



U.S. Department of Justice

Ronald C. Machen Jr.
United States Attorney

District of Columbia

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

October 13, 2010

The Honorable Lee F. Satterfield, Chief Judge
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Suite 3500
Washington, D.C. 20001

Dear Chief Judge Satterfield:

The purpose of this letter is to update the Court on the progress of the United States Attorney's Office's review of cases involving FBI forensic examiners whose work was called into question by a report issued in 1997 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").

On March 12, 2010, the United States Attorney's Office (USAO) provided the Court with a summary of 20 cases involving analysts criticized by the *OIG Report*. Since that time, the United States Attorney has formed a task force to conduct a comprehensive review of all D.C. cases involving forensic analysts named in the *OIG Report*. The goal of the USAO task force is to identify any other defendant who might have a viable claim of actual innocence under the federal or local Innocence Protection Acts. Having completed the second phase of the review process, the task force has not identified any other defendant with a viable claim of actual innocence. However, out of an abundance of caution, and in the interest of transparency, the USAO has invited the Mid-Atlantic Innocence Project to independently review 24 cases containing positive forensic evidence where a conviction was obtained.¹ We are confident that the Innocence Project's independent review will provide a robust process for identifying any other defendant who might possess a potential claim of actual innocence under the federal or local IPA.

Since our initial report, the USAO task force has identified 109 additional cases in which forensic

¹ The Mid-Atlantic Innocence Project is a non-profit organization that provides investigation and legal assistance to incarcerated people who claim to be wrongly convicted. The project was founded in 2000 and is run through a network of attorneys and law students in the Washington, D.C. area. The Mid-Atlantic Innocence Project is affiliated with the Innocence Network, which has worked with the FBI to review convictions involving bullet lead analysis.

examiners named in the *OIG Report* were asked to conduct an analysis.² For 92 of those cases, no additional review is required because the integrity of these prosecutions is not called into question by the *OIG Report*. In 56 of these 92 cases, the examiners found no forensic evidence (*e.g.*, no hair) or no useful forensic evidence (*e.g.*, no hair suitable for comparison; no hair like the defendant's on the victim or vice versa), and, thus, the forensic analysis had no effect on the case. In 28 of these cases, the examiners involved were not among those criticized in the *OIG Report*. In eight of these cases, a positive forensic analysis was issued by the FBI, but no conviction was obtained. Beyond these 92 cases, there are two additional cases where the convictions were vacated, one before and one after the issuance of the *OIG Report*. Therefore, no further review is warranted in 94 of the 109 cases.

With respect to the remaining fifteen cases, there was both a positive forensic analysis from the FBI and a subsequent conviction. In addition, there were nine cases that were discussed in our previous report from March 12th that fit into this same category. Thus, all told, we are aware of 24 local and federal D.C. cases, between 1978 and 1994, in which an FBI forensic analysis yielded a positive result and the prosecution obtained a conviction which still stands.³ The USAO task force has invited the Innocence Project to independently review these 24 cases.⁴

By its charter, the Innocence Project is equipped to review federal and local prosecutions. As the Innocence Project's core mission is to identify and correct wrongful convictions, it is uniquely well-suited to provide an independent review of the USAO task force's work. The Innocence Project has agreed to reexamine these 24 cases to ascertain whether any of these defendants possesses a viable claim of actual innocence under the federal or local IPA. Once this independent review is completed, the Innocence Project will file a report with the Court indicating either that it: (1) concurs that there is no viable claim of actual innocence; (2) intends to file one or more claims of actual innocence; or (3) requires more time to properly investigate. In the event an IPA claim is filed on behalf of a defendant, the USAO's Special Proceedings Division will respond to the motion and participate in any hearing that might be held. The Innocence Project will also file follow-up reports

² These additional cases bring the total – including Mr. Gates's case and the 20 identified in our first letter – to 130. The USAO is awaiting the completion of a new database at the Department of Justice containing all documents relating to cases involving forensic examinations by analysts named in the *OIG Report*. Once the database has been finalized, the USAO will search for any additional materials relating to D.C. cases. In the event that more cases are uncovered, the USAO will submit a third report. We will also address in a separate letter the Public Defender Service's request that the USAO "broaden its investigation to include all persons in the District of Columbia whose convictions were affected by the work of FBI hair and fiber analysts during the pre-DNA era."

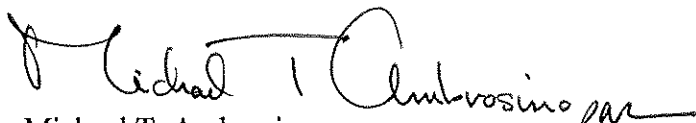
³ These 24 cases involved a total of 41 defendants. Out of these 41 defendants, 13 were found guilty after a jury trial, 24 defendants entered guilty pleas, one defendant remains a fugitive, and the government dismissed charges against the remaining three defendants. We note that one of the 24 cases did not involve a positive forensic analysis because the report yielded a negative result. However, the forensic analyst nevertheless testified to the significance of the forensic report at trial, so we have invited the Innocence Project to review this case as well.

⁴ Before providing any records or information to the Innocence Project, we will submit to the Court a proposed Order that will permit the USAO to disclose information that might otherwise be protected by Rule 6(e) or the Privacy Act, and that will prevent further disclosure except by order of this Court.

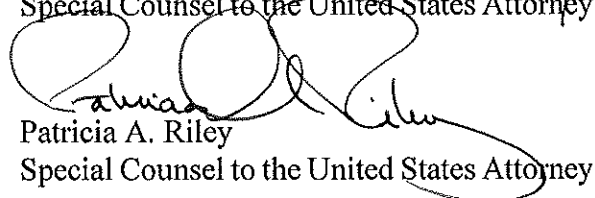
regarding any cases that require further investigation.

Given the passage of time and the nature of the issues raised by the *OIG Report*, the USAO does not believe that the defendants covered by the USAO task force review have any statutory or constitutional avenues of relief other than a claim of actual innocence under the federal or local IPA. However, to the extent that the Innocence Project determines that a defendant has a cognizable, non-IPA, statutory or constitutional claim, it can request that the appropriate court appoint counsel to inquire into the matter. Should the District Court or this Court appoint counsel under such circumstances, any claim would be handled in the normal course of litigation by the Special Proceedings Division of the USAO.

Sincerely,



Michael T. Ambrosino
Special Counsel to the United States Attorney



Patricia A. Riley
Special Counsel to the United States Attorney

cc: The Honorable Fred B. Ugast
The Honorable Russell F. Canan
Shawn Ambrust, Esq., Mid-Atlantic Innocence Project
Sandra Levick, Esq., Public Defender Service