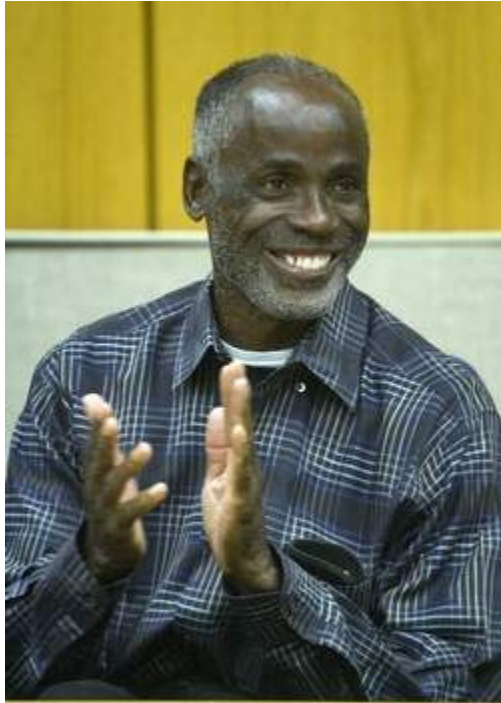


Judge meets man he helped to exonerate

By [Todd Ruger](#) Friday, May 14, 2010



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James Bain spent 35 years in prison for a 1974 rape conviction before new DNA evidence exonerated him.

A year ago, local **Senior Judge Thomas Gallen** penned a legal opinion that gave an inmate his chance to argue why a DNA test would prove his innocence.

The ruling helped lead to James Bain winning his freedom after 35 years in prison, using the DNA test to prove he was wrongfully convicted of rape.

“When I first read that the DNA test proved James Bain was not guilty, I thought to myself, ‘What a tragedy it would have been if we had not ruled in his favor on the appeal,’” Gallen said.

So when Gallen heard Bain would be speaking to Sarasota attorneys Thursday about his release from prison in December, he asked to sit at the table with Bain.

“I wanted to meet him, just to see the person,” said Gallen, former chief judge of the judicial circuit that includes Sarasota and Manatee counties.

Bain's case is the kind that inspires attorneys and judges. But behind the stories about the inmate and the attorneys who helped him is always a decision from a judge.

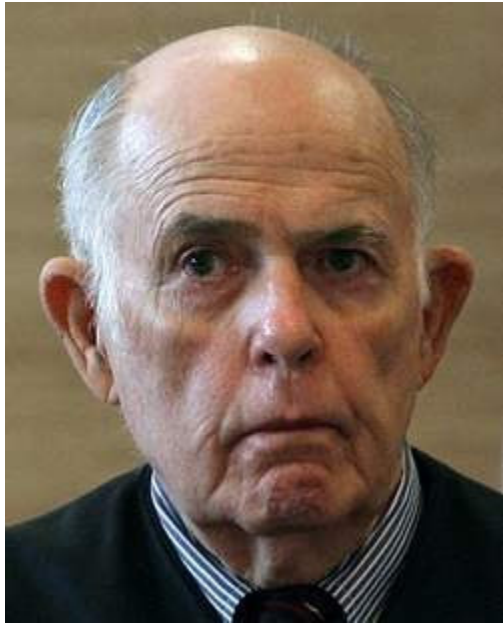
“I think it's more satisfying to help someone prove their innocence than it is to help prove they're guilty,” Gallen said.

The case also serves as a cautionary tale of why judges should take post-conviction motions seriously, Bain's attorney told a meeting of the Sarasota County Bar Association and Legal Aid of Manasota.

Bain petitioned judges four times to have the DNA from his 1974 conviction tested. Each time his request was denied for technical reasons, and he could never get a day in court to tell a judge why the test was important.

Gallen and two other appeals judges heard the case and ruled in April 2009, telling a circuit judge to hold another hearing and reconsider the denial of the DNA test.

Gallen's opinion got the attention of the Florida Innocence Project, who jumped to help argue Bain's case. Bain sought to retest the victim's underwear and pajamas, introduced by the state at trial because they were said to contain Bain's blood, saliva and semen.



Judge Thomas Gallen

Bain was released from prison in December after he was excluded as a possible source for DNA on the underwear. His 35 years of wrongful incarceration is the longest served of any of the 246 DNA exonerees nationwide, the Florida Innocence Project said.

Bain, now 54, was sentenced to life in prison for kidnapping a 9-year-old boy and raping him in a nearby field.

“It is not often that a judge's decision is indisputably scientifically determined to be correct,” Gallen said.

“I am glad we were correct.”