



Team's hard work pays off

OIP counts five victories
in 2011

Feature commentary

How can three eyewitnesses
be wrong?

Lectures, art exhibit and concert

OIP international conference
a huge success

ANNUAL REVIEW 2011

OIP

Ohio Innocence Project

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What is the OIP?

The Ohio Innocence Project (OIP) seeks to identify and assist prison inmates who claim to be actually innocent of the crimes for which they were convicted. The OIP will review an inmate's request and conduct an investigation to determine whether the request meets OIP review and screening criteria. The OIP will work only on those cases where new evidence, whether newly discovered or developed through investigation, supports the inmate's claim of innocence.

The best type of new evidence is physical evidence (i.e., DNA) that was not tested prior to trial. The OIP also will work on cases that do not involve DNA if the appropriate criteria are met. While there is no fee for OIP services, inmates may be required to pay for DNA testing or other expert witness fees.





The OIP Team 2011-2012—Front row (from left to right): Mark Godsey, Karla Markley Hall, Shiyuan Huang, Katie Barrett, Carrie Waide, Liza Dietrich **Middle row:** Carrie Wood, Jodi Shorr, John Hill, Greg Kendall, Katie Rasfeld, Caitlin Brown, Queenie Takougang, Lauren Staley, Gretchen Schrader, Jennifer Paschen Bergeron, Phil Locke **Back row:** Levi Daly, Chelsea Brint, Brendan O'Reilly, Greg Moredock, Logan McNiece, Doug Walter, Matt Fitzsimmons, John Gallo, Jimmy Harrison, Jonathan Lynn

{ OIP fellows, students who work for the program, are **actively investigating 287 cases**. Approximately 34 of them are currently being litigated.

{ The OIP is currently reviewing cases of inmates housed in **26 state correctional institutions**. Their cases come from **50 Ohio counties**.

As a result of the wide distribution of inmates and cases around the state, fellows and staff spend many hours reading and writing letters and speaking with inmates about their cases.

Prior to actively taking on a case, the OIP staff and fellows will meet the inmate in person to discuss the case, the plan for litigation, and all expectations of the case.



Gift to Create Clarence Elkins Scholarships; Goal is to Continue Support of OIP

Clarence Elkins, who in 2005 was exonerated from a life sentence for rape and murder by DNA testing with the help of the Ohio Innocence Project (OIP), presented a \$5,000 gift to the OIP which hopes to renew annually. With this gift the OIP established the Clarence Elkins Scholarships, which will be awarded each year to the OIP team the staff determines has worked the hardest and most diligently on its cases. OIP students work in teams of two, and each student in the winning team will receive \$1,000.

"I'll never forget the weekly phone calls from one of our clients, Ed. In addition to case updates, Ed always came prepared with a topic to discuss, whether it was the recent success of a favorite sports team or memories about a restaurant near where both of our families are from. I came to realize how much it means to clients to hear a friendly voice and know someone on the outside is listening."

Lauren Staley '13, recipient of the Clarence Elkins Scholarship

Said Elkins, "When I was in prison, seeing how hard the OIP students worked on my case inspired me and gave me hope, something I had not had for years. Whenever they came to visit me in prison, it was a blessing. I created this scholarship to reward the hardest working team of students in the OIP each year, and to inspire future OIP fellows to work as hard on their cases as the OIP fellows did on my case years ago."

The first recipients of the scholarship, which were recently presented, are Katherine Barrett and Lauren Staley, both second-year law



students. "The Elkins Scholarship is a tribute not just to the students that drive OIP, but also to those inmates who remain incarcerated despite overwhelming evidence of

innocence," said Staley. "I am honored to have been presented this award by Clarence Elkins himself, as he represents the success that can be achieved through hard work and diligent advocacy."

Barrett agreed. "Working with the OIP has shown me that the study of law is so much more than merely understanding and applying the rules of our society. Indeed, law transcends every aspect of our lives and ultimately affects people in a very real, very human way. I am fortunate that I was able to learn this lesson during my invaluable experience with the OIP."

Today, Elkins and his wife Molly split their time between their home in New Lexington, Ohio and their log cabin on 20 acres in New Philadelphia, Ohio. He has engaged in significant public speaking and public awareness efforts for the OIP. In fact, his lobbying efforts were instrumental in getting SB77 passed. SB77, often called the "model" Innocence Protection Act anywhere in the United States, was passed in 2010. It contains numerous reforms in police procedures that reduce the risk of wrongful conviction.



To stay updated on wrongful convictions news, check out Mark Godsey's new blog:





Spreading the Word: Where has OIP been speaking?

Mark Godsey, the Daniel P. and Judith L. Carmichael Professor of Law and Director, Lois and Richard Rosenthal Institute for Justice/Ohio Innocence Project

In **January**, Godsey spoke about the Innocence Movement with exonerees Raymond Towler and Robert McClendon at University of Dayton Law School. He also spoke at a fundraiser for OIP in Columbus, Ohio.

In **February**, he spoke about the Innocence Movement at the Sycamore Presbyterian Church in Cincinnati. In **March**, he—along with exoneree Robert McClendon—spoke about the Innocence Movement at the Cincinnati Chapter of the League of Women Voters. Then in **April**, Godsey spoke on a variety of topics at the 2011 Innocence Network Conference, hosted by the OIP at the Freedom Center in

Cincinnati. (See page 16 for more information about the event.) He also spoke on the impact of Ohio's Innocence Protection Act, SB77, at a CLE event in Akron, Ohio.

In **July**, Godsey had the opportunity to speak at an academic conference in Athens, Greece about the international expansion of the Innocence Movement. In **September**, he then spoke about wrongful convictions and the international expansion of the Innocence Movement to justices of the Chinese Supreme Court in Beijing, as well as at four different universities across China.

This was followed in **October** with a speaking engagement about the Innocence Movement to Northwest Newcomers, a civic organization in Cincinnati. He, along with exoneree Raymond Towler, also spoke to

the University of Cincinnati Alumni Association in Indianapolis, IN. The month concluded with an opportunity to speak to legal representatives from Moldova about the international expansion of the movement.

