IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Steven J. HATFILL, M.D., *Plaintiff* v. Attorney General John ASHCROFT, Timothy BERES, Daryl DARNELL, Van HARP, the DEPARTMENT OF JUSTICE, the FEDERAL BUREAU OF INVESTIGATION, *et alia,* *Defendants*	)	Civil No. 1:03-CV-01793 (RBW)

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE AGENCY DEFENDANTS' MOTION FOR ORDER BARRING DEPOSITION OF VIRGINIA PATRICK

In a motion that bodes ill for the discovery phase of this case, the Agency Defendants have asked this Court to prevent the plaintiff from preserving the first-hand testimony of a private citizen to whom the defendants willfully disclosed investigatory information pertaining to Dr. Hatfill. They argue unconvincingly that such evidence is irrelevant, even though it goes to the heart of Dr. Hatfill's case. They also argue that the government possesses a privilege that permits them not just to keep secret information secret, but to prevent private citizens from talking about things that are manifestly not secret.

The suggestion that the government-as-litigant may control the flow of information to the Court in this manner is unfounded, particularly when the government stands as a defendant accused of serious misconduct. Because the relevance is direct and obvious, and because the assertion of law-enforcement privilege is specious, the motion should be denied. There is simply no good-faith argument that the law-enforcement privilege may be extended to silence a third-party witness to the public statements and activities of Agency Defendants.

Part I of this Opposition gives the Court the crucial factual context which the Agency Defendants' papers omit. Part II describes the obvious relevance of the testimony in question. Part III explains why the "law enforcement investigatory privilege" is simply inapplicable to this case.

I. The Factual Context of the Agency Defendants' Highly Public Use of Hounds in Investigating Dr. Hatfill

It is no secret to Dr. Hatfill that the FBI employed bloodhounds in its investigation of the anthrax murders. Regrettably, due to FBI leaks, it is also no secret to anyone who has either watched or read the news in the past three years:

> [PETER JENNINGS] The FBI tells ABC News it is very confident that it has found the person responsible [for the anthrax attacks].
> ABC's Brian Ross is here. Brian? Same case, same individual.
> [BRIAN ROSS] That's right, Peter, Steven Hatfill. And while there no direct evidence, authorities say they are building what they describe as a growing case of circumstantial evidence.
> And their secret weapon has been a 3-member team of bloodhounds. . .
>
> [BRIAN ROSS] Some of the same dogs being used in the sniper case. The team includes this dog named Lucy from the Long Beach, California Police Department, and two others from California, Tinkerbell and Knight. The three bloodhounds are considered by the FBI to be the best in the country. In the anthrax investigation, officials say each dog was given the scent extracted from the anthrax letters, and each, independently, then reacted at the same place. The Maryland apartment of former US government scientist Steven Hatfill. The bloodhound Lucy actually led its handler directly to Hatfill. While Hatfill is still not officially called a suspect, he still clearly is the main focus of the FBI, even though he continues to deny any involvement.

Peter Jennings and Brian Ross, World New Tonight With Peter Jennings, (ABC News Broadcast, October 22, 2002)

* * *

> The [FBI] agents quietly brought the dogs to various locations frequented by a dozen people they considered possible suspects—hoping the hounds would match the scent on the letters. In place after place, the dogs had no reaction. But when the handlers

> approached the Frederick, Md., apartment building of Dr. Steven J. Hatfill, an eccentric 48-year-old scientist who had worked in one of the Army's top bioweapons-research laboratories, the dogs immediately became agitated, NEWSWEEK has learned. "They went crazy," says one law-enforcement source. The agents also brought the bloodhounds to the Washington-D.C., apartment of Hatfill's girlfriend and to a Denny's restaurant in Louisiana, where Hatfill had eaten the day before. In both places, the dogs jumped and barked, indicating they'd picked up the scent.

Mark Miller and Daniel Klaidman, *The Hunt for the Anthrax Killer*, *NEWSWEEK*, August 12, 2002, at 22.

