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Virginia Supreme Court Agrees to Hear Aleck Carpitcher Case

In September, the Virginia Supreme Court agreed to consider the case of Aleck Carpitcher, a MAIP client who was wrongfully convicted of child sexual abuse after his girlfriend's 11-year-old daughter falsely testified against him. Carpitcher is currently serving a 38-year sentence.

Carpitcher's case will be the first case heard by the Court under the writ of actual innocence statute, which was enacted in 2004.

Carpitcher's Petition for a Writ of Actual Innocence was denied by the Virginia Court of Appeals in January in an opinion that interprets the actual innocence statute in a way that could make it impossible for defendants to be exonerated based on witness recantation even when the sole witnesses against them have recanted.

In a brief filed by volun-

teer attorneys **George A. Somerville** and **Robert A. Angle** of **Troutman Sanders LLP**, MAIP Board member **Julia Sullivan**, and **Kelly Makins Baugh**, Carpitcher urged the Virginia Supreme Court to reconsider

"The outcome [of this case] will determine whether a much-needed reform ... will function as it manifestly was intended to do."

-Steve Northup

the Court of Appeals' interpretation of the statute.

The alleged victim, known as "H.L.," testified at trial that Carpitcher had

abused her on at least three occasions. H.L. was the prosecution's only witness at the 35-minute trial.

Seven months after the trial, H.L. told her therapist that she had fabricated her allegations against Carpitcher because she missed being able to spend time with her mother.

During the next year, she formally recanted her testimony in a letter to the governor, a videotaped statement to Carpitcher's counsel, and two affidavits.

Carpitcher was unable to assert his claim of innocence until Virginia enacted the actual innocence statute, which allows prisoners to challenge their convictions at any time based on evidence that was not available to them at the time of trial. Carpitcher promptly filed a petition under the statute

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MAIP Fights to Compensate D.C. Exoneree Suit Could Be First Tried Under D.C. Compensation Statute

In August, the D.C. Superior Court ruled that Steven DeWitt's suit against the District of Columbia for damages arising from his 13-year wrongful imprisonment should proceed to discovery and trial.

The ruling was a victory for **Akin Gump** partner **Michael A. Fitzpatrick** and litigation associates **David L. Axelrod** and **James E. Sherry**, who are representing

Dewitt for purposes of seeking compensation.

DeWitt was convicted of a 1991 murder at a Northeast D.C. gas station. Reliable evidence pointed to another man as the killer, but four D.C. detectives secured DeWitt's conviction by suppressing some evidence, fabricating other evidence, coercing a de-

(Continued on page 3)



A Message From Our President: Moving Beyond DNA



If life imitated art, or at least if life imitated television, then "CSI America – Solving Injustice" would portray a hip, attractive crime scene analyst who, deploying amazing technological gadgetry, examines decades-old crime scenes, identifies the real criminals, and frees wrongfully convicted prisoners. Although I may pitch this idea to Fox for an upcoming season as part of a novel fundraising plan for the Mid-Atlantic Innocence Project, righting these wrongs in real life is more likely to be a frustrating, emotionally grueling marathon than a eureka moment. Most wrongful convictions cannot be remedied by conclusive scientific proof of innocence, because most criminal convictions are built upon human – and thus fallible – evidence. While DNA testing has saved the lives of many wrongfully convicted prisoners and has exposed flaws in our justice system, it is not a cure-all. And, so far, the certainty that DNA testing brings has not yet completely convinced those who hold the power to right these wrongs (the courts, parole commissions, and governors) that broader problems exist that demand attention.

DNA evidence has opened a window and cast a harsh light on the shameful failings of our criminal justice system. Nay-sayers have long claimed that the American criminal justice system does not mistakenly convict the innocent. They have argued that police and prosecutors would not pursue charges unless they possessed powerful evidence of guilt. They have insisted that jurors and judges could distinguish between the guilty and the innocent. And they have always fallen back on the claim that the appellate system and the unlimited power of executive clemency would weed out those few cases that fell through the cracks. Even when convictions were overturned, the nay-sayers often suggested the exonerated were really still guilty.

DNA testing has thrown open the window and put the lie to those claims. In the last 15 years, 185 wrongfully convicted people have been exonerated by DNA. That's about one exoneration a month. Most of these prisoners were freed after decades in prison. Many were sentenced to death. And time and again, these exonerees had already lost their cases in the courts or had their requests for clemency denied when DNA proved their innocence.