November brought an opportunity to speak at a CLE event for public defenders in southwestern Ohio with exoneree Raymond Towler. Finally, in **December**, Godsey spoke to legal representatives from Mongolia regarding the international expansion of the movement.

Carrie Wood, Attorney
In **April**, Wood spoke about the Innocence Movement and

Mark Godsey speaks in China



Wrongful Convictions for the American Legal Rights and Social Service Field Experience, Social Studies Department at local Wyoming High School. Then, in **July** she spoke about this topic for the College of Law's Law and Leadership Program.

Karla Hall, Attorney

In **May**, Hall spoke about the program at local school Summit Country Day School. She then spoke in **November** at Miami University.

Jim Petro: Champion of Justice Award



At the 2011 Innocence Network Conference in Cincinnati, Ohio's University Chancellor and former Attorney General, Jim Petro, received the 2010 Champion of Justice Award for Public Service. This award honors public servants who go above and beyond in supporting and championing efforts that free the wrongfully convicted and/or reform the criminal justice system to prevent

wrongful convictions. It is awarded to one person each year, and the recipient is selected by the Innocence Network Board of Directors from nominations made from around the world.

Petros' illustrious career has spanned 37 years as a practicing attorney in a variety of roles. As Attorney General of Ohio, Petro championed the use of DNA evidence in criminal prosecutions. He

made national headlines as Attorney General when he became the first and only state Attorney General to side with an Innocence Project in a case against the local prosecutor. He took that position in the case of OIP client Clarence Elkins, and Petro's position helped eventually obtain the exoneration and freedom of Mr. Elkins. Later, he and his wife Nancy co-authored "False Justice: Eight Myths that Convict the Innocent," a book that examines DNA exonerations to identify the factors that cause wrongful convictions.

After leaving state-wide office, Petro has volunteered for OIP in a variety of important ways. For example, he was instrumental in helping SB77 become law (the "Innocence Reform Act"). He also has volunteered as co-counsel in a number of OIP cases, most notably, the Roger Dean Gillispie case (discussed on pages 7 and 10).

Volunteers Who Share Their Gift

The OIP would not be able to do the important work it does without the help of a number of gifted volunteers. In this report, we spotlight two such volunteers.



Bill Gallagher, Attorney

Bill Gallagher is a prominent Cincinnati criminal defense attorney, and was instrumental in helping establish the OIP in 2003. Although he has lent a hand to OIP in everything from fundraising and police training to legislative reforms, in 2011 he served as lead counsel with staff attorney

Karla Hall in the Cincinnati case of Bryant Gaines. Gaines had been convicted of murder in 2004. The state's witnesses later recanted after Gaines was convicted. The OIP was able to find a new witness,

however, who stated that he witnessed the murder up close and that Gaines was not involved. This new witness had no motive to lie and passed a polygraph test.

In 2011, Gallagher and Hall presented the new evidence in an evidentiary hearing before a trial judge in Cincinnati, who overturned Gaines conviction and ordered a new trial. Unfortunately, this decision was subsequently overturned by the Ohio First District Court of Appeals. In March 2012, Gaines filed a new post-conviction motion, and then walked free after accepting a plea deal to a reduced charge in exchange for his immediate freedom.

Bill Gallagher has the passion and talent to reform Ohio's criminal justice system, and the OIP is lucky to have him on its team.

"The OIP really allowed me to further my understanding of what legal work actually entails. It's more than just case briefs like 1L year; it's following one's own ideas and creating relationships with the people involved so they become more than just names on a page."

Greg Moredock '13, recipient of the Lois Rosenthal Award



Phil Locke, Science & Technology Advisor

Phil Locke is an engineer by education and training. Upon his retirement from the private sector in 2008, he contacted the OIP and offered to help navigate the complicated forensic and scientific issues routinely faced in this line of work. Locke has

spent the last several years diving into complicated cases and helping OIP understand its cases from a scientific angle. His work quickly became indispensable, and the OIP officially made him the Science & Technology Advisor to OIP. His reports and break-downs of cases have been so impressive and valuable that other Innocence Network organizations around the country have seen his work and have called OIP asking for his services.

To date, Locke has provided scientific consultations and analysis for the Arizona Innocence Project and the Northwest Innocence Project (Seattle), among others. For example, Locke researched cutting edge technology for obtaining fingerprints from used bullet casings. After he located the only facility in the world that can obtain a fingerprint without preventing later DNA testing of the same item, he convinced them to test shell casings from two of the OIP's recent cases without charge. In addition, Locke recently used advanced photogrammetric analysis on a security video of a robbery, and his analysis helped convince an assistant prosecutor to consent to DNA testing of our 6'4" client. (According to Locke's video analysis, the perpetrator was only 5'10"). The sole male DNA profile located on the crime scene evidence, as he predicted, does not match our client, and OIP attorneys are currently negotiating with the prosecutor's office to determine if the client will be released without further litigation.



Freedom Center Journal Special Edition Highlights Exonorees' Creative Work

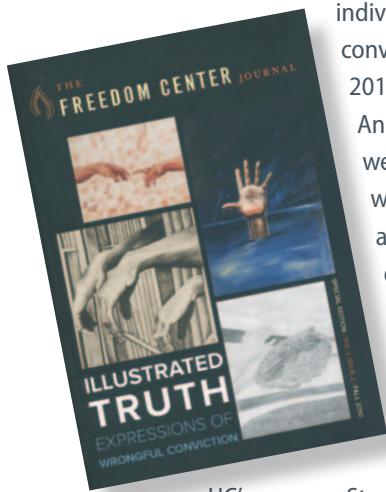
By: Teresa Martinez-Mulwane '11, Former Editor of the FCJ

Recognizing that "the pain and frustration of wrongful conviction and incarceration often manifests itself in incredibly meaningful forms of artistic expressions," Mark Godsey, Director of OIP, approached the Freedom Center Journal (FCJ) with the idea for FCJ to dedicate a future issue to the creative works of

individuals who have been wrongfully convicted, in conjunction with the 2011 Innocence Network Conference. An interdisciplinary journal, the FCJ welcomed the opportunity to work with the OIP while also bringing awareness to the social injustices experienced by those who have been wrongfully convicted.

