

Lois and Richard Rosenthal Institute for Justice — Ohio Innocence Project

COLLEGE of LAW

UNIVERSITY of
Cincinnati

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OHIO INNOCENCE PROJECT NEWS

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We'd like to share some of the highlights of 2008 as well as what we are looking forward to in 2009:

"Test of Convictions" series published by The Columbus Dispatch, January 27-31, 2008. After two years of investigations, The Columbus Dispatch, in conjunction with the Ohio Innocence Project, published the results of their review of the state of post-conviction DNA testing in Ohio in a five-part series. Following the review of the 313 cases where inmates had previously sought post-conviction DNA testing and been denied, 30 of the cases were selected for additional applications for DNA testing. The OIP prepared applications for 23 of the 30 cases and is in the process of working with prosecutors and judges from throughout the state to have testing granted in each case. Currently 12 of the 23 cases for which the OIP has requested testing have been approved.

Read the five-part series and receive updates at:
www.dispatch.com/dna

See the Active Case Updates on pages 3 and 4 for more information about the individual cases in testing.

Exoneration of Robert McClendon on August 11, 2008. Robert McClendon

was the first individual from the group of 30 Columbus Dispatch "Test of Convictions" cases to be approved for DNA testing in 2008 and was the first of that group to be found innocent of the crimes for which he was convicted. McClendon had been imprisoned for 18 years for the rape of a child, a crime for which he had always maintained his innocence. Since his exoneration, McClendon has been spending greatly-missed time with his children and grandchildren as well as participating in speaking engagements with the OIP.

The team working on the McClendon case included attorney Jennifer Paschen Bergeron, and OIP Fellows, Mike Harrington, Dan O'Brien, Courtney Cunningham,

ham, and Megan Tonner. This team was responsible for preparing and submitting Mr. McClendon's Application for DNA Testing and for working with the Franklin County Prosecutor's Office in selecting evidence for testing. DNA Diagnostics Center, a Fairfield, OH, DNA testing laboratory, provided complimentary testing in this case.

Introduction of SB 358, the "Integrity of Evidence" Legislation, in the Ohio Legislature on August 21, 2008. SB 358 proposes a standardized method for the preservation of biological evidence. The legislation also provides recommendations for improving the process of eyewitness identification and videotaped police interrogations.

(Continued on Page 4)



Robert McClendon (third from right) with Bergeron and the OIP Fellows who worked on his case during the last two years (From left to right: Mike Harrington, Dan O'Brien, Courtney Cunningham, Robert McClendon, Jennifer Paschen Bergeron, and Megan Tonner).

WHO ARE WE AND WHO DO WE HELP? OIP BY THE NUMBERS

WHO ARE WE?

The Ohio Innocence Project is led by Director Mark Godsey and staff attorneys, Jennifer Paschen Bergeron, Karla Hall, and David Laing. Katie Gallagher serves as the administrative and policy coordinator for the program. From May through April, a team of twenty law students, the majority of whom are in their second year, serve as the OIP Fellows for the Project. After the academic year ends, from May through August, the Fellows work 40 hours per week and receive a small stipend for their work. During the school year, the Fellows work approximately 10 hours per week and receive class credit for their participation in the program.

Fellows for the 2008-2009 Academic Year:

Evan Anderson	John Kennedy
Christie Bebo	Melissa Laugle
Courtney Cunningham	Peter Link
Thomas Darrow	Chris Liu
Nick Endsley	Jason Masterson
Jon Ford	Amanda Smith
Kurt Gee	David Sturkey
Eric Gooding	Megan Tonner
Brian Howe	Joshua Ward
Errin Jordan	Elizabeth Zilberberg

WHO DO WE HELP?

OIP Fellows are actively investigating 370 cases. Approximately 35 of those cases are currently being litigated by one of the four staff attorneys, with the assistance of the Fellows. The OIP is currently reviewing cases of inmates housed in 27 different Ohio state correctional institutions (See Chart #2, "Location of Inmates"). Their cases come from 55 different Ohio counties. Chart #1 below shows the distribution of cases among counties where the OIP is investigating or actively litigating five or more cases in the county.