* * *

> What was it exactly that brought FBI agents and US Postal inspectors to the Maryland apartment of a former bioweapons researcher last week for a second search? The answer, it turns out, is dogs. Government officials confirm the search was ordered after bloodhounds showed apparent reactions to scents at the apartment of Dr. Steven Hatfill and at the Washington, DC, apartment of his girlfriend.

Pete Williams, *The News with Brian Williams*, (CNBC Broadcast, August 5, 2002) [1]

Indeed, observant viewers would have known about the bloodhounds almost as early as Dr. Hatfill did. On August 1, 2002, in front of a nation-wide television audience, Special Agents of the Federal Bureau of Investigation (FBI) searched Dr. Steven Hatfill's apartment. The television cameras captured images of bloodhounds at Dr. Hatfill's apartment. During the search the agents escorted Dr. Hatfill to an empty apartment in his complex. There, the agents told him that the bloodhounds had "alerted" to locations where Dr. Hatfill had recently been present. As if to prove their point, the agents then brought in a bloodhound. The dog walked over to Dr. Hatfill, sniffed him, and then allowed Dr. Hatfill to pet him.

---

[1] These three examples are illustrative of the dozens of news stories (based on anonymous leaks) reporting that the FBI subjected Dr. Hatfill to bloodhounds during its investigation. Although the number of leaks regarding the bloodhounds is distressing, they are merely the tip of the iceberg of all the unlawful Privacy Act disclosures Dr. Hatfill has suffered at the hands of the agency defendants during the past three years. To set out all of the unlawful disclosures in this document would risk running afoul of the local rules regarding page limits in briefs.

Shortly after this staged media event, FBI Special Agents visited Mrs. Virginia Patrick, a longtime friend of Dr. Hatfill.[2] According to Mrs. Patrick, the agents told her that Dr. Hatfill was the killer and that the bloodhound "evidence" proved it. When she expressed doubt, they theatrically brought out the waiting bloodhounds and performed a demonstration. *See* Ex. 1, Declaration of Virginia Patrick.

The bloodhound "evidence" was bandied about so freely by the Agency Defendants in their contacts with the media that it spawned a follow-up waive of articles casting serious doubut upon the extraordinary claims made on behalf of these bloodhounds and their handlers. *See, e.g.*, Scott Shane, *FBI's Use of Bloodhounds in Anthrax Probe Disputed; Techniques the Three California Handlers Brought in by the Bureau are Viewed Skeptically by Many in Their Field*, Baltimore Sun, October 29, 2002 ("[T]he three bloodhound handlers brought into the anthrax case . . . use equipment and techniques that are rejected by many others in the field, including both of the major police bloodhound associations."), attached hereto as Exhibit 2.

II. Relevance

The testimony Dr. Hatfill seeks to elicit from Mrs. Patrick can be discerned from her attached Declaration. It pertains to what the Agency Defendants said to her about their investigation of Dr. Hatfill, and what they demonstrated to her in her own yard. It is directly

[2] Agency Defendants mention that Mrs. Patrick's husband, Dr. William Patrick, is "a bioweapons expert with whom the FBI had contact in connection with the investigation...." DOJ Brief at 4. This passing mention, and the related *ex parte* argument Agency Defendants have apparently made regarding disclosures to Dr. Patrick (see DOJ Brief at 5), is a red herring. The Patricks are personal friends of Dr. Hatfill to whom Agency Defendants deliberately made Privacy Act disclosures particularly calculated to cause personal harm. More to the point, Mrs. Patrick can testify on personal knowledge about the way in which the defendants made free with the bloodhound information they have lately come to regard as secret. The subject matter of the deposition is what the Agency Defendants said to Ms. Patrick and performed for her, not any professional work of her husband.

