



THE INNOCENCE ALERT

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AARON MICHAEL HOWARD RELEASED

On August 5, 2008, Aaron Michael Howard walked out of prison as a free man for the first time in nearly twenty years.

Howard was serving a life sentence for the 1988 murder of Bobby Parker in Washington, D.C., but new evidence of innocence uncovered by his lawyers was so strong that the lead prosecutor withdrew from the case stating he could no longer defend the jury's guilty verdict. Howard accepted a deal no innocent man could turn down — his immediate release with a time-served sentence.

Mid-Atlantic Innocence Project (MAIP) board member Seth Rosenthal represented Howard and was instrumental in discovering the new information that led to Howard's release. With the pro-

bono resources of his firm, Venable LLP, and additional financial support from MAIP, Rosenthal obtained affidavits from Howard's co-defendants that cleared him of any blame.

Howard's victory is striking because the new evidence proving his innocence did not include DNA evidence. Instead, Howard's lawyers obtained statements from his co-defendants in which they confessed their participation in the murder, affirmed that Howard was not involved, and disclosed the true identity of the fourth participant. These statements, which decisively undermined the accounts of the two witnesses who testified against Howard, were corroborated by a vast amount of other evidence, including forensic evidence and testimony introduced at the original trial.

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Our mission is to seek the exoneration and release of persons who have been convicted of crimes they did not commit in the District of Columbia, Maryland, and Virginia.

A MESSAGE FROM OUR PRESIDENT



When Mike Howard walked out of prison this summer, we in the MAIP office felt a strange mix of joy, pride and frustration. The overriding emotion was

happiness for this innocent man finally set free after serving years in prison for somebody else's crime. It was hard not to shed a tear seeing Mike reunite with the woman who loved him even when he was behind bars and hearing them plan for their future. How could you not be impressed with the way Mike conducted himself following his release? He fielded questions from Fox, NBC, and a variety of print outlets with a quiet dignity. He didn't express anger toward his captors or his accusers, but rather hope and optimism for the future.

We're also exceptionally proud of the work of Mike's legal team, led by MAIP board member Seth Rosenthal of Venable. This was not an easy case. The lawyers devoted countless hours and resources to righting this wrong. But every time an innocent person leaves prison, it is a bittersweet moment. How did things go so wrong? Why did Mike have to lose so many of his prime years behind bars? And, in this case, why did the prosecutor insist that Mike consent to an "Alford-style" manslaughter deal before agreeing to his release? After all, the Assistant U.S. Attorney who had been on the case had recused himself from the matter in open court because he no longer could defend the jury verdict, citing the overwhelming evidence of innocence.

Mike's case is not the typical one you find at Innocence Projects around the country. DNA evidence did not prove his innocence. Over the past 15 years, more than 200 innocent prisoners have

been exonerated with the help of newly discovered (or at least newly tested) DNA evidence. Most of those cases involved a sex crime during which the actual perpetrator left physical evidence at the crime scene that could be tested later. It sounds fairly simple — find the old rape kit, subject it to the most exacting form of DNA testing available, determine whether the "right guy" is in prison and, if not, release him. Unfortunately, far too many of these "easy" cases have dragged on for 10, 15, even 20 years because of procedural barriers, lost evidence, intractable prosecutors and other problems.

The Mid-Atlantic Innocence Project was among the first legal organizations in the country to take on non-DNA wrongful conviction cases.

Mike's innocence was even harder to prove than most. The actual perpetrators of the horrible murder of Bobby Parker in 1988 did not leave their biological evidence behind to be tested later. Rather, the Venable legal team needed to piece together a case by interviewing crime scene witnesses from almost 20 years before, discrediting the testimony of eyewitnesses who had died many years ago by showing they could not have been at the scene, and getting declarations of his innocence from Mike's co-defendants who are behind bars. Needless to say, this was no small task. The case was exceptionally time consuming and expensive. The Venable lawyers alone have estimated that they spent more than 1,600 hours on the matter, amounting to over \$500,000 in billables donated to this case. Tens of thousands of additional dollars were spent on investigation.