As a result of the wide distribution of inmates and cases around the state, the OIP Fellows and staff spend many hours reading and writing letters and having telephone conversations 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 the expectations of the inmate and the OIP in the case.

Chart #1

Distribution of Open/In Review Cases In Counties Where the OIP is Working on 5 or More Cases

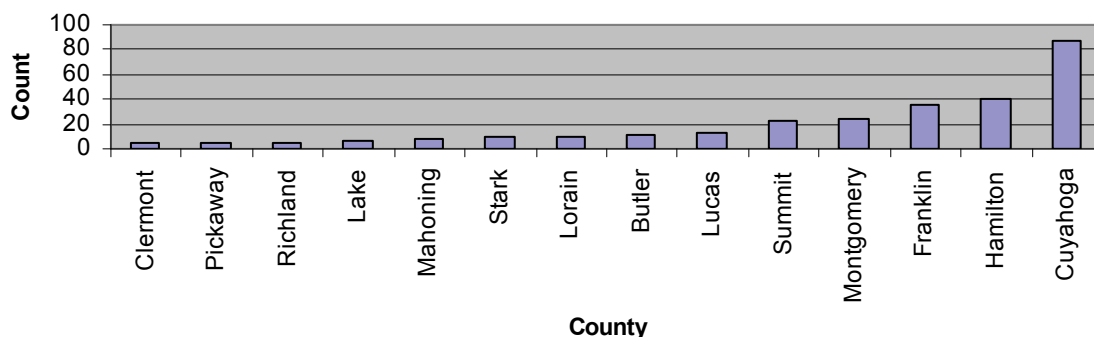
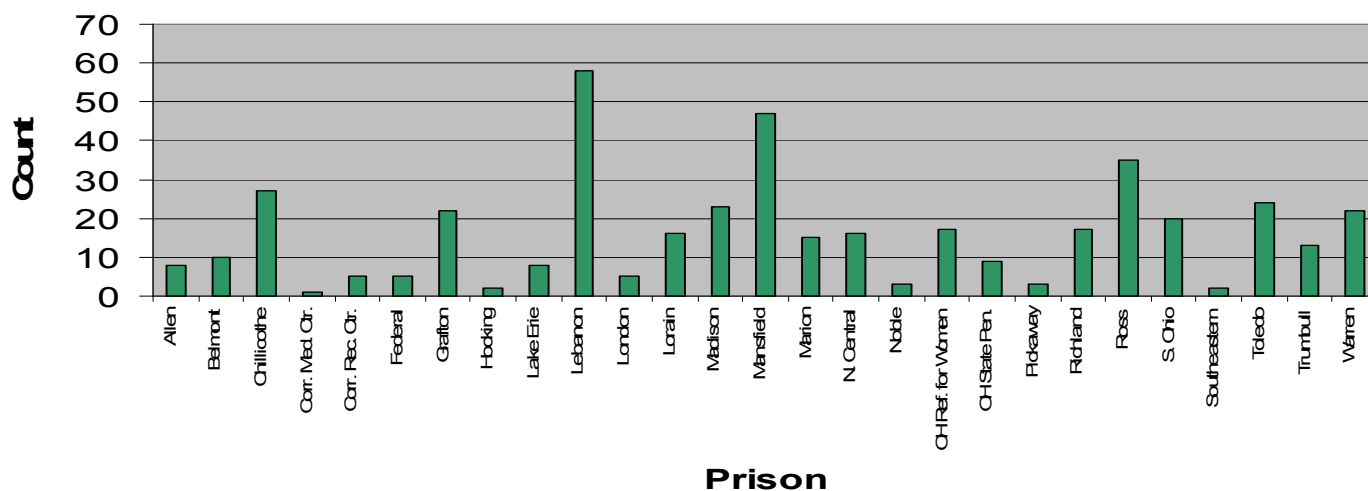


Chart #2

Location of Inmates with Cases In Review



ACTIVE CASE UPDATES, INCLUDING MEDIA COVERAGE

The following notes provide a brief overview of a few of the cases that the OIP is actively litigating. The OIP's current caseload includes a mix of cases involving DNA and non-DNA cases. Also noted in the summaries are any media coverage that the cases have recently received.

