



THE CASE OF INMATE NO. A246292

DEAN GILLISPIE
HAS SPENT
20 YEARS IN
PRISON FOR
KIDNAPPING
AND RAPE.
JIM PETRO '70
BELIEVES
HE IS INNO-
CENT— AND
HAS MADE IT
HIS JOB TO
FREE HIM.
BY ALEXANDER
GELFAND
ILLUSTRATION
BY JON KRAUSE

**“THIS IS DUMB.
I’M JUST GOING TO
BREAK THE LAW.”**

And with that, Jim Petro ’70—former auditor and attorney general of Ohio, former Cuyahoga County commissioner, one-time candidate in the Republican primary for governor of the state, and a lawyer for nearly 37 years—made a left turn of questionable legality at a traffic light in downtown Dayton.

In his defense, the light had been red for a while, and Petro had good reason to be in a hurry. It was 8:00 a.m. on the Monday of Thanksgiving week, and he and his wife, Nancy Bero Petro ’70, were heading to the Montgomery County Court House to attend the latest hearing in the case of convicted rapist Roger Dean Gillispie: Petro as pro bono co-counsel with the Ohio Innocence Project, which is pushing for a new trial that would spring Gillispie from Lincoln Correctional Facility, where he has been imprisoned for the past 20 years; and Nancy as a witness for the defense. (Gillispie himself would remain in his cell.) The rear seat of their silver Toyota Avalon was occupied by an enormous poster Nancy had made demonstrating the numerous similarities between the perpetrator in the Gillispie case, and the man whom Petro believes actually committed the crimes. Needless to say, husband and wife are both convinced that Gillispie is innocent.

Roger Dean Gillispie—Dean to his friends—did not match the physical description of the perpetrator whom the victims originally described to the police back in 1988 when the crimes were committed. That man was a smoker with reddish-brown hair, a deep tan, and noticeable acne along his jaw line; he wore a chain and medalion around his neck, and had no chest hair. Gillispie, whose hair is now completely white, was already going prematurely gray—his high school nickname had been “Silver Fox”—and he was so fair that he burned rather than tanned. His skin was clear, his chest hair was so thick that he couldn’t wear jewelry around his neck, and he so disliked the odor of cigarette smoke that he kept a “No Smoking” sign in his truck. In addition, Gillispie was out of town on a camping trip when two of the victims—twin sisters, abducted in the parking lot of the Dayton Mall—were forced at gunpoint to perform oral sex. And he had already been eliminated as a credible suspect by two detectives in the Miami Township police department.

In 1990, those detectives received a tip from Gillispie’s

former supervisor in the security division at the local GM plant. Gillispie and his supervisor did not get along, and shortly after Gillispie was fired, his supervisor presented Gillispie’s employment photo to the detectives, claiming that it resembled the composite police sketch of the Dayton-area rapist that had been posted in the plant lunchroom for nearly two years. They disagreed.

But the supervisor didn’t give up so easily. When the senior detective on the case retired later that year, the supervisor tried again with his replacement—a 22-year-old rookie who was also the son of the chief of police. This time, Gillispie became the prime suspect.

Petro believes that the young detective batted onto Gillispie in an effort to make his bones in the department by solving a cold case. In any event, Gillispie was indicted by the Montgomery County prosecutor and convicted on all charges in 1991. A second trial was ordered months later when new physical evidence came to light, but while the jury initially hung 8-4 for acquittal, Gillispie was ultimately found guilty yet again.

Despite a growing body of exculpatory evidence—including the discovery of an alternate suspect who does closely resemble the victims’ descriptions, and who has committed other offenses using the same modus operandi as the perpetrator in the Gillispie case—he has been in jail ever since. Petro is convinced that his client was wronged by the criminal justice system, and he is not alone. Just before Gillispie’s pre-Thanksgiving hearing, the *Dayton Daily News* published an editorial calling for former Governor Ted Strickland to either pardon Gillispie or commute his sentence. But after nearly twenty years’ worth of unsuccessful appeals, there seems little reason to believe that Gillispie will be freed any time soon.