relevant in at least six ways. First, it is direct evidence of a disclosure of what Dr. Hatfill contends to be Privacy Act material, by the very recipient of that disclosure.[3] Second, it is direct evidence that the defendants acted willfully in making such a disclosure. Third, it is circumstantial evidence that the disclosed information – the account of the use of bloodhounds against Dr. Hatfill and the investigators' opinions about Dr. Hatfill – is Privacy Act information. Fourth, it is circumstantial evidence that the other, strikingly parallel disclosures of the same information to reporters, was intentional, part of a plan, and not an accident of any kind. Fifth, it demonstrates some of the actual damage Dr. Hatfill suffered from agency defendants' Privacy Act disclosures. Finally, it eliminates a factual predicate necessary to the agency defendants' assertions that their use of the bloodhounds was a secret law-enforcement technique; there was simply nothing secret about it.[4]

It is worth noting that the agency defendants have themselves made this deposition necessary, and brought about the final point of relevance noted above, by their strained invocation of the law-enforcement privilege to avoid admission of what, in good faith, cannot be denied. Over a year ago, Dr. Hatfill propounded the following request for Admission on the agency defendants (a request that tracked the precise language of the Privacy Act):

---

[3] Agency Defendants' claim that it is not relevant because Dr. Hatfill did not include this particular disclosure among the many enumerated in his Complaint is unavailing. Notice pleading standards do not require the specification of each and every incident alleged to be a part of the course of conduct giving rise to the Complaint. See Fed. R. Civ. Pro. 8(a); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 122 S.Ct. 992, 998 (2002).

[4] Agency Defendants argue that no discovery may be had regarding disclosures to Mrs. Patrick, because any such disclosure will be shown to fall within enumerated routine uses. *See* DOJ Memo at 5-6. While that defense might properly be raised at summary judgment, it cannot conceivably be used at this stage to frustrate discovery regarding the facts of such disclosures. "[I]t is unfair to ask plaintiff to prove its case as a condition to securing discovery." *Tri-State Hospital Supply Corp. v. United States*, 226 F.R.D. 118, 139 (D.D.C. 2005). Indeed, just by raising this argument now, the Agency Defendants persuasively illustrate how close to the heart of the plaintiff's Privacy Act claim this testimony lies. If they wish to assert that disclosures to people like Virginia Patrick are permissible "routine uses," then it is certainly necessary for the Court to know the facts surrounding such disclosures.

> Admit that information regarding whether Law enforcement officials subjected Dr. Hatfill to dogs ostensibly trained for law enforcement purposes is contained within a record or records within a system of records maintained by defendant United States Department of Justice from which information can be retrieved by the name of Dr. Hatfill, or by some identifying number, symbol, or other identifying particular assigned to Dr. Hatfill.[5]

The agency defendants refused to answer this request for admission, citing the law enforcement privilege. Defendant Department of Justice's Response To Plaintiff's First Set Of Request for Admission at 59-71. Having refused to admit this fact, the Agency Defendants can hardly complain with any justice about the deposition of witnesses who will enable the plaintiff to prove what the defendants should have admitted.

III. The Law Enforcement Privilege Does Not Apply

The law enforcement investigatory privilege is a qualified, common-law privilege. Where applicable, it allows the executive branch to withhold information 1) compiled for law enforcement purposes that 2) "might reveal law enforcement investigative techniques or sources . . . ." *Tuite v. Henry*, 98 F.3d 1411, 1413 (D.C. Cir. 1996). The privilege is plainly inapplicable here, not only because the information in question is in no sense secret, but also because the proposed witness is a private citizen who is presumptively not just permitted but obliged to tell the Court what she knows.

---

[5] To demonstrate his good faith and to show the Court that Dr. Hatfill has not designed his discovery requests with the intent to learn what is happening (if anything) in the criminal investigation, Dr. Hatfill took great care not to ask for the *results* of any investigative technique used by the FBI in it is investigation. Every request seeking an admission that the FBI used a particular investigative technique is tied directly to a specific leak of that investigatory procedure that appeared in the media. The discovery sought from Mrs. Patrick is typical: Dr. Hatfill seeks to ask her what government officials have already publicly disclosed to her about their investigation of Dr. Hatfill.