Clarence Weaver

was convicted of murdering his wife in 1991 in Lorain County. As part of the Columbus Dispatch's "Test of Convictions", the Court granted our Application for DNA Testing and evidence is currently in testing at DNA Diagnostics Center. Unfortunately for Weaver, the evidence most likely to contain the DNA of the perpetrator is unavailable for testing, either because it was initially never collected from the crime scene or it was destroyed or lost since his trial. The OIP is considering other avenues to secure Weaver's exoneration if DNA testing is unable to do so.

Elyria Chronicle Telegram
-Sept 10, 2008 "Prosecutors: Weaver Not Worthy"
-Oct. 10, 2008 "Judge Orders New DNA Tests in Clarence Weaver Case"


Bryant Gaines

was convicted of murder in 2003 in Hamilton County. At the trial, no physical evidence connected Gaines to the crime. He was convicted solely on the testimony of one eyewitness who has since recanted his testimony. Recently, a new, previously unknown witness came forward and identified the shooter, who he says is not Gaines. Despite the fact that the State's own ballistics and medical evidence indicate



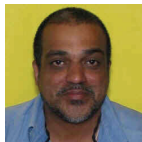
that the other man identified (not Gaines) was the shooter, the trial court refused Gaines' motion for a new trial. The case is currently on appeal.

Cincinnati CityBeat

-Dec. 17, 2008 "Down By Law"
-Jan. 14, 2009 "Mallory Misses the Mark"

Orlando Morales

was convicted in 1981 in Cuyahoga County when a teenage girl was kidnapped while delivering morning newspapers. She was sexually assaulted and then murdered. Her body was found three months after the kidnapping in an abandoned house. Although there was a wealth of physical evidence at the crime scene, none of it matched Orlando Morales. Five months after the kidnapping, a drug-addicted 20-year-old identified Morales as one of two men she saw chasing the victim. At trial, a jailhouse informant testified that Morales had confessed his involvement in the crimes to him. These two witnesses convinced the jury to convict Morales. Today, the informant says that Morales actually denied any involvement in the crime, but he was encouraged to implicate Morales in exchange for reduced jail time. The court granted Morales' motion for DNA testing, but the majority of the evidence has not been located. A few ancillary items have been sent for DNA testing, but the evidence most likely to contain the perpetrator's DNA has not been located. Morales has been in prison since 1981.


Cleveland Plain Dealer

-May 30, 2008 "DNA Testing Sought in 1981 Murder"
-Nov. 14, 2008 "Judge

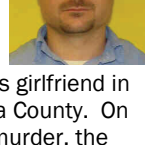
Orders DNA Testing in 27 Year Old Murder Case"


Ray Smith

was convicted of aggravated murder, aggravated robbery, and tampering with evidence in 1999 in Lorain County, following the murder of one of his coworkers at their place of employment on Christmas Eve. He 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. The Court granted the Application for DNA Testing and several items are in testing at DNA Diagnostics Center. However, the OIP is concerned that these items may not contain enough DNA to provide an adequate sample for identification. Similar to the case of Clarence Weaver, the OIP will explore other options for securing Smith's exoneration if DNA testing does not prove viable.


Rex Clinger

was convicted of murdering his girlfriend in 1993 in Seneca County. On the day of the murder, the victim's neighbors recalled hearing noises and noticing the victim's and Clinger's vehicles in front of the building. Clinger's Application for DNA Testing, submitted as part of the Columbus Dispatch "Test of Conviction" series, was agreed to by the Seneca County Prosecutor's office, and the joint draft order for testing was approved by the Court. The evidence from the crime scene is currently in testing at DNA Diagnostics Center. Results are expected from the testing within the next few months.


