DOG SCENT LINEUPS
A Junk Science Injustice

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INTRODUCTION AND OVERVIEW

The use of "junk science" by police and prosecutors in Texas is an ongoing injustice. Nowhere is this more obvious than in the government's use of "scent lineups"—a practice that is happening today throughout the state.

The purpose of this report is to summarize the results of our investigation into the use of this "scientific evidence." For reasons that will be explained below, the use of this testimony, particularly by the State's star expert Deputy Keith Pikett, has led to wrongful arrests, indictments and convictions. It will continue to do so unless it is stopped. Our aim in publishing this report is to help make that happen.

The following topics are covered in this report:
1. What Is "Junk Science"?
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6. The Strange and Awful Career of Deputy Keith Pikett
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WHAT IS "JUNK SCIENCE"?

Even before the television show "CSI" became popular, juries and judges have tended to believe what "scientific experts" say in criminal cases—especially if these "experts" are police officers or prosecution witnesses. One study found that "about one quarter of jurors who were presented with scientific evidence believed that had such evidence been absent, they would have changed their verdicts—from guilty to not guilty."[1] In the hands of a skilled prosecutor, scientific-sounding testimony from any source, no matter how fraudulent, can be played to great dramatic effect and win convictions.

Prosecutors have taken full advantage of the gullibility of jurors and the willingness of courts to allow the use of these techniques. In case after case, prosecutors have used phony "experts" with little or no training or education, false results from shoddy labs and dubious "theories" with no basis in fact to get convictions. Taken together, these abusive practices have come to be known as the use of "junk science." The use of this "evidence" is not limited to the courtroom: law enforcement agencies have come more and more to rely on it in making arrests and getting indictments.

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[1] KELLY M. PYREK, FORENSIC SCIENCE UNDER SIEGE: THE CHALLENGES OF FORENSIC LABORATORIES AND THE MEDICO-LEGAL INVESTIGATION SYSTEM 414 (Elsevier Academic Press) (2007).

Many people sent to prison because of junk science have been innocent: of the first 200 defendants exonerated through DNA in this country, "65% were convicted at least in part on fraudulent, unreliable, or limited forensic science."[2] In nearly all of those cases the real criminal got the chance to commit more crimes while an innocent citizen was locked up. This is why the use of phony scientific evidence presents a real threat to justice and a risk to public safety for every citizen.

In 2009, the National Research Council published an exhaustive report about the use of forensic science and expert testimony in criminal cases. The book-length report, mandated by Congress, is entitled "Strengthening Forensic Science in the United States: A Path Forward." This landmark study went so far as to state that exaggerated and inaccurate testimony by experts has "contributed to the admission of erroneous or misleading evidence."[3] The report also dedicates an entire chapter to "strengthening oversight of forensic science practice"[4] and concludes "that every effort must be made to limit the risk of having the reliability of certain forensic science methodologies judicially certified before the techniques have been properly studied and their accuracy verified."[5]

JUNK SCIENCE, TEXAS STYLE

Few such steps have been taken in Texas, and the situation here is especially bad. Take, for example, the case of Cameron Todd Willingham, who was executed in 2004.[6] His conviction was based on the theories of an uneducated arson "expert" whose ideas, according to a real fire scientist, were more "characteristic of mystics or psychics" than those of a rational thinker.[7] Government use of junk science in Texas has not been limited to bogus arson experts: everything from false autopsies[8] to inaccurate hair and fiber evidence[9] has been used to convict people in this state. The scandal of the Houston crime lab is stark proof of how "grossly misleading" reports in the areas of serology and DNA testing have also been used time and time again to win convictions in Texas.[10]

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[2] THE INNOCENCE PROJECT, 200 EXONERATED: TOO MANY WRONGFULLY CONVICTED 22-23 (2007).
[3] National Research Council of the National Academies, STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD 4 (The National Academies Press) (2009).
[4] *Id.* at 193-216.
[5] *Id.* at 86.
[6] David Grann, *Trial By Fire: Did Texas Execute an Innocent Man?*, THE NEW YORKER, Sept. 7, 2009.
[7] *Id.*
[8] See Roberto Suro, *Ripples of a Pathologist's Misconduct in Graves and Courts of West Texas*, N.Y. TIMES, Nov. 22, 1992.
[9] See JIM FISHER, FORENSICS UNDER FIRE: ARE BAD SCIENCE AND DUELING EXPERTS CORRUPTING CRIMINAL JUSTICE? 228-29 (Rutgers University Press) (2008).
[10] See INDEPENDENT INVESTIGATOR ISSUES FIFTH REPORT ON HOUSTON POLICE DEPARTMENT CRIME LAB (2006), *available at* http://hpdlabinvestigation.org/pressrelease/060511pressrelease.pdf