A. The Law-Enforcement Privilege Cannot be Extended to Suppress The Testimony of a Third Party Witness to Public Disclosures by Law Enforcement Officials

Dr. Hatfill seeks discovery not from the executive branch but from a private, third-party witness to what the executive branch personnel have publicly declared and did. While Courts have sometimes rejected "forcing the *government* to testify about the content" of law enforcement files, *In re Sealed Case*, 856 F.2d 268, 271 (D.C. Cir. 1988) (emphasis added), agency defendants have cited no authority for the proposition that they may preclude third-parties from testifying to what they observed government agents say and do.

The inapplicability of the law-enforcement privilege to testimony from third-party witnesses to law-enforcement activity is confirmed by the basic test the D.C. Circuit applies to assertions of the privilege. The Court is required to consider, among other factors, "whether the information sought is available through other discovery or from other sources." *Sealed Case*, 856 F.2d at 272, citing *Frankenhauser v. Rizzo*, 59 F.R.D. 339 (E.D. Pa. 1973). *See also In re United Telecommunications, Inc.*, 799 F. Supp. 1206, 1209 (D.D.C. 1992) (upholding SEC assertion of law-enforcement privilege and inviting movants to seek directly from third party the information that party provided to the SEC). Recourse to willing third-party witnesses such as Mrs. Patrick is a fundamental assumption of the legal framework surrounding the law-enforcement privilege.

Indeed, if the law enforcement privilege were as broad as the Agency Defendants have claimed here, it is difficult to see how any plaintiff could ever prove a Privacy Act violation. The gravamen of an improper disclosure claim under the Privacy Act is that the government took information that should have remained private and made it public. If the government has the right to prevent the plaintiff from deposing anyone who witnessed such a disclosure on the

ground that the information should not have been disclosed, then the only testimony the plaintiff will be able to gather will be information the disclosure of which is not actionable. In other words, the government will permit testimony about disclosures of information that it was permissible to disclose, but not about disclosures that would violate the Privacy Act. However congenial that state of affairs might prove to government leakers, it would gut the Privacy Act.

Nor are these considerations peculiar to the Privacy Act. Generally speaking, a witness is not owned by either party. Even in the context of the formal secrecy protections that apply under Fed. R. Crim. P. 6(e) in the grand-jury context, "there is no general obligation on the part of a grand jury witness to refrain from disclosing the contents of his testimony before the grand jury." *In re Investigation Before the April 1975 Grand Jury*, 531 F.2d 600, 274 n.11 (D.C. Cir. 1976). Every witness is "free to disclose his testimony to . . . anyone else." *Id.* Given the unquestioned freedom of grand-jury witnesses to tell the truth to either side, assertion of a government right to restrict Dr. Hatfill's access to a witness to a public, informal exchange with the Agency Defendants is particularly extraordinary and baseless.

B. The Law-Enforcement Privilege Does Not Protect the Government Against the Assembly of a Court Record on its Public Activities

Even if the pending Deposition Notice called for testimony from government personnel rather than a third-party witness, there would be no basis for granting defendants' motion, because the testimony does not involve any secrets.

The burden is upon the Agency Defendants to establish that the law enforcement privilege applies. *Friedman v. Bache Halsey Stuart Shields, Inc., et. al.*, 738 F.2d 1336, 1341 (D.C. Cir. 1984). Although the law enforcement privilege was meant to shield investigative techniques, it "should not be interpreted to include routine techniques and procedures already well known to

the public, such as ballistics test, fingerprinting, and other scientific tests or commonly known techniques." *Crooker v. Bureau of Alcohol, Tobacco, and Firearms*, 670 F.2d 1051, 1111 n.78 (D.C. Cir. 1981) (quoting Congressional conference report on law enforcement privilege exemption to FOIA). Thus, for the Agency Defendants to prevail on their privilege claim they must demonstrate that the use of bloodhounds is not "routine" or a procedure "already well known to the public." *Crooker*, 670 F.2d at 1111 n. 78.

