



# THE INNOCENCE ALERT

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innocents, which I am. If I were able to afford to have my semen analyze with the semen that the doctors suppose to have gotten from the victim, I know it would prove my innocents. The wry technology is today it should be able to be done. Don't you think?, I wish

Letter written by Cunningham from jail to the Honorable Judge Warren Stevens in 1982

## CUNNINGHAM CLOSER TO RELEASE

Almost 30 years after Calvin Wayne Cunningham was convicted of rape, DNA testing proved this August that he could not have committed the crime and that he is innocent, just as he has always claimed.

Cunningham's DNA does not match the DNA of the rapist found on the victim's clothing and in her rape kit, providing conclusive evidence that Cunningham is not responsible for the rape in Newport News, Virginia, that left him incarcerated for more than seven years. Further testing excluded the victim's husband as the source of the biological material found at the crime scene, making it apparent that an unknown third party committed the rape.

Cunningham's DNA was tested as part of an ongoing project—known as the Old Case Testing Project—to perform DNA testing in hundreds of 1973 to 1988 cases in which biological evidence was unexpectedly saved by analysts in the

Virginia Department of Forensic Science. Ordered by then-Governor Mark Warner in early 2006, the project has also led to the exoneration of two other men.

MAIP became aware of Cunningham's case in 2009, after the Virginia General Assembly—due in part to MAIP's advocacy work—required the Virginia Forensic Science Board (FSB) to notify affected individuals that DNA testing was being performed in their cases. The notice sent to defendants by the FSB invited them to contact MAIP if they had questions or felt the need for legal representation. MAIP is working with the FSB and the Virginia State Crime Commission to coordinate both the notification process, which is ongoing, and the securing of attorneys for affected defendants who claim innocence.

"This case demonstrates why both the Old Case Testing Project and the notification of defendants about this project are so important," said Shawn Armbrust, MAIP's Executive Director. "Without this test, Mr.

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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 BARRY POLLACK



This year I am privileged to begin my term as MAIP's Board President as MAIP celebrates its tenth anniversary. The organization has had a tremendous

impact in its first ten years and continues to grow and serve the seemingly limitless need for the vital work of preventing and correcting wrongful convictions arising out of Virginia, Maryland and Washington, D.C. MAIP's continued growth and success is attributable to its amazing and dedicated staff, its talented and hardworking volunteer leadership, its enthusiastic network of law students and the many lawyers and law firms who have volunteered their pro bono time, energy, talents and financial support to MAIP's work.

So why are all of these people so drawn to MAIP's work? What has struck me the most is the extent to which MAIP manages to stay independent in a potentially political realm. The fight against wrongful convictions can be, and should be, a cause that crosses lines of politics and ideologies. MAIP does not defend the guilty or advocate against the death penalty. We do not ask for leniency in sentencing or suggest how states should run their prisons. We simply advocate on behalf of individuals who have been wrongfully convicted and did not commit the crimes for which they were convicted. We do so whether or not the case involves DNA evidence. Those wrongfully convicted in non-DNA cases are just as innocent as those convicted in cases where DNA evidence happens to exist. In our region, there are very few other organizations stepping up to fight on behalf of these innocent men and women. Doing so not only helps to right a terrible wrong, it helps to disclose in cases of wrongful conviction that there is an actual perpetrator who has not been prosecuted and may still be living in the community.

Over the past few years, MAIP has found great success in working within the system, rather than against it. When Virginia's Old Case Testing Project started in 2005, for example, MAIP was representing one of the first inmates whose case involved DNA evidence that had been unexpectedly found in old Virginia forensic laboratory files. Then-Governor Mark Warner had ordered the lab to conduct testing in nearly 1,000 old cases, but his administration had not developed a plan for sharing the results of the tests with the defendants whose cases could be affected. MAIP realized that potentially innocent defendants' interests would not be adequately represented if these defendants were not notified of the fact that testing was taking place and given the opportunity to request attorneys to assist them during the process.