We expect that more cases in the future will be like this one. The use of DNA technology in new criminal cases has become routine. Today, most cases involving biological evidence are tested in advance of a prosecution, hopefully preventing a wrongful conviction in the first place. And, while there still are many old convictions from the 70s, 80s and 90s to revisit (the VA retesting project being just one example of the tremendous potential for this type of exoneration), at some point in time most of the old cases of this type will have been reexamined. This does not mean that there will be any fewer wrongful convictions to correct, but that the cases will rely on more challenging, non-DNA evidence — witness recantation, exposure of a coerced confession or prosecutorial misconduct, reexamination of eyewitness accounts, etc.

The Mid-Atlantic Innocence Project was among the first legal organizations in the country to take on non-DNA wrongful conviction cases. We are uniquely positioned to be successful in the future in handling cases like Mike Howard's that do not involve DNA. But we also recognize the inherent complexity of these matters with the accompanying public relations challenges and financial barriers they present. In DNA cases, the innocent suspect is exonerated and often the actual perpetrator is identified at the same time. But in non-DNA cases, prosecutors who were reluctant to accept the reality of exonerations in DNA cases are even more reluctant to accept a defendant's innocence. Thus, victory is even harder to achieve on behalf of the innocent in those cases. While Mike's case may have been more time consuming and expensive than earlier DNA exonerations, and while the prosecutor exacted a high toll in demanding a plea despite overwhelming evidence of innocence, Mike's liberation is no less well deserved. ■

VIRGINIA OLD CASE TESTING

Since last year, MAIP's involvement in a Virginia project to perform post-conviction DNA testing in nearly 1,000 old cases has begun to ensure that this promising project ordered by former Gov. Mark Warner will live up to its full potential.

Between 2002 and 2005, five men were exonerated after DNA testing was performed on tiny clippings of evidence that unexpectedly were saved in Virginia Department of Forensic Science (DFS) case files between 1973 and 1988. Based in part on MAIP's urging, then-Gov. Warner ordered that DFS perform testing in every cases where evidence had been saved.

Although the project began nearly three years ago, it had proceeded largely in secret, with almost no oversight over the type of DNA testing being conducted, the selection of cases, and the dissemination of results. As MAIP began to learn more about the project, it became increasingly clear that the secrecy potentially could harm innocent defendants whose DNA was being tested as a part of this process.

Shawn Armbrust, MAIP's Executive Director, began working with allies in Richmond and at the Innocence Project in New York to alleviate the problems. The group's biggest concern was that Virginia authorities did not intend to notify the defendants in whose cases DNA had been located. The group became convinced that a reliable method of notifying these defendants was essential to ensure that they could obtain the representation necessary to protect their interests.

In February 2008, in accordance with the group's recommendation, the Virginia state legislature passed a law that required Virginia's Forensic Science Board (FSB) to notify those defendants who had DNA evidence subject to re-testing. The FSB

formed a subcommittee to develop a plan for implementing this notification requirement. The subcommittee crafted a plan in which MAIP would recruit and train pro bono lawyers to help locate and notify defendants about the process.

The plan was narrowly voted down. Instead, the FSB opted to notify defendants by way of a letter that alerted them to the existence of the project and suggested that they contact MAIP with any questions. The letters were sent to 400 of the nearly 1,000 affected defendants at the end of September.

Unfortunately, many of these defendants were hard to locate, having been released from prison years ago. In some cases, the only addresses available were decades old. As a result, many of the people who received the letters were not sure whether they were the intended recipient. In addition, the letter was written in a way that was hard to understand, particularly for people with limited education and no legal background.

The result was a flood of calls and letters from people who believed that Virginia was trying to use DNA testing to implicate them in crimes from the 1970s and 1980s. In addition to finding counsel for those defendants who have asked MAIP to help them pursue an innocence claim, MAIP will now need to recruit pro bono attorneys in many cases just to ensure that they correct people are located and that they understand the process and its potential implications.

