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## FBI Drops Controversial Bullet Tests

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WASHINGTON -- The FBI decided Thursday to stop tests that match bullets by lead content, a practice criticized as producing a high rate of false matches between crime scene bullets and bullets taken from suspects.

The bureau said it was informing 300 state, local and foreign law enforcement agencies that had received positive match reports from the FBI Laboratory since 1966. The FBI said it had not determined those results were wrong but informed them so they could take whatever action they deem appropriate.

Criminal defense attorneys have contended that re-evaluation of these tests could affect some convictions on appeal. One New Jersey defendant has been granted a new trial because of questions about the bullet test analysis, and a convicted double murderer in New Zealand has requested a pardon based on questions about the test.

Jack King, National Association of Criminal Defense Lawyers spokesman, said defense attorneys will track down most defendants in those 300 cases. "Now, we need the FBI to provide a live witness, a scientist from the FBI Lab, to testify at post-conviction hearings on these old cases," King said. "Some of these guys have sat in jail for decades, and it's about time they got a fair hearing."

The bureau spent more than a year reviewing recommendations of a scientific panel that last year criticized the reliability of conclusions based on the tests. The panel was assembled by the National Research Council, principal operating arm of the National Academy of Sciences, a private institution chartered by Congress to advise the government on scientific matters.

The FBI said it dropped the tests primarily because "neither scientists nor bullet manufacturers are able to definitively attest to the significance of an association made between bullets in the course of a bullet lead examination."

Examinations of the lead content of bullets have been performed in limited circumstances, the FBI said. Typically they are done when a firearm has not been recovered or when a fired bullet from a crime scene is too small or damaged to compare with the marks left on a slug by the barrel of a firearm.

These bullet lead exams determine the amounts of trace elements, like copper, arsenic, antimony, or tin, in the bullets. That analysis allows crime-scene bullets to be compared to bullets found in a suspect's possession or weapon, the FBI said.

Since the early 1980s, the bureau has performed bullet lead examinations in 2,500 cases submitted by federal, state, local and foreign law enforcement agencies. But the results were introduced at trials in fewer than 20 percent of those cases, the FBI said.

The NRC study, requested by the FBI and released in February 2004, found the FBI's chemical analyses and equipment were sound. However, the study questioned a statistical analysis method known as chaining that compares trace elements in a series of bullets. It noted that bullets sold in one package are not necessarily all from the same batch of lead.

The study was first reported by The Associated Press in November, 2003.

Kenneth O. MacFadden, a Chestertown, Md., research and management consultant who chaired the

NRC study, said its most urgent recommendation was to have FBI witnesses in criminal cases more clearly explain the limits of the test.

MacFadden said chaining is like saying bullet A is like bullet B and B is like C and C is like D and so on, and then concluding that means A is the same as E because they are part of the same chain.

The committee said this can lead to an artificially large group of bullets being considered identical, "when this would not be true if other statistical methods were used."

Last year, King, of the defense lawyers group, had predicted the NRC study would affect cases on appeal. "They cannot match lead samples like fingerprints" but an FBI scientist's testimony gets more credibility from the jury than it deserves, King said.

Last March, a New Jersey appeals court ruled the FBI lab technique is based on "erroneous scientific foundations" and overturned a 1997 murder conviction. The court ordered a new trial for defendant Michael S. Behn because the FBI analysis that used chaining to link bullets found at Behn's residence with those used in the killing was the only expert testimony not countered by Behn's lawyers.

"The integrity of the criminal justice system is ill-served by allowing a conviction based on evidence of this quality, whether described as false, unproven or unreliable, to stand," the judges said.

That is believed to be the only U.S. conviction overturned on this basis since the NRC report, King said.

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