Charles Dumas

was convicted of raping a child in Columbus in 1998. Dumas's original Application for DNA Testing was rejected in 2004 and another application was rejected in 2007 when Dumas was 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 of evidence were located. At the end of January 2009, the Franklin County Common Pleas Court approved the testing agreement between the Franklin County Prosecutor's Office and the OIP to have the evidence tested at DNA Diagnostics Center in Cincinnati. DNA testing will begin by March.


The Columbus Dispatch

-Jan. 17, 2009 "Convict has Hope after Rape-Case DNA Found"

Larry Jerido

was convicted of murdering a friend and hiding the body in a freezer in 1996 in Cuyahoga County. Jerido, who found the body in the freezer and contacted the police, was convicted despite no physical evidence of his involvement as well as an alternative suspect being identified in the case. Several pieces of evidence from the crime scene are still available for testing. Jerido's Application for DNA Testing, filed as part of the Columbus Dispatch's "Test of Convictions" series, has been approved and the evidence is currently in testing.



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ACTIVE CASE UPDATES (CONTINUED FROM PAGE 3)

Roger Dean

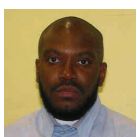
Gillispie was convicted in 1990 of raping twins in Dayton. His conviction was based on identifications made by the victims two years after the crimes were committed. The OIP developed evidence strongly suggesting that another suspect committed these crimes and also discovered that the police had destroyed or failed to turn over exculpatory evidence prior to Gillispie's trial. Upon learning the facts of Gillispie's 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. The OIP is currently appealing the case with former AG Petro's support and will continue to fight for Gillispie's freedom until it is achieved.

Dwight Reynolds

was convicted of attacking and robbing a



woman outside a dentist's office in the Dayton area in 2000, despite the fact that the original descriptions of the attacker from the victim and a witness did not match Reynolds. Reynold's Application for DNA Testing of the knife used in the attack was submitted as part of the Dispatch's "Test of Convictions" series. The trial court denied the application, but the OIP has filed a Notice of Appeal in the matter and is working on the appellate brief.

Glen Tinney, who

struggles with mental illness, confessed to a murder more than fifteen years ago in Richland County. However, his confession did not match the crime. The police now believe they know the true killer, and they would like Mr. Tinney freed so that they can arrest and convict the actual murderer. The investigation of this matter is nearly complete, and the OIP will be filing a motion to withdraw Mr. Tinney's guilty plea shortly.



FELLOW'S VIEW: OIP GUEST FELLOW, JODI SHORR

Jodi Shorr spent the summer working with the Ohio Innocence Project as a Visiting Fellow. She shares some of her thoughts about her experience with the OIP below.

I am currently a Masters student at Northern Arizona University (NAU) majoring in Criminal Justice with a specialization in wrongful conviction. I am also a Fellow with the Northern Arizona Justice Project. Since I would like to work for an innocence project (IP) after graduation, I thought an internship at the OIP during the summer of 2008 would help me learn more about a different IP model. The project in North-

ern Arizona is small, mostly comprised of volunteers, and is one of the few IPs based in a university social science program. In contrast, the OIP is based at a law school, in a city, with full-time personnel, and has several success stories. I felt it would be exceptional if the two programs could learn from each other through my participation with both.

Throughout the summer, I was able to share similarities and differences in the programs with the OIP Fellows. Additionally, at the conclusion of my three-month stay in Cincinnati I conducted interviews with the OIP

Fellows to learn how they felt about their experiences, so that I could share that information with the students at NAU. Highlighting the results: the three most enjoyable parts of the position for the OIP Fellows were the investigation process, talking with inmates in person and on the phone, and obtaining valuable real-world experience, regardless of the field of law they plan to enter upon graduation. I think this data is important because it shows the viability of the OIP clinic and how well it prepares students for the future.



