), the criminal justice system's outlook and approach to alibi evidence is poorly understood and confounded by the absence of empirical data to support the relevant procedures. Burke et al. (2012) note that "there is currently very little research, and virtually no literature, on the psychology of alibis" (p. 159). Thus, there has been a more concerted effort in understanding the way in which others perceive alibis, to thereby limit the potential for future erroneous convictions.

The research pertaining to alibi evidence has grown over the past twenty years or so, and continues to develop to encompass all stages of prosecution. According to Olson and Wells (2004), alibis should be defined in terms of the evidence provided in support of the alibi, allowing for the strength of an alibi to be discussed and compared, regardless of its surface characteristics. Thus, corroborating evidence

in support of an alibi is covered by two broad categories; physical evidence (a tangible record/verification of their statement e.g. CCTV), and person evidence (testimony provided by another individual to support the account). The relative believability of the alibi - that is the way in which evaluators make basic judgements about the alibi - is seen to be correlated with the strength of the corroborating evidence and the perceived ease with which it could be fabricated.

The psychological research has broadly focused on one of two areas; alibi evidence in the investigative stage or in the ensuing courtroom proceedings. In relation to the investigative stage, Dahl and Price (2012) found that the relationship between the defendant and witness are a significant predictor of ratings of believability and culpability. When considering juror's evaluation in the courtroom, the nature of the relationship between alibi provider and alibi witness is a predictor of credibility ratings and verdict; the closer the relationship, the less credible the evidence is deemed thus the greater likelihood of a guilty verdict (Culhane and Hosch, 2004). Furthermore, Fawcett (2015) found that an alibi which is amended over the course of an investigation is regarded particularly negatively by jurors. It would suggest the alibis are viewed, by both investigators and juries, with a degree of scepticism, particularly when aspects relating to its believability and credibility are contentious. However, the literature has yet to consider one potentially notable perspective. The way in which such evidence is presented (via examination-in-chief and cross-examination, by the opposing defence and prosecution counsels) has the potential to impact upon how juries and jurors view this form of defence yet, to my knowledge, has never been explored or addressed within the alibi literature. As such, this PhD aims to explore the relatively unchartered area of the way in which alibi evidence is presented, and subsequently evaluated, within the courtroom. The first phase, as detailed in this article, explores the experiences of criminal barristers in their understanding and perceptions of alibi evidence. In addition, it explores the approaches utilised by barristers in the examination and cross-examination of such evidence. It is anticipated that this greater understanding will inform real-life practice and provide a tangible basis to inform the way in which alibis are approached within the criminal justice system. For instance, an awareness that barristers may be feeding in to alibi scepticism means that better informed training can be employed

and judicial guidance can be developed to highlight this and potentially limit or eradicate strategies that inflict undue bias on jury decision making.

Method

This research conducted semi-structured interviews with four participants (two males, two females), all of whom were qualified criminal barristers, using a snowball sampling method. Three of the participants interviewed were still active at the Bar, whilst one was employed in academia, and their experience ranged from four to 25 years in practise. Due to the hard-to-reach nature of this population, and the data collected being of a high quality and rich in detail, a sample of four participants was deemed sufficient to conduct a detailed analysis, consistent with qualitative research standards (Fusch and Ness, 2015). Interviews were audio-recorded and transcribed verbatim, before being subject to thematic analysis (King and Horrocks, 2010). Ethical approval was granted by the Manchester Metropolitan University ethics committee prior to data collection.

Results

At the time of writing, thematic analysis of three transcripts had been completed. The preliminary findings relating to three themes will be discussed (using participant pseudonyms for verbatim quotes).

Believability and consistency of the alibi

The believability of a defendant's alibi, that is the extent to which it is viewed by the jury as an accurate and truthful account, appears to be a central component of this form of defence. This appears to be associated with (in)consistency; that is the more consistent an alibi story is across accounts (i.e. police interview, examination-in-chief, cross-examination), the more believable it is perceived. In instances where alibi stories are inconsistent, or changed entirely, there is an assumption that this alibi (mistaken or false) equates to guilt.

> *…because this entire defence is based around BELIEVING the defendant and as soon as you show that these people are not worthy of belief, then the whole thing starts to crumble from their point of view [Tom].*

> *Whatever they've changed they've given themselves, they've given you, a problem that is going to be a hurdle to overcome. Because it immediately raises suspicion doesn't it? That they ARE guilty and that's why they made it up [Mary].*

Such features appear fundamental to it being a persuasive defence, particularly believability; *with alibis, it's all about who do you believe [Tom].* The subsequent themes indicate these are intrinsically interlinked with the presentation and evaluation of alibi evidence in the context of a criminal trial. Where possible, aspects of the account relating to believability and consistency (or lack of) should be made clear and used to the counsels own advantage accordingly.