The collaborations that made this special issue possible quickly expanded beyond the law school to multiple departments across

UC's campus. Students in Professor Stan Brod's Fall 2010 Design Methodology Studio at UC's School of Design, Art, Architecture and Planning were responsible for the graphic design of the project, designing the layout of the entire issue, as well as its cover. Assistant Professor Sean Hughes of the College of Arts and Sciences and his students photographed the works that appear in Part II of the issue. Drawing from her experience with art's impact on politics, Professor Adrian Parr, who holds joint appointments in the Department of Women's, Gender, and Sexuality Studies and the School of Architecture and Interior Design, provided the introduction to the issue.



A Look Inside the Book

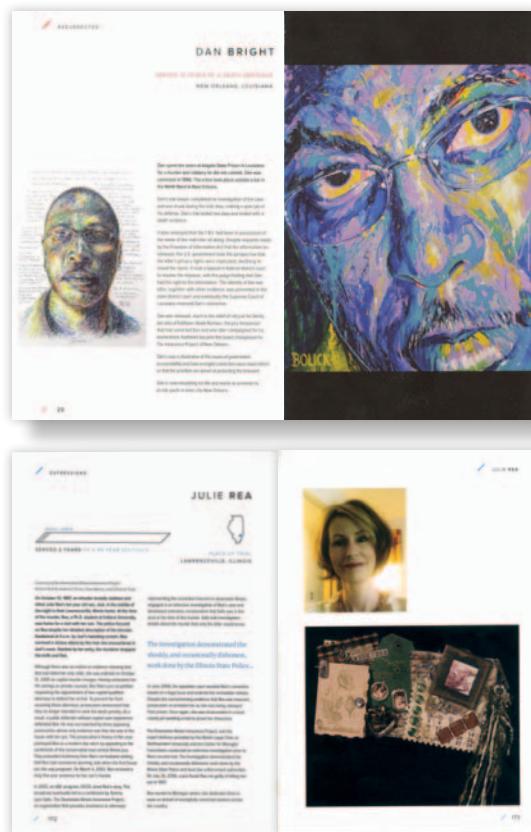
The issue is divided into three sections: Part I includes work from artist Dan Bolick's "Resurrected" collection of portraits. Bolick's paintings depict exonerees who were wrongfully convicted and sentenced to death or life in prison.

Part II of the issue consists of the creative expressions of 28 individuals who were also wrongfully convicted. The creative expressions include letters, poems, essays, artwork and photographs of gifts made while incarcerated allowing the reader an insight into the reality of wrongful conviction.

Each individual's work is accompanied by a case profile explaining what led to the wrongful conviction. Not all of the individuals included in this section have been exonerated. Some have been released from prison without an official recognition of wrongful conviction; some still remain incarcerated irrespective of their actual innocence. The case profiles were researched by OIP fellows and written by FCJ associate editors.

Part III of the issue includes photographs by a world-renowned photographer who portrays individuals who were wrongfully convicted, incarcerated, and later exonerated through DNA evidence.

"Illustrated Truth: Expressions of Wrongful Conviction" can be purchased by contacting Jodi Shorr at 513-556-0752 or jodi.shorr@gmail.com.



freedom

A Year of Work: OIP Celebrates Five Victories in 2011

2011 was a banner year for the OIP, with five convictions overturned and four of those clients enjoying freedom by the time the year came to a close. Here is a recap of the cases.



David Ayers

**Served 11 years of a life sentence
Cleveland, Ohio**



Marvin Fong, The Plain Dealer

On September 12, 2011, OIP staff attorney Carrie Wood and her team of students walked David Ayers out of a Cleveland courtroom a free man, after he had served 11 years in prison for a murder that he did not commit. The crime involved the brutal rape and murder of an elderly woman in her Cleveland apartment building. Mr. Ayers originally became a suspect because he worked as a security officer in the building. It appeared that whoever attacked the victim had a key to her apartment or some other means of access without having to break in.

The police built their case against Mr. Ayers primarily through the use of a snitch—a convict who was given leniency and benefits in exchange for testimony that Ayers confessed to him. "Snitch testimony," as it is often called, has been identified as a leading cause of wrongful conviction. In the past few years leading up to the exoneration, Ayers was represented by both the OIP (who handled DNA testing issues) and the Cleveland Public Defenders, who were pursuing legal arguments that the police held back evidence from the defense prior to the trial relating to the unreliability of the snitch witness. In 2010, after many years of litigation, the OIP was finally successful in getting a court—the Eighth District Court of Appeals—to order DNA testing in Ayers' case. The crucial piece of evidence to test was a pubic hair found in the victim's mouth. Meanwhile, in 2010, the Cleveland Public Defenders were successful in getting a federal court to overturn Ayers' conviction on grounds that the police had withheld crucial information regarding the snitch.

While Ayers was in jail awaiting retrial after his victory in federal court, the DNA test results were returned showing that the pubic hair found in the victim's mouth did not match either the victim or Ayers. At that point, all charges were dropped against and Ayers was released from prison. Staff Attorneys

David Laing and Carrie Wood worked on the case, along with many law students through the years, including Andrew Brenner, Jimmy Harrison, Levi Daly, Ryan McGraw, Julie Kathman, Aisha Monem, Jonathan Norman, Elizabeth Zilberberg and Joshua Ward, among others. Ayers, who had no criminal record prior to being arrested in this case, is currently living in Cleveland with his sister, attempting to adjust to life after exoneration, and seeking full-time employment.

