



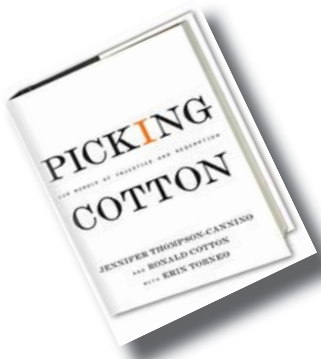
# UNIVERSITY OF CINCINNATI COLLEGE OF LAW

## Ohio Innocence Project

### Lois and Richard Rosenthal Institute for Justice

Volume 1, Issue 2

Summer 2009



## PICKING COTTON

### OUR MEMOIR OF INJUSTICE & REDEMPTION

*A story of pain...redemption...  
friendship. Don't miss this event.*

"Picking Cotton: Our Memoir of Injustice and Redemption," a *New York Times* bestseller, is the story of Jennifer Thompson-Cannino, who was raped as a college student, and Ronald Cotton, who Cannino selected in a line-up as her attacker. Cotton served 11 years in prison for the attack before DNA proved that he was not the perpetrator. Two years after Cotton was released from prison, he and Cannino met and have since developed a very special friendship. Don't miss this gripping story.

Former U.S. Attorney General Janet Reno says about Picking Cotton: "Few people have done more to put a human face on issues involving wrongful convictions than Jennifer Thompson-Cannino and Ronald Cotton. Yet through their shared pain, they have been able to forge a friendship that most of us search our lives for."

This event is sponsored by the Cincinnati Museum Center, the Rosenthal Institute for Justice/ Ohio Innocence Project, and the YWCA of Greater Cincinnati. Register online at [www.law.uc.edu/institutes/rosenthal/pickingcotton.shtml](http://www.law.uc.edu/institutes/rosenthal/pickingcotton.shtml). For more information, call 513/556-4275. ■

Cincinnati Museum Center,  
The University of Cincinnati College of Law,  
Rosenthal Institute for Justice/Ohio Innocence Project,  
and the YWCA of Greater Cincinnati

*cordially invite you to the*

Cincinnati Museum Center's  
*Insights Lecture Series*

### PICKING COTTON: OUR MEMOIR OF INJUSTICE & REDEMPTION

*featuring co-authors*

Jennifer Thompson-Cannino & Ronald Cotton

**Thursday, September 17, 2009 — 7:30 p.m.**

Cincinnati Museum Center  
Union Terminal - Reakirt Auditorium  
1301 Western Avenue, Cincinnati, OH 45203

*Special thanks to our event sponsors the Lois and Richard Rosenthal Foundation*

## NANCY SMITH AND JOSEPH ALLEN EXONERATED AFTER 15 YEARS IN PRISON!

On June 24, 2009, Nancy Smith, a Head Start bus driver, and Joseph Allen were exonerated after a Lorain County judge granted their motion for a new trial and then acquitted them in the face of mounting evidence of their innocence. They each spent 15 years in prison for a crime they did not commit. How could this happen?

In the early 1990s, the news program *60 Minutes* aired an episode in which a daycare provider had molested the young children in his care. The culprit was convicted. The parents sued. Because the center was funded by the federal government through the Head Start program, the parents were able to collect huge settlements. After this episode aired, copycat claims were made against Head Start daycare providers in many states across the country. Many providers were convicted and sent to prison,

with the parents then receiving huge settlements. In many of these cases, the authorities now realize that the charges were concocted and the defendants have been exonerated and set free. Nancy Smith and Joseph Allen are the most recent innocents who have been recognized by the courts as victims of this unfortunate pattern.

The case against Smith and Allen was based on the testimony of very young children who had been coached by their parents. The children alleged that on certain days Smith did not take them to school; rather, she took them to different locations and spent the day molesting them with Allen. Despite numerous inaccuracies, including the fact that the children's stories contradicted each other and often did not make sense, the jury convicted Smith and Allen. The parents received settlements in the millions of dollars.