You would think that the nay-sayers would concede that the DNA exonerations are only the tip of the iceberg, but that is not what has happened. DNA has certainly opened the window, but the harsh light has not shined throughout the whole house. DNA evidence has exposed the most obvious injustices, but it is not a panacea for the problems in the criminal justice system. DNA evidence often is found in rape or sexual offenses, but in most criminal cases, there is no DNA evidence. Only about one percent of prisoners are serving time for rape or sexual offenses, but the vast majority of DNA exonerations involved convictions for rape or other sex crimes.

The nay-sayers who continue to profess absolute

confidence in the accuracy of the criminal justice system say that DNA exonerations are the isolated and unusual cases where the system made a mistake. They say that with DNA as the failsafe, the system is working and the mistakes are being caught. But can any rational, honest person really believe this is true? Why would anyone think that the police only obtain false confessions in rape cases, but not in the vast majority of cases where no DNA evidence exists? Why would anyone believe that victims and witnesses only mistakenly identify innocent suspects in a sexual assault? Why would anyone conclude that police or prosecutors only hide exculpatory evidence in sex crimes? Why would anyone imagine that jailhouse informants only snitch on innocent men accused of rape?

The reality is that there are many, many prisoners with compelling claims of innocence, but who have no chance for the DNA Hail-Mary because no biological evidence exists in their cases. These prisoners face numerous, daunting obstacles that block their paths to freedom.

Take Larry Fowlkes. He was convicted of a 1995 Virginia murder based solely on the uncorroborated testimony of a career criminal and a serial thief, Sheila Barbour Stokes. Fourteen witnesses — including a police officer, the officer's wife, and a minister — testified that Larry Fowlkes was at a church picnic in another town at the time of the murder; in the face of this evidence, the prosecutor had to concede at trial that Fowlkes was not present at the crime, but the prosecutor insisted Fowlkes was an accomplice. Stokes testified she heard Larry Fowlkes and others planning the crime. She also claimed she helped Fowlkes clean blood from his car after the crime, although police technicians found no trace of blood in the car. What the jury did not know was that Stokes had a powerful incentive to implicate Larry Fowlkes. Stokes had been charged with stealing, forging and cashing her own sister's welfare check. The prosecutor offered to drop those charges in exchange for Stokes' testimony against Larry Fowlkes. At trial, Stokes and the prosecutor misled the jury by denying any deal existed.

Procedural barriers prevented Fowlkes from presenting the significant new exculpatory evidence he uncovered, including Stokes' later admission that the prosecutor did drop her charges in exchange for testifying against Fowlkes, in post-trial challenges to his conviction. Left with no other options, Fowlkes, represented by lawyers recruited by MAIP, filed a compelling clemency request which has been sitting on the desks of two Virginia governors for almost two and a half years.

Larry Fowlkes and other innocent prisoners — like Aleck Carpitcher, Mario Bustillo, and the Norfolk 4, whose ordeals are chronicled in this newsletter — deserve their immediate freedom even though new DNA evidence is not available as the magic bullet in their cases. DNA has opened the window into our justice system, but not enough people are paying attention to the dark secrets inside. We still have a lot of work ahead of us.

MAIP Fights to Compensate D.C. Exoneree, con't

fense witness into giving a false statement, and using suggestive techniques to procure an incorrect eyewitness identification. The prosecution compounded the problem by failing to investigate and then withholding exculpatory evidence from the defense.

After 13 years of maintaining his innocence, DeWitt became the first person exonerated under D.C.'s Innocence Protection Act in 2004. An F.B.I. agent who had not been convinced of his guilt had continued to look into the case after his conviction and uncovered evidence that was then developed on DeWitt's behalf during an exhaustive investigation by court-appointed attorney **Frances M. D'Antuono**.

That evidence — including eyewitness confirmation, an overheard confession, and a motive — demonstrated that

the actual murderer was Samuel Carson, who had committed nine other murders. After a lengthy hearing, a Superior Court judge found it more likely than not that DeWitt was actually innocent of all charges and ordered him released.

After Dewitt's release, the Akin Gump attorneys filed suit under D.C.'s unjust imprisonment statute, which allows people who have been unjustly convicted and imprisoned to sue for damages if they can prove their innocence by clear and convincing evidence.

When Dewitt's compensation lawsuit was filed, the defendants moved to dismiss the case because the Superior Court judge hearing his Innocence Protection Act claim had found him innocent only by the "more likely than not" standard required by the Innocence Protection Act, and not by the "clear

and convincing" standard required by the unjust imprisonment statute.