Roger Dean Gillispie

**Served 20 years of a 22-56 year prison sentence
Dayton, Ohio**

For Christmas 2011, Roger Dean Gillispie of Dayton enjoyed a turkey dinner with his family for the first time in more than 20 years. This occurred after Magistrate Judge Michael Merz, the U.S. District Court for the Southern District of Ohio, overturned his rape conviction and released him into the arms of his family and friends three days earlier. Gillispie, who had a clean record at the time of his arrest in this case, was convicted in 1992 of abducting three women from public parking lots in broad daylight, taking them to secluded areas, and then raping them. Gillispie's case was the first case accepted by OIP in January of 2003, and more than 20 law students have worked on his case over the years.



OIP students investigated Gillispie's case for five years before finally going to court and seeking his exoneration in 2008. The OIP's investigation revealed that the original detectives assigned to the case developed evidence of Dean's innocence, eliminated him as a suspect, and wrote reports to the file containing the reasons why Gillispie could not have committed the offense. After these detectives retired or moved to other departments, a new detective took over the case and arrested Gillispie. The written reports containing the evidence of Dean's innocence disappeared and were never turned over to the defense. The OIP discovered the existence of the reports only by tracking down and talking to the original detectives many years later.

In addition, the OIP developed overwhelming evidence that another man who had committed copycat crimes in the past committed the offenses for which Gillispie was convicted.

Gillispie's conviction was overturned by the federal court on the grounds that the police violated his due process rights by destroying (or failing to disclose) before trial the written reports that demonstrated his innocence. Gillispie's case is chronicled in great detail in the best-selling book "False Justice: Eight Myths that Convict the Innocent", written by co-counsel and former Ohio Attorney General Jim Petro and his wife Nancy. (The book is available on Amazon.com and most bookstores.) Gillispie's case is also chronicled in the article "How Can Three Eyewitnesses Be Wrong" on page 10 of this Annual Review.

In April 2012, the 2nd District Court of Appeals in Ohio also overturned Gillispie's conviction, holding that the new evidence showing that the alternate suspect likely committed this crime would have caused the jury to have acquitted Gillispie had it been presented to the original jury. At this point in time, Gillispie is free on his own recognizance while the State is appealing both of Gillispie's victories.

Walter Zimmer

**Served 12 years of a 50 year sentence
Cleveland, Ohio**



On April 1, 2011 staff attorney Carrie Wood walked OIP's long-time client Wally Zimmer out of a courtroom in Cuyahoga County (Cleveland, Ohio) after he served 12 years for a murder that DNA evidence proved he did not commit.

Zimmer and his co-defendant Thomas Siller were originally convicted in 1999 of murdering an elderly woman in her home. The conviction was based primarily on snitch testimony. The snitch,

originally indicted as the sole perpetrator of the crime, wiggled his way out of responsibility for the murder by convincing the police that he did not commit the crime, but instead witnessed Zimmer and Siller do it. The snitch then testified at trial that he came upon the crime scene and saw Zimmer and Siller committing the murder. Zimmer and Siller always claimed that they played no part in the murder. The snitch committed the murder, they claimed, and simply pointed the finger at them to save his own skin.

DNA testing sought by the OIP found the snitch's DNA all over the crime scene, including on the cloth bindings that were

used to tie the victim. Zimmer and Siller's DNA were nowhere to be found. The pants that the snitch was wearing on the day of the murder were also tested, and droplets of the victim's blood were found on those pants. This evidence corroborated Zimmer and Siller's defense, and showed that the snitch had been lying at trial, as Zimmer and Siller contended all along. The OIP represented Zimmer, and the Innocence Project in New York City represented Siller.

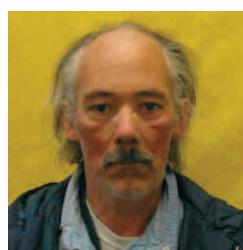
After the DNA results came back in March 2011, the prosecutors offered to release Zimmer immediately if he would plead guilty to a theft charge in exchange for having the murder charges dropped. Zimmer took the deal. After his plea to theft, he was released and prosecutors dismissed the murder charges against him.

Staff Attorney Carrie Wood handled the case, along with many students through the years, including most recently Scott Crowley, Elise Lucas, Andrew Cleves and Sean Martz.

Glenn Tinney

Sentenced to life in prison, which he is still serving at this time

Mansfield, Ohio



On March 25, 2011 the OIP received news that a court in Mansfield, Ohio had thrown out the murder conviction of longtime OIP client Glenn Tinney. Tinney, who suffers from severe mental illness, confessed and pleaded guilty in 1992 to the 1988 murder of a small business owner in his store even though no evidence connected him to the crime. Tinney's "confession" included 65 facts that diverged from the actual facts of the case, including a claim that he stole the victim's wallet and jewelry (the victim's wallet and jewelry were still on his body when he was found), he hit the victim with a wrench from behind (the victim was hit from the front and medical experts stated a wrench could not have been the murder weapon), and that he worked in the store as an employee of the victim (the facts showed that Tinney never worked in the store). After his "confession," Tinney was unable to describe the victim or identify him from a photo lineup, even though Tinney claimed to have worked for the victim for years. Several experts, including Richard Leo and UC's own Scott Bresler, analyzed the case and opined that Tinney's confession was likely false and a product of his mental illness. In addition, the victim's wife and the police department that investigated the case supported and continue to support the OIP's effort to free Tinney.

After Tinney's conviction was overturned, the prosecutors appealed. The court of appeals ruled in December 2011 that the

trial court should not have granted Tinney's motion to throw out his conviction based solely on witness affidavits, but should have granted the prosecutors a hearing to cross-examine Tinney's experts and other witnesses. Thus, although the court of appeals did not overturn the OIP's victory for Tinney, it did remand the case to the trial court for an evidentiary hearing. Staff attorney Karla Hall and the students who are working on Tinney's case are confident that their victory for Mr. Tinney will hold up and that he will be released from prison sometime in 2012.