Examination-in-chief: Logical and sequential case presentation, controlling information provided

In examination-in-chief, whereby alibi evidence is first admitted by the defence during a criminal trial, participants highlighted the need for a strategy which clearly demonstrated to the jury their proposed account of the event.

> *So you would lead it out, as with any witness, you go through it in terms of the sequence of events. So there's their story from start, middle to end [Maurice].*

> *You say "Ok erm at the time of the offence, where were you?", "I was at home", "who were you with?" "I was with the defendant", "what were you doing?" So that's how you do it [Tom].*

It was recommended by participants that, during examination-in-chief, alibi evidence should be presented in a logical and sequential format, almost as if they were telling their 'story'. The use of 'WH' (what, where, why, who, when) questions was an advocated technique, not only to assist in the step-by-step presentation of the case but also to control the information provided. This approach is consistent with the existing legal literature (Ross, 2007), in that examination-in-chief should be a narrative account of the individual's testimony, in chronological order, using open questions to elicit the relevant information only. Participants do however acknowledge that an individual's account may not be seen as overly favourable; *because MOST defendants, they're not telling a very attractive story [Mary].* This may be due to the nature of the activity or the people involved, or that there are

some inconsistencies or missing information evident. It is noted that any overt issues with the alibi defence should be made clear to the court, alongside an explanation or justification where appropriate.

Use of cross-examination to discredit alibi

Finally, participants identified the overall aim of cross-examination was to discredit an alibi, in that *the prosecution would cross-examine to try and undermine the alibi in any way they can [Tom].* This could be done in two distinct ways; undermining the alibi story and undermining the alibi provider/witness. In relation to the alibi story itself, participants identified that undermining the defendant or witness' story was a key approach for the prosecution in discrediting this form of defence.

> *…if you're prosecuting what you're wanting to demonstrate generally is what the defendant says, and what his witnesses says, can't be relied upon. And what your witnesses say can [Mary].*

One technique which was deemed effective in doing so was a probing mode of questioning; *to attack an alibi, you cross-examine on the detail [Maurice].* It is noted that by gathering information on relatively minor details of an account, it can then be used to compare this against other knowledge or facts in the case (Boon, 1999). If the prosecution can demonstrate even minor errors or inconsistencies in the evidence, it is believed that the jury will *swing with the prosecution [Tom]* and ultimately find the defendant guilty. Thus, making such discrepancies clear before the jury was considered a *classic technique [Tom*] and an effective strategy in undermining credibility and ultimately the alibi defence. A further technique that is utilised by the prosecution to discredit an alibi is to focus on undermining the defendant, or the witness/es who are supporting the defence, which is considered somewhat discreet from the story itself.

> *…your alibi witness has got previous convictions which, as a prosecutor, you've managed to get before the court, I wouldn't have thought they're going to be regarded highly by the jury [Mary].*

This could be done by simply highlighting character flaws or presenting evidence (e.g. previous convictions) that may bring in to question an individual's credibility. This is consistent with Stone's (1995) advice when cross-examining such witness

evidence; the character of the individual should be explored, in addition to their motivation for giving evidence in support of the defendant's account.

Discussion and future research

The preliminary results thus far identify a number of key themes, three of which have been discussed. The believability and consistency of a defendant's alibi appear to be central to it being a persuasive defence; where a barrister can bolster or exploit this, it can be used to their own counsel's advantage. When alibi evidence is admitted by the defence, examination-in-chief is vital in clearly and accurately portraying the relevant aspects of the defendant's story before the court. For the purposes of cross-examination, the findings suggest that barristers are aware of, if not buy in to themselves, the misconception that inconsistency across evidence is viewed as a common indicator of deception (Vrij, 2008). This approach fits with the Elaboration Likelihood Model of persuasion (Petty and Cacioppo, 1986), in that jurors may process some complex trial information at a peripheral level (which relies on heuristic-based cues for judgement). By undermining the alibi story and its provider/witness, barristers are exploiting juror's peripheral processing by basing their arguments on extraneous details (e.g. minor inconsistencies, the relationship between defendant and witness) as opposed to the alibi itself. This has the potential to subsequently impact on the, often negative, perceptions and attitudes formed which may further impact decision-making as to culpability.

The preliminary findings go some way in addressing an important area of the alibi literature that has been neglected; the way in which criminal barristers perceive and use alibi evidence in the courtroom. The first phase of this research is the first of its kind to not only consider this specific topic in detail, but also to use a sample of professionals who have significant experience in this role. It has generated interesting and noteworthy findings that provide a foundational knowledge on which to develop this area of interest. It is anticipated that subsequent stages of the research will expand on this topic, and consider the way in which alibi evidence is presented to jurors/juries by barristers and the impact this has on their decision making. Specifically, mock-juror paradigms will be utilised within a mixed-methodological approach to explore the impact of barrister presentation style on jurors understanding and perceptions of alibi evidence. By understanding the pivotal

role barristers play in evaluating and delivering such evidence, practical implications can be developed to ultimately inform real world practise.

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