In a striking victory, the Akin Gump attorneys managed to refute this argument and persuade the court to deny the defendants' motion to dismiss. The case will now proceed to discovery and trial. If it does not settle, the case will be the first ever under D.C.'s unjust imprisonment statute to go to trial.

MAIP recently has begun co-counseling with pro bono lawyers in some cases and is expected to join Akin Gump's team in the upcoming weeks.

MAIP Hires New Assistant Director

In September, MAIP announced the hiring of **Elizabeth "Eily" Raman** as its second employee and new Assistant Director, who will focus on case management and development efforts.

"I couldn't be more thrilled that we were able to attract someone with Eily's incredible intellect and experience," said Shawn Armbrust, MAIP's Executive Director. "She will be a huge asset to our organization and to wrongfully convicted prisoners in our region."

Eily comes to MAIP with a wealth of criminal defense experience. Prior to joining the organization, she served for five years as an Assistant Federal Public Defender (AFPD) in Greenbelt, Maryland, conducting trials and arguing appeals before the United States Court of Appeals for the Fourth Circuit.

Prior to joining the FPD, Eily was an associate at Crowell & Moring and a law clerk to the Honorable Edith Brown Clement of the U.S. District Court for the Eastern District of Louisiana.

Eily graduated *magna cum laude* from Harvard College and *cum laude* from Georgetown University Law Center, where she was Articles Editor of the American Criminal Law Review, participated in the Georgetown Criminal Justice Clinic, and interned for the Alaska Public Defender.

Eily is MAIP's second employee. MAIP was able to add her position because of a generous increase in donations from our wonderful supporters.

DNA Exonerates Two More VA Men

Further Retesting Will Result in Even More Exonerations

In January of this year, two Virginia men were exonerated based on DNA testing that was ordered by then-Governor Mark Warner in 30 cases handled by a former state lab analyst who was known for saving "clippings" of physical evidence in her files.

"The results of these tests revealed a seven percent error rate in the sample, a disturbingly high number that should raise serious concern about the problem of wrongful convictions," said MAIP Executive Director Shawn Armbrust.

The test results did concern Warner, who subsequently ordered the retesting of all cases handled by the crime lab in which analysts had retained biological evidence. The sweeping order probably will result in more exonerations in the years to come.

"MAIP commends Virginia for being the first state to engage in such an ambitious retesting program," Armbrust said.

"Virginia should serve as a model for other states."

While the tests are being conducted, the Innocence Commission for Virginia — a joint project of MAIP, the Constitution Project, and the Administration of Justice Program at George Mason University — is investigating the two recent exonerations.

Lawyers from the Washington, D.C., office of **Wilmer Hale** are investigating

the case of Philip Thurman, who was wrongfully convicted of an Alexandria rape, and lawyers at **Covington & Burling** are investigating the case of Willie Davidson, who was wrongfully convicted of a Norfolk rape.

The two firms will be analyzing the causes of the wrongful convictions and preparing reports about the cases, which will be used by the ICVA to determine whether any additional policy reforms should be recommended.



MAIP Signs *Amicus* Brief in FOIA Case

MAIP recently filed an amicus brief before the Court of Appeals for the D.C. Circuit in a case that considers whether the Freedom of Information Act (FOIA) can be used by criminal defendants seeking potentially exculpatory information, known as *Brady* material, located in government files.

The case arose when, after being convicted of a federal crime, defendant Harold Martin came to believe that the prosecution had withheld exculpatory evidence located in FBI and FDIC files about two government witnesses.

After trial, Martin filed a FOIA request for the documents. The FBI and FDIC refused to produce them, citing FOIA exemption 7(C), which provides that the government need not release records compiled for law enforcement purposes if their disclosure might constitute “an unwarranted invasion of personal privacy.”

The District Court concluded that Martin did not have a right to the documents because their release would invade the personal privacy of the two witnesses, while advancing no public interest at all. In reaching this holding, the court essentially ruled that FOIA could never be used by criminal defendants seeking wrongfully withheld *Brady* material because the information is never of interest to anyone other than the individual who seeks it.

When the case reached the D.C. Circuit, MAIP filed an amicus brief written by **Michael S. Fried, Laura Tuell Parcher, Joseph W. Clark, and Juliet J. Karastelev** of **Jones Day**.