MAIP thus began working with the Commonwealth of Virginia to develop a protocol to help ensure that the testing process succeeded in identifying every possible innocent defendant whose biological evidence could be tested. MAIP's Executive Director attended countless meetings of the Virginia State Crime Commission and the Virginia Forensic Science Board, helping make these entities aware of the issues she had spotted that might impede the effectiveness of the testing project. In the end, the Forensic Science Board decided to send a letter to each defendant in whose case DNA had been located, advising him whether testing was planned in his case and inviting him to contact MAIP if he wanted more information or desired legal representation. The letter went out on the Forensic Science Board letterhead. Having the Commonwealth officially recognize MAIP as a valuable resource for innocent men and women in Virginia's prisons was a milestone in which MAIP takes great pride.

Testing is underway on behalf of nearly 1,000 men. Under the protocol, which remains in place, MAIP has been contacted by nearly 200 potentially innocent defendants. Two of them, Thomas

Haynesworth and Calvin Cunningham, have already conclusively been proven innocent by DNA, and their freedom is hopefully on the horizon. Both Mr. Haynesworth and Mr. Cunningham are being represented by MAIP and pro bono attorneys that MAIP secured for them. The Commonwealth's Attorneys in both of these cases have acknowledged the terrible injustice that was visited on each of these men by the Virginia legal system. They are working with MAIP and the rest of the prisoners' legal teams, not against us, in figuring out how most quickly to right each wrong.

Finally, perhaps the best evidence of MAIP's professionalism and non-political nature is the fact that our largest funder is now the United States Department of Justice. In 2009, the Bureau of Justice Assistance launched the Wrongful Conviction Review Program, an initiative that provides funding for Innocence Projects and other non-profits that strive to correct wrongful convictions in the United States. MAIP is one of only a few organizations nationwide to receive a grant under this program. The award of almost \$300,000 over two years will allow us to hire a much-needed staff investigator, thus increasing significantly the number of clients we will be able to help, and the speed with which we will be able to provide them assistance. We are immensely grateful to the Bureau of Justice Assistance. We can think of no better validation of the importance of the work we do.

The need for MAIP has never been greater. I hope that during my term, the level of generous and enthusiastic support we have received in the past ten years from everyone in the MAIP community—staff, law students, lawyers and law firms—will only increase. I think that you will agree that the achievements of the first ten years demonstrate that MAIP will put those resources to great use and do so with an unparalleled degree of professionalism and political independence, so that when our system of justice makes mistakes in our region, those mistakes will not fester and true justice will ultimately be served.

# DNA HELPS PROVE THOMAS HAYNESWORTH'S INNOCENCE

After 26 long years of proclaiming his innocence in five Richmond rapes and attempted rapes, Thomas Haynesworth is close to clearing his name. In August, DNA testing in a second case confirmed last year's results in a first case, exonerating Haynesworth and linking the crime to a notorious serial rapist.

Haynesworth—who was charged in 1984 with five sexual assault crimes and convicted in three—has for years believed that the crimes were committed by Leon W. Davis, Jr., a serial rapist who called himself the “Black Ninja” and terrorized the Richmond area in the latter two-thirds of 1984. His belief received scientific backing last year when DNA testing in one of the crimes in which he was convicted linked the crime to Davis.

Upon a careful review of the other cases, MAIP and its co-counsel at Hogan Lovells and the Innocence Project in New York determined that the crimes for which Haynesworth was convicted all bore a disturbing resemblance to the crimes for which Davis was convicted. Davis and Haynesworth also look alike and were neighbors. Finally, Davis is three inches taller than Haynesworth, the exact height described by each of the victims.

Haynesworth, a teenager who had never been arrested, became a suspect when one of the victims saw him on the street in her neighborhood. Once he was arrested, the other four victims identified him in photographic lineups that did not reveal that he was, at 5 feet 7 inches tall, three inches shorter than each of them had described.

“The resemblance between the alleged Haynesworth crimes and the Davis crimes is eerie,” said Shawn Armbrust, MAIP’s Executive Director. “Anyone who looks at these cases together would come to the conclusion that they were committed by the same person.”

The government is beginning to share Armbrust’s views. Richmond Commonwealth’s Attorney Mike Herring told the Richmond Times-Dispatch in August that “you have to wonder if any of the Haynesworth cases were tried today—and this evidence linking Davis was available and admitted—would any jury convict the guy. ... I am losing confidence in the conviction with each revelation.”