JIM PETRO IS NO STRANGER TO WRONGFUL IMPRISONMENT.

Shortly after he became attorney general in 2003, he learned that the state of Ohio had still not made restitution to Anthony Michael Green, a man who spent 13 years in jail for allegedly robbing and raping a cancer patient at the Cleveland Clinic before being exonerated by DNA evidence. Petro reviewed Green’s case and swiftly authorized payment of more than \$500,000 to him.

Two years later, Petro intervened in the case of Clarence Elkins, who had been wrongfully convicted of raping and murdering his 58-year-old mother-in-law. It was, in fact, the first time that an attorney general had intervened in an Innocence Project case anywhere in the country. The Summit County prosecutor who had indicted Elkins fought Petro at every turn, and the battle to free the innocent man was played out in a series of dueling press conferences. Eventually, Elkins, too, was released on the basis of DNA evidence, and Petro became a crusader in the fight to free those who have been unjustly jailed.

As attorney general, Petro won legislative approval to collect DNA samples from every convicted felon in Ohio. “We beat our brains out against the prosecutors’ association getting that law passed,” Petro says. (Prosecutors argued that they would be overwhelmed by the number of DNA-based court challenges that would be brought in

DENISON MAGAZINE

Jim and Nancy Petro have dedicated themselves to freeing innocent men and women from prison.



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Attorney Mark Godsey (left) consults with Jim Petro as the pair fight to free Dean Gillispie from prison.

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the wake of such legislation. In reality, Petro says, only a small number of felons have petitioned for relief.) He frequently speaks to professional gatherings of lawyers and judges about the problem of wrongful conviction, and he recently helped pass Senate Bill 77, a package of criminal justice reforms that are intended to keep innocent people out of jail. He and Nancy have written a book, *False Justice: Eight Myths that Convict the Innocent*, in hopes of spurring similar reforms across the country, and Petro continues to use his legal expertise and high profile in Ohio politics to push for the release of innocent men and women. Not long ago, he helped negotiate a \$2.57 million settlement for Ray Towler, who spent nearly 29 years in jail for a rape that he did not commit.

There are plenty of cases to argue. Estimates vary, but most experts believe that between .5 percent and 1.5 percent of the nation’s inmates should never have been convicted. In a total prison population of 2 million, that adds up to 10,000 to 30,000 cases of wrongful imprisonment, with 250 to 750 in Ohio alone. What this means in states that sanction capital punishment is even more troubling. Ironically, Petro was instrumental in reinstating the death penalty in Ohio in 1981, when he was a member of the Ohio House Judiciary Committee—and the irony is not

lost on him. “I can accept the idea of the death penalty,” he says, “but I get real antsy about the idea of a mistake.”

Gillispie’s case is different from many of those that Petro has previously championed, however—and not in a good way. For one thing, DNA cannot save the man: the physical evidence that was collected from the victims proved inconclusive, and the one item that could have decisively cleared him—a T-shirt stained with the rapist’s semen—disappeared long ago. Meanwhile, Petro and Mark Godsey, the University of Cincinnati law professor who leads the Ohio Innocence Project, have faced stiff opposition not only from the Montgomery County prosecutors who continue to insist that Gillispie is guilty, but also from the judge who was placed in charge of deciding whether Gillispie ought to be granted a new trial. It’s been a tough, emotionally draining slog, and Petro takes it more personally than he does most cases.

“I feel anger and bitterness toward the people who did this to him,” Petro says. “When you have the kind of career I’ve had, lawyering as much as I have, you develop an intuition. And I am absolutely—*absolutely*—certain that Gillispie did not do this.”

Unfortunately, as Jim Petro can now attest, innocence is no guarantee of freedom.

“THAT’S A FELONY!”