The brief pointed out that *Brady* violations are one of the most frequent causes of wrongful convictions. While uncovering such information is helpful to individual defendants, it also is in the public’s interest to ensure that the prosecutors are complying with their constitutional obligations and to correct wrongful convictions.

MAIP Advocates for Legislative Reforms in Maryland and District of Columbia

In the past year, MAIP Executive Director **Shawn Armbrust** has testified before legislative bodies in the District of Columbia and Maryland, advocating for reforms that would help prevent wrongful convictions.

In March, Armbrust testified before the Maryland House of Delegates in support of House Bill 414, which would have reduced the risk of false confessions by requiring the recording of custodial interrogations. Armbrust testified with Maryland advocates, as well as a former U.S. Attorney for the Northern District of Illinois and a Denver police detective. The bill did not get out of committee, but it did gain unexpected new supporters on both sides of the aisle.

At the same time, Armbrust also testified on behalf of House Bill 807, which would have helped improve eyewitness identification procedures by requiring law enforcement officials to preserve the record of eyewitness identifications and to take a confidence statement from the eyewitness at the time of the identification. She also testified on behalf of the eyewitness legislation before the Senate, which passed a version of the bill out of committee. The session ended before the bill could be voted on, but there was tremendous support for the proposal.

Although neither Maryland bill passed, advocates for the legislation — including MAIP, the National Association of

Criminal Defense Lawyers, the Office of the Public Defender for the State of Maryland, and the American Civil Liberties Union of Maryland — believe that there is momentum for policy reform in Maryland that would reduce the likelihood of wrongful convictions.

As a result, MAIP has led these organizations in forming the Maryland Innocence Coalition, which will attempt to educate the public, judges, and legislators on the causes of wrongful convictions and the need for reform.

Within the next year, MAIP should be releasing a report on wrongful convictions in Maryland, and the Coalition will host a series of informal educational events throughout the state to focus attention on recording interrogations, eyewitness identification reforms, and lab accountability.

In July, Armbrust testified in D.C. at a public hearing on behalf of the Criminal Records Expungement Act of 2006, which would make it easier for wrongfully convicted individuals to expunge the charges for which they have been erroneously convicted. The legislation would provide tremendous help to area exonerees — like Steven Dewitt — who often have difficulties finding jobs because of their criminal records. The bill still is pending before the Council of the District of Columbia.

MAIP Launches New Website & Other News in Brief

- On November 11, MAIP launched its new website, which is designed to be a more user-friendly site for the families of exonerees and for those who want to learn more about wrongful convictions. **The Bivings Group** made the development of the new website possible by its generous donation of its web design services to MAIP. Check out our new website and blog at www.exonerate.org!
- MAIP Executive Director **Shawn Armbrust** was elected to serve on the Innocence Network Board of Directors, which also elected her as its secretary for the 2006-2007 term.
- *The Innocent Man*, John Grisham’s first nonfiction book, has just been released and tells the story of Ron Williamson, who was exonerated after being wrongfully convicted and sentenced to death for a brutal rape and murder in Oklahoma.

Salzman Fights for Norfolk Four Case Illustrates Problem of False Confessions

MAIP President and Skadden Arps pro bono counsel **Don Salzman**, a team of Skadden lawyers, and lawyers from **Hogan & Hartson** and **Holland & Knight** have been working tirelessly for two years to correct a miscarriage of justice on behalf of four men known as the Norfolk Four. Their clemency petitions have been pending with Virginia Gov. Tim Kaine for almost a year.

The Norfolk Four are former Navy sailors with no prior criminal records who have been wrongfully convicted for the 1997 rape and murder of Michelle Bosko.

After the crime, police focused their investigation on Salzman's client, Danial Williams.

After 11 hours of interrogation in which the police lied about evidence, told him he failed a polygraph when he actually passed it, and threatened him with the death penalty, Williams provided a false confession that did not at all match the physical evidence.



DNA tests excluded Williams, but police began searching for an "accomplice" among his friends. Police ultimately obtained false confessions from Joseph Dick, Eric Wilson, and Derek Tice, but their confessions were inconsistent with each other and with the crime scene. Moreover, their DNA did not match the real rapist's DNA.

While the investigation was taking

place, Omar Ballard — a friend of the victim's — bragged that he had committed the crime. At the time of his confession, he was in prison for a violent

assault he had committed in the victim's building two weeks before her murder.