"I'm happy that the FSB has at least attempted to notify the defendants who are part of this project," said Armbrust. "But it is disheartening that they chose such an ineffective method for doing so. It is frustrating that the problems I'm seeing with these letters are exactly the problems I predicted would occur." ■

In the past year, MAIP's involvement in policy work in the District of Columbia, Maryland, and Virginia has resulted in proposals or changes that will help prevent and correct wrongful convictions.

In Maryland, MAIP's three years of work with a coalition that included the Maryland ACLU and the state Office of the Public Defender finally resulted in the passage of legislation that addresses the videotaping of interrogations. The bill establishes the videotaping of interrogations as state policy and requires the state to help local jurisdictions obtain funding for videotaping, which had been a significant barrier to enacting this policy.

"Although the new law does not require videotaping, it will help reduce false confessions and ultimately will be embraced by law enforcement because having an accurate record of what takes place in the interrogation room ultimately tends to benefit police by reducing suppression motions and lawsuits against police," said Shawn Armbrust, MAIP's Executive Director.

In Virginia, MAIP advocated for a law that would have allowed defendants seeking post-conviction DNA testing to obtain more cutting-

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COVER STORY:

AARON MICHAEL HOWARD RELEASED

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Howard leaves prison a free man, but he unfortunately will not be considered "exonerated" in an official sense. While the Metropolitan Police Department detective who reviewed the case and the lead prosecutor on the case were convinced Howard was innocent, the United States Attorney's Office for the District of Columbia remained intent on prosecuting him. Facing the prospect of a second wrongful conviction, and having already spent two decades in prison, Howard accepted an offer to accept a manslaughter conviction without admitting guilt, earning immediate release for the time he had already served.

"The agreement is not perfect," Howard said. "Although it allows me to maintain my innocence, it requires me to accept a conviction for a crime I did not commit."

Shawn Armbrust, MAIP's Executive Director, agreed. "While we're thrilled that Mr. Howard has been released from prison, this case highlights the difficulties of convincing authorities of a defendant's innocence after conviction. It makes clear why we need to prevent wrongful convictions in the first place and keep working to educate law enforcement officials about the potential for error in our system."

Despite being unjustly stripped of his freedom, Howard harbors no ill-will. "I got God in my life, and that's who I rely on every day," Howard said. "I'm not hardened or nothing. If He can forgive people for the massive things they do, I know I can forgive for some little stuff." ■

LARRY FOWLKES & THE NORFOLK FOUR MISCARRIAGES OF JUSTICE

Larry Fowlkes was an innocent man who spent 13 years in a Virginia prison, the last four waiting for a Virginia governor to grant him a pardon.

Tragically, Fowlkes died in prison this spring, waiting for a decision that never came.

In 1995, Fowlkes was charged with a murder even though no physical evidence or eyewitnesses connected him to the crime, and even though a minister, a police officer and a dozen other witnesses confirmed that he was 40 miles from the scene during the crime. The Commonwealth's only evidence came from a snitch, who was a career criminal. But the jury that convicted Fowlkes was never told that prosecutors dropped numerous felony charges against the snitch in exchange for her testimony.

MAIP took on Fowlkes' case several years later and discovered that the snitch's family had evidence discrediting her fabricated claims; even the snitch eventually recanted her testimony, leaving nothing to support the conviction. MAIP filed a clemency petition on Fowlkes' behalf, but despite overwhelming evidence of innocence, the petition was ignored by two Virginia governors for four years.

"In the end, the courts and the clemency process failed Larry Fowlkes. Denied the freedom he deserved, it was his faith, his God that finally called him home," said Julia Sullivan, his lawyer and a former MAIP board member.