Petro exclaims, as a naked infant crawls across the large-screen television in Gambits Bar and Grill at the Dayton Marriott. Apparently, showing too much baby skin on national TV—even if it’s part of an *America’s Funniest Home Videos* rerun—is a no-no.

Petro isn’t here to provide legal play-by-play for the evening’s entertainment, however. It’s the night before Gillispie’s hearing, and he and Nancy have driven down from their home in Columbus for a pre-court meal of burgers and beer with Mark Godsey and his students.

Having worked with Petro on the Elkins case, Godsey approached him again in 2007, just three months after Petro had left the attorney general’s office and returned to private practice, to see if he would join Gillispie’s legal team. Given the lack of DNA evidence, Petro was reluctant. Once committed, however, he threw himself into the case with characteristic intensity—driven not only by personal sympathy for Gillispie, but also by the conviction that the course of justice had been terribly perverted.

Many of the factors that lead to wrongful imprisonment raise Petro’s ire, from the bad science occasionally purveyed by expert witnesses who misinterpret physical evidence (botching a DNA analysis, for example, or misidentifying a hair belonging to a victim or a suspect), to the dubious assumptions held by jurors (only guilty people confess, the system almost never convicts an innocent person). Few, however, anger him as much as a prosecutor’s refusal to admit, despite mounting evidence, that a defendant might actually be innocent.

According to the American Bar Association’s standards of criminal justice, “the duty of the prosecutor is to seek justice, not merely to convict.” According to the Petros, however—and Jim Petro began his career as an assistant Franklin County prosecutor—many prosecutors simply focus on winning cases, which means putting people into prison, not setting them free. “The prosecutor’s role is somewhat conflicted,” Nancy says. “They’re supposed to prosecute on behalf of the state, but they’re also supposed to be our ministers of truth.” The situation is further complicated by our natural desire to achieve quick closure in cases involving heinous crimes, and by the adversarial nature of our criminal justice system, which pits prosecution and defense against one another in cutthroat fashion. “Put all that together, and that whole search for the truth sort of falls by the wayside.”

In addition to fighting Petro tooth and nail over the issue of allowing inmates to request DNA testing, prosecutors have mounted fierce opposition to virtually every case of wrongful imprisonment raised by the Ohio Innocence Project, one of several organizations around the country that seeks to identify and assist innocent inmates. At Gillispie’s last hearing in July, Petro became so incensed at the prosecution’s efforts to prevent a new trial that one of Godsey’s students was afraid the former attorney general would “throw down” in the judge’s chambers.

At first, the idea may seem silly. In 2009, Petro was diagnosed with throat cancer. Radiation treatments and surgery have led to a clean bill of health, but his voice

remains hoarse and raspy. “They cut your throat and drill into your voice box, right through the cartilage,” he says, pointing at a scar just to the right of his Adam’s apple. Still, he is a large man, with a tolerance for pain that must have served him well in his days as a varsity heavyweight wrestler; when years of running finally ruined his hips, he chose to replace both at once (“I didn’t want to go through that twice”), then refused any post-operative painkillers save for Tylenol and beer. So really, the thought of him throwing down with a prosecutor would be like a freight train colliding with a bus at a level crossing.

Yet the mood on this particular evening is fairly relaxed. There is, to be sure, talk of courtroom strategy, of subpoenas and witnesses, and also of Petro and Godsey’s efforts to argue Gillispie’s case in federal court, and to secure either a pardon or a commutation of his sentence from Governor Ted Strickland, whose term expires in January. But there is also much casual conversation about family and travel, along with some good-natured teasing when Petro, who is 63 years old, admits that he needs his son’s help to work his DVD player.

There is also talk of the innocent men whom Petro and Godsey have freed from prison. Men like Robert McClendon, who served 17 years for rape and kidnapping, and Clarence Elkins, who served seven and a half years for rape and murder. Men whom both Jim and Nancy describe using words like “nice” and “lovely.”