Today, police and prosecutors are using yet another kind of junk science to win cases. This "science" involves dog handlers who testify that a dog "told" them who was present at a crime scene or whose sent was on a piece of evidence by making signals to the handler during a "scent lineup." The use of this "dog whispering" has become more and more common. Prosecutors have touted the "evidence" gained from this practice as being "as powerful as DNA evidence to support a conviction."[11]

We decided to investigate the use of this technique by Texas officials. We talked with lawyers who have handled cases in which it has been used. We interviewed citizens who have been wrongfully accused because of it. We studied the scientific literature. We analyzed dozens of transcripts from court proceedings.

What we learned is set out below.

DOG SCENT EVIDENCE AND "SCENT LINEUPS"

Virtually all dogs have a heightened sense of smell.[12] This is why they have proven to be very useful in identifying distinct odors like bombs or drugs.[13] A dog smells a scent, barks or makes a signal that it has done so, and his handler notices it. Dogs can also be used to trail scents from one location to another.[14] The "evidence" in such cases is a simple alert by the dog or the path the dog takes to get from one place to another.

Although that kind of basic identification can be affected by a host of handler and dog errors, that is not what we are examining here. What we are looking at are cases in which dog handlers claim that their dogs have distinguished between different odors among people, identified one, and matched it to evidence from a crime scene. This is what is often referred to as a "scent lineup" in the field of "criminal odorology." It is a much more complex process than picking out a package of drugs or following a scent. Research has proven that it requires the use of qualified handlers and the observance of numerous safeguards if it is to produce even marginal results.[15]

A "scent lineup" starts with the dog being introduced to a scent sample that has been collected from a crime scene or a piece of evidence. After "getting" that scent, the dog is then presented with a series of containers with similar scents in them. These scents have often been taken directly from a suspect and from others matching the general description of the suspect. The idea is that the dog will then

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[11] See *Winfrey Found Guilty*, SAN JACINTO NEWS TIMES, Dec. 2007.
[12] Bob Coote Expert Witness Report. See Appendix A.
[13] See Sari Horwitz and Lyndsey Layton, *So Far, Dogs are Still Best Detectors of Bombs*, WASH. POST, July 19, 2005.
[14] Bob Coote Expert Witness Report. See Appendix A.
[15] See Mark Derr, *With Dog Detectives, Mistakes Can Happen*, N.Y. TIMES, Dec. 24, 2002.

communicate to its handler/observer if the scent that it "got" the first time matches a scent in one of the containers. The handler/observer, so the theory goes, can then testify that his dog has accurately picked out the scent of a particular person or suspect. This testimony is then presented as a "scientific identification" in Texas courts. It is called a "scent lineup" because of its similarity to an eyewitness lineup.

The use of scent lineups has become widespread in Texas. One handler in particular, Deputy Keith Pikett, has been responsible for untold arrests and convictions throughout the state.[16] His work has been praised and sponsored by prosecutors and police for years. The Texas Attorney General's office has recommended that he be used widely. As will be seen, however, Pikett's work is seriously flawed and his testimony is highly suspect.

THE SCIENCE OF SCENT LINEUPS

Humans have been using the superior scent abilities of dogs for thousands of years.[17] The fundamental problem is that dogs and their handlers are not always reliable when it comes to making complicated distinctions between human scents— too much guesswork, suggestion, and subjectivity can come into play. Although a rough guess may be good enough in some situations, it is clearly not enough to justify a conclusion that a person was at a particular location at a given time and thus committed a crime.

In recent decades, a whole body of science has evolved that deals with how and under what conditions a trained dog and handler can make such conclusions.

Police agencies in the Netherlands have led the way in developing this science. After many years of trial, error, and the application of scientific methods they have come up with a working set of rules that govern the use of scent lineups.[18]

These rules govern the way that the initial scent is collected and how it is stored, how the scents in the line-up are collected and stored, how the line-up scents are laid out for the dog, who can handle the dog at various junctures, what kind of reaction should be observed from the dog, and so forth.[19] The rules are based on years of methodical observation and research.