Many OIP students worked on the case over the years, along with private investigator Martin Yant, and developed strong evidence of innocence. The parole packet submitted to the court, which outlined the grounds of innocence, was written by former OIP students Bobbi Madonna '07 and Whitney Sheff '07, when they worked as OIP Fellows. The evidence they set forth included:

- Odometer readings that showed that Smith did not stray from her bus route on the days in question.
- Attendance records that showed each child was present at Head Start on the supposed days of the attacks.
- Records that Smith had clocked in at her second job right after she dropped the children off at Head Start on each of the days of the supposed attacks.
- A lineup video, that had not been shown at trial, demonstrating that the victims were not able to pick Smith and Allen until their parents improperly coached them.

Madonna, who now works as a staff attorney for the Innocence Project of Florida, says, "Nancy Smith is the reason I work for an Innocence Project today. She changed my life and I thought I would always be haunted by the memory of her behind bars. I am so thankful that a judge finally saw the truth and let two innocent people free." ■

## SB 77 Approved by Ohio Senate

On June 24, 2009, the Ohio Senate voted overwhelmingly in support of SB 77, legislation aimed at drastically reducing the risk of convicting the innocent. The OIP initially proposed the legislation to Governor Ted Strickland and the legislature in February 2009. Soon after its submission, the legislation was quickly supported by sponsor Senator David Goodman and Senator Bill Seitz, the Senate Criminal Justice Committee chair. The bill proposes to identify specific procedures for the preservation of biological evidence for DNA testing, the recording of custodial interrogations for certain felonies, and the "double blind" preparation of photo line-ups for eyewitness identification.

The measure requiring the video recording of interrogations is designed to cut down on false confessions. The requirement that police use a "double blind" process for line-ups, which means the officer administering the lineup does not know which person in the lineup is the suspect, is designed to reduce misidentifications by eyewitnesses. Mistaken identification due to outdated lineup procedures is the leading cause of wrongful conviction.

On the day of the vote, Senator Goodman provided sponsor testimony before the Senate voted 31-1 in support of the legislation. On hand during the vote were Ohio exonerees Robert McClendon, Joseph Fears, and Walter Smith, as they had been for every committee hearing and discussion of the bill throughout the process. The exonerees received a standing ovation by the senators for their efforts in getting the bill successfully moved through the Senate. The bill, which has the support of both Governor Strickland and Attorney General Richard Cordray, will go before the House of Representatives this fall. ■



Nancy Smith, center, with family, in photo taken in prison.



What is the Ohio Innocence Project

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.

Meet the OIP Team

Director — Mark Godsey

Staff Attorneys — Jennifer Bergeron, Karla Hall, and David Laing

OIP Intern — Virginia Vega-Siferd (from University of Cincinnati Sociology Program)

2009-2010 OIP Fellows — Marie Alao, Christie Bebo, Chris Brown, Scott Crowley, Sean Graves, Ryan Houston, Matt Katz, Megan Lorenz, Elise Lucas, Alison Minnietar, Aisha Monem, Jonathan Norman, Daryl Osuch, Lauren Presley, Stacey Skuza, Jessica Strudthoff, Chad Thompson, Emily Vance, Sam Warden, Jing Zhang

OIP Fellows, students who work for the program, are actively investigating 370 cases. Approximately 35 of them are currently being litigated. The OIP is currently reviewing cases of inmates housed in 27 state correctional institutions. Their cases come from 55 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, if not before, 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. ■

The prospect of innocents languishing in jail or, worse, being put to death for crimes that they did not commit should be intolerable to every American, regardless of race, politics, sex, origin, or creed.