Ballard's DNA matched the DNA of the rapist in the Bosko case, and other physical evidence at the scene indicates that the crime was committed by only one person, but the Norfolk Four remain in prison for a crime they clearly did not commit.

For more information about the case, please visit www.norfolkfour.com.

New and Departing MAIP Board Members

MAIP has an active 20-member Board of Directors. During the summer, **Jon Gould**, **Mark Kappelhoff**, and **Katie Monroe**, left the Board due to other commitments. In addition, law student board members **Molly Cannon**, **Jennifer Cheung**, **Lauren Hopkins**, and **Erin McFarland** completed their terms with the Board. MAIP greatly benefited from their services and appreciates their efforts.

MAIP's 2006-2007 Board continues its tradition of attracting board members with demonstrated commitment to and expertise in criminal justice issues in our region.

Gina Harps, a family friend of MAIP exoneree Marvin Anderson, is a longtime member of MAIP's public relations committee and currently is a writer and editor with the Department of Labor's Office of Communications.

Cynthia Jones is a Professor of Law at American University's Washington College of Law, where her scholarship focuses on wrongful convictions. She is the former Executive Director of the D.C. Public Defender Service.

Seth Rosenthal is the legal director of the Alliance for Justice and previously was a trial attorney in the Civil Rights Division of the Department of Justice and a Skadden Fellow at the Southern Center for Human Rights.

VA Supreme Court Agrees to Hear Carpitcher Case, Con't

based upon the H.L.'s recantation.

To be exonerated under the statute, a prisoner must prove that the newly discovered evidence on which he is basing his petition is "material and when considered with all of the other evidence in the current record will prove that no rational trier of fact could find proof of guilt beyond a reasonable doubt."

Considering Carpitcher's petition, the Court of Appeals observed that "there is no form of proof so unreliable as recanting testimony." It then held that, where a witness' recantation is used to attack a conviction, "there must be clear and convincing proof that the

witness testified falsely at the trial, and not merely proof that by reason of conflicting statements his testimony is unworthy of belief."

Providing such proof will be virtually impossible for defendants like Carpitcher, who were found guilty in trials where there was no evidence other than the now recanted testimony. In Carpitcher's case, because the trial court had already found that it could not determine whether H.L. had been telling the truth during her recantation or at trial, Carpitcher was not entitled to relief under the statute.

As Carpitcher points out to the Virginia Supreme Court, he has met the

burden of proving that no rational trier of fact could now find him guilty beyond a reasonable doubt because, at the very least, it is impossible to know whether the sole witness against him was telling the truth or not. The Court of Appeals erred in interpreting the statute otherwise.

Steve Northup, a MAIP Board member and partner at **Troutman Sanders**, said that the case is critically important because it will determine whether Carpitcher will be able "to breathe free air again and will also determine whether a much-needed reform enacted by the Virginia General Assembly will be allowed to function as it manifestly was intended to do."

Bustillo Loses in U.S. Supreme Court but Continues to Fight Wrongful Conviction

Last term, MAIP filed an amicus brief in the United States Supreme Court case of Mario Bustillo, a Honduran national who was wrongfully convicted of murder.

The case presented the first known circumstance in which a violation of the Vienna Convention resulted in tangible

“Mario Bustillo has spent 8 years in prison for a crime he did not commit because the state wrongly prevented him from obtaining evidence of his innocence.”
- Paul Enzinna

prejudice to a foreign defendant.

After the trial, in which Bustillo contended that the murderer was actually a different Honduran national known as “Sirena,” it came to light that the Virginia authorities had failed to

fulfill their obligation under the Vienna Convention to inform Bustillo that he had a right to consult with the Honduran consulate upon his arrest. Bustillo was not aware of this right and did not consult with the consulate before trial.

The Honduran consulate was finally notified after Bustillo’s conviction, and its help was invaluable in Bustillo’s defense team’s efforts to develop evidence to prove his innocence after the fact. The consulate confirmed that it would have been willing and able to provide this same assistance prior to trial, had it been consulted by Bustillo at the time of his arrest.

MAIP got involved in the case when Virginia lawyer **John Kiyonaga** — who has worked tirelessly on the Bustillo case for years — asked the Project to find counsel to help with his appeal to the Virginia Supreme Court in Bustillo’s state habeas petition. MAIP Board member **Paul Enzinna** recruited lawyers from his firm, **Baker Botts LLP**, to take the case.

