

SKEPTIC TURNED SAVIOR

The man who helped free Ricky Jackson brings a healthy dose of disbelief to the Ohio Innocence Project [BY BETH KARAS](#)

MARK GODSEY, WHO DIRECTED the Innocence Project team that freed Ricky Jackson, began his exoneration career as a skeptic.

He begrudgingly agreed to supervise the Kentucky Innocence Project in 2001 while an assistant professor at the Salmon P. Chase College of Law, just a few miles from downtown Cincinnati. Early in his tenure he met with two students who had just visited Herman May, an inmate whose case the innocence team had taken on. “When they told me how they looked into [May’s] eyes and just knew he was innocent, I thought, ‘Come on,’” Godsey recalls, describing his cynical eye-roll at the students’ apparent naïveté.

But the students were right; DNA evidence would soon prove that May was innocent of rape and sodomy. “By the end of that year, I had gone through a complete transformation,” Godsey says. He had become a believer, acknowledging that there are many innocent men and women in prison—though he still insists that you cannot detect someone’s innocence by simply looking into their eyes.

At 49, Godsey has a youthful energy about him; his passion for his work is obvious within minutes of meeting him. He co-founded the Ohio Innocence Project at the University of Cincinnati College of Law in 2003; since then, it has become one of the most successful groups of its kind in the nation, freeing 24 inmates who together served more than 450 years in prison for crimes they did not commit. The high-

stakes work is costly, time-consuming and frustrating, and it requires tenacity and compassion to persevere. Godsey has what it takes. Look no further for proof than his team’s work with Jackson, who walked out of prison on Nov. 21, 2014, after serving 39 years for a murder he did not commit. “Mark is a tireless champion of the wrongly convicted,” Jackson says. Not to mention “just a good all-around person.”

Godsey, a 1993 graduate of Ohio State University’s Moritz College of Law, served as an appellate-court clerk in Utah before joining the prestigious law firm Jones, Day, Reavis & Pogue for two years in Chicago and New York. On track for a coveted partnership, he chucked it in favor of gritty investigative and trial work as a federal prosecutor in the Southern District of New York, where he also helped mentor new staffers. Preet Bharara, who runs the office today, fondly recalls Godsey teaching him the ropes back in 2000 with complete commitment, even hobbling around on crutches, his leg in a cast because of torn tendons, to be there when Bharara interviewed witnesses.

After six years, Godsey returned to his hometown of Cincinnati to teach and raise a family. Following his time in Kentucky—where those eager students made him roll his eyes—he moved on to the University of Cincinnati College of Law. He and local lawyer and city-council member (and Cincinnati mayor) John Cranley founded the Ohio Innocence Project at the school. They got their first case in 2003



Godsey (above), director of the Ohio Innocence Project, also blogs about justice issues.

when Juana Gillispie, the mother of a man convicted of and imprisoned for the 1988 kidnapping, rape and robbery of three women in two separate incidents, reached out for help.

Roger Dean Gillispie, her son, had always maintained his innocence, and he had alibis for the two incidents. The initial detectives on his case had ruled him out as a suspect, saying Gillispie did not fit the physical description of the rapist that the victims had given. But a new detective put together a flawed photo lineup of possible suspects—Gillispie’s photo was larger, and against a different color background, than the other photos—almost two years after the rapes. The victims then identified him as the attacker. Gillispie was convicted in 1991 and sentenced to 22 to 56 years in prison.

The jurors never heard about the initial detectives’ dismissal of Gillispie as a suspect, and no forensic evidence tied Gillispie to the crimes. That gave his parents hope for an appeal, so they mortgaged their home, sold furniture, and raised all the money they could to pay for new lawyers, experts and investigators. Nothing happened until 12 years later, when a friend directed Juana Gillispie to Godsey.