While Gov. Kaine failed to act in Fowlkes' case, he should remedy another miscarriage of

justice by granting full pardons to the Norfolk Four, former Navy sailors convicted of a 1997 rape-murder based on false confessions. Their confessions clashed with each other and with the physical evidence and were obtained after lengthy, coercive interrogations. The crime scene, autopsy, and DNA evidence prove that only one person, Omar Ballard, committed the crime. Ballard readily confessed to police and has sworn he committed the crime alone. Nevertheless, three of the four men are in prison serving life without the possibility of parole. The fourth man, who was convicted only of rape, served his entire 8 1/2 year sentence and has been released.

In 2005, lawyers at three national law firms led by two MAIP Board members filed a clemency petition in the Norfolk Four case several months before former Virginia Gov. Mark Warner left office; the petition has been pending before Gov. Kaine for three years.

"The Norfolk Four have waited over 10 years for justice. Each day they sit in prison for a crime that Omar Ballard committed by himself magnifies the wrong they have suffered. It is time for Gov. Kaine to set them free," said MAIP Board Member Don Salzman, one of the Norfolk Four attorneys. ■

MAIP THANKS the many law firms whose pro bono attorneys devote a tremendous amount of time to our work.

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FIRST ANNUAL AWARDS LUNCHEON

LEGISLATIVE VICTORIES

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Gov. Mark Warner and Julius Earl Ruffin

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On July 15, 2008, MAIP hosted its First Annual Awards Luncheon, honoring former Virginia Governor and Senate candidate Mark Warner as a Champion of Justice, because of his extraordinary commitment to exonerating innocent defendants.

During Gov. Warner's time in office, five innocent men were cleared of rape charges based on DNA evidence that had unexpectedly been saved in files kept by the Virginia Department of Forensic Science (DFS).

In 2005, Gov. Warner made history when he ordered DFS to perform post-conviction DNA testing in more than 1,000 cases in which such evidence had been saved. The review of DNA evidence in Virginia, which is still ongoing, was the first such review of its kind in the nation.

"Gov. Warner deserved all of the accolades he received," said MAIP President David Eppler. "It is not every day that an elected official has the courage to even pardon someone demonstrably innocent, let alone to affirmatively seek out instances in which the criminal justice system has made mistakes. We can only hope others take notice and follow his lead."

MAIP also honored Misty Thomas, a recent graduate of Georgetown University Law Center and MAIP's

former director, with its Defender of Innocence Student Award. Thomas graduated cum laude from GULC in 2008 and began working as the pro bono fellow at Howrey LLP this fall. While in law school, Thomas — a Public Interest Law Scholar — worked at the Criminal Justice Clinic, the Public Defender Service, the Washington Legal Clinic for the Homeless, and the Southern Center for Human Rights.

"No student deserves this award more than Misty," said Shawn Armbrust, MAIP's Executive Director, "and it was only fitting that she become the first recipient of what we intend to be an annual student award."

MAIP also welcomed four exonees to join in honoring Gov. Warner and Thomas — Honorary Board Member Marvin Anderson, Willie Davidson, Honorary Board Member Beverly Monroe, and Julius Ruffin.

Anderson, who was pardoned by Gov. Warner, met him for the first time and presented him with his award, thanking the Governor publicly and hugging him onstage, a wonderful moment that was the capstone on a great first event for MAIP.

The sponsorship of 25 law firms and attendance of more than 200 supporters helped MAIP net nearly \$100,000 from its first annual event. ■



Marvin Anderson, Misty Thomas and Gov. Mark Warner

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edge tests that were not available from the Virginia Department of Forensic Science (DFS). Under existing Virginia law, defendants seeking post-conviction DNA testing can obtain testing only at DFS, which limits the types of testing available. MAIP was particularly concerned about the unavailability of what is known as Y-STR testing, which often can provide exonerating evidence when other DNA tests cannot.

Although the law did not pass, MAIP's advocacy put pressure on DFS to adopt Y-STR testing and to speed up its implementation of other cutting-edge methods. These changes ultimately will benefit both MAIP's clients and prosecutors who seek to use these tests before trial to catch the perpetrators of crimes.