There is nothing in their motion that supports such a proposition. That is unremarkable because it is no mystery to anyone in the country that law enforcement officers employ bloodhounds to assist in criminal investigations.

And the Agency Defendants' particular use of bloodhounds with Dr. Hatfill and his property is infamous, not secret. Dr. Hatfill was present when the bloodhound "procedure" took place. The American public saw the bloodhounds during the live televised broadcast of the defendants' search of Dr. Hatfill's apartment. The Agency Defendants told Virginia Patrick that they had used the bloodhounds in connection to Dr. Hatfill and in connection with the Patricks' property. And, the Agency Defendants leaked to virtually every major media outlet that bloodhounds had identified Dr. Hatfill as the anthrax perpetrator. In short, there are no law enforcement *secrets* to protect in connection with the bloodhounds, and obtaining testimony from Mrs. Patrick about what the Agency Defendants said and did on her property implicates the law-enforcement secrets no more than would a subpoena to the various television stations for tapes of their broadcasts of the search in progress.

There are, of course, excellent reasons why the bloodhound "evidence" should never have been mentioned in public: basic fairness to Dr. Hatfill, as well as DOJ regulations and the Privacy Act, required that any information about what the bloodhounds did or did not do with

respect to Dr. Hatfill should have been kept secret. But that will be true of many, many leaks at issue in this case; that indeed is the gravamen of Dr. Hatfill's Privacy Act claim. The Agency Defendants are taking the completely circular and untenable position that no testimony should be taken about improper disclosures because the disclosure of such information would be improper. The confidential nature of the information in an ideal world cannot, in logic or fairness, preclude the taking of testimony about the very-much-less-than-ideal way that information was actually handled in the real world.

At bottom, the Agency Defendants' motion is not aimed at keeping any information from Dr. Hatfill; obviously, Dr. Hatfill already knows about the bloodhounds and about what federal agents said to Mrs. Patrick. Nor is the defendants' motion aimed at keeping information away from the news media, since the media have already written extensively on the subject. (And indeed, by arguing that disclosure of the bloodhound "evidence" to the news media would be a permissible "routine use," DOJ Brief at 5, the Agency Defendants imply that the disclosure of this information would be *good* for the investigation.) *The only purpose served by the Agency Defendants' motion is to keep relevant information away from the Court.* This is not a matter of protecting the information in question for legitimate law-enforcement interests, but of frustrating Dr. Hatfill's efforts to put the facts regarding the leaks in admissible form so that the Agency Defendants can be held accountable. The defendants, the plaintiff, the witness, and the general public already know all about the infamous bloodhounds. The Court is entitled to have testimony on the subject as well.

IV. **Conclusion**

The Agency Defendants assert that the law enforcement investigatory privilege allows them to deprive the Court of relevant information that they were previously quite content to

disclose to private citizens, not to mention major media outlets – even though the testimony in question will come not from a government agent piercing some veil of secrecy, but from a private citizen who is only recounting what happened on her own property. For the foregoing reasons, Dr. Hatfill asks that the government's motion be denied.

DATED: June 27, 2005

/s/
Respectfully submitted,

By: Thomas G. Connolly, D.C. Bar # 420416
Mark A. Grannis, D.C. Bar # 429268
Patrick O'Donnell, D.C. Bar # 459360
Harris, Wiltshire & Grannis, LLP
1200 18th Street, NW
Washington, DC 20036

CERTIFICATE OF SERVICE

I, Jacinda Lanum, hereby certify that on this 27th day of June, 2005, a true and accurate copy of the foregoing Memorandum of Points and Authorities in Opposition to the Agency Defendants' Motion for Order Barring Deposition of Virginia Patrick was sent via facsimile and first-class mail, postage pre-paid, to:

Elizabeth J. Shapiro
U.S. Department of Justice
Civil Division
Federal Programs Branch
P.O. Box 883, Ben Franklin Station
Washington, DC 20044
(202) 616-8470 *facsimile*