One would imagine that, after spending any amount of time in jail for crimes that they did not commit, these men would be anything but nice and lovely; that they would, instead, be bitter and angry and hard. Somehow, though, they have managed to forgive those responsible for their imprisonment, and to accept fate.

“It’s the only way they can survive,” Nancy says. “If they can’t get past that”—past the injustice, the lives cruelly interrupted, the day-to-day horrors suffered under Kafkaesque circumstances—“it would kill them.” Those horrors are never far from Petro’s mind, and the phrase “it breaks my heart” is often on his lips—as in, “it just breaks my heart that this man’s life was taken away from him.”

JUANA GILLISPIE IS SILVER-HAIRED AND WELL-SPOKEN,

a devout Christian who credits her son’s survival in prison to his faith in God. She’s dressed as if for church, in a white sweater, a black scarf, and pearl earrings. She is, in fact, standing outside Court Room 12 at the Montgomery County Court House, waiting to learn if this latest hearing will proceed, or if there will be yet another delay in the ongoing effort to free her child.

The case against Gillispie relied primarily upon eyewitness identifications that were made under unusual circumstances two years after the crimes were committed. The detective who conducted the photo lineup was the one who had decided to pursue Gillispie as a suspect after his senior colleagues had already dismissed him. He made sure that Gillispie’s photo stood out by virtue of its being larger than the others, and by placing it on a differ-

AS DNA-BASED EXONERATIONS BEGAN MOUNTING IN THE 1980S AND 1990S, RESEARCHERS DISCOVERED THAT 75 PERCENT OF WRONGFUL CONVICTIONS WERE BASED ON MISTAKEN EYEWITNESS TESTIMONY.

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ent colored matte background. He also told the victims that Gillispie was the suspect.

The Montgomery County Prosecutor’s Office declined to be interviewed for this article. When asked about these and other claims made by the defense, however, a spokesman for the prosecutors wrote in an email that “both the Montgomery County Common Pleas Court and Court of Appeals have thoroughly evaluated and rejected the allegations that Gillispie continues to make in order to undermine the testimony of his three victims. His guilt—legal and factual—was established at trial and has withstood the close and rigorous scrutiny of the courts.”

And so Gillispie continues to sit in his cell at Lincoln Correctional Facility, diverting himself with the carpentry and landscaping projects to which he has devoted himself during his long incarceration. A model prisoner, Gillispie has completed more than 12,000 hours of community service, raised more than \$12,000 for the Make a Wish Foundation, and won Best in Show at the Cincinnati Flower Show. Eight offers of outside employment awaited him at his last hearing before the Ohio Parole Board. Unfortunately, the board requires that inmates demonstrate remorse for their crimes, which is difficult to do when one denies having committed them.

And so Juana Gillispie takes this opportunity to make the point that even unreliable eyewitness testimony can be almost impossible to overcome.

“You could convict this guy right here,” she says to a second-year law student on the Ohio Innocence Project team, “Just get two people to say he did it.”

She may be right. In *False Justice*, the Petros point out that, historically, eyewitness testimony “has been the most valuable tool for solving crimes in convicting the guilty.” But because such testimony is so persuasive, it “often trumps alibis and strong conflicting evidence. Therefore, it is also the number one reason that the innocent sometimes get convicted of crimes they did not commit.” As DNA-based exonerations began mounting in the 1980s and 1990s, researchers discovered that 75 percent of wrongful convictions were based on mistaken eyewitness testimony. One study of 175 exonerations found that, in 38 percent of the cases, two or more eyewitnesses misidentified the same innocent person—a statistic that earned the dictum “an eyewitness is the best evidence” the number-five spot on the Petros’ list of myths.

But mistaken eyewitness testimony isn’t the only thing that lands innocent people in jail. The Petros identify six factors that can lead to wrongful conviction, including bad lawyering, faulty science, and government misconduct. More than one appears to have been at play in Gillispie’s case. For example, Petro and Godsey believe that the detective who secured Gillispie’s eyewitness identification not only mishandled the photo lineup, but also suppressed evidence that might have proven his alibi. (Reform Bill 77 would make it more difficult to commit such misconduct.)