After the Virginia Supreme Court denied Bustillo’s arguments, **Jeffrey Lamken, Mark Stancil, Michael Patillo, and Heather McCann** filed a

cert petition in the U. S. Supreme Court.

When cert was granted, MAIP recruited Board member **Seth Tucker of Covington & Burling** and his associates **Gina Merrill, Keil Mueller, and Jennifer Overbeck Farina** to file an amicus brief.

In the brief, MAIP pointed out the ways in which the Vienna Convention consular notification provision can play a real and important role in the search for truth that is (or should be) an essential part of any criminal investigation and prosecution.

The Supreme Court ultimately ruled against Bustillo. The Baker Botts attorneys are now pursuing federal habeas corpus relief on his behalf. They anticipate petitioning the governor of Virginia for clemency if their federal court efforts do not succeed.

“Mario Bustillo has spent 8 years in prison for a crime he did not commit, because the state wrongly prevented him from obtaining evidence of his innocence,” Enzinna said. “John Kiyonaga has struggled for years to obtain justice for Mario, and we are proud to join him, and committed to seeing that justice ultimately prevails.”

WCL to Sponsor Innocence Week in Spring

In March, the Mid-Atlantic Innocence Project and the Washington College of Law will co-sponsor “Innocence Week,” a series of lunchtime lectures on wrongful convictions capped by two evening performances of the critically acclaimed play *The Exonerated*.

The event, which still is in the planning stages, will provide an opportunity to give MAIP and innocence issues greater visibility among Washington College of Law students, faculty, and alumni, while also highlighting the law school’s ongoing commitment to wrongful convictions as a human rights issue.

Innocence Week is the brainchild of MAIP Board member and WCL professor **Cynthia Jones**, who believes the week will present an excellent opportunity to educate the WCL community about the problem of wrongful convictions.

The goal is to have a series of lunchtime panels,

ranging from WCL professors to national legislators to high-profile exonerees from Virginia, Maryland, Illinois, and California.

The play will be staged on Thursday and Friday and will be introduced both evenings by exonerees and their attorneys.

The program will be offered as a WCL Founder’s Event through the generous support of the Dean’s Office and the help of several student organizations.

“We are already so grateful to WCL, which has given MAIP a

home and so much of the support that we need to function effectively,” said MAIP Executive Director Shawn Armbrust. “We can’t wait to take this opportunity to show the WCL community that we’re here in their midst and that we’re doing really important work to improve the justice system and free innocent people from prison.”



Spotlight on a Firm: Baker Botts

Since MAIP's inception in 2001, one of its most important and committed partners has been the Washington, D.C., office of **Baker Botts, LLP**, a firm with an impressive commitment to pro bono service all over the country.

"Without Baker Botts' unwavering generosity and commitment, some of MAIP's most notable achievements could not have taken place," said MAIP President Don Salzman.

MAIP's association with Baker Botts began when partner **Paul Enzinna** – who also is actively engaged in the representation of death row inmates – became one of MAIP's founding board members.

Enzinna and his firm immediately signed on to represent **Marvin Lamont Anderson** on MAIP's behalf, successfully petitioning the Commonwealth of Virginia for DNA testing. The testing ultimately proved that Anderson had served 15 years in prison for a rape he did not commit, making him the first person to win relief under Virginia's Writ of Actual Innocence statute for biological evidence. Their outstanding efforts earned Enzinna the 2002 Kenneth R. Mundy award from the D.C. Association of Criminal Defense Lawyers.

When Virginia lawyer **John Kiyonaga** asked MAIP to help him find co-counsel for Mario Bustillo's state habeas petition before the Virginia Supreme Court, several top-notch attorneys from the firm's appellate practice group stepped in. **Jeffrey Lamken, Mark Stancil, Michael Patillo, and Heather McCann** not only represented Bustillo before the Virginia Supreme Court, but they successfully petitioned the U.S. Supreme Court for a writ of certiorari in the case, bringing a novel legal issue to the court's attention. Although the Court ultimately ruled against Bustillo, Baker Botts is continuing to fight for him in federal court.

Baker Botts associate **Barrett Atwood** also is working on another MAIP case and currently is preparing to file a petition for writ of actual innocence in the Virginia courts. MAIP Board member, UVA Innocence Project President, and Baker Botts summer associate **Mary Schmid** also worked with Atwood on the case this summer.

