

**Superior Court of the District of Columbia
Washington, D.C. 20001**



**Lee F. Satterfield
Chief Judge**

January 11, 2011

(202) 879-1600

Avis E. Buchanan
Director
Public Defender Service
633 Indiana Avenue, N.W.
Washington, D.C. 20004

Ronald C. Machen Jr.
United States Attorney
District of Columbia
Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530

Dear Ms. Buchanan and Mr. Machen:

On December 15, 2009, without objection from the government, Judge Fred B. Ugast issued an Order releasing Donald Gates from federal custody in case number 1981-FEL-6602. On December 18, 2009, the United States Attorney's Office (USAO) joined the motion of Mr. Gates to vacate his convictions for first degree felony murder while armed, rape while armed, and carrying a pistol without a license on the grounds of actual innocence. Judge Ugast signed an Order granting the motion that day. Judge Ugast's Order followed the receipt of DNA analyses confirming that Mr. Gates was not the contributor of semen found in the body of a woman who had been raped and murdered in Rock Creek Park in 1981.

During the course of the post-conviction Gates litigation, it came to the attention of the Court that several FBI examiners, including the one who testified at Mr. Gates's trial, had been under investigation for possible wrongdoing. In a 1997 report issued by the

Office of the Inspector General of the Department of Justice entitled *The FBI Laboratory: An Investigation into Laboratory Practices and Alleged Misconduct in Explosives-Related and Other Cases* (“OIG Report”), seven FBI forensic examiners were identified who may have made examinations, filed reports or testified in District of Columbia criminal cases, and who were under investigation. On December 15, 2009, the date of Mr. Gates’s release, Judge Ugast requested that the USAO investigate all cases which relied on the work of Special Agent Michael Malone, and the other FBI forensic examiners identified in the OIG Report. Judge Ugast further requested that the results of the investigation be reported to the Chief Judge of the Superior Court.

On March 16, 2010, the government submitted a preliminary report on its progress. In that report the USAO provided the Court with a summary of 20 cases involving analysts criticized by the OIG report. In a letter dated October 13, 2010, the USAO reported that it had established a task force to continue the investigation, which had identified an additional 109 cases in which forensic examiners named in the OIG Report were asked to conduct an analysis. These additional cases brought the total number of cases in which these examiners were involved—including Mr. Gates’s case and the 20 identified in the USAO’s previous letter—to 130.

The government concluded that of the 130 cases, 24 resulted in a conviction based in part on expert evidence from one of the seven examiners identified in the OIG Report. The government’s analysis showed that none of the 130 cases, including the 24 cases noted above, were affected by misconduct. Nonetheless, in an abundance of caution, the government asked the Mid-Atlantic Innocence Project to independently review these 24 cases. Once this independent review is completed, the Innocence Project will file a report with the Court indicating that it: (1) concurs that there is no viable claim of actual innocence; (2) intends to file one or more claims of actual innocence pursuant to the Innocence Protection Act (IPA); or (3) requires more time (or perhaps additional information or materials) to properly investigate. In the event that an IPA claim is filed, the USAO will respond to the motion and participate in any hearing that might be held. The USAO also indicated, however, that the investigation is ongoing, and that more work needs to be done to identify the entire universe of possible cases in which these examiners were involved.

The Public Defender Service (PDS) has had an opportunity to respond to the USAO's reports and has made several recommendations to the Court. These recommendations, and the Court's responses, are as follows:

- (1) Establish an “Innocence Commission”:** I have asked Judge Russell F. Canan, Presiding Judge of the Criminal Division, to convene an ad hoc committee with our criminal justice partners to make a recommendation on whether the District of Columbia should establish a body to evaluate the causes of wrongful convictions and propose areas for reform. In the event that the ad hoc committee determines that such a body is appropriate, the committee will also recommend the process through which this body should be established. The participants in these meetings will include members of the prosecution and defense bars, the Criminal Justice Coordinating Council, the Metropolitan Police Department, the Mid-Atlantic Innocence Project, and representatives from the legislative and executive branches of government.
- (2) Make all documents and communications related to this investigation public:** Upon request, all documents pertaining to this matter, as redacted if necessary, will be made available through the Court's Public Information Officer.
- (3) Appoint a judge to preside over this investigation:** If cases are brought by the Mid-Atlantic Innocence Project, or any other lawyer, that relate to the OIG Report, I will consider assigning a single judge to preside over those cases. I have designated a judge to review the report of the Mid-Atlantic Innocence Project. The assignment of a judge to preside over the investigation, however, seems premature at this time, as I will monitor developments as they arise.
- (4) Broaden the investigation to include all District of Columbia cases in which FBI hair and fiber examiners played a role in obtaining a conviction**

by guilty plea or at trial: The Court appreciates the actions of the Office of United States Attorney to date and the concerns articulated by PDS regarding hair and fiber forensic evidence as presented in the Gates case. In light of the fact that some aspects of these issues may be litigated in cases before this Court and other courts, the Court is reluctant to initiate an investigation beyond the inquiry requested by Judge Ugast. However, in its response, the government has acknowledged that Agent Malone in the Gates case “offered unfounded testimony at trial that exaggerated the probative value of the hair match.”¹ While the Court is not formally requesting that the government expand the scope of its current investigation, the Court would nonetheless urge the government to consider whether there were other FBI hair and fiber experts, beyond the seven identified in the OIG Report, whose testimony may have contributed to a conviction that deserves renewed examination.

(5) Appoint PDS as counsel to the investigation: I do not believe it is necessary to formally appoint PDS or any other entity as counsel to the investigation conducted by the United States Attorney in response to Judge Ugast’s request. I note that PDS, the Superior Court Trial Lawyers’ Association, and the Mid-Atlantic Innocence Project will be participating with Judge Canan on the ad hoc committee referenced in point (1) above.

(6) Allow PDS to review the list of cases and all of the records relating to each case that is the subject of the government’s initial or subsequent reports to this Court: Based on the information provided pursuant to Judge Ugast’s request thus far, it appears to me that the government has acted in good faith and has conducted an extensive investigation into these matters, which is still ongoing. As such, I do not

¹ Letter from Michael T. Ambrosino, Counsel to the United States Attorney, to Chief Judge Satterfield of the Superior Court of the District of Columbia (Nov. 15, 2010), n.3.

believe there is a sound basis upon which to request that the government turn over its files, beyond those it has voluntarily produced to the Innocence Project.

The Superior Court continues to be committed to adhering to the highest standards of justice for the residents of the District of Columbia. The case of Donald Gates has prompted this Court, and the broader criminal justice community, to reflect upon how we can improve upon these standards, and work together to ensure that no innocent person is convicted or imprisoned. We have already begun that process and we intend to continue, subject to the constraints of the separation of powers and the overarching imperative to preserve the independence of the judicial branch.

I appreciate the careful consideration that both the USAO and PDS have given to this matter, and I look forward to continuing this dialogue among our criminal justice partners.

Sincerely,

A handwritten signature in cursive script that reads "Lee F. Satterfield". The signature is written in black ink and is positioned above the printed name and title.

Lee F. Satterfield
Chief Judge

Copies to:

The Honorable Russell F. Canan, Presiding Judge, Criminal Division

The Honorable Robert E. Morin, Deputy Presiding Judge, Criminal Division

The Honorable Fred B. Ugast

The Honorable Frederick H. Weisberg

Leah Gurowitz, Esquire

Sandra K. Levick, Public Defender Service

Betty M. Ballester, Superior Court Trial Lawyers Association

Patricia A. Riley, United States Attorney's Office

Michael T. Ambrosino, United States Attorney's Office

M. Kimberley Brown, Office of the Attorney General

Mannone Butler, Criminal Justice Coordinating Council

Chief Cathy L. Lanier, Metropolitan Police Department

Assistant Chief Peter Newsham, Metropolitan Police Department

Shawn Armbrust, Mid-Atlantic Innocence Project

Paul A. Quander, Deputy Mayor for Public Safety and Justice

Phil Mendelson, D.C. Councilmember