Sitting in on this latest hearing, watching Godsey and Petro fight to free a man whom many believe has been wrongly imprisoned for nearly two decades, one couldn’t help but experience a sickening feeling in the pit of the stomach—a feeling that is equal parts sympathy and fear. The fear that, if Dean Gillispie could be torn from his life

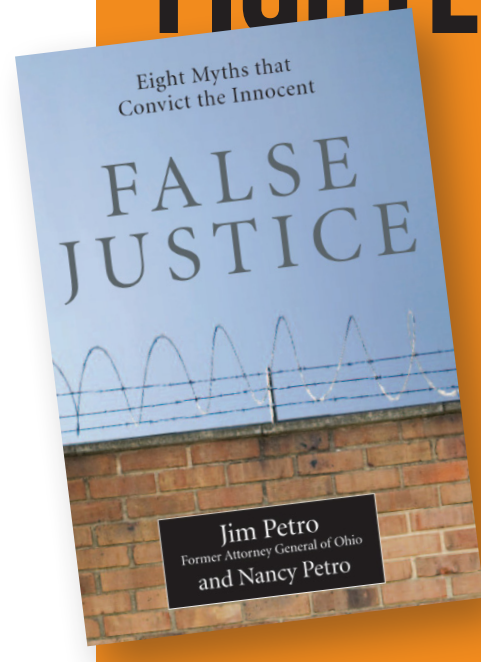
and his family by a gross miscarriage of justice, so could any one of us.

“It’s like you’re hit by a bus, and you’re a paraplegic for the rest of your life,” Petro says. Gillispie was 25 years old when he was first convicted, with no prior criminal record and a flock of devoted friends, many of whom continue to visit him, sometimes introducing him to the children they have had during his long incarceration. Recently engaged at the time of his arrest, he once talked about his plans for marriage, and about fixing up the home he had just purchased. And then, in a flash, everything changed.

PETRO GREW UP IN A WORKING-CLASS SUBURB OF CLEVELAND.

His father was the only lawyer in town, as well as a Republican ward boss and justice of the peace—the sort who declined to cash the \$10 checks he received for performing wedding ceremonies. Petro joined the Franklin County prosecutor’s office straight out of law school—his first job involved prosecuting a rape case—but left to found a law firm with his father and brother, and to begin his steady ascent in Ohio politics. Yet regardless of how far he has climbed—his throat cancer preempted a run for the Ohio Supreme Court, and he recently was

FREEDOM FIGHTERS



DENISON MAGAZINE

named the chancellor of the Ohio Board of Regents by newly elected Governor John Kasich—Petro seems never to have lost his ability to empathize with others, or his fundamental sense of decency and fairness. Those small-town virtues seem to underlie the indignation, bordering on fury, that Petro feels when confronted with the awful mistakes that have been committed by a justice system to which he has devoted his entire life.

Not that Petro would ever be mistaken for a small-town lawyer. His demeanor at Gillispies’ hearing was instructive. Godsey, a former federal prosecutor, was efficient to the point of brusqueness; his affect remained neutral, but he had a knack for illustrating how absurd he considered the state’s claims to be by asking just a few, quick questions. Petro, on the other hand, seemed relaxed and expansive, even when he wasn’t talking. Leaning back in his chair, his long arms spread wide, he laughed whenever the prosecution said something he considered laughable, and gave the overall impression that he owned the place.

The person actually running the show in Court Room 12 that day was Judge A. J. Wagner, and he was not inclined to favor the defense. The prosecution asked for additional time to prepare for two of the four witnesses Petro and Godsey had subpoenaed, and Wagner consented. A continuance was scheduled for December 20, and the judge committed to rendering a decision on whether to grant the motion for a new trial by year’s end. It wasn’t

the worst thing that could have happened—Wagner could have denied the motion then and there—but it wasn’t the best, either. On Dec. 20, Petro and Godsey presented their remaining witnesses and made their final case for a new trial. On Dec. 29, Wagner denied the motion.