In the District of Columbia, MAIP has submitted testimony in favor of a bill that would require the Metropolitan Police Department to adopt best practices for eyewitness identification procedures. These practices are designed to ensure that eyewitness error, which has contributed to three wrongful convictions in D.C., is minimized.

At a September 30 hearing before the D.C. Council's Committee on the Public Safety and Judiciary, numerous law enforcement officials from other jurisdictions testified about the efficacy of the recommended reforms, and scientific experts from as far away as Great Britain testified about the importance of enacting them. ■

LAW SCHOOL UPDATE: UNIVERSITY OF VIRGINIA SCHOOL OF LAW

In June, the University of Virginia School of Law officially launched its Innocence Clinic, in which students working on cases in conjunction with MAIP will be supervised by Deirdre Enright, an experienced death penalty and habeas lawyer who also has worked on a high-profile Virginia innocence case.

"This is sort of the dream class if you're a law student because it involves great issues for research that are topical — DNA, new techniques in DNA, new testing, eyewitness ID, jailhouse informants, poor lawyering, poor prosecuting — it's all these great cutting-edge issues," Enright said.

UVA is the latest school affiliated with MAIP to begin offering students credit in conjunction with innocence work. Last year, Georgetown University Law Center and the William & Mary School of Law both launched programs that give students credit for this investigative work. Catholic University's Columbus School of Law and American University's Washington College of Law had already been offering such credit.

“ I know this will lead to more exonerations and to more young lawyers who have an understanding of how important this work is. ”

Next year, when the Washington & Lee School of Law begins offering practicum credit for MAIP-related work, every school with which MAIP works will offer credit for innocence work.

This development represents the culmination of several years of work by MAIP and supportive faculty members at each of our affiliated schools, who recognized that this work has important educational value and that MAIP's clients are better served when students are in a more structured environment.

"As someone who started this work as a student, I understand both how great it can be and how important it is that a formal classroom structure exist for supervising this work," said Shawn Armbrust, MAIP's Executive Director. "I know this will lead to more exonerations and to more young lawyers who have an understanding of how important this work is." ■

BOARD AND STAFF NEWS

Recently longtime supporter **DOUG WHAM** left the Board. Wham, a Deputy Public Defender for Arlington County, Virginia, had been involved with MAIP since its inception. In addition to serving on the Board from 2005-2008, he supervised Georgetown University Law Center student volunteers who helped investigate innocence claims. We thank Doug for his efforts.

MAIP recently appointed three new experienced and committed Board members.

DES HOGAN, a partner at Hogan & Hartson LLP, has a long-standing commitment to civil rights and criminal pro bono matters. He currently represents one of the Norfolk Four defendants, and was co-lead counsel in a highly publicized civil rights trial that resulted in the exoneration of 35 people who were convicted of crimes they did not commit. Hogan was honored for his work by the NAACP Legal Defense Fund.

BARRY POLLACK, a partner at Kelley Drye, is a former Assistant Federal Public Defender for the District of Maryland. Pollack led the pro bono representation of Martin Tankleff, an innocent man who was convicted in New York of murdering his parents. Pollack's work ultimately resulted in Tankleff's exoneration after 17 years in prison. In 2008, the New York State Association of Criminal Defense Lawyers recognized Pollack with the "Gideon Champion of Justice Award" for that work, and he also was listed in the 2007 and 2008 editions of *The Best Lawyers in America* and *"Washington, DC Super Lawyers."*

KATHRYN RUEMLER is a partner at Latham & Watkins LLP.

Before joining Latham, Ruemmler was the Deputy Director of the U.S. Department of Justice's Enron Task Force and was one of three lead prosecutors in the trial against Enron's founder, Kenneth Lay, and former CEO, Jeffrey Skilling. Ruemmler served as an Assistant United States Attorney from 2001 to 2007 and was recognized as a leading trial attorney in *Washingtonian* magazine's 2007 "Top Lawyers" list.