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[16] See Transcript of Pretrial Hearing at 37 (Volume 1), State v. Jason Smith (2007); Leslie Wilber, *Handlers' Credibility Questioned in Court*, VICTORIA ADVOCATE, July 12, 2009. According to a KVUE news story on Keith Pikett and his dogs, "Pikett has estimated that his pack of bloodhounds has indicted over 1,000 suspects including burglars, rapists and killers." *Deputy Dogs Help Solve Hundreds of Murders*, KVUE.com, January 7, 2009.

[17] Charles Mesloh, *Scent as Forensic Evidence and its Relationship to the Law Enforcement Canine* at 2, University of Central Florida, Nov. 2, 2000.

[18] See Mark Derr, *With Dog Detectives, Mistakes Can Happen*, N.Y. TIMES, Dec. 24, 2002.

[19] See *id.*

One of the purposes of these rules is to insure that the reactions of the dog are objective and not influenced in any way by the handler.[20] In many respects, they are similar to the body of rules that we now know should be used to prevent unfair eyewitness identifications.

Even when these rules are scrupulously followed the results can never be considered conclusive. After many years of research and hard experience, the Dutch have concluded that this sort of evidence has limited value and can only be used in conjunction with other scientific proof like DNA in a criminal case.[21] In the U.S., various associations and experts have also begun to formulate rules and protocols for the limited use of the technique.[22]

If there is a developing consensus about the use of scent lineups, it comes down to this:

1. Scientific methods have to be used;

2. Rules based on those methods have to be precisely followed;

3. Even if proper methods and rules are used the scent lineup has very limited value as "scientific evidence" and cannot be solely relied upon.

THE JUNK OF SCENT LINEUPS

Scent lineups, even if done correctly, are of only marginal value. Scent lineups done incorrectly or relied upon as conclusive proof result in disaster.

At least two other jurisdictions besides Texas have routinely relied on unscientific scent lineups.

In Florida, a dog handler named John Preston was used over and over again by police and prosecutors to gain convictions.[23] Although his work was based on guesses and exaggerations it was presented as "science" to dozens of juries.

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[20] "Handlers can create errors by pulling their dogs away from things they are investigating, by letting them search too long in a single place or by inciting the dog through some gesture, glance or emotion, even unconscious. Trainers say the message 'travels right down the leash.' Mainly for that reason, the few studies of dog performance that have been done suggest that dogs perform best off their leashes." *Id.*

[21] See Guy Hargreaves, *Scent Lineup Article – Police Practice Detection Dog Lineup*, PoliceLink, *available at* http://www.policelink.com/training/articles/1797-scent-lineup-article---police-practice-detection-dog-lineup.

[22] See Steve Tyler, *Guest column: Innocents Placed at Risk With Unreliable Scent Dogs*, VICTORIA ADVOCATE, July 18, 2009.

[23] Jeff Schweers, *16 Cases Mired in Dog Handler's Fraud*, FLORIDATODAY.COM, Aug. 30, 2009.

Although it has taken decades, DNA evidence and proof that Preston lied under oath have now discredited his "expert" testimony. As of earlier this year, 16 cases in which Preston participated have been scrutinized, with nearly a hundred more to follow.[24] Three men have been exonerated so far.[25] Taken together, these innocent men spent more than 50 years of their lives in prison.

One other government entity is apparently relying on scent lineups: the communist regime in Cuba. There, the secret police have amassed thousands of bottles of scents taken from anti-Castro slogans painted on walls and other such "crime scenes" and are using them as "proof" against dissidents.[26]

The leading "expert" in Texas on scent lineups is a dog-handling deputy from Fort Bend County named Keith Pikett. He has become famous by traveling throughout the state and testifying for prosecutors. He has garnered favorable publicity, awards, and opportunities for advancement for himself along the way. Because he has come to dominate this field in Texas his history and methods deserve to be carefully examined. This is done below.