The OIP Fellows Meet the UC Bearcat.

As for my future plans, after I graduate in the fall of 2009, I plan to work for an innocence project. I've found that this type of work is rewarding, exciting, and interesting. I'm truly lucky to have been able to work for such great innocence projects.

OIP NEWS (CONTINUED FROM PAGE 1)

Senators David Goodman and Bill Seitz introduced the legislation at a press conference with former Attorney General Jim Petro, OIP Director Mark Godsey, and Exonerree Robert McClendon. **The sentencing hearing for Earl Mann**, the person who committed the crimes for which Clarence Elkins, the OIP's first exonerree, was originally convicted, was held on August 28, 2008. Mann

was sentenced to 55 years in prison for the rape and murder of Judith Johnson and the rape of Johnson's granddaughter. Both Clarence Elkins and Melinda Elkins Dawson, the daughter of Mrs. Johnson, were present at the hearing and able to speak to Mann about the effects of his actions on their lives.

In 2009 we are looking forward to:

-Reintroducing the Integrity of

Evidence legislation with Senators Goodman and Seitz

- Starting a **second phase of post-conviction DNA testing research** with The Columbus Dispatch and the Ohio Public Defender's Office

-Hosting an event in the fall for **Ronald Cotton and Jennifer Thompson** when in Cincinnati promoting their book, Picking Cotton. Cotton and Thompson met after DNA

testing proved Cotton's innocence. He was wrongly convicted for the rape of Thompson based on her mistaken identification.

- Planning for the **2011 Innocence Network conference** and International Symposium, to be held in Cincinnati

To learn more about these activities, e-mail OIP Director Mark Godsey,
mark.godsey@uc.edu.

RECOMMENDED READING: CASE OF A LIFETIME

Professor Abbe Smith Describes Her "Case of a Lifetime"

Georgetown Law Press Release, July 21, 2008

WASHINGTON, D.C. - As a second-year law student in 1980, Abbe Smith had no idea that her first case would be her most memorable one. In her new book, Case of a Lifetime: A Criminal Defense Lawyer's Story (Palgrave Macmillan, 2008), Georgetown Law Professor Smith tells the story of her attempt to free a woman who would spend 28 years in prison for robbery and murder. "It remains the most haunting miscarriage of justice I have ever encountered," said Smith.

Smith met Patsy Kelly Jarrett in 1980, three years after Kelly was sentenced to life in prison for driving the getaway car in a 1973 felony-murder in upstate New York. Convinced that Kelly, whose conviction was based on eyewitness testimony, was innocent, Smith agreed to take on her case and be-

came a tireless advocate over the next 25 years in trying to secure her freedom.

Smith describes her growing affection for Kelly during these years and her struggle to separate her professional responsibilities from her personal feelings. "Kelly showed me that sometimes -- not often, but sometimes -- being a good lawyer also means being a good friend, no matter how uncomfortable I am with the idea," Smith notes.

Smith also discusses her attempt to come to terms with the fact that it was a parole, not her own efforts, that finally gained Kelly's prison release in 2005. "I confess that I struggled with a feeling of anticlimax," she writes. "I was tormented by the idea that Kelly might have been paroled even if I had done nothing, if I had never come back into her life." *Publishers Weekly* says, "The book's strength is Smith's openness about her life as a criminal de-

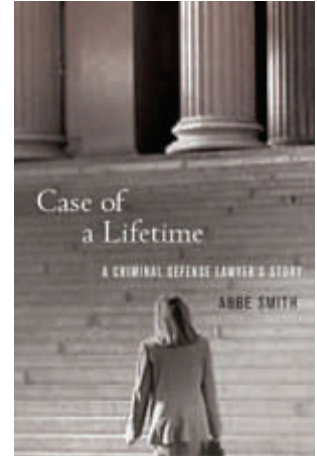
fense attorney and her sophisticated thinking about the moral and ethical dilemmas criminal lawyers routinely navigate."