_____/s/_____
Jacinda Lanum

Dated: June 27, 2005

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN J. HATFILL, M.D., Plaintiff v. ATTORNEY GENERAL JOHN ASHCROFT; THE DEPARTMENT OF JUSTICE; THE FEDERAL BUREAU OF INVESTIGATION; DOJ EMPLOYEE TIMOTHY BERES; DOJ EMPLOYEE DARYL DARNELL; FBI SUPERVISORY SPECIAL AGENT VAN HARP; AN UNKNOWN NUMBER OF UNKNOWN AGENTS OF THE FBI; and, AN UNKNOWN NUMBER OF UNKNOWN EMPLOYEES OF THE DEPARTMENT OF JUSTICE, Defendants	Civil Action No.03-1793 (RBW)

DECLARATION OF VIRGINIA PATRICK

I, Virginia Patrick, hereby declare under the penalty of perjury as follows:

1. I am a housewife married to William Patrick. I live outside of Frederick, Maryland.

2. Over the years, through my husband I have gotten to know Dr. Steven Hatfill, the plaintiff in this action. I am fond of Dr. Hatfill and do not believe that he had any involvement in the atrocious anthrax murders of 2001.

3. In or about August 2002, I was shopping in a store in Frederick, Maryland when two FBI agents and my husband approached me in the store. The FBI agents requested that I immediately return with them to my home. When I arrived at home FBI special agents told me words to the effect that: Dr. Hatfill was the anthrax killer; that the FBI had a "smoking gun" to prove it; and that the "smoking gun" was bloodhounds the agents had used and whom they said had identified Dr. Hatfill as the murderer.

4. Knowing Dr. Hatfill as I did, I was stunned to hear this news. I expressed some skepticism to the agents about what they had told me. I also offhandedly suggested that I would like to see these bloodhounds in action. The FBI agent immediately took me up on my offer. Within a matter of minutes, dog handlers and their dogs arrived on our property. It was obvious to me that the dog handlers had been stationed nearby in case the opportunity presented itself to show the dogs to us.

5. Upon arriving on my property, one of the handlers, whom I understand is not an FBI agent, set up a quick demonstration in my yard to attempt to demonstrate the prowess of his dog. Another person at the scene, I do not recall precisely who, told me that the dog handlers had earlier brought the dogs to my home and sniffed around my property to try to determine whether our property had any connection to the anthrax mailings.

6. The disclosures from the FBI regarding the bloodhounds were quite disturbing. This was made even more so by the fact that it was never made clear to me why the FBI disclosed this information to me. Once they disclosed this information to

me, they never asked me to do anything with the information, nor did they ask me not to disclose what they had told me. The FBI agents never asked me to sign any sort of non-disclosure agreement.

I declare under the penalty of perjury, this 24th day of June, 2005, that the foregoing is true and correct.

Virginia Patrick

Virginia Patrick

Exhibit 2

The Baltimore Sun

October 29, 2002 Tuesday FINAL Edition

SECTION: TELEGRAPH, Pg. 1A

LENGTH: 1998 words

HEADLINE: FBI's use of bloodhounds in anthrax probe disputed;
Techniques: The three California handlers brought in by the bureau are viewed skeptically by many in their field.

BYLINE: Scott Shane

SOURCE: SUN STAFF

BODY:

Three keen-nosed bloodhounds named Lucy, Knight and TinkerBelle, flown in by the FBI from Southern California late last summer to help with the anthrax investigation, are a major reason for agents' focus on former Army bioterrorism expert Dr. Steven J. Hatfill, according to sources with knowledge of the case.

But the three bloodhound handlers brought into the anthrax case - who also helped with the Washington-area sniper investigation - use equipment and techniques that are rejected by many others in the field, including both of the major police bloodhound associations.

It is uncertain what, if any, other evidence the FBI may have against Hatfill, a 49-year- old physician and biologist who worked at the Army's biodefense center at Fort Detrick from 1997 to 1999. Hatfill adamantly denies having anything to do with the anthrax attacks, saying he has been targeted by investigators desperate to show progress in the year-old case.