It took Godsey and the Ohio Innocence Project team, composed mostly of University of Cincinnati law students, almost nine years to convince a federal judge that Gillispie had not received a fair trial—in part because some evidence had initially been withheld. But they did it. Gillispie was released from prison on Dec. 22, 2011. And though a county court ruled in 2015 that he could not be retried for the crimes, and it was upheld on appeal, a local prosecutor is now appealing that ruling. Godsey hopes that appeal will be rejected this year; by law, Gillispie’s record will be expunged and his name removed from sex-offender lists.

“There is no case that I have worked harder on in my career,” Godsey told the University of Cincinnati’s *UC Magazine*. “More than anyone, though, this case belongs to the UC law students. So many students through the years have poured their hearts and souls into this case. So many of them have cried with Dean and his mother, or held their hands. Without their passion and inspiration, this victory would not have happened. Student idealism and passion is the lifeblood of the OIP.”

Today, Godsey oversees four staff attorneys,

20 law students and two administrative assistants who review about 500 applications a year from Ohio inmates claiming innocence.

Litigation of these cases can last a decade or more. Godsey and the staff attorneys supervise the students, who largely handle the labor-intensive casework. Courtroom battles take two tracks: where the staffers are convinced of an inmate's innocence, or where they are not sure but are suing to do more scientific testing. (The OIP has sued for more testing—usually DNA—in about 100 cases. If the testing proves a client's guilt, the project stops handling the case.) Godsey estimates that most of their cases take five to nine years to resolve, regardless of the outcome.

His standards are straightforward. "I tell my students to fight the bias, fight their instincts," Godsey says, commenting on the essence of why wrongful convictions occur. "Stay objective as long as you can. It's a message for everybody."

Godsey believes in educating both students and participants in the justice system—judges, police and prosecutors—about where and how arrest and prosecution errors can occur. Often they are simple mistakes, he says, not actions intended to harm an innocent person—though that can occur.

In his book *Blind Injustice: A Former Prosecutor Exposes the Psychology and Politics of Wrongful Convictions*, to be published later in 2017, Godsey explains how human error can result in the unjust convictions of innocent people, how tunnel vision and the tendency to interpret new evidence as confirmation of one's existing theories can corrupt criminal investigations and lead to tragic results. He notes:

"We as a society are in collective denial about our biases, misperceptions and memory problems. Prosecutors, judges, police officers, jurors, witnesses, defense attorneys, media reporters—everyone—has bought into the myths of the system and confidently goes about their business unaware of the thin ice they walk upon. Though new breakthroughs in science and psychology are quickly eroding the myths of the past, players in the system by and large ignore them, resist the 'new' and confidently assert their opinions in ignorance of their flimsy foundations."

Godsey's interest in exoneration extends beyond the classroom and the courthouse. Together with former Ohio attorney general Jim

Petro, he persuaded state lawmakers to pass what is known as the Innocence Protection Act, designed to minimize the risk of error. Enacted in 2010, the law requires that evidence be preserved for future DNA testing until the inmate is out of prison or for 30 years, whichever is longer, and improves access to the evidence. (Prosecutors have been known to throw up roadblocks to post-conviction DNA testing.) The law encourages, though does not require, police departments to record interrogations on video, and it changes procedures for more-reliable eyewitness identifications. Godsey calls the statute a good start and expects that the law will be updated and improved in the years to come.

He is also extending his influence beyond the Ohio River. Along with Justin Brooks, the director of the California Innocence Project, Godsey co-chairs the International Committee of the Innocence Network. He travels to Europe and Asia, lecturing about wrongful convictions and minimizing legal mistakes. And he helps set up Innocence Projects in other countries. At home, he lives with his wife, attorney Michele Berry (who also volunteers at the OIP), their toddler son and two children from his previous marriage.

His work garners high praise from his peers. Godsey's team, notes Cincinnati law professor and dean emeritus Louis Bilonis, is "doing such important work, the kind of work that redeems your belief in justice . . . and in the system in an honest and forthright way." Says Cincinnati mayor John Cranley, "Mark is doing his life's calling. He's making the world a much better place."

Godsey is hopeful for the future of the judicial system, but the skepticism that greeted his first law students won't let him rest on the laurels offered by his colleagues.