• 240 (The number of US DNA exonerations)

Kyle Healey '07 Takes OIP Experience to Job

Before law school, if someone had told me that I would make a cross-country move to pursue the job of my dreams, I would not have believed them. Today, as an Assistant U.S. Attorney in Tucson, Arizona, I couldn’t be more pleased with where life has taken me. My current position wasn’t something I seriously considered before law school; in fact, I attended law school with little intention to practice law. I intended to become an FBI agent. But that slowly started to change as I became more involved with the Ohio Innocence Project. Law school helped me understand the legal system; the Innocence Project prepared me to be a lawyer. On a whim, I applied for the assistant United States attorney position in Tucson. I held little hope for this job as I’d already been turned down for the Department of Justice honor’s program. But at this point I thought it couldn’t hurt to apply for the supplemental positions that became available. Fortunately, I received an interview and my interviewer was impressed with my OIP work and my understanding of DNA. At my second interview I was asked multiple ethical questions focusing on discovery and exculpatory evidence. These questions were much more difficult than anything asked on the MPRE. My time at the Innocence Project helped me answer these questions because I recognized several of them from cases we read as part of our training.

On the Job

My first few months on the job have opened my eyes to the large problem facing our country involving the southwest border and the Mexican drug cartels. I had read about the drug smuggling problem in Arizona, but had no idea of the magnitude or the violence that accompanied it. To say the least, moving to the desert and working for the U.S. Attorney’s office has been a significant change compared to working for the Innocence Project in Cincinnati. I became an OIP Fellow during my second year of law school and continued during my third. My project partner, Eric Eckes, and I worked on the Doug Prade case. I, along with many others, am eagerly awaiting the Supreme Court’s response on that one. I also worked on the Columbus Dispatch/Test of Convictions project. In hindsight, it was probably one of the best decisions I made in law school. I was given the freedom to examine



Assistant U.S. Attorney and Former OIP Fellow, Kyle Healey

Date	OIP Milestone
January 2002	University of Cincinnati College of Law Dean Joseph Tomain, College of Law Professor Jack Chin, Cincinnati City Councilman John Cranley, and local attorney Bill Gallagher, along with many others, meet to discuss plans to establish an Innocence Project. Initial funding by Tom and Cathy Crain helps start the Urban Justice Institute to study inequality in the criminal justice system.
May 2003	The Ohio Innocence Project launched by John Cranley and Mark Godsey as part of the Urban Justice Institute.
September 2004	The Urban Justice Institute became the Rosenthal Institute for Justice as a result of a generous gift from Lois and Richard Rosenthal.
February 2005	Gary Reece was paroled on grounds of innocence after spending 25 years in prison for rape.
December 2005	Clarence Elkins was exonerated from a life sentence after serving seven years for murder and rape that DNA testing proved he did not commit.
May 2006	Chris Bennett’s conviction overturned by court of appeals, following DNA testing which proved he was not the driver of a crashed vehicle five years earlier.
July 2006	Senate Bill 262 became law. This bill, drafted by the OIP, expanded the eligibility for post-conviction DNA testing.
November 2007	“Test of Convictions,” a series by <i>The Columbus Dispatch</i> highlighting the plight of inmates pursuing post-conviction DNA testing and identifying 30 cases for which the OIP and the Ohio Public Defender’s Office would pursue additional DNA testing, was published.
January 2008	Convicted in 1993, Bruce Paul was released after serving over 14 years in prison. Through it all, Paul has maintained his innocence.
August 2008	Robert McClendon was exonerated after serving 18 years for a rape that DNA testing proved he did not commit.
August 2008	Senate Bill 77, also called the “Integrity of Evidence Act” was introduced in the Ohio Senate, proposing state-wide requirements for biological evidence preservation, expansion of the eligibility for post-conviction DNA testing, recording of custodial interrogations, and eyewitness identification procedures.
March 2009	Joseph Fears was exonerated after serving 25 years for a rape that DNA testing proved he did not commit. This was a result of a renewed investigation for evidence in Franklin County following the exoneration of Robert McClendon.
June 2009	Nancy Smith and Joseph Allen exonerated in child molestation case for which they had always maintained innocence.
June 2009	Senate Bill 77, legislation that provides for reforms in the way that serious crimes are handled in Ohio, passed in the Senate. Advocacy for the bill was provided by the OIP, <i>Columbus Dispatch</i> , and former Ohio Attorney General Jim Petro.