In the meantime, Haynesworth, now 45 years old, anxiously awaits release from prison and relief from decades-old convictions of heinous crimes that he simply did not commit.

## EXONERATE.ORG GETS A MAKEOVER

As MAIP continues to grow, its staff is excited to announce that our website is growing with us. Thanks to the pro bono efforts of the Bivings Group, the new **Exonerate.org** was launched with its improved new look this October. With more original content in a more user-friendly format, Exonerate.org will help MAIP spread information about wrongful convictions to readers around the region and the country.

In addition to offering regularly updated MAIP news, national innocence news and feature articles, Exonerate.org’s greater goal is to put a face on wrongful convictions. The new In Their Words section features firsthand stories of people who have been affected by wrongful convictions in a variety of ways. From defense counsel to defendants’ families to detectives and police officers, In Their Words provides a personal view of wrongful convictions from every angle. The site currently includes pieces by attorneys Sig Libowitz and Steve Bright; the twice wrongfully convicted Dana Holland; and retired Metropolitan Police Department Detective Jim Trainum.

MAIP Program Associate Rachel Cicurel also interviewed Betty Anne Waters, whose inspiring true story is portrayed in the film *Conviction*, as well as Tony Goldwyn, who directed the film, and actor Sam Rockwell, who plays Betty Anne’s wrongfully convicted brother Kenny. Transcriptions of the interviews with Waters, Goldwyn and Rockwell can be found in the In Their Words section of the site.



If you know anyone who has been personally impacted by a wrongful conviction and has a story that should be told, please let MAIP know. If you’d like to subscribe to MAIP’s weekly email updates or have any comments or questions about Exonerate.org, please email [RCicurel@exonerate.org](mailto:RCicurel@exonerate.org).

Cunningham would have had to live the rest of his life as a registered sex offender. Without the notification, he never would have contacted MAIP and might have missed a valuable opportunity to clear his name."

Cunningham's defense counsel—MAIP and pro bono lawyers from Wilmer Cutler Pickering Hale and Dorr LLP—have filed a Writ of Actual Innocence Petition with the Virginia Supreme Court. The Commonwealth did not oppose the motion.

"We are confident that the Virginia Supreme Court soon will act to right this wrong, as the Attorney General and the Commonwealth's Attorney also have been working to do," Armbrust said.

Cunningham has professed his innocence since he was arrested and continued to do so after his conviction in 1981. The victim was Cunningham's neighbor in an apartment complex, and her identification of Cunningham as the perpetrator was the primary evidence against him at trial. Cunningham was sentenced to spend 15 years in the penitentiary for rape and five for burglary. Though those sentences have long been served, he has spent more than 29 years as a convicted rapist and sex offender in the Commonwealth of Virginia.

Cunningham has sought scientific testing that could prove his innocence since before DNA testing existed. In a letter to the Honorable Judge Warren Stevens received on March 9, 1982, long before DNA analysis was being used in criminal cases, Cunningham asked for the exact type of testing that has finally excluded him nearly three decades later:

"If I were able to afford to have my semen analyze with the semen that the doctors suppose to have gotten from the victim, I know it would prove my innocents," Cunningham wrote. "The way technology is today it should be able to be done. Don't you think?"

## AWARDS LUNCHEON RECAP

**Over the summer, the Mid-Atlantic Innocence Project celebrated its 10th anniversary with its Third Annual Awards Luncheon.**

More than 300 members of the local legal community came out to show their support for MAIP and the greater cause of justice for the wrongfully convicted. Thanks to the excellent turnout and the generosity of the luncheon's many sponsors, MAIP is prepared for another year of increasing success.

Assistant Director. "I looked around as Derek Tice was speaking, and there wasn't a dry eye in the house."

Troy Cahill, a counsel at Akin Gump, agreed. "One word," he said in describing the event: "Wow. It was a powerful and moving experience. Hearing from the clients and the lawyers that represented them was incredible. I would like to talk about devoting my pro bono time to MAIP."