Teddy Moseley

Sentenced to 11 years in prison and granted clemency after serving 10 years Scioto County, Ohio

In 2007, the OIP submitted a letter in support of Teddy Moseley's request for executive clemency. In 2000, Moseley was convicted of two counts of Aggravated Vehicular Assault and three counts of Involuntary Manslaughter after a jury found that he was driving at the time of a horrible car accident. As a result of these convictions, Moseley was sentenced to 11 years. The exact cause of the accident remains unknown, but whatever the cause, Moseley's car spun out of control, crossed the center line and struck a minivan. Shortly after his conviction, three emergency responders and two civilian witnesses came forward indicating that they could have provided testimony at Moseley's trial to support his claim that he was the backseat passenger in the accident. Specifically, the first EMT responder on the scene maintained that Moseley had been in the backseat of the car when she arrived at the scene shortly after the accident. Notwithstanding each of these witnesses' ability and willingness to provide vital information to the investigation surrounding this accident, none of the witnesses were ever contacted by the police, despite the police's knowledge of their presence at the scene shortly after the accident. Equally troubling was the failure of Moseley's defense attorney at the time of trial to seek out statements from witnesses who would have bolstered the defense's theory of the case. Despite this new evidence, when Moseley attempted to present this testimony in the form of a motion for new trial, the appellate court concluded that such testimony was merely cumulative and the failure to present such testimony was a result of the inconsequential incompetence of his defense lawyer. Former Governor Ted Strickland ultimately granted clemency to Moseley, and he was released from prison in December 2010.

"Working with the OIP has shown me that the study of law is so much more than merely understanding and applying the rules of our society. Indeed, law transcends every aspect of our lives and ultimately affects people in a very real, very human way. I am fortunate that I was able to learn this lesson during my invaluable experience with the OIP."

Katherine Barrett '13, recipient of the Clarence Elkins Scholarship





How can three eyewitnesses be wrong?

Why multiple eyewitnesses often misidentify the same innocent person

BY NANCY PETRO

T

he case seemed cut and dried: Three women identified Roger Dean Gillispie as the man who raped them in 1988. Tried and convicted, Gillispie was sentenced to 25–55 years in prison. However, no physical evidence linked him to the crimes. He had no criminal record, and veteran police detectives said he didn't fit the crime profile. Gillispie was unwavering in proclaiming innocence. Could three victims misidentify the same innocent man?

DNA-proven wrongful convictions have revealed that it's not uncommon for multiple victims to finger the same innocent person. Remarkably, that person often doesn't even resemble the actual perpetrator.

When Mark Godsey, Director of the OIP looked at the Gillispie case in 2004, he saw red flags. DNA couldn't save Gillispie; biological evidence hadn't been retained. Nonetheless, Godsey accepted Gillispie as the OIP's first client.

The only evidence implicating Gillispie was the victims' identification of him from a "six pack" photo lineup, even though he didn't match the description they provided shortly after the crimes.

Many understand that eyewitness identification isn't always reliable. But the testimony of a victim confidently declaring, "That's him—I will never forget that face," can trump alibis and other evidence. Unfortunately, conventional understanding of memory is based on false assumptions, not case experience and scientific research.

Signs of Misidentification and Wrongful Conviction

The crime: A man who claimed to be a security officer forced twin sisters to drive at gunpoint to a remote area where they were ordered to provide him oral sex. After returning the women to their original location, the rapist left. Within hours the sisters provided a detailed description of the perpetrator. A third victim later reported a similar crime. A sketch of the perpetrator was created from the victims' description. Police vigorously investigated, but the case grew cold.

Nearly two years later, a dispute with a work supervisor resulted in Dean Gillispie's termination from his job. It was then, after the police sketch of the rapist had been displayed at his company for nearly two years, that his former supervisor told a Miami Township sergeant that Gillispie resembled the police sketch.

Detectives eliminated Gillispie, however, due to the "extreme differences in Gillispie's physical appearance compared to the description of the rapist." The victims said the rapist had brown hair with a reddish tint. Gillispie had dark brown, prematurely graying hair, which earned him the nickname "Silver Fox".

The twins said the perpetrator had a dark tan. Gillispie didn't tan because his fair skin burned. One victim said the assailant had no chest hair; another said he wore a medallion. Gillispie had thick chest hair that prevented his wearing medallions. One victim said the perpetrator's voice was authoritative. Gillispie has an unassuming voice.

The rapist bummed cigarettes; Gillispie disliked smoking so much that he had a "No Smoking" sign in his truck. The perpetrator reeked of alcohol; Gillispie was not much of a drinker.

The perpetrator told the sisters that he was from Columbus and had spent time in Corpus Christi, Texas. He said he was a hired killer and that he was raped when he was 12 by his grandfather. Gillispie never lived in Columbus or Corpus Christi, never was a hit man, and never was molested.

When the senior detective handling the case retired, a young and inexperienced detective, Scott Moore, latched onto the opportunity to solve the cold case.

Moore refused Gillispie's request to take a lie detector test, prompting the Gillispies to hire retired Dayton police officer J.D. Caudill, who now worked as a polygraph expert and was preferred by local law enforcement. Caudill reported that Gillispie's responses were "truthful" and told the detective, "They've got the wrong man."

Nevertheless, Moore contacted the victims nearly two years after the crime to view a photo lineup. According to Steven Clark, Professor of Psychology at the University of California, Riverside, research shows that after 11 months, the rate of accurate eyewitness identification decreases from 67 to 11 percent, no better than chance.

Moore defied at least four best practices in line-up procedures. (1) Telling the victims he had a suspect encouraged them to make a selection, to look for the person most like the perpetrator. (2) By presenting all six photos at once, he enabled a comparative selection rather than an objective decision on each photo, which occurs in recommended sequential presentation. (3) The composition of the lineup was suggestive. Gillispie's head was larger in the cropping. His background was yellow; the others were blue. His photo had a matte finish; the others were glossies. The Dayton Daily News later reported that Gillispie's photo was all but "circled and starred."

The first sister identified Gillispie, but with only 90 percent certainty. The next day her twin selected Gillispie. Detective Moore told them they had selected his suspect. (4) Such reinforcement increases witness's confidence even in an inaccurate selection. The third victim also selected Gillispie from the suggestive lineup. He was arrested, tried, and convicted.