A starred *Kirkus Review* describes "Case of a Lifetime" as "a captivating, emotionally intense investigation of the complicated relationship between truth and the justice system."

"This is an extraordinary, profoundly moving book," notes Anthony Lewis, Pulitzer Prize winning author of "Gideon's Trumpet." "I know of no other book that says as much about a defense lawyer's motivations, self-doubt, frustrations. I finished it with tears in my eyes."

Sister Helen Prejean, author of "Dead Man Walking," says, "this is a substantial work: intelligent, subtle and honest. I couldn't put the book down."

An essay by Smith adapted from "Case of a Lifetime" appeared in the *Washington Post Magazine* on June 29, 2008.



INNOCENCE NETWORK CONFERENCE HOUSTON, TX: MARCH 20-22, 2009

Exoneree Robert McClendon and the OIP Staff will be attending the Innocence Network Conference in Houston, TX, from March 20-22, 2009. The conference is hosted this year by the South Texas College of Law.

The Innocence Network is an affiliation of organizations dedicated to providing pro bono legal and investigative

services to individuals seeking to prove innocence of crimes for which they have been convicted and working to redress the causes of wrongful convictions.

Innocence Network members from across the country use the conference time to discuss current innocence related issues, including advances in DNA and forensic

technology and policy related issues, as well as to share time with the exonerated men and women that our organizations represent.

The conference is open to students, exonerees, Innocence Network members, public interest attorneys, and the general public.

THE INNOCENCE NETWORK

THE OIP AND THE UK INNOCENCE NETWORK EXCHANGE

In October 2008, the OIP Director, Mark Godsey, attended the United Kingdom Innocence Network Conference in Cardiff, Wales.

During the event, Godsey presented information about the Ohio Innocence Project as well as other American innocence projects. Godsey presented the case of Clarence Elkins and showed the documentary based on the Elkins case, "Conviction."

The conference was also a great opportunity for Godsey to learn more about the similarities and differences between the US and UK justice systems and the barriers to prove innocence faced in each.

As a result of his work at the UK conference, the UK Innocence Network and the Ohio Innocence Project will be establishing an exchange program for students in-

volved in the two innocence projects. Current plans are to have a student from one of the UK Innocence Network programs join the OIP during the summer of 2009 and OIP will send one of the current Fellows to work with a UK project during the fall of 2009. OIP Fellows will receive course credit for their semester in the UK as well as invaluable experience.



Godsey (top middle) with UK Innocence Founder and Director Michael Naughton (top left) and UK Innocence Network Exonerates.

RECOMMENDED VIEWING: AFTER INNOCENCE

Review by Stephen Holden
The New York Times
Published: Oct. 21, 2005

Calm, deliberate, and devastating, Jessica Sanders's documentary "After Innocence" confirms many of the worst fears about weaknesses in the American criminal-justice system. In examining the cases of seven men wrongly convicted of murder and rape and exonerated years later by DNA evidence, the film reinforces the queasy feelings you have while following high-profile criminal trials.

The pursuit of justice in those cases often seems secondary to the drama of competing lawyers and to the ferocious desire of prosecutors to win at all costs and protect their reputations. Like many of us, judges, lawyers and prosecutors may often go out of their way to avoid admitting mistakes.

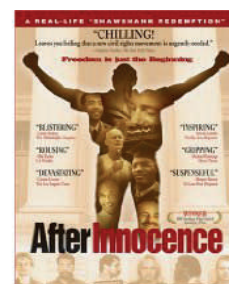
Watching the interviews with those fortunate enough to have been exonerated, it is impossible not to imagine yourself in their shoes and wonder how you would feel if the best years, or decades, of your life had been lost to a wrongful conviction. Overwhelming rage, bitterness and despair would seem natural human responses. But although tears of frustration well up in the eyes of more than one subject, no one in the film seems completely crushed by his misfortune. Bitterness is tempered by gratitude and a personal sense of the miraculous; all seven want to get on with the rest of their lives as best they can.