THE STRANGE AND AWFUL CAREER OF KEITH PIKETT

Keith Pikett grew up in upstate New York. After graduating from high school in 1965, he enlisted in the U.S. Navy. He served six years. He then took a job at the Ingall Ship Yard in Mobile, Alabama. He went to college, graduating with a degree in chemistry from the University of South Alabama.[27] He later attended another Alabama institution called the United States Sports Academy, where he received a master's degree in "Sport Science" in 1984.[28]

At some point after that, Pikett moved to Texas. He and his wife bought a bloodhound as a pet. After playing with the dog they decided to train it to be a police dog. They did this on their own without using any known or established program.[29]

Pikett then began volunteering himself and the dog for use by different law enforcement agencies. In 1990, the Montgomery County Sheriff's Office began using them on search and rescue missions.[30]

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[24] *Id.*
[25] John A. Torres & Jeff Schweers, *Dog Handler Led to Bad Evidence*, FLORIDATODAY.COM, June 21, 2009.
[26] Juan O. Tamayo, *Cuba's Sniffer-Dog Program Tracks Down Crooks, Dissidents*, THE MIAMI HERALD, Sept. 9, 2009.
[27] Keith Pikett Undergraduate Degree. See Appendix B.
[28] Keith Pikett Graduate Degree. See Appendix B.
[29] Steven Long, *Nothin' But a HOUND DOG Trackin' All the Time*, HOUSTON CHRONICLE, Mar. 11, 1994.
[30] Transcript of Pretrial Hearing at 28 (Vol. 3 of 17), Texas v. Marcus Omar Winston (2000).

In 1992, Pikett bought another bloodhound that he named "Columbo."[31] By 1994 he was claiming that the dog could not only do trailing and other basic tasks but could also do scent lineups.[32] These claims began to attract the attention of local newspapers and make Pikett well known.

In the early 1990s, Pikett began working with the Fort Bend County Sheriff's Office.[33] This new status enabled him to work on criminal cases and tout his expertise with dogs. One of his first big cases involved a defendant named Marcus Cotton. Pikett testified in Cotton's first trial that he had conducted a scent lineup and that his dog had matched a scent taken from crime scene evidence to Marcus Cotton.[34] In an apparent effort to make himself seem important, he also testified that he had a Bachelor of Science in Chemistry degree from Syracuse University and a Master's degree in Chemistry from the University of Houston.[35] This was a lie: Pikett has never received degrees from either institution.[36] The defense in Cotton's case never questioned Pikett on this, and his testimony was allowed to stand. Cotton eventually received another trial. The State did not use Pikett in this second trial.

His career as a scent lineup "expert" took off after the *Cotton* case. He acquired more dogs and gave them names like "James Bond" and "Clue." He became a full-time law enforcement officer.[37] He traveled across the State using the dogs to identify suspects and provide "evidence" to police and prosecutors in a host of important cases.

The testimony he gave to juries has been described as enthused, "down-home", and charming. As he perfected his routine, he began to make wild assertions in trials.

He has testified under oath, for example, that even though he does not keep detailed records of his activities[38] he knows that his dogs have almost never been wrong. According to Pikett, as of 2009 his dog "Clue" had been wrong once out of 1,659 lineups.[39] "James Bond" had been wrong once out of 2,266 times.[40] "Quincy"

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[31] Transcript of Pretrial hearing at 21 (Volume 3), Texas v. Marcus Omar Winston (2000).

[32] Transcript of Pretrial Hearing at 13 (Volume 2), Texas v. Justin Alexander (2009).

[33] Transcript of Pretrial Hearing at 28 (Volume 3), Texas v. Marcus Omar Winston (2000).

[34] Transcript of Trial Record at 461 (Volume 7), Texas v. Marcus Cotton, (1997).

[35] Transcript of Trial Record at 445 (Volume 7), Texas v. Marcus Cotton, (1997).

[36] Letters from Syracuse University and the University of Houston. Appendix B.

[37] Transcript of Pretrial Hearing at 12 (Volume 1), Texas v. Justin Alexander (2009).

[38] When asked about whether he tracks the success of his dogs and the outcomes of the cases they work, Pikett states "No. Everybody in the country calls me, so I guess that's something." See Transcript of Pretrial hearing at 129-31 (Volume 1), Texas v. Jason Smith (2007). Likewise, when asked about the total number of trails and scent lineups he and his dogs have conducted, Pikett admits that "[he] couldn't keep up with it" and acknowledges that the number could be in the 4000 to 5000 range. *Id.* at 37.