Correcting a Wrongful Conviction

During the appeals process, Gillispie's defense team—expanded in 2007 to include former Ohio Attorney General Jim Petro—discovered that original detectives' records were never shared with the defense as required by *Brady v. Maryland*. The team also identified an alternative suspect with remarkable similarities to the victims' description. He frequented area bars, had been arrested for DUI, and had impersonated a police officer in an abduction of a young woman.

The alternative suspect's former girlfriend testified in the state appeal that he talked about Columbus and Corpus Christi. She described his hair as light brown with a reddish tint; he tanned darkly. He bragged about being a contract killer and claimed he'd been sexually molested by his father or grandfather. He had a fetish for oral sex, and he was abusive.

On July 24, 2009, the Ohio Second District Court of Appeals remanded the case back to the trial court for an evidentiary hearing to flesh out whether the alternative suspect evidence merited a new trial. In late 2010 the court denied Gillispie's

motion. Nearly a year later, Mark Godsey and Jim Petro represented Gillispie again before the same Court of Appeals.

They also argued the case before Federal Court Magistrate Judge Michael Merz. The original Miami Township police detectives testified about their reports, which were never shared with the defense. Gillispie's trial attorney testified that

if he'd seen the reports, he would have changed his defense strategy. Gillispie's attorneys argued that Detective Moore's failure to share them constituted a *Brady* violation.

The Gillispie OIP defense team won both efforts. On December 15, 2011, Judge Merz ruled that Gillispie had been denied the right to due process. He ordered the State of Ohio to release him pending the jurisdiction's decision on trying him again. On April 13, 2012, the Second District Court of Appeals also vacated Gillispie's conviction and sentence, and ordered a new trial.

"My experience with OIP highlighted a perspective of the legal profession that is impossible to study in a book. Although I learned an incredible amount about everything from counseling clients to writing briefs, the most valuable lesson, for me, was the lens through which the OIP views the world."

Brendan O'Reilly '13, recipient of the Lois Rosenthal Award



Why We Can't Believe Our Eyes

Thousands of experiments have confirmed that the mind doesn't work like a tape recorder and that memory is subject to contamination. The criminal justice system didn't embrace scientific findings on memory until the lessons of DNA, first used in a U.S. criminal case in 1989. Since then, mistaken eyewitness identification has contributed to 76 percent of DNA-proven wrongful convictions.

Studies have revealed that, among police lineups in which a selection was made, eyewitnesses chose a non-suspect filler 30 percent of the time. If a witness selects a police-selected innocent filler, no harm is done. However, if the witness selects an innocent suspect, the stage is set for wrongful conviction.

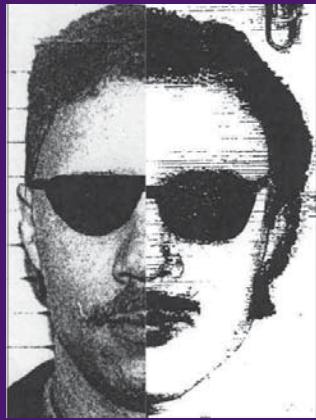
A 1996 National Institute of Justice study, "Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial," compared biological evidence taken from victims with the DNA of the primary suspect, usually identified by the victim. According to Peter Neufeld and Barry Scheck:

Every year since 1989, in about 25 percent of sexual assault cases referred to the FBI where results could be obtained (primarily by state and local law enforcement), the primary suspect has been excluded by forensic DNA testing. Specifically, FBI officials report that out of roughly 10,000 cases since 1989, about 2,000 tests have been inconclusive (usually insufficient high molecular weight DNA to do testing), about 2,000 tests have excluded the primary suspect, and about 6,000 have "matched" or included the primary suspect.

The lesson: While based upon "innocent until proven guilty," our system has convicted countless people on evidence that is unreliable 25 percent of the time.

But how likely is it that three victims would wrongfully identify the same innocent person? In a study of 190 DNA-proven wrongful convictions that included eyewitness misidentifications, multiple witnesses misidentified the same innocent person in 36 percent of the cases, according to Brandon Garrett, Professor of Law at the University of Virginia.

This suggests that protocols, procedures and players contribute to misidentifications. The lessons of DNA and research findings have prompted best practices in eyewitness procedures advocated by the Innocence Project to reduce error.



The OIP's alternative suspect in the Dean Gillispie case is an uncanny match to the police sketch of the perpetrator that was based on the twin sister's first description of the rapist within hours of the crime. Acquaintances of the alternative suspect also testified that his behavior

matched the comments of the rapist to his victims: Both talked about connections to Columbus and Corpus Christi; both bragged about being a contract killer; both said they had been molested as a child by a father or grandfather; both had the same sexual fetish, both impersonated a security or police officer in abductions.

The OIP's Ongoing Efforts on Behalf of Dean Gillispie



On the rainy evening of December 22, 2011, Dean Gillispie walked out of the London Correctional Institution into his parents' arms. Friends from his high school years chartered a bus to greet him. He spent his first

Christmas at home in two decades and had more than 600 visitors over the following weeks.

Gillispie's battle for freedom continues. Although he is free on his own recognizance, the State has appealed both of the OIP's victories in the case. In order to reinstate Gillispie's conviction, the State must prevail on both appeals. This will be highly problematic for the State, however, as the only avenue for appeal in one of the cases is the Ohio Supreme Court, which accepts less than 10 percent of all cases appealed to it. Stay tuned for updates on the Gillispie case.



Author: Nancy Petro, co-author of "False Justice: Eight Myths that Convict the Innocent." The book, available at Amazon, Barnes & Noble, and independent booksellers, was written with Jim Petro, former Ohio Attorney General.

Utilizing Best Practices to Reduce Wrongful Convictions

Recommended best practices to reduce error in eyewitness identification include:

- The witness is advised a suspect may or may not be in the lineup.
- The filler (non-suspect) photos should resemble the victim's earliest description of the perpetrator, not the suspect.
- The suspect should not stand out from the fillers.
- A sequential presentation (persons presented one-at-a-time) requires the witness to make an objective—not a comparative—decision.
- Blind administration (the administrator does not know which person is the suspect) reduces intended and unintended influence.
- The selection should receive no approval or reinforcement, which increases confidence in the selection, accurate or not.