Project 262, Part 2  
Death Penalty Cases

In 2006 the OIP, together with *The Columbus Dispatch*, reviewed numerous Ohio criminal cases where DNA might exist that would identify the perpetrator of the crime. OIP attorneys then fought for DNA testing and worked with various offices to locate potential DNA evidence. We named that effort “Project 262” in honor of Senate Bill 262, the newly passed post-conviction DNA testing law. Although much of the DNA evidence sought through the project had been lost or destroyed over the years, Project 262 has resulted in the exoneration of two innocent Ohio citizens, with more on the horizon. Based on the success of Project 262, the OIP, in cooperation with the Ohio Public Defender’s Office, is now beginning “Project 262, Part 2.” OIP staff and attorneys are reviewing the cases of Ohio inmates currently on death row with an innocence claim. The OIP hopes to locate any DNA that may exist in these cases that will exonerate these men before they are put to death for a crime they did not commit. ■





Jim Petro and Juana Gillispie



The Native Cowboy

### Former AG Petro Presented with Painting from Gillispie

On April 6, Juana Gillispie, mother of Roger Dean Gillispie, presented former Ohio Attorney General Jim Petro with a painting done by Mr. Gillispie. General Petro has put in hundreds of hours for the OIP on a pro bono basis attempting to exonerate Mr. Gillispie. The painting, entitled “The Native Cowboy,” is of the same style as J.D. Challenger, one of Gillispie’s favorite artists. Accompanying the painting was this description:

**“The Native Cowboy”**

*It is a great honor and privilege to present this painting to Mr. Jim Petro, a man of the people, one who has never lost sight of the common working man and who has put forth a great effort to correct a wrong that occurred nearly twenty years ago.*

*Faith and encouragement have once again been restored to a family that had lost all but their prayers. They can now see a twinkle of light at the end of this long dark nightmare that gives hope that the truth will free an innocent man, their son.*

*This painting was done with heart felt gratitude and personal integrity for a man who has and will continue to make a difference.*

– Dean “SPIZ” Gillispie

- **4500** *(The number of case review requests received by the OIP since 2003)*
- **370** *(The number of cases that the OIP is actively investigating or litigating)*

### Case Updates

**Roger Dean Gillispie, evidence suggests another suspect guilty of crime**

Gillispie was convicted in 1990 of raping twins in Dayton based on identifications made by the victims two years after the crimes were committed. The OIP developed evidence strongly suggesting that another suspect committed these crimes and also discovered that the police had destroyed or failed to turn over exculpatory evidence prior to Gillispie’s trial. Upon learning the facts of this case, former Ohio Attorney General Jim Petro was compelled to join the OIP as co-counsel on the case, working in a pro bono capacity. The OIP/Petro team sought to exonerate Gillispie in court in July 2008 and lost. In July 2009, Petro argued the case to the 2nd District Court of Appeals in Dayton. The appeals court reversed the lower court and remanded for an evidentiary hearing, to be held in the fall of 2009.

**Ray Smith, Jr., fingernail scraping may yield perpetrator**

Smith, Jr. was convicted of aggravated murder, aggravated robbery, and tampering with evidence in 1999 following the murder of one of his coworkers at their place of employment on Christmas Eve. After a capital trial based solely on circumstantial evidence, Smith, Jr. was sentenced to life without parole. The OIP submitted an Application for DNA Testing for Smith as part of the Columbus Dispatch/Test of Convictions series. To date, none of the tests have uncovered any DNA profiles. In early June, the Court granted the OIP’s motion to consume the sole fingernail scraping collected from the victim. It is hoped that the scraping will contain enough DNA from the perpetrator to yield a profile.

