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September 23, 2005

*Via U.S. Mail and Fax: (202) 514-1009*

David M. Hardy  
Section Chief  
Records/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Washington, D.C. 20535

**Re: FOIA Request on Behalf of Forensic Justice Project and Dr. Frederic Whitehurst**

Dear Mr. Hardy:

On behalf of the Forensic Justice Project and Dr. Frederic Whitehurst, we hereby request access, pursuant to the Freedom of Information Act, 5 U.S.C. §552, to the following documents:

- 1. All documents concerning or relating to the “bullet lead examinations” conducted by the FBI Laboratory “in approximately 2,500 cases submitted by federal, state, local, and foreign law enforcement agencies.” See Attachment 1, FBI Press Release, “FBI Laboratory Announces Discontinuation of Bullet Lead Examinations,” p. 1 (September 1, 2005).**
- 2. All documents concerning or relating to the “[l]etters outlining the FBI Laboratory’s decision to discontinue these [bullet lead] examinations” that were “sent to approximately 300 agencies that received laboratory reports indicating positive results since 1996.” See Attachment 1, FBI Press Release, “FBI Laboratory Announces Discontinuation of Bullet Lead Examinations,” p. 1 (September 1, 2005), attached hereto.**
- 3. All FBI laboratory reports indicating positive results in bullet lead examinations since 1996 (see Attachment 1, FBI Press Release, p. 1), and all documents concerning or relating to said laboratory reports indicating said positive results.**

**4. All FBI laboratory reports indicating positive results in bullet lead examinations since 1963, and all documents concerning or relating to said laboratory reports indicating said positive results.**

For purposes of this request, the term "documents" includes but is not limited to notes, letters, memoranda, drafts, minutes, diaries, logs, procedures, instructions, engineering analyses, drawings, files, graphs, charts, maps, photographs, agreements, handwritten notes, studies, data, notebooks, books, telephone messages, computations, interim and/or final reports, status reports, and any and all other records relevant to and/or generated in connection with the above-listed records.

As you are aware, the FOIA requires you to release documents in segregable portions in the event they contain exempt material. For any documents or portions that you deny due to a specific FOIA exemption, please provide an index itemizing and describing the documents or portions of documents withheld.

We also ask that all fees be waived because all of the information requested will contribute significantly to the public's understanding of the operations or activities of the government and/or is primarily in the public interest and is not in the commercial interest of the requester.

We request expedited processing of this FOIA request. This request for expedited processing is submitted pursuant to 28 C.F.R. §16.5(d)(1)(iv). A copy of this request is also being sent to the Director of Public Affairs pursuant to 28 C.F.R. § 16.5(d)(2). I hereby certify to be true and correct to the best of my knowledge and belief all of the information contained in this letter in support of our request for expedited processing pursuant to 28 C.F.R. § 16.5(d)(1)(iv): the investigation that is the subject of this request has also been the subject of ongoing widespread and exceptional media coverage and remains of interest to nearly every national news media outlet in the United States, to the general public and to the U.S. Congress. The subject matter of this FOIA request has been the subject of numerous news media reports. We have previously provided copies of widespread and exceptional media coverage, and Congressional oversight, of the FBI's bullet lead controversy in support of other FOIA requests that are currently in litigation. *See Forensic Justice Project v. FBI, et al.*, C.A. No. 1:04CV01415 (PLF) (D.D.C.). A copy of the news articles, television broadcasts and other documents that demonstrate ongoing and exceptional and widespread news media and Congressional interest in the subject matter of this request are attached to the Forensic Justice Project's filings in that case. *See Id.*, Plaintiff's Exhibits in Support of Cross-motion for Partial Summary Judgment on Expedited Processing and in Opp. to Motion for Open America Stay, dated February 25, 2005; Plaintiff's Surreply/Reply Exhibits, dated April 20, 2005. The FBI is already in possession of these documents and they are incorporated herein by reference.