[39] Transcript of Pretrial Hearing at 36 (Volume 2), Texas v. Justin Alexander (2009).

[40] Transcript of Pretrial Hearing at 35 (Volume 2), Texas v. Justin Alexander (2009).

had only been proven wrong three times in 2,831 lineups.[41] According to the research done by the Dutch police and other experts in the field, this is absurd. Even using rigorous training methods, experts believe that the best dogs worked in perfectly controlled conditions can only be right approximately 85% of the time.[42]

Pikett has indicated that it is not important for him to receive any formal training, that he does not need to follow any rules or protocols established by scientists in the field, and that he rejects the importance of scientific studies concerning scent lineups[43]. Pikett has also claimed that his dogs can identify scents more than a decade old[44] and that they can follow scents left behind by cars[45]—claims which have been criticized by experts in this field[46].

One case, *State v. Winston*, cemented Pikett's reputation as the leading Texas expert in scent lineups. In that case he repeated the lie that he had a master's degree in chemistry, this time from the University of South Alabama.[47] He was proclaimed an expert witness by the prosecutor, and then testified in the usual manner that his dogs had conclusively identified the defendant's scent on the crime scene evidence.[48] This testimony was not contradicted by an expert for the defense, nor was it effectively challenged through cross-examination. Winston was convicted. On March 28, 2002 the 14th Court of Appeals wrote an opinion affirming the conviction and held that Pikett was a qualified expert.[49] This decision made it official: in Texas courts Pikett would be allowed to present his lineups as "scientific evidence."

In the wake of this ill-informed decision Pikett's star rose further. He continued to testify in trials. When confronted with the issue of his reliability and the validity of scent lineups, appellate courts simply relied on the earlier decision in *Winston* and affirmed the defendants' convictions.[50] No serious scrutiny was given to Pikett's testimony.

He became immensely popular with prosecutors, who started using him routinely. The ability of his dogs to "confirm" what they wanted to know in a case, coupled with his charm with juries, made him a fixture in criminal cases all over

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[41] Transcript of Pretrial Hearing at 34-35 (Volume 2), Texas v. Justin Alexander (2009).

[42] Charles Mesloh, *Scent as Forensic Evidence and its Relationship to the Law Enforcement Canine* at 6, University of Central Florida, Nov. 2, 2000.

[43] See Transcript of Keith Pikett Testimony at 88-89, Texas v. Richard Winfrey, Jr. (2009).

[44] Transcript of Pretrial Hearing at 46-47 (Volume 1), Texas v. Jason Smith (2007).

[45] K. Pikett Depo. at 74-75 & 141, Buchanek v. City of Victoria, et. al, 6:2008cv00008 (S.D. Tex. filed Jan. 29, 2008) - Deposition taken on Jan. 22, 2009.

[46] See Charles Mesloh, *Scent as Forensic Evidence and its Relationship to the Law Enforcement Canine* at 6, University of Central Florida, Nov. 2, 2000; Affidavit of Douglas H. Lowry at 3. Appendix A.

[47] Transcript of Pretrial Hearing at 15 & 27 (Volume 3), Texas v. Marcus Winston (2000).

[48] Transcript of Trial Record at 206 (Volume 10), Texas v. Marcus Winston (2000).

[49] Winston v. State, 78 SW3d 522, 529 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd).

[50] See e.g. Robinson v. State, 2006 WL 3438076 at *3 (Tex. App.—Beaumont); Winfrey v. State, 2009 WL 1636849 at *6 (Tex. App.—Eastland).

Texas. As late as April of this year, one prosecutor with the Attorney General's office said of Pikett: "He has helped us with several cases over the past few years with great results. I'm a big fan...."[51] Later, reporting on a visit between an investigator and Pikett, this prosecutor exclaimed: "Woo-hoo! Just got word that Keith's dogs unanimously hit on my evidence today, just as we'd hoped" and appended a "smiley-face" symbol to her message.[52]

Pikett also became something of a folk hero in law enforcement circles. One of his dogs was inducted into the Texas Veterinary Hall of Fame in 2002.[53] That same year, Pikett was named "Officer of the Year" by a police support group in Houston.[54]

As Pikett handled more and more cases, however, the fraudulent and shoddy nature of his work began to be revealed.