*The Norfolk Four legal team, this year's honorees, with three of the Norfolk Four*

Despite the good company and the presence of many inspiring legal advocates, it was the exonerees in attendance who made the luncheon a truly memorable occasion. Julius Earl Ruffin, who served more than 20 years in prison for a rape that he did not commit, opened the event with a brief talk about how his wrongful conviction affected his life. After hearing from Ruffin, MAIP was honored to have three members of the Norfolk Four present the Champion of Justice Award to their legal teams, which included MAIP Board members Des Hogan of Hogan Lovells, Don Salzman of Skadden Arps, and Steve Northup of Troutman Sanders, as well as George Kendall of Squire Sanders.

"It was an incredibly moving experience," said Eily Raman, MAIP's

For Raman, who has spent four years on MAIP's staff, the experience was a reminder of why MAIP's work is so important, even when it seems hopeless. And for Hogan, the luncheon was validation of the countless hours and tireless dedication he and his co-counsel put into helping the Norfolk Four gain their freedom.

"The Hogan Lovells team was deeply honored to receive the 2010 Champion of Justice Award," Hogan said. "We appreciate all the work MAIP did and continues to do to support efforts like the release of the Norfolk Four and we were especially pleased that MAIP brought together Derek, Joe and Danial, who shared deeply touching remarks that reflect both the joy of their release and the struggles they face because of the great injustice they have suffered."

# THE NORFOLK FOUR: WHERE ARE THEY NOW?

Three of the Norfolk Four were released last year when Virginia Governor Tim Kaine issued them a conditional pardon. (The fourth defendant had already served his sentence and been released previously.) Although Kaine acknowledged that he was not sufficiently confident in the sailors' guilt to require their continued incarceration, he refused to acknowledge that they were completely innocent of the brutal rape and murder of which they were convicted. As a result, the men remain on parole in their home states with restrictive conditions, including electronic monitoring and the requirement that they register as sex offenders.

Since their emotional reunion at MAIP's July luncheon, the Norfolk Four and their attorneys have continued their pursuit of a full recognition of their innocence. Most recently, Derek Tice's counsel argued in front of the United States Court of Appeals for the Fourth Circuit on behalf of his petition for Writ of Habeas Corpus. In September of 2009, a federal judge granted Tice habeas relief because his trial lawyers had failed to argue that Tice's confession had been obtained in violation of Miranda. Had the claim been raised, the court ruled, the confession would have been suppressed, and Tice would not have been convicted. The Commonwealth of Virginia has appealed this ruling to the Fourth Circuit. Tice's attorneys argued the case in September, and along with Tice, they are waiting anxiously for the court to issue its opinion.



*MAIP Board Member Des Hogan with  
Derek Tice of the Norfolk Four*

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In the meantime, Glenn Ford, the lead detective in the Norfolk Four's prosecution and the driving force behind their conviction, was convicted in late October on federal corruption and perjury charges in an unrelated case.

"The evidence heard by the jury ... establishes a larger pattern of unlawful and dishonest conduct on the part of Ford during his tenure as a homicide detective in the Norfolk Police Department," wrote the Norfolk Four's legal teams in a press release following the conviction. "Detective Ford's pattern of rampant, unchecked misconduct included pursuing the Norfolk Four—innocent men convicted of a crime they did not commit. The Commonwealth should no longer allow the grave injustice suffered by the four former sailors to continue. Authorities should immediately concede that the Norfolk Four convictions are invalid and should finally and forever dismiss the charges against them."

MAIP's continuing efforts to increase its staff size and improve its processes have been paying off. The Haynesworth and Cunningham cases are exciting, but there also are several other promising cases being litigated that may lead to exoneration in the near future.

Last fall, MAIP and Hunton & Williams filed a habeas petition on behalf of Mike Hash, an innocent client who was wrongfully convicted in Culpeper, Virginia. Pursuant to a discovery motion filed in the case, the court recently ordered Virginia to perform a ballistics test comparing the bullet used in the murder to a gun owned by the prime alternative suspect, which may have been the murder weapon.