"As long as humans are in charge of the system, there will be human error. We need to make reforms to try to do the best we can, be as aware of these problems," he says. "But they're not cures. It's just an awareness. We'll never be able to get rid of this problem completely. All I can ask is that we do our best. We're not doing our best."

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CASE STUDY: CLARENCE ELKINS

A Battle Against Family

A 6-year-old's shaky testimony and pressure from police landed her uncle behind bars for life. Mark Godsey and the Ohio Innocence Project took on the case *BY BETH KARAS*

In June 1998, an intruder raped, strangled and beat Judy Johnson, 58, and her granddaughter Brooke Sutton, 6, in the Akron suburb of Barberton, Ohio. Johnson died; the child somehow survived and was able to tell police that the attacker "looked like Uncle Clarence." Based almost exclusively on those words, Clarence Elkins—Johnson's son-in-law, Sutton's uncle—was arrested, convicted and sentenced to life in prison. Within four years, the child recanted her testimony, saying the police persuaded her to doubt her uncle's innocence.

A court refused to accept the child's word, however, believing she had been pressured by her family. Elkins remained in prison. Meanwhile his wife (and Johnson's daughter), Melinda Elkins, embarked on a campaign to exonerate him. She began educating herself about criminal science and surreptitiously collecting DNA samples (on beer glasses and cigarettes) from possible suspects. She could not afford to get the samples tested, though.

The case caught the attention of Mark Godsey and the Ohio Innocence Project. Godsey persuaded a DNA-testing firm to analyze Melinda's samples as well as those collected at the crime scene for \$25,000, half the normal cost. The first round of testing showed that Clarence's DNA did not match newly discovered DNA samples at the crime scene, and it revealed DNA that belonged to someone else—they just didn't know whom. Godsey assumed that would exonerate Clarence. But prosecutors came up with an alternative contamination theory to explain the mystery DNA. Then a judge refused to order a new trial, saying the evidence wasn't sufficient to change a jury's deci-

sion. "It made no sense. Either they were crazy or I was," said a frustrated Godsey.

He called Elkins at the prison to inform him of the setback. "I had felt punched in the gut and started crying when telling him the news. Clarence had to be the

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one to tell me everything will be OK and give me a pep talk. He told me that justice will win out in the end; he has faith. And he was calm, while I was a mess."

Next up: a big break. The investigative team learned that a man named Earl Mann, who had been convicted of raping three young girls, had dated Johnson's former next-door neighbor. Mann, by coincidence, was serving time in the same prison as her husband, Clarence. The next move was for

Clarence to somehow get a DNA sample from Mann. For nearly two months he walked around with a clean tissue, waiting for his chance. He finally got it when Mann left a cigarette butt behind in a prison ashtray. Elkins wrapped the butt in the tissue, put it in a baggie and stuck it inside his Bible in his cell before finally sending it on to his attorney. Mann's DNA matched the DNA found at the crime scene. "Wow! I'm going home," thought Elkins.

But there was more work to do. Godsey kept the DNA match a secret from local prosecutors and the police until he could find someone he trusted to help him with the next court battle. Ohio's attorney general, Jim Petro, listened to Godsey's arguments and then asked former homicide prosecutors in his office to review the case. "They concluded Clarence Elkins was most likely innocent of crimes for which he spent seven years in prison," Petro said. He agreed to join Godsey and the OIP in the litigation to exonerate Elkins. In the end, the Summit County prosecuting attorney agreed that Elkins was innocent and that Mann was the real assailant. Elkins was released on Dec. 15, 2005. Two days later, Godsey drove some 250 miles to take him to dinner. "It meant the world to me," Elkins recalled recently. "He bought me a few changes of clothes . . . shirts, jeans. To this day, he's my best friend."

Elkins had become the first successful exoneration case for Godsey and the Ohio Innocence Project. He accepted a multimillion-dollar settlement from the state and county, and he later remarried. Today he meets regularly with other Ohio exonerees for dinner, companionship and support.