Reflecting on his time spent in jail, Scott Hornoff, a Rhode Island police officer who served 6 and a half years of a life sentence for first-degree murder, declares that the goal of prison authorities is to break prisoners' spir-

Intact. After his release, he went to court to win back his job and his back pay, and he won, but the police department has appealed the decision. Like many in the film, he is now a staunch advocate for the innocent.

Three men in the film - Calvin Willis of Louisiana, Wilton Dedge of Florida, and Nicholas Yarris of Pennsylvania - were imprisoned for more than two decades; Mr. Yarris spent most of that time in solitary confinement. The movie observes the three-year struggle that finally led to Mr. Dedge's release in August 2004; the state had opposed his release because his DNA tests were taken five years before the law provided for such testing. Mr. Dedge's case is the film's most flagrant example of embarrassed justice officials throwing up roadblocks.

The film cites research, based on 70 DNA exonerations, that points to



mistaken identity as the most common factor leading to a wrongful conviction. It offers a graphic example in the case of Ronald Cotton of North Carolina, who served 11 years for rape and burglary based on the eyewitness testimony of Jennifer Thompson-Canino identifying him in a police lineup as her rapist. When another man confessed to the crime 11 years later, DNA evidence bore out the confession. Mr. Cotton was released, and he and Ms. Thompson-Canino have become friends. Her story, sorrowfully told on camera, illustrates the chilling fact that even the most positive eyewitness identification can be wrong.

HELLO TRUTH!

Hello Truth!

Poem By Robert McClendon,
7th Ohio Exoneree
Dated: July 24, 2008

Hello Truth!

You've been there all the time.
But some people don't want to see you.
Some people don't want to believe you!

Hello Truth!

We fight for you.
We fought because of you.
But there are those who live with the lie.
Those who sleep with the lie!

Hello Truth!

They played hide and seek with you and the
proof.

But when surrounded by lies and deceit.
No wonder it took so long to find you!

Hello Truth!

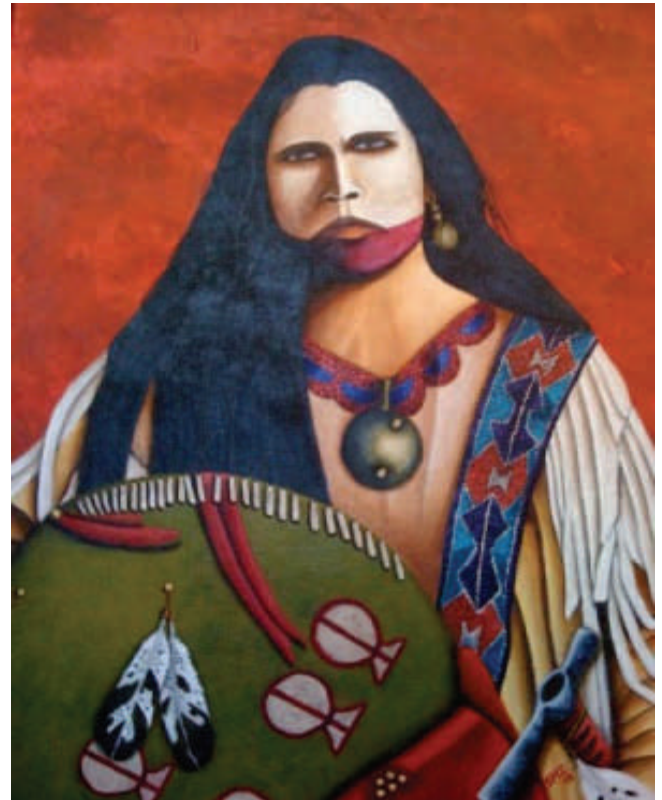
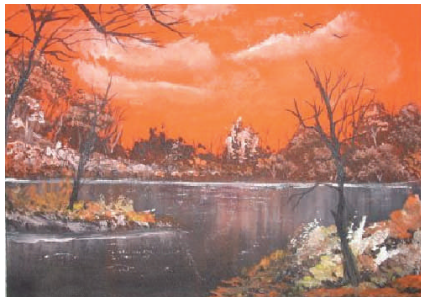
With God's armor you call to dress me.
I knew in time you would bless me!