The Ohio Innocence Project
of the Rosenthal Institute for Justice
University of Cincinnati College of Law

Since its founding in

2003

OIP has helped release

15

innocent individuals.

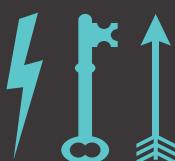
They collectively served

257½ YEARS

in prison for crimes they
did not commit.

1750 A.D.

257 years ago in the 1750's
the French & Indian War
was just starting &
Benjamin Franklin had just
discovered electricity.



WHY WERE THEY CONVICTED?*

*Of the 15 victories
to date, these are
the reasons for the
wrongful convictions.



BY ADDRESSING
THESE ISSUES, OIP
HAS PROVEN THE
INNOCENCE OF **FIFTEEN**
INDIVIDUALS.



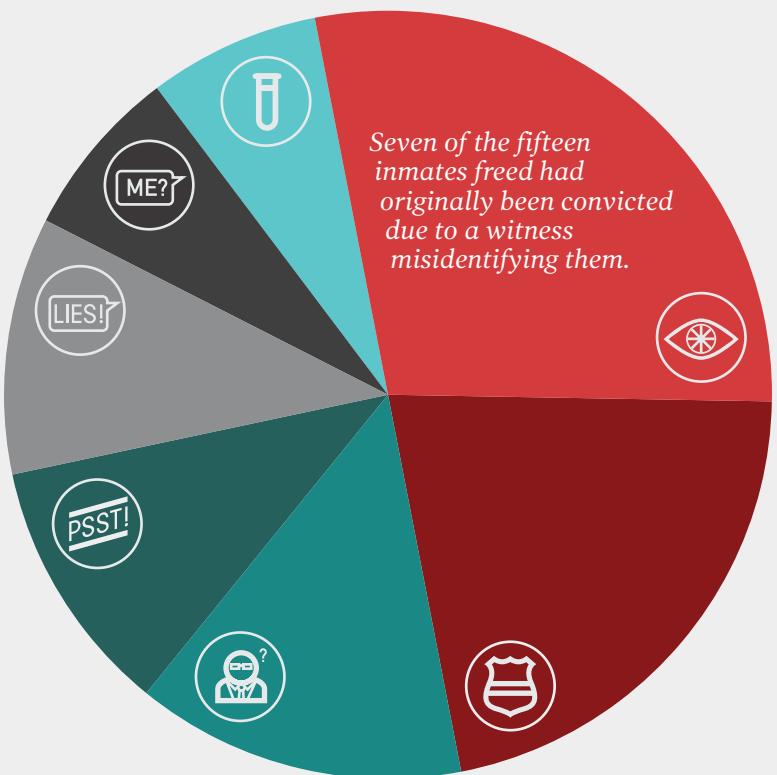
DNA testing proved
innocence in eight of
the 15 cases.



OIP assisted in
identifying the true
perp in six of the
15 cases.



Only three of the 15
freed inmates were
compensated by
the state of Ohio.



of hours OIP has spent on the
phone with inmates since 2003

1,902



of calls by inmates to OIP
since 2003

15,680

OIP IS EXTREMELY SELECTIVE

24/5,886*

*5,886 inmates have reached out to OIP since its founding in 2003. OIP has taken the position that an inmate is innocent in only 24 of these cases. Thus, OIP has asserted innocence in only .004% of the cases where inmates have sought OIP's help.

CHANGING THE GAME

SENATE BILL 77

- 1 Requires police to save DNA
- 2 Improves eyewitness & lineup practices
- 3 Incentivizes police to record interrogations

GET TO KNOW OUR LEGAL TEAM



1 Director, 1 Full-Time Attorney,
1 Administrator, 2 Part-Time Attorneys



20 Law Students



OIP has more than 150 alumni, who have gone on to successful careers, for example, in Wall Street firms, as attorneys in Fortune 500 companies, and as federal and state prosecutors or public defenders. Our alumni have taken their empathy, dedication, and organizational and investigation skills that they learned at the Ohio Innocence Project and applied those skills throughout their careers and lives in a myriad of forms for the common good.



of letters written on behalf of inmates since 2003

40,425

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Created in collaboration with MadeByWe.org

UC Law and OIP Host First-Ever International Conference of Innocence Projects, a Growing Global Effort

First-ever international innocence conference held April 7–10, 2011



"Sometimes, in prison, you had to force hope..." That's according to Raymond Towler, University of Cincinnati College of Law's 10th exoneree, about his time in prison.

Imprisoned for almost three decades, Towler served the most time of any exonerated individual in Ohio's history. He, along with 100+ exonerees from around the world, were special guests at the largest gathering of exonerees ever in one place: the 2011 Innocence Network Conference: An International Exploration of Wrongful Conviction. This extraordinary event, the first-ever international innocence network gathering, was held in April 2011 in Cincinnati. The event was hosted by the College of Law's Rosenthal Institute for Justice/Ohio Innocence Project and held at the National Underground Railroad Freedom Center.

Unique to this conference was its focus on the global human



Ray Towler, a recent OIP exoneree

rights problem of wrongful conviction. "This was the first conference bringing the world together to discuss this issue," said conference organizer Mark Godsey, the Donald P. and Judith L. Carmichael Professor of Law and Director of the Rosenthal Institute for Justice/Ohio Innocence Project, about the at-capacity event. International interest in the conference was so great that attendee registration closed.

The four-day conference brought over 500 attendees to the city, including scholars, lawyers and exonerees from around the world for substantive discussions, workshops and keynote addresses on national and international trends on the issue of wrongful conviction. In addition to sharing information and providing a forum for learning, organizers hoped that the event would serve as a springboard for galvanizing

the innocence movement into a unified, international human rights movement. To that end international attendees came from more than 25 countries, including Canada, Japan, China, Ireland, Japan, Mexico, Nicaragua, Chile, England, Ireland, Australia, Nigeria, Norway, South Africa, Czech Republic, Singapore, and Switzerland.