The story was not over. Days after rendering judgment, Wagner retired from the bench. On Jan. 7, Petro and Godsey submitted a motion for reconsideration of the ruling with Wagner’s replacement, Judge Steve Dankof—a man whom the *Dayton Daily News* argued “would have every reason to grant a motion for reconsideration.”

There is, of course, no guarantee that Dankof will do so—no guarantee that any of the legal avenues so doggedly pursued by Petro and Godsey, or any amount of public support, will see Roger Dean Gillispie out of jail any time soon. No one knows this better than Gillispie’s lawyers and family. Which is perhaps why every turn in this case, whether a minor victory or a minor defeat, seems touched by the same pall of weariness.

“We’re so tired,” Juana Gillespie said outside the courtroom her ex-husband, Roger, standing quietly by her side. “We’re so tired. 20 years of this ...”

“It breaks my heart,” Petro said.

Alexander Gelfand is a freelance writer based in New York. He was written for The New York Times, The Chicago Tribune, and The Economist.

Wrongful imprisonment is a living nightmare for thousands of Americans. So it’s only fitting that the impulse to write a book about the subject struck Nancy Petro in the middle of the night.

“It woke me up,” Petro says. “I’m a person of faith. I took it as a call to do this. In the morning, I told Jim, ‘Guess what? We’re writing a book.’”

Despite Nancy’s background in editing and publishing—she ran her own marketing firm for 20 years and launched a national high school sports magazine—it wasn’t quite that easy. She describes the first draft of *False Justice: 8 Myths That Convict the Innocent*—a dense, and essentially unsellable, collection of facts and figures presented in the third person—as “the research paper from hell.”

“The biggest challenge was to make it a good read,” says Nancy, a member of Denison’s Board of Trustees. The turning point came when she and Jim decided to present the narrative in his voice, incorporating elements of memoir and narrative nonfiction.

The book is still packed with information. There are lengthy asides on recent psychological insights into human memory, which teach us that eyewitness testimony is prone

to all manner of distortions. And there are plenty of statistics, afforded by more than a decade’s worth of DNA exonerations, demonstrating just how many innocent people are sent to prison, and why (somewhere between 10,000 and 30,000, mostly due to faulty eyewitness identification). But they are now tied together into a compelling story through the use of personal anecdotes culled from Jim Petro’s long political career, and by his gradual awakening to the problem of wrongful conviction.

The book presents two complementary arguments. The first is that wrongful conviction is made more likely by eight popular myths, including the wrongly held notion that everyone in prison claims innocence, and the false assumption that mistakes are dependably corrected upon appeal. The second is that six principal factors, ranging from mistaken eyewitness testimony to false confessions and bad forensic science, help land innocent people in jail. Both arguments are illustrated by actual cases of innocent men who Jim

Petro helped free from prison.

As Nancy Petro hoped, it all makes for a gripping read. But she and Jim both want *False Justice* to be more than just a page-turner. Ultimately, they hope that it will help shape public debate over the criminal justice system, and move more states towards the kind of criminal-justice reforms that were enacted last year in Ohio. Such reforms include ensuring that suspect interrogations are recorded for future review, and that photo lineups are administered according to strict protocols in order to prevent bias.

“The general public has more influence on public policy than they probably recognize,” says Nancy, who wants to influence the opinion not just of prosecutors and judges, but also of the ordinary citizens who vote them into office. “Over the past 30 years, conventional wisdom has had a big influence over the criminal justice system, which has veered to a very tough-on-crime stance, with ‘zero tolerance’ and ‘three strikes and you’re out.’ This is what the public wants.”

If that same public were better informed about wrongful conviction, it might once again exert its influence—this time, by helping to eliminate the tragic phenomenon for which *False Justice* is named.