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THE BALANCE

A Newsletter of the Fair Trial Initiative

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FTI BOARD WELCOMES WILLIAM MOFFITT



The FTI board and staff warmly welcome their newest colleague, **Bill Moffitt**.

Bill Moffitt is a highly recognized criminal defense attorney and a named partner at Asbill Moffitt & Boss in Washington, DC. He is a Past President of the National Association of Criminal Defense Lawyers

(NACDL), has been a member of the Board of Directors of the ACLU and has served as President of the Virginia College of Criminal Defense Lawyers. He has taught on the faculty of the prestigious National College of Criminal Defense and has also served as a criminal justice expert on numerous media programs, including: Today Show, CNN's Crossfire, ABC & CBS News.

FTI HELPS KEEP INNOCENT MAN FREE

About half-way into their first year as FTI fellows, Sarah Anthony and Khary Johnson began to help attorneys Bob Hurley and Kirk Osborn on the Michael Pettaway case. At first glance, it seemed this case was little more than what has sadly become a too common occurrence – a convenience store robbery gone awry – with the owner of the shop, Mr. Abdo H. Mohamed Muharam ending up shot to death on May 31, 2001. After being implicated by another suspect, Mr. Pettaway was arrested. One of the elements that made this case far from ordinary, however, was the exceptional representation Pettaway got from his attorneys and FTI fellows. He maintained his innocence throughout, and Sarah and Khary were given the task of delving into the seedy underworld of Vance County to uncover what really happened. They found a wealth of impeachment material on the only person implicating Pettaway in the crime. They discovered a hidden world of interconnected criminal activity that may have led them to the actual perpetrators. The death penalty was taken off the table, but Pettaway faced life without parole if convicted. Sarah and Khary helped Kirk Osborn to the end of trial, when Mr. Pettaway was acquitted by the jury on May 20. Michael called the next day to tell the fellows “it’s lovely to be home.” “The tears of gratitude from Michael and his family upon hearing the not guilty verdict,” Sarah said, “have given me renewed motivation to do this difficult work.”

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Message from David Neal, Executive Director

The North Carolina Legislature came close to passing a 2 year ban on executions this session – the bill cleared the Senate in an historic 29-21 vote. Senators supported the death penalty, but had reservations about how the system actually works. Before the vote, Senators took to the floor expressing fear that we might execute the innocent, distress that many facing death have received bad lawyers, concern that racial bias is coloring who gets death, and confusion at why death sentences are so geographically skewed in the state. FTI will continue to work closely with the coalition that has brought the case for a moratorium to the people of North Carolina.

In the last couple of years, the state has gone from having one of the highest per capita sentencing rates in the country to one of the lowest; only 2 people have been sentenced to death in the last 8 months. What has changed? When people have good lawyers, it is rare that they receive the death penalty. FTI has been part of this trend, lending assistance in some of the toughest death cases in the state – but more needs to be done. What the Representatives from the House ought to consider before voting on the moratorium is whether they themselves would have been satisfied with the legal counsel provided to people on death row and whether they can be certain those awaiting execution received a fair trial.

David can be reached at david@fairtrial.org

VIRGINIA PROGRAM CONTINUES TO GROW

Will Hendricks, who graduated from the NYU School of Law this spring will be joining FTI as our first fellow in Virginia. He will be working with the newly-created Office of Capital Defender in Richmond. The office is the first of four such offices that are being established in the Commonwealth to provide representation in capital cases for indigent clients. Will worked with the Capital Defender Clinic at NYU and is looking forward to getting started on death penalty trial cases in Richmond.

Jack Lahr and his colleagues at **Foley Lardner** completed work on their first *pro bono* capital case in Charlottesville with a favorable plea and have started work on a case in Roanoke. Jack helped place **Patton Boggs** attorneys on a highly publicized case in handled by the Norfolk Capital Defender Office. The next stage of our Virginia work will address the critical shortage of mitigation specialists in the state. Depending on funding, we hope to begin offering training opportunities, field placements for social work students, and fellowships for individuals who want to become mitigation specialists in the coming year.

FTI IN THE NEWS

The Carolina Alumni Review recently featured an eleven page article on the Fair Trial Initiative and the work done by FTI fellows in North Carolina.

You can access the article at: http://www.fairtrial.org/fti_article.pdf

FTI will be featured in the upcoming Newsletter of the North Carolina State Bar Legal Specialist Program.

FAIR TRIALS FROM SURRY TO PAMLICO:

Just look at the counties in which Fellows currently have cases, and you can see how FTI is seeking to ensure fairness all over the state:

Sarah Anthony: Sampson, New Hanover
Khary Johnson: Forsyth, Stanley, Johnston



Jenny Mellon: Anson (2), Nash, Surry, Lee
Yvonne Nix: Anson, Halifax, Cumberland (2), Wake
Terrica Redfield: Northampton, Wake, Pamlico, Pitt, Wilson

FTI Takes the Stage at *The Exonerated* in New York

On the evening of December 19, 2002, FTI co-founders Zephyr Teachout, David Neal, and Jonathan Soros shared the stage with Kerry Max Cook, a man who spent 22 years on Texas' death row for a crime he did not commit. *The Exonerated*, a play that tells the unembellished stories of how Kerry Cook and five other innocent people spent years on death row, is a powerful reminder of the flaws in the current administration of the death penalty. After the actors completed the show, Jeff Goldblum, who played the role of a man wrongfully convicted of killing his parents in Illinois, encouraged the audience to remain for a "talk back" session with members of FTI. Executive Director David Neal pointed out that appointed lawyers without adequate resources or competence have played a large role in innocent people ending up on death row, as Kerry's case exemplified. The lawyer hired to represent him was paid a mere \$500 and conducted no independent investigation. David stressed, however, that the unfairness goes beyond innocence, and results in a system that sentences people to death, in effect, for having bad lawyers.

Thank You!

A special thanks to our most recent contributors:

\$1,000 and up

Kirk Osborn
Grove Creek Fund
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Patton Boggs

FTI CAPITAL MITIGATION PROGRAM

Sarah Anthony will be graduating from her two-year fellowship this August, but she won't be leaving FTI. Sarah is going to stay on board and take charge of building our mitigation program in North Carolina. The US Supreme Court has ruled that the jury's life or death decision in capital cases must be based on the culpability and individual characteristics of each defendant. Mitigation investigation is helping to transform the way Americans think about capital punishment, expanding the public focus to include not merely the facts of each crime but also the often tragic and always humanizing story of each defendant's life. The American Bar Association has recognized that mitigation specialists are "indispensable" members of capital defense teams. However, in North Carolina, there are not enough qualified mitigation specialists to cover every capital case. Sarah will lead FTI's efforts to recruit new people to do mitigation work and provide a structured entry into the field. Our program will provide field placements for students, mentoring opportunities with experienced social workers doing mitigation investigation, and coordinating a fellowship program to future mitigation specialists. This work will mirror our efforts in Virginia and help to fill one of the biggest needs facing indigent capital defendants in North Carolina.

Please write to sarah@fairtrial.org or call 919-680-2986 if you would like more info about our new Capital Mitigation Program.