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Wrongful convictions:

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ST. ALBANS - Walking down the street, how many people do you see each day? Can you remember what each looked like, what each was wearing? What if someone bumps into you? Imagine being a victim, or a witness to a crime, and having to recall those facts.

William Cristman, a St. Albans criminal defense attorney and president of the Vermont Association of Criminal Defense Lawyers, believes that **wrongful convictions** - many based on mistaken eyewitness identification - can lead to lengthy and unwarranted prison sentences and even executions.

He recently penned a piece for the organization's newsletter about this issue.

In his paper Cristman cited the Innocence Project, a national litigation and public policy organization dedicated to exonerating the wrongfully convicted through DNA testing and working to reform the criminal justice system.

Cristman noted that the group has documented 303 **wrongful convictions** to date that were overturned by DNA evidence.

Vermont Case.

Just last summer a Vermont judge vacated the conviction of John Grega, 50.

Grega was charged with and convicted of murdering his wife in 1994. After 18 years in jail, the man was released on bail last August and is currently awaiting a new trial.

The New England Innocence Project claimed that Grega, who had no criminal record or history of violence or mental illness, was convicted on circumstantial evidence. He was the first in Vermont to receive a life sentence with no possibility of parole, the organization noted.

DNA evidence showed that he was likely not the crime's major contributor.

Cristman explained that the State's Attorney in Windham County, where this occurred, argued there is overwhelming evidence of guilty despite the DNA findings.

"That is typical of the way things work in the criminal justice system. It's not a criticism of the people in the system, because they're just human beings. What it is evidence of is how people, how they think and how they process information," Cristman said. "Just like the eyewitness who picks out the wrong person and becomes convinced forever."

Franklin County State's Attorney Jim Hughes said that while DNA evidence in this case raised a doubt, it doesn't prove innocence.

"It just says that there was somebody else potentially present at, or about, the time of the murder," he said. Which to the prosecutor does not mean Grega wasn't there, too.

"People are saying 'he's exonerated,' but the facts are still pointing pretty much at him, this is just new evidence that can be used by him as a basis for a request for a new trial and it may be enough to raise a reasonable doubt as to whether he is guilty or not," Hughes said.

Systematic Problems?

The best local example of **wrongful** accusation that came to public attention recently is that of the late Christopher Davis, 22, of Swanton.

Police last April asked the public for help locating Davis and named him as person of interest then and believed responsible for four robberies, one in Swanton and three in St. Albans between April 1 and 8.

On April 16, however, Davis was found dead, floating in the St. Albans City Pool, where his body had been for nearly a month. He could not possibly have committed the crimes.

Cristman explained that 72 percent of the 303 Innocence Project cases involved mistaken eyewitness identification testimony, a leading factor for all crimes, from robberies to rape.

The leading contributing cause of **wrongful** conviction for murder, he said, is perjury or false accusation, including deliberate misidentification in which people might identify an innocent person to deflect attention from them.

"Tragically, but not surprisingly, the criminal so-called justice system has lagged far behind psychological science in the areas of perception and memory formation and recall," Cristman wrote in his piece.

He told the Messenger that misidentification by witnesses could be the result of suggestive police investigation.

One famous case of mis-taken identity is that of the Central Park jogger. In 1989, a woman was raped and beaten nearly to death, she believed by a gang of black men. Five young men were convicted of the crime, having confessed on videotape.

Later it was shown that the men's confessions had been coerced. They were also ruled out as suspects by DNA evidence.

"They were completely innocent and they went to prison," Cristman said.

One man, serving a life sentence for other crimes, was found to be the sole contributor of semen for the Central Park rape in 2002, more than a decade after the crime.

Cristman studied and practiced law in Georgia and recalled a famous case there, that of Troy Anthony Davis.

Davis, from Savannah, was put to death about a year ago. He was a black man convicted of the murder of a white police officer in 1989. He denied the crime until his death, but was convicted on eyewitness testimony.

Seven out of nine eyewitnesses later recanted, saying the police threatened jail time if they did not pinpoint Davis as the killer (those witnesses had criminal histories and were easy to pressure, Cristman said).

Two witnesses did not recant, one saw only the clothing of the perpetrator and the other was suspected by some to be the murderer because he was heard bragging about the crime later on.

The Georgia Supreme Court was divided on the case and it went to a federal court in Savannah, which upheld the conviction. In the end Davis was executed.

"It was horrible," Cristman said.

After Sept. 11, 2011, latent fingerprints found in Spain after a train bombing were linked by the FBI to a Muslim attorney in the U.S. The attorney denied the act. His life became hell, Cristman said.

The same latent print was also found to be a match to an Algerian native located by Interpol, the actual culprit.

"How did the FBI make that mistake?" Cristman wondered.

This case and others show the need for error rates and a better understanding of DNA evidence's sensitivity, Cristman said.

Hughes noted that science and DNA technology are very advanced, but added, "DNA isn't typically just the be all and end all of a case," except sometimes in instances of stranger attacks or when no suspect is known and bodily fluids are present.

Investigation.

Challenging witness identification involves two items - proving the police technique used was impermissibly suggestive, then showing that those actions led to an irreparable likelihood of misidentification, said Cristman.

"When the law doesn't want you to do something it creates a multi-prong test," he said.

Suggestive investigations can intentionally or subconsciously sway witnesses, he added. Saying "You got the bad guy," replaces whatever memory the witness might have had with the new, confirmed face.

"And you will never shake that witness from that belief," Cristman said.

Other factors that might contribute to **wrongful convictions** included mishandling of evidence by police, prosecutors hiding evidence, and false or misleading forensic data, Cristman explained.

Cristman said that Vermont, like most states, still utilizes decades old investigation practices. Something, he argued, that needs to be discussed with the Vermont Legislature.

Rather than showing six photos and asking to select the "bad guy," witnesses should be shown sequential photos and given the chance to recognize someone on their own.

Cristman said wrongfully convicted defendants are often those who plead "no contest" because they believed a plea deal might provide a better chance to move on with their lives than a jury verdict would.

Exactly that happened in a recent domestic assault case that Cristman said he defended. The accused, a man, maintained innocence but faced up to 15 years in prison if convicted. Taking a deal meant 12 months' probation.

State's View.

State's Atty. Hughes maintained that it is difficult to get a conviction in criminal cases.

"When you have a trial before 12 people and the state's burden of proof is to convince all 12 to unanimously agree there is no reasonable doubt that this person is guilty of the crime charged, it's kind of a high burden," he said.

There are many safeguards to protect an innocent person of a **wrongful** conviction, he added, including police officers' best efforts, prosecutors who must find probable cause to charge someone, judges who must confirm that cause, discovery rules in which defense attorneys are given each and every piece of evidence uncovered by the state, legal motions filed to test evidence and the means by which it was found.

"And not the least, the jury system and then the appeals system," Hughes added, which includes the supreme court review system in Vermont, and the civil court process for those who believe their cases were not handled fairly.

"It's very hard to get a conviction with our system and it should be that way," Hughes said.

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