Mark Godsey and Professor Jiahong He, from Renmin University Law School in Beijing.

Key Events:



Opening Reception “Illustrated Truth: Expressions of Wrongful Conviction” Art Exhibit

The conference kicked off with the first-ever art exhibit featuring the work of exonerees and those still imprisoned. Thirty exonerees, including OIP exonerees Raymond Towler (exonerated May 2010) and Clarence Elkins (exonerated December 2005), exhibited artwork, poetry, photos, letters and other literary works.

Students from the University of Cincinnati’s College of Design, Architecture, Art and Planning (DAAP) designed and curated the exhibit.

In addition, the exhibit is showcased in a special edition of the Freedom Center Journal, a joint scholarly publication of the College of Law and the National Underground Railroad Freedom Center.



Richard and Lois Rosenthal



Hundreds of conference attendees viewed the art exhibit, which was open to the public until July 2011.



Guests at the Conference



Professor Margaret Drew taking a closer look at the art exhibit.

International Conference of Innocence Projects

Key Events:

Opening Ceremony

Barry Scheck and Peter Neufeld, co-founders and co-directors of the Innocence Project at the Benjamin N. Cardozo School of Law, opened the event followed by the introduction of delegate countries and exonerees.

More than 100 exonerees from around the world attended the event. Many were introduced at the opening ceremony.



Keynote Event by Exonerees from Around the World

One of the most captivating components of the conference was the opportunity to hear first-hand from exonerees from the U.S. and around the world. Participants included exonerees from Japan (first DNA exoneree), Canada, England (Gerry Conlon, who was portrayed by Daniel Day Lewis in the film "In the Name of the Father"), Mexico and Nicaragua.

From far right: Keith Findley (President of the Innocence Network), Barry Scheck, and exonerees from six different countries.





"Let Freedom Sing" Musical Concert

The concert featured the music of exonerees from various innocence projects. This was the first time exonerees had jammed together in such a public performance. See the entire concert at:
www.law.uc.edu/oip/multi-media



International Delegate Tour of DNA Diagnostics Center (DDC)

Attendees had the opportunity to tour DDC's world-renown DNA laboratory and attend a workshop on DNA testing in post-conviction cases. DDC has played a critical role in the work of the OIP, as well as other Innocence Projects across the United States, conducting forensic DNA testing and consultation that has resulted thus far in numerous exonerations. DDC's Assistant Laboratory Director in Charge of Forensics, Dr. Julie Heinig, conducted the tour and workshop on DNA for delegates, providing valuable insight to the actual processes involved in post-conviction DNA analysis and consultation with IP lawyers and students. The highlight of the tour was the unveiling of the newly-named gene fragment analyzer instrument, "Hello Truth," inspired by the story of Robert McClendon, the first OIP exoneree whose case was processed by DDC Forensics in 2008.



Robert McClendon, exoneree, speaks with Dr. Julie Heinig, Assistant Laboratory Director. At the conference, DDC unveiled the newly named DNA analyzer "Hello Truth," in honor of McClendon and his poem of the same name.

Additional photos from the conference, including the art exhibit and the concert, are available online at www.law.uc.edu/oip/multi-media. Video from the event is also available there.

Go directly to the links by scanning this QR code.



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Current OIP client



"Flood of Lies"
Al Cleveland, artist

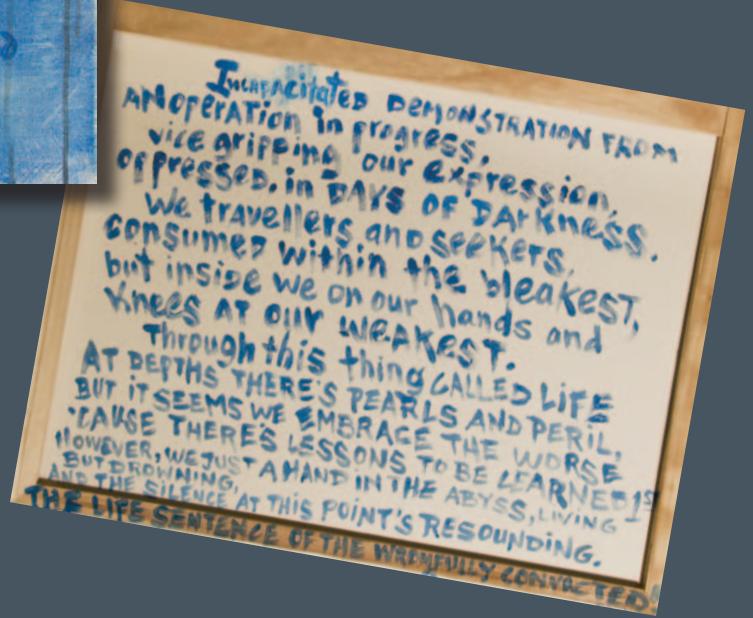
I don't have too many words to describe this piece, but it represents the end of the artistic confines to which I have been bound for years and marks the beginning of an inward journey of truth-telling in art and the expression of such by all means despite the look. No beauty right now, just a soul under pressure and an able hand in need, coming to grips with a few dreams it must let go. Upon further thought, this represents the feeling of many of us wrongfully incarcerated, serving life sentences.



Al Cleveland is currently serving a life sentence for the 1991 murder of Marsha Blakely in Lorain, Ohio.

He was convicted

on the uncorroborated eyewitness testimony of then 23-year-old crack addict William Avery Jr. Mr. Avery has since come forward and admitted that he lied about witnessing the Blakely murder. However, during a 2008 court hearing, Avery refused to testify in support of Cleveland's innocence claim, and instead exercised his Fifth Amendment right not to incriminate himself (perhaps fearing that if he recanted his trial testimony he would be charged with perjury). The OIP has filed a habeas petition on Cleveland's behalf, based on his claim of actual innocence.





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