**Father Gerald Robinson, DNA comparison may be key to true killer**

In 1980, Sister Margaret Ann Pahl was murdered near the chapel at Mercy Hospital of Toledo as she prepared the facility for Easter services. An intruder strangled and stabbed her. After remaining unsolved for more than 20 years, a cold case squad re-opened the case in 2004 and re-interviewed the few elderly alleged witnesses that were still alive. Father Gerald Robinson, a 72-year-old Catholic priest with an immaculate service record, was arrested and convicted. By the time Father Robinson was actually tried for the crime, a substantial amount of meaningful evidence and the only witness who could establish his whereabouts at the time of the murder were no longer available. Male DNA has now been collected from under the deceased nun’s fingernails; however, the DNA does not belong to Father Robinson. The OIP is in the process of having the unknown male DNA compared to DNA samples taken from possible suspects in the murder, including a known serial killer who was actively killing women in a similar manner during the early 1980’s. The OIP hopes to soon have conclusive DNA evidence that will identify the true killer and free Father Robinson.

**Alan Butts, victim of scientific discovery too late**

Butts, a kind, soft-spoken young man, had never been accused of violence toward anyone. In fact, he had acted as father for 2-year-old Jaydyn for almost two years, fixing breakfast, playing games and reading with him. In 2005, however, Jaydyn, who had been ill and was taking medication, became unconscious and had trouble breathing while in Butts’ care. He quickly summoned emergency services, but Jaydyn died in the hospital the next day. The

prosecution was unable to locate a single witness who indicated that Butts had ever been unkind or impatient with Jaydyn or anyone else. Jaydyn had no injuries consistent with abuse. Unfortunately, though, for many years the general medical community believed that any child who had a triad of particular symptoms must have been shaken violently immediately prior to his death. After extensive medical testimony indicating that Jaydyn had the “shaken baby syndrome” triad, a jury convicted Butts of murder. While he sits in prison serving a life sentence for Jaydyn’s “murder,” new studies have demonstrated repeatedly that there are numerous ways in which the triad of symptoms formerly identified as “shaken baby syndrome” can be caused by many other things, including certain illnesses, genetic conditions, and accidental falls. The OIP is actively working with a team of neurologists and pediatricians to establish Butts’ innocence by proving that Jaydyn died of natural causes. Butts remains in prison.

**Douglas Prade, primitive DNA testing vs. advanced methods**

In 1998, Prade was convicted of the murder of his ex-wife, Margo. In 2008, the OIP submitted an Application for DNA Testing for Prade as part of the Columbus Dispatch/Test of Convictions series. Prade’s requests to test materials from the crime scene were denied at the trial and appellate level over the past year, but in June 2009 the Ohio Supreme Court accepted his appeal. The issue for review in this case centers around whether primitive DNA testing that yielded inconclusive results can bar an application for testing using newer, more advanced DNA testing methods. The OIP has been aided at the appellate levels by attorneys Dave B. Alden, Jim Young, and Ann Netzel from the Jones Day/Cleveland office.

### RIJ to Host Eyewitness Identification Training Symposium for Police and Prosecutors

**Date:** October 2, 2009  
**Time:** 10:00 a.m. – 4:15 p.m.  
**Place:** Ohio Supreme Court (65 South Front St. Columbus, OH 43215)  
**Cost:** Free for police officers; for prosecutors, application for 5 hours CLE credit for Ohio has been approved. \$100/advance; \$125/door

On October 2, RIJ will host “Strengthening Prosecutions: Improving Eyewitness Identification Procedures in Ohio,” a training session for police and prosecutors. The symposium will bring together four experts from law enforcement and academia to address recent developments in the field of eyewitness identifications, different eyewitness procedures, and practical experiences from the implementation of new procedures. The symposium’s goal is to inform Ohio’s law enforcement agencies and prosecutors about the advantages of adopting new eyewitness identification procedures. The direct results of these procedures will be seen throughout the criminal justice system: they will make law enforcement investigations more efficient by eliminating false suspects; will strengthen prosecutions by providing prosecutors with more accurate identifications; and will make communities safer by putting the true perpetrators behind bars.