News media reports and scientists' views on the likely source of the mailed anthrax that killed five people last year remain strikingly divided. Last week, ABC News reported that the bloodhounds were the FBI's "secret weapon" in firmly linking Hatfill to the anthrax letters. Yesterday, The Washington Post published a report suggesting that the anthrax in the letters might actually have been produced by a bioweapons program in Iraq or some other country, not by a renegade U.S. scientist as the FBI appears to believe.

FBI spokesman Paul Bresson said yesterday that investigators have ruled out no possible source. "We're exploring all leads and letting the facts take us where they will," he said.

Whatever the FBI's ultimate conclusion, the controversy over the bureau's use of bloodhounds reveals a surprisingly haphazard approach to enlisting outside forensic help in one of the largest investigations in U.S. history. If charges are ultimately brought against anyone, the debate over how the dogs were used could be a hurdle in proving the case.

Unlike even many midsize police departments, the bureau does not have its own bloodhounds or handlers so it must recruit outsiders.

In this crucial case, the 15-year FBI veteran who selected the handlers and dogs is an explosives expert who says he has no experience using bloodhounds himself. Agent Rex Stockham acknowledges that the California handlers and their methods are viewed skeptically in the field, though he says the critics base their opinions on prejudice, not evidence.

"The guys in Southern California are social outcasts in the bloodhound handling community," said Stockham, a forensic examiner in the explosives unit at the FBI Laboratory in Washington.

'Talking trash about us'

The two major associations, the Law Enforcement Bloodhound Association and the National Police Bloodhound Association, "are out there talking trash about us," Stockham said. In fact, he said, he was virtually "laughed out" of one training seminar at which he tried to present results of the California handlers' work.

Jerry Nichols, a Colorado police officer and president of the Law Enforcement Bloodhound Association, does not mince words in criticizing the Californians.

"These are people we have credibility problems with," said Nichols, who has worked with bloodhounds for 13 years, conducted more than 500 bloodhound searches and testified in court 21 times. "I'm extremely skeptical. I don't believe these dogs really do what they claim to do."

A half-dozen other handlers interviewed by The Sun expressed similar doubts, including veteran Maryland police bloodhound handlers who admitted being irritated that the FBI had flown dogs across the country for searches that were mostly in the Frederick area.

But the critics have not dissuaded Stockham and the FBI from using the three handlers and their hounds - Bill Kift, a police officer in Long Beach, Calif., and his dog, Lucy; Dennis Slavin, an urban planner and reserve officer with the South Pasadena Police Department, and TinkerBelle; and Ted Hamm, a civilian who runs his own bloodhound business and is used by the Los Angeles County Sheriff's Department, and Knight.

"It's new," Stockham said of techniques used by the three men. "It's going to be criticized. I'm critical of it myself. I'm evaluating it for the FBI lab."

Stockham said he first became acquainted with the three handlers after seeing a 1999 video of their experiments with taking scents from fragments of exploded bombs.

But Stockham said he could not comment on the use of the bloodhounds on the anthrax case, the sniper case or any other open case. He also said the FBI had asked Kift, Slavin and Hamm not to comment; they did not return phone calls.

Truc Do, a Los Angeles County deputy district attorney who has prosecuted cases successfully based in part on blood- hound evidence produced by Slavin and Hamm, said the critics are misinformed. She said the California handlers are very careful to test their techniques before trying them on real cases.

"They've been working at the forefront of this kind of evidence," said Do. She was skeptical at first but has been won over: "You really have to see it to believe it."

Traditionally, a bloodhound handler uses a "scent article" to start his dog looking for a trail left by the person who had contact with the article. For example, a dog might be given an item of a missing child's clothing.

Then, on command, the dog sniffs around an area for a matching scent. If the dog picks up the child's scent, it trails with nose to the ground until it finds the child or the point where, for instance, the child was pulled into a car.

Instead of using the original scent article, handlers often put a small gauze pad on the item - clothing, facial tissue, a steering wheel - and allow the gauze to absorb the scent before preserving the "scent pad" in a plastic bag.

