



U.S. Department of Justice

Channing D. Phillips
Acting United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

December 18, 2009

The Honorable Fred B. Ugast
Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Washington, D.C. 20001

Re: United States v. Donald Gates, Crim. No. F-6602-81

Dear Judge Ugast:

We are writing to inform the Court that following an extensive search of the United States Attorney's Office, we discovered in our files the letter dated January 22, 2004, from Amy B. Jabloner to Terry Keeney regarding FBI laboratory examiner Michael Malone. Although we indicated in Court on Tuesday that, based on the information we believed to be accurate at the time, it did not appear that this letter had been received by the Special Proceedings Division, information uncovered in the subsequent search for pertinent records indicates that the letter may have been received by that Division. We have referred the matter to the Department of Justice and the Office of Professional Responsibility for whatever action they deem appropriate.

In response to the Court's request, we have initiated an investigation into whether there are any other cases in the District of Columbia involving examiners who were criticized in the 1997 report entitled *The FBI Laboratory: An Investigation into Laboratory Practices and Alleged Misconduct in Explosives-Related and Other Cases*. The Department of Justice previously undertook to identify those cases in which examiners whose work was called into question testified. We have begun to review those results and will notify the defense in any additional cases in the District of Columbia in which an examiner testified. We also will undertake a second review to make sure all such cases have been identified. We will work as expeditiously as possible, but the age of the cases and need to review files and possibly transcripts likely will cause some logistical problems. At your suggestion, we will report our findings to the Chief Judge no later than March 15, 2010, and will provide your Honor with a copy as well.

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We are deeply troubled by the way this case progressed, and we regret that any mistakes by the government were not disclosed and resolved earlier. We are dedicated to examining what happened in this case to make sure such mistakes are never repeated. We are sincerely sorry that Mr. Gates was imprisoned for so many years for a crime he did not commit and hope to have the opportunity to personally express our sentiments to him.

Sincerely,



Channing D. Phillips
Acting United States Attorney



Joan Draper
Assistant United States Attorney

cc: Sandra Levick, Chief
Parisa Dehghani-Tafti, Staff Attorney
Special Litigation Division
Public Defender Service

Felony Clerk's Office