Not only does the firm donate pro bono hours, but it also generously do-

nated the space and other costs of a reception after MAIP hosted a fundraiser in conjunction with a performance of *The Exonerated* in 2002. MAIP also holds its Board meetings at Baker Botts, a huge help for an organization that operates with very few resources.

Founded in Houston in 1870, Baker Botts now is a major international law firm with about 700 attorneys. Baker Botts' commitment to MAIP reflects a larger firm commitment to pro bono work in each of its nine offices. Each year, Baker Botts attorneys provide thousands of hours of pro bono

legal services to deserving organizations on issues ranging from adoption, child custody and other family law concerns to death penalty, civil rights, and federal and state constitutional law issues.

In 2003, Baker Botts won the American Bar Association's National Public Service Award, which is given annually to a law firm or corporate legal department that has demonstrated a commitment to providing free legal services to the poor in a business context. When Baker Botts received the award, the ABA specifically mentioned the firm's commitment to MAIP.

MAIP Takes Action in Three New Cases

In the past year, MAIP referred to pro bono attorneys three cases that had been investigated by our participating student groups. MAIP is about to begin direct representation of its clients by co-counseling on its first-ever case.

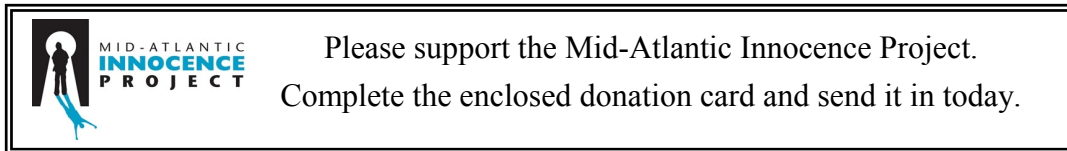
- **Seth Tucker**, a MAIP Board member and a partner at **Covington & Burling**, and **Noah Monick**, a Covington associate, filed a motion for post-conviction DNA testing in the case of a Maryland man who was convicted based on a single eyewitness identification.
- **David Eppler**, a MAIP Board member, and **Barry Boss**, a partner at **Cozen O'Connor**, filed a motion for post-conviction DNA testing on behalf of a Virginia man whose case was handled by Mary Jane Burton, the lab analyst who saved "clippings" of biological evidence in her files. The case was investigated by students at Georgetown University Law Center.
- **Hunton & Williams** has just agreed to co-counsel with MAIP in the case of a Virginia man who was convicted of murder based on snitch testimony and remains in prison, even though two eyewitnesses came forward shortly after trial and said they saw someone else commit the crime.

MAIP thanks its most generous volunteers and contributors. Without your support, our important work would not be possible.

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MAIP Student Group Update

- Students at American University's Washington College of Law continue to investigate three cases as part of a fieldwork class taught by Alexandria public defender **Gerylee Baron**, and an active student group participates in case screening with MAIP's staff.
- Thanks to the hard work of students **Molly Cannon**, **Brian Luhman**, and **Heidi Waltz**, Catholic University's Columbus School of Law Innocence Project is thriving this year as a fieldwork seminar under the supervision of **Prof. Sandy Ogilvy**, investigating three cases and learning about the causes of wrongful convictions.
- Students at Georgetown University Law Center currently are investigating 11 cases, and student interest in the Project is tremendous. Last February, the Project co-sponsored Criminal Justice Awareness Month, which brought in speakers such as Maryland exoneree and Honorary Board Member **Kirk Bloodworth**.
- Student interest at University of Virginia Law School has never been stronger, and students are working hard on eight cases. They also co-sponsored a speech by **John Grisham**, author of *The Innocent Man* and have conducted research for MAIP on a variety of legal issues.
- The hard work of students to establish an Innocence Project at Washington & Lee's School of Law has paid off. They started investigating cases this fall under the supervision of Lexington criminal defense lawyer **Ross Haine** and will be participating in a wrongful convictions seminar taught by Haine next semester.
- Students at William & Mary School of Law have formed a group called Students for an Innocence Project and are working with their administration to start a clinic that will investigate wrongful conviction cases and will affiliate with MAIP.



MAIP Honorary Board

Our Honorary Board is comprised of a diverse and bipartisan group of local lawyers, law school deans, current and former judges, prosecutors, policymakers, area exonerees, and other prominent Americans who support MAIP.

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*Former Solicitor General of the United States
Wilmer Hale*

Beth Wilkinson

*Federal Prosecutor, Oklahoma City bombing case
Fannie Mae*

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President of the Police Foundation