Hello Truth!

ART CONTRIBUTIONS

The OIP receives a number of art contributions from inmates and other individuals concerned about the innocence movement every year. These pictures show just a few of the pieces that are part of the growing OIP Art Gallery.

Pieces, clockwise from bottom left include, "Sunset" from David Wayne Allen, "Rivers Edge" from David Wayne Allen, "Imprisoned Ohio" from Ashley Kuehner, "Bird" from Unknown contributed by Eric Johnson, and "As Long as There Is One" from Roger Dean Gillispie.



Painting and inscription by Roger Dean Gillispie

"As long as there is one...."

This painting of a warrior was painted by a warrior, Dean "Spiz" Gillispie for a warrior, Mark Godsey, Who has fought, is fighting, and will continue to fight for the innocent, as long as there is one.

Lois and Richard Rosenthal Institute for Justice — Ohio Innocence Project

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Administrative & Policy Coordinator:
Katie Gallagher

INTERESTING NUMBERS:

- **4200**—The number of case review requests received by the OIP since 2003
- **700**—The number of new cases brought to the OIP for review in 2008
- **40**—The number of cases OIP has represented or is actively litigating
 - **232**—The number of US DNA exonerations
 - **7**—The number of DNA exonerations in Ohio

HOW YOU CAN HELP

ASSIST A NEW EXONEREE

When exonerees are released, they often own little more than the clothes that they are wearing. If friends and family are still around, they often shoulder the majority of the financial expenses of an exoneree through the first few months, purchasing clothes and toiletries for them, providing shelter and food, and helping them with their legal, medical, educational, and financial needs. The OIP aids exonerees where they can, but through your support, more can be done to help transition exonerees back into their communities.

Whether you support an exoneree with a direct gift, through a donation of gift cards, or a contribution of professional support to aid with medical or educational needs, your gift would be greatly appreciated.

If you would like to learn more about the immediate needs of new exonerees or the experiences of a new exoneree when released from prison, Robert McClendon, Ohio's seventh exoneree, would be happy to share his experiences. Please contact the OIP at 513-556-0752 to learn more about Mr. McClendon's speaking schedule with the OIP.

SUPPORT THE WORK OF OIP

In our fifth year of operation, the OIP is actively representing more inmates than ever before, which has grown our wish list. By contributing to OIP, which will support one of the items on our list, you can help make sure that we have the ability to secure the exoneration of the innocent men and women in Ohio who have enlisted our assistance.

Below are the costs of some of the most essential items that the OIP needs to operate:

Transportation expenses to visit an OIP client in prison: \$100-200

One month of **Postage** to correspond with inmates and family members: \$250

One month of phone calls on the **Inmate Phone Line**: \$500

Cost to obtain **Trial Records** for one case: \$750

One **DNA Test**: \$1500

Online **Case Management System** to manage client files: \$2500

DNA Testing for an entire case: \$4500

Office Copier: \$6000

TALK ABOUT OIP

One of the best things you can do, and the easiest, is **talk about the project**. Whether you're talking to friends and family about specific cases that you have learned about or you're contacting your government representatives to ask that they support issues highlighted by the project, please talk about us! Your communications are our best advertisements. Additionally, word of mouth is one of the most common ways that innocent people in prison learn about the OIP.

Contribute to OIP today by making an online contribution.

Visit www.Giveto.UC.edu and click **GIVE NOW!**