In a second case, MAIP has teamed up with MAIP Board President Barry Pollack of Miller & Chevalier to represent an innocent DC man who was convicted of a brutal 1984 murder along with several co-defendants, one of whom is represented by MAIP Board Member Don Salzman. The government withheld significant exculpatory evidence of an alternative suspect, and four key witnesses have recanted their testimony. An evidentiary hearing likely will take place in this case in the spring or summer of 2011.

MAIP recently has joined forces with other attorneys from Miller & Chevalier in the case of a Maryland man who was wrongfully convicted of rape and with attorneys at Cozen O'Connor in the case of a DC man who was wrongfully convicted of murder.

Finally, MAIP is making significant progress in DNA cases. Locating testable biological evidence in DNA cases is a significant challenge; by one estimate, that evidence has been destroyed in approximately 75% of cases. As of 2005, MAIP had no pending DNA testing motions and had not located any DNA evidence in two years. In the past three years, however, MAIP has located DNA evidence in eight cases and has five post-conviction DNA testing motions that are in various stages of litigation.

## IN THEIR WORDS

As both a former cold case homicide detective and the head of the DC Metropolitan Police Department's Violent Crime Case Review Project, **Jim Trainum** has spent his career securing confessions and sealing convictions. But he's also spent more than a decade working toward a future free of bad police practices and one where every conviction will be rightfully earned.

“ In 1994, I was working on one of my first cases, a fairly high-profile case, and I obtained a false confession.

But of course I didn't know it was false at the time. She had failed both a polygraph and voice stress test. We were pretty convinced of her guilt, until we later found out that her alibi, which she failed to present to us, was pretty unshakeable.

It caused me to take pause. She had no obvious mental health issues and was of above-average intelligence. And we didn't yell; we didn't scream; we didn't say we're going to put you in jail for life. We insinuated that it was in her best interest to tell us what we wanted to hear. That the short-term benefits outweighed the long-term consequences.

It wasn't until years later when I started to read about false confessions that I read about the stuff that I had done. In our case, we had unintentionally fed her almost the entire case over a several hour period. And the woman—she would guess. She would guess a lot. And sometimes the guesses were right. And we wouldn't see the ones that weren't because 'She was being evasive.' So that's how we wrote that off. But fortunately, we had accidentally let a tape continue to run, and we captured the whole thing on video. But if we hadn't, we never would have been able to go back years later and catch our mistakes. It went right over our heads.

For a cop, I think the hardest part is sorting through the half truths that are out there, because everybody has something to hide. You look back and you go, 'You dummy,' but when you're in the mix, it's so hard. Sometimes you get a confession in my department, and it doesn't fit. And I tell them, if this guy came in your office and said 'I was a witness and this is what I saw,' you'd throw him out. But because he said 'I did it and this is what I did,' all critical thinking goes out the window.

I actually went to a seminar, and the presenter used a phrase that I think all law enforcement agencies should use: The right guy, the right way. Once we think we got the right guy, and we start cheating on the right way, that's when we get the wrongful convictions.

You know, the biggest misconception about false confessions is that you have to be crazy to confess to something you didn't commit.

...But that's how interrogation works. We box you into a corner, and then we show you the light. ”

## BOARD AND STAFF NEWS

To celebrate our 10th year, MAIP has been graced with the energy and dedication of two new Board members: **ROB CARY** and **JENNIFER O'CONNOR**.

Rob, a partner at Williams & Connolly in DC, brings a history of successful defense representation in both criminal and civil cases. In addition to speaking out against prosecutorial misconduct, he has also been included in the 2010 list of The Best Lawyers in America for his work in White Collar Criminal Defense. However, Rob is likely best known for his valiant efforts in representing US Senator Ted Stevens. Senator Stevens was indicted just shy of his re-election in 2008, but thanks to the thorough work of Rob and his team, Senator Stevens was cleared just eight months later.

Jennifer comes to us as a litigation partner at WilmerHale who primarily acts as defense counsel in criminal and civil cases. Jennifer also provides strategic public policy advice in government-related legal issues, and was recognized by the New York State Association of Criminal Defense Lawyers, who awarded her the Gideon Champion of Justice honor for her role in helping correct the wrongful conviction of Martin Tankleff. Prior to joining WilmerHale, Jennifer worked as a senior policy official in the US Department of Labor in 1997, and spent 1993 to 1996 as a special assistant to President Clinton during his time in the White House.