In June, MAIP welcomed **CHRISTIAN VAN BUSKIRK** as the organization's Development Associate/Project Assistant. He will focus on furthering MAIP's outreach and fundraising efforts.

"Chris was the clear choice for this position," said MAIP Executive Director Shawn Armbrust. "He is helping us improve our response time to prisoner inquiries, so that we can evaluate cases as efficiently and effectively as possible."

Van Buskirk joins MAIP from Howrey LLP, where he worked for two years as a Litigation Paralegal and was widely praised for his capabilities. His exposure to the innocence movement began in college, where he had the opportunity to work for legendary attorney Michael Tigar, who piqued Chris' interest in the criminal justice system and innocence issues. That interest was honed at the Catholic University of America, where he earned his bachelor's degree and worked under the guidance of a pre-law advisor.

The expansion of MAIP's staff was made possible through a grant from the D.C. Bar Foundation and the continued support of MAIP donors. ■



SPOTLIGHT ON A FIRM: LATHAM & WATKINS

Over the past year, MAIP has been thrilled to watch its partnership with Latham & Watkins flourish and grow.

Latham's connection with MAIP was initiated by former associate Rachel Yasser in 2007. As a law student, Yasser was actively involved with the Northwestern Center on Wrongful Convictions (CWC), where she successfully argued for post-conviction DNA testing on behalf of CWC clients. When she moved to D.C. to join Latham, she approached MAIP Executive Director Shawn Armbrust, the former case coordinator at the CWC, about ways in which Latham might perform pro bono work on behalf of MAIP clients.

Armbrust quickly brought Latham on board in the case of a Virginia prisoner who was seeking DNA testing of evidence from his decades-old rape conviction. Yasser assembled a team of attorneys, including Latham partner Kathryn Ruemmler and former associate Cameron Smith, and they successfully obtained DNA testing in the case.

Yasser then worked to recruit an impressive contingent of Latham attorneys who are interested in representing MAIP clients. "These

cases provide a unique opportunity for associates to directly interact with and advocate on behalf of clients, all while contributing to a worthwhile cause. An ongoing MAIP partnership fits well with Latham's generous pro bono model, and also provides invaluable training for associates," said Yasser, who just began work as an Assistant U.S. Attorney in Baltimore.

The partnership has indeed blossomed.

Latham associate Sonia Nath and partner Donald Remy are currently representing a MAIP client who was convicted of a 1987 Baltimore County rape and murder. Nath has taken the lead in tracking down the remaining physical evidence in the client's file and in drafting a petition seeking DNA testing. "Helping our client access the benefits of modern DNA testing has been one of my most rewarding experiences at Latham, and I hope to continue working with MAIP in the future," reflected Nath.

Remy offered, "I believe that every attorney has a professional responsibility to make a positive difference in the lives of others and bring about a constructive contribution to our system of justice. Our pro bono partnership with MAIP

provides Latham attorneys with the wonderful opportunity to do just that, and I am delighted to participate in it."

Earlier this year, when MAIP was searching for new lawyers to join its Board of Directors, it turned to Ruemmler, who supervised Yasser on her MAIP case, previously served as the Deputy Director of the U.S. Department of Justice's Enron Task Force, and was one of three lead prosecutors in the trial against Enron's founder and CEO.

Ruemmler noted, "I am honored to join the MAIP Board and to contribute to its important work. All of us who participate in the criminal justice system have an obligation to strive for a system free of wrongful convictions. MAIP's work is an invaluable part of that shared goal and provides a voice to those defendants who the system may have failed."

In July, MAIP named Latham a Champion of Justice in recognition of its \$5,000 contribution to MAIP's First Annual Awards Luncheon. Latham has expressed its interest in taking on as many MAIP cases as possible, particularly those involving DNA. MAIP is looking forward to continuing to work with Latham in the years to come. ■

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