Pushing the limits

But the Californians have pushed the limits of the bloodhound art, taking scent off shell casings from firearms used in crimes, fragments of exploded bombs - and the decontaminated anthrax letters.

The Californians often use a $895 machine called a Scent Transfer Unit, resembling a small vacuum cleaner, that is designed to draw the scent off the article and deposit it on the pad. One of the machine's inventors is Larry R. Harris, a veteran bloodhound handler who trains with Slavin, Kift and Hamm.

Neither of the two police bloodhound associations has endorsed the Scent Transfer Unit. Officers of the two groups say it offers little advantage over using a gauze pad alone and in fact might confound matters. They contend that an older scent might linger in the machine when it is used on a new case - a charge its users deny.

In addition, bloodhound experts say, the Californians have been quite aggressive in using the dogs not only to follow fugitives or missing persons, but also to identify potential suspects - such as Hatfill - out of a number of people who might have committed the crime.

A false positive

That raises the possibility of a false positive - the identification of an innocent person as the perpetrator, with dire consequences. Some handlers say that there is always a chance that an eager-to-please dog will identify someone even if there is no scent match.

I. Lehr Brisbin Jr., a University of Georgia biologist who has a doctorate in animal behavior, is one of the few scientists who has actually tried to test dog handlers' claims that a bloodhound can accurately pick out a perpetrator from several suspects. He has conducted numerous experiments in which the bloodhound tried to pick from a half-dozen people the one whose scent was on a baseball cap, he said.

No dog was able to do it consistently.

"As a scientist, what they're supposed to have done (in the anthrax case) sounds like a miracle," said Brisbin, a bloodhound handler himself. "Every time I ask a dog to identify a suspect under controlled conditions, the dog can't do it."

Indeed, a federal jury awarded $1.7 million last year to a man wrongly accused of rape after police identified him in part based on the use of Slavin's bloodhound, TinkerBelle. DNA evidence later proved the man, Jeffrey Allen Grant, had not committed the rape.

Hatfill's attorney, Victor M. Glasberg, has suggested that such a mistake might have occurred with the bloodhounds used in the anthrax case, which he has ridiculed as "bionic dogs."

While few details of what the California handlers did in the anthrax case are known, Hatfill said through a spokesman that a bloodhound entered a room where he was sitting and approached him, prompting one agent to call out that the dog was identifying him.

Similarly, William C. Patrick III, another bioterrorism expert, said he and his wife were asked to stand on their lawn in Frederick, and two bloodhounds were led near them.

"They released the dogs, maybe 10 feet away," Patrick said. "My wife and I are dog lovers and we called them, and they walked up and we patted them." Patrick said he was told the dogs had not identified him as the perpetrator.

'Too many variables'

Cpl. Douglas H. Lowry, the senior bloodhound handler for the Maryland State Police, said that if he had been asked to take his dog to potential suspects' houses or approach suspects to see whether the scent from the letters could be matched, he would have refused to try.

"I think there's too many variables," said Lowry, a handler for 23 years who works from the Hagerstown barracks. "Let's say there's a cat or dog that urinated on the floor. You're going to have to be a pretty good handler to tell (the dog's reaction to) that from identifying the suspect."

In addition, Lowry and several other bloodhound handlers say they are doubtful that a useful scent could be taken from the anthrax letters. They note that the perpetrator probably minimized handling of the letters because no fingerprints or DNA could be recovered from them.

Then the letters went through the postal system, rubbing against other letters with other scents. And finally, the letters were decontaminated using radiation, which might affect the scent.

Two false trails

The use of the dogs in the sniper case raised other doubts for some handlers, although the dogs apparently played no role in the identification of two suspects last week.

A Maryland law enforcement officer involved in the sniper investigation said the dogs from California, given the scent taken from spent shell casings, followed two false trails in Montgomery County.

One led to a house, for which a search warrant was obtained and which turned out not be relevant. The other led to a dog-grooming parlor, the officer said.