In addition to our new Board members, MAIP is greatly looking forward to hiring its first staff investigator in the coming months. This fall, MAIP became the fortunate recipient of a generous federal grant which will help support the hiring of an in-house investigator, a long overdue addition to the office who will help delve into new innocence cases more effectively and efficiently. The grant will also help support the legal and investigative demands of MAIP's numerous open cases.

Also new to the office is MAIP's Program Associate, Rachel Cicurel, who graduated this past June from Northwestern University's Medill School of Journalism. Rachel spent her senior year as an investigative journalism student for the Medill Innocence Project helping to uncover evidence of innocence in the case of a Chicago resident who has spent 21 years behind bars for a double homicide she does not believe he committed.

Lastly, MAIP congratulates New York exoneree Fernando Bermudez on the one-year anniversary of his release, thanks to the determined efforts of MAIP Board President Barry Pollack and his colleagues at Miller & Chevalier.



(left to right) MAIP Executive Director Shawn Armbrust with New York exoneree Fernando Bermudez and MAIP Board President Barry Pollack

## SPOTLIGHT ON A FIRM

# HUNTON & WILLIAMS

Over the course of the last decade, the support of Hunton & Williams LLP has helped make MAIP what it is today.

Thanks to their long-standing commitment to pro bono work, led by George Hettrick and Kim Magee, Hunton has been one of MAIP's most committed pro bono and financial supporters for the past five years.

Today, attorneys at Hunton & Williams make up nearly a fourth of our screening committee, the most of any law firm participating on the committee. Led by Magee, a partner at the firm, the Hunton screeners help to ensure that MAIP devotes its resources to the right cases. In addition to Magee, attorneys Britt Anderson, Eric Nedell, Janet Cho, Maya Eckstein, Martha Warthen, Tina Marr, Whitney Pinna, Rachel Northup and Hillary Peet have all worked consistently and thoroughly to help us process new requests for assistance.

"Having so many Hunton attorneys on our screening committee is a delight," said Eily Raman, MAIP's Assistant

Director, who oversees the screening process. "They are remarkably productive. They routinely take huge files, including hundreds of pages of transcripts, police reports and handwritten letters from prisoners, and distill them into concise and thoughtful memos—all within the quick deadlines that we set for them. One Hunton attorney recently screened three cases in one month, while in between projects at work."

In the last year, Hunton & Williams has taken on a new role as our partner by offering its expertise, investigative resources and valuable time as co-counsel for MAIP client Mike Hash, a Culpeper, Virginia man who currently is serving a life sentence for a murder he did not commit. For the past year, a terrific team led by Matthew Boshier—who already has won a habeas claim on behalf of an innocent client in New York—has worked tirelessly on Hash's habeas claim, drafting and filing a federal habeas petition and other substantive legal pleadings. Moreover, their investigative resources have allowed us to break new ground in a case that is compelling but difficult to litigate.

"Working with Matthew and the other lawyers on the Hunton team has been a dream," said Shawn Armbrust, MAIP's Executive Director. "They are smart, creative, diligent, and treat Mike and his family like they are paying clients. This case is one of the ones that consistently has kept me awake at night, but having Hunton at the helm makes me much more confident that Mike eventually will prevail."

MAIP is grateful for all of Hunton's support and commitment and looks forward to a continuing partnership with Hunton over the coming years.

**MAIP THANKS** the many law firms whose pro bono attorneys devoted a tremendous amount of time to our work this year.

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### DEFENDERS OF INNOCENCE (cont.)

Jones Day  
Relman, Dane & Colfax PLLC  
Shook, Hardy & Bacon LLP  
Steptoe & Johnson LLP  
Washington College of Law  
Wilmer Cutler Pickering Hale and  
Dorr LLP  
Zuckerman Spaeder LLP

### ADVOCATES (\$1,000 - \$2,499)

Arnold & Porter LLP  
Brendan Sullivan  
Christopher & Angela Ciccolo  
Bruce & Mary Louise Cohen  
The Constitution Project  
Cozen O'Connor  
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