Moreover, on September 1, 2005, the FBI, itself, issued a national press release in which the FBI announced the discontinuation of bullet lead examinations nation-wide. *See* Attachment 1, FBI Press Release (Sept. 1, 2005). The FBI's September 1, 2005 announcement is the subject of widespread and exceptional news media coverage, which is ongoing. *See* Attachment 2, Michael J. Sniffen, "FBI Drops Controversial Bullet Tests," Associated Press (9/1/2005); and Attachment 3, Google List of News Reports (Sept. 2005). In addition, the Forensic Justice Project and Dr. Whitehurst have been contacted by national news media reporters since September 1, 2005, expressing a continuing and ongoing interest in the bullet lead issue. It is anticipated there will be further widespread and exceptional news media coverage of this issue on an ongoing basis.

We therefore request that this FOIPA request be expedited and that all documents be released within ten (10) working days.

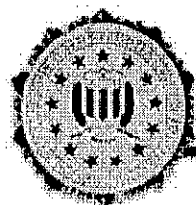
If you have any questions, please do not hesitate to contact us. Thank you for your attention to this matter.

Sincerely,

David K. Colapinto  
Attorney for the Forensic Justice Project  
and Dr. Frederic Whitehurst

#### Attachments

cc (via fax) (w/attachments):  
Director of Public Affairs  
Office of Public Affairs  
U.S. Department of Justice  
Room 1128, 950 Pennsylvania Avenue, NW.  
Washington, D.C. 20530-0001  
Fax: (202) 514-5331



## **U.S. Department of Justice Federal Bureau of Investigation**

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**For Immediate Release  
September 1, 2005**

**Washington D.C.  
FBI National Press Office**

### **FBI LABORATORY ANNOUNCES DISCONTINUATION OF BULLET LEAD EXAMINATIONS**

Washington, D.C. – The FBI Laboratory today announced that, after extensive study and consideration, it will no longer conduct the examination of bullet lead. Bullet lead examinations have historically been performed in limited circumstances, typically when a firearm has not been recovered or when a fired bullet is too mutilated for comparison of physical markings. Bullet lead examinations use analytical chemistry to determine the amounts of trace elements (such as copper, arsenic, antimony, tin, etc.) found within bullets. The result of that analysis allows crimescene bullets to be compared to bullets associated with a suspect. Since the early 1980s the FBI Laboratory has conducted bullet lead examinations in approximately 2,500 cases submitted by federal, state, local, and foreign law enforcement agencies. In less than 20% of those cases was the result introduced into evidence at trial.

In 2002, the FBI asked the National Research Council (NRC) of the National Academy of Science to have an independent committee of experts evaluate the scientific basis of comparative bullet lead analysis. Specifically, the FBI divided the bullet lead examination into three parts (the scientific method, the data analysis, and the interpretation of the results) and asked the NRC for an impartial review of each area. The technology reviewed by the NRC had been used by the FBI Laboratory since 1996. The NRC's recommendations, following the study, were set forth in a report entitled "Forensic Analysis: Weighing Bullet Lead Evidence."

The NRC found that the FBI Laboratory's analytical instrumentation is appropriate and the best available technology with respect to precision and accuracy for the elements analyzed. It also found that the elements selected by the FBI for this analysis are appropriate. The NRC expressed concerns, however, relating to the interpretation of the results of bullet lead examinations.

Following the issuance of the report the FBI Laboratory embarked on an exhaustive 14-month review to study the recommendations, offered by the NRC, including an evaluation of statistical methodologies. Although the NRC stated that the FBI Laboratory did not need to suspend bullet lead examinations while undertaking this review, the FBI elected to do so while the review was pending.

One factor significantly influenced the Laboratory's decision to no longer conduct the examination of bullet lead: 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. While the FBI Laboratory still firmly supports the scientific foundation of bullet lead analysis, given the costs of maintaining the equipment, the resources necessary to do the examination, and its relative probative value, the FBI Laboratory has decided that it will no longer conduct this exam.

Letters outlining the FBI Laboratory's decision to discontinue these examinations are being sent to approximately 300 agencies that received laboratory reports indicating positive results since 1996. The letters are being sent so that these agencies may take whatever steps they deem appropriate, if any, given the facts of their particular

case. It is important to note that the FBI Laboratory has not determined that previously issued bullet lead reports were in error.

The NRC's report is available through the National Academies Press website at ([www.nap.edu](http://www.nap.edu)).

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