For more information, call us at 513/556-4275 or visit us on the web at [www.law.uc.edu/institutes/rosenthal/eyewitness.shtml](http://www.law.uc.edu/institutes/rosenthal/eyewitness.shtml). This training is for police and prosecutors only. ■

**Charles Dumas, DNA matches inmate**

In 1998, Dumas was convicted of raping a child in Columbus. His original Application for DNA Testing was rejected in 2004 and 2007. He was also told that the evidence in his case could not be located. In 2008, following the exoneration of Robert McClendon, Franklin County Prosecutor Ron O’Brien encouraged staff in his office to look for the evidence again and two pieces were located. After a DNA profile was derived from the crime-scene evidence, Dumas refused to give a sample of his own DNA for comparison. At that time, the OIP moved to withdraw from the case as his counsel. Subsequently, the prosecutor got a court order forcing Dumas to provide a sample; the results came back and matched Dumas’ DNA to the DNA from the crime scene. “We have had several cases come back from DNA testing showing that the inmate is guilty. That is the best result we could ask for,” said OIP Director Mark Godsey. “It shows the judicial system got it right, the true perpetrator is being punished, and an innocent person is not languishing in prison.” ■

Special Thanks to Lois and Richard Rosenthal



Lois Rosenthal, Robert McClendon, Richard Rosenthal

The Ohio Innocence Project gives a special thank you to Lois and Richard Rosenthal for their continued support. The Lois and Richard Rosenthal Institute for Justice (RIJ) at the University of Cincinnati College of Law was founded in the aftermath of the racial strife and civil unrest that shook Cincinnati in April 2001. The RIJ seeks to

harness the idealism, energy, and intellect of law students and turn those qualities into a vehicle for positive social and legal change in Cincinnati, the state of Ohio and beyond.

Their gift establishing the RIJ at the College of Law funds the Ohio Innocence Project, which identifies inmates convicted of crimes they did not commit. This program has supported efforts resulting in the release of eight inmates. “The freedom of these innocent inmates is priceless,” says Mark Godsey, UC professor of law and faculty director of the Lois and Richard Rosenthal Institute for Justice/Ohio Innocence Project. “All future inmates who gain their freedom will have the Rosenthals to thank.” The RIJ also serves as an umbrella organization for RIJ Research Projects and Reports, which has resulted in the passage of numerous progressive reform laws in Ohio, and the RIJ Speaker Series.

“With every success of the Lois and Richard Rosenthal Institute for Justice, its caseload grows exponentially as more and more people become aware of its crucial work. Thanks to Lois and Dick’s tremendous commitment, leadership and generosity, the project is strengthening its ability to make a difference and bring justice to the wrongly convicted,” says Louis D. Bilonis, dean of the UC College of Law and Nippert Professor of Law. ■

- **45** *(The number of cases OIP has represented or is actively litigating)*
- **8** *(The number of DNA exonerations in Ohio)*



University of Cincinnati  
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*“Law school helped me  
understand the legal system;  
the Innocence Project prepared  
me to be a lawyer.”*

Kyle Healey '07

What’s in this issue!

Picking Cotton	1
SB 77	1
Smith/Allen Exonerated	1
Kyle Healey	2
Project 262, Part 2	2
Active Cases	3
Native Cowboy	3
Upcoming Events	3

Thank You!

The Ohio Innocence Project also wishes to thank the following people for their continued support and assistance:

Assistance:

- Dave Alden, Jim Young, and Ann Netzel of Jones Day Cleveland, for their outstanding pro bono work on several OIP cases
- Mark DeVan of Berkman, Gordon, Murray & DeVan for his pro bono effort in the Raymond Towler case
- Bill Gallagher for his pro bono assistance in the Bryant Gaines case
- Jim Petro, former Attorney General of Ohio, for his efforts in the Roger Dean Gillispie case and in pushing SB77 through the Senate
- Senators Bill Seitz and David Goodman for their tireless efforts in getting SB77 successfully through the Senate with a 31-1 vote
- Exonerees Robert McClendon, Walter Smith, Joseph Fears and Danny Brown, for their efforts in testifying and supporting SB77 on numerous occasions in committee hearings before the Senate
- OIP alumna and attorney Michele Berry '06, for her efforts in drafting the legislative proposal that resulted in SB77
- The Innocence Project staff, particularly Rebecca Brown, Zeke Edwards, and Steve Saloom, for their continued advice and assistance throughout the legislative process

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