In 2006, Pikett went to Victoria to perform a scent lineup in a notorious murder case.[55] The local authorities identified Michael Buchanek, a retired police captain, as a person of interest in the case.[56] Predictably, Pikett did a scent line up which came out the way the police wanted. Mr. Buchanek was questioned, harassed, and identified in the media as a prime suspect—almost entirely on the basis of Pikett's "expert evidence." Several months after the murder another man confessed to the crime and pled guilty.[57]

In August 2007, Pikett was called in to perform one of his scent lineups in a string of Houston burglary cases. Against the judgment of the officers working the case, two detectives had a hunch about who the real suspect was. These detectives contacted Pikett, who had his dogs do a scent lineup. Predictably, Pikett told them what they wanted to hear. The detectives then made an arrest on the basis of the scent lineup. They had gotten the wrong man. The real criminal was arrested by other officers right after committing another burglary. After hearing of this, Vic Wisner, a 24 -year veteran prosecutor in charge of the case, ordered the man Pikett had accused released. Mr. Wisner then sent an e-mail to all Harris County

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[51] Posting of Lisa Tanner to http://tdcaa.infopop.net/2/OpenTopic?a=tpc&s=347098965&f=157098965&m=2781026881&r=3091026881#3091026881 (Apr. 1, 2009).
[52] Posting of Lisa Tanner to http://tdcaa.infopop.net/2/OpenTopic?a=tpc&s=347098965&f=157098965&m=2781026881&r=3091026881#3091026881 (Apr. 3, 2009).
[53] Texas Veterinary Medical Association: Texas Animal Hall of Fame, Quincy, http://www.tvma.org/Pet_Owners/08_hof_quincy.phtml (last visited Sept. 15, 2009).
[54] *Id.*
[55] Terri Langford, *Questions About CPS Official's Death Haunt Her Community / With No Arrests, Concerns Among Friends and Family are Growing*, HOUSTON CHRONICLE, July 3, 2006.
[56] *Id.*
[57] Testimony of Jeffrey Frank Grimsinger – Plea of Guilty at 4-5, Texas v. Jeffrey Grimsinger (2008).

prosecutors explaining what had happened and warning them about Pikett. This information is set out in Mr. Wisner's affidavit, which is attached to this report.[58]

In late 2007, Houston police were called to the scene of a triple homicide.[59] Apparently untroubled by his previous false accusations, police asked Pikett to help them again.[60] Their hunch was that Cedric Johnson had committed the crime, but they needed concrete evidence to tie him and later another individual, Curvis Bickham, to the scene. Pikett was asked to assist them in his time-honored fashion. He did a scent lineup and duly reported that his dogs had placed the suspects' scents on pieces of evidence gathered from the crime scene. Both men were arrested for capital murder, a death penalty crime, and held in jail.[61] Months later they were released and all charges against them were dropped.

In January 2009, a Yoakum County resident named Calvin Miller came under suspicion for rape and robbery. Pikett performed a scent lineup and once again provided "evidence" to back police guesswork. Months later, after DNA and a failed eyewitness identification cleared him, Yoakum police finally released Mr. Miller.[62]

We have no way of knowing how many more cases like this have happened. We do know that each of these men were falsely accused of serious crimes because of scent lineups and were lucky enough to have other evidence that cleared them. How many people have not been so lucky? How many people are in prison because of Pikett and his scent lineups? We have no way to answer these questions.

The government does. It could have chosen at any time to stop using scent lineups as evidence. It could have chosen to investigate old cases in which they were used. It could have made an effort to insure that our criminal justice system worked. Instead, it has chosen to continue relying on this fraudulent technique. Police and prosecutors are still using Pikett and his scent lineups despite his record of perjury and false accusations.

Fortunately, a handful of private lawyers have stepped forward to challenge the use of this technique in Texas. Pikett and his scent lineups have come under increasing attack in both civil and criminal cases in the last few months.

Lawsuits have been recently filed against Pikett and the law enforcement

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[58] Vic Wisner Affidvait. See Appendix C.

[59] See Jeremy Desel, *Man Claims He was Wrongly Accused of Murder*, KHOU.COM, June 16, 2009.

[60] See *id.*

[61] City of Houston, 5TH UPDATE ON INCIDENT AT 6122 BELCREST (2007), *available at* http://www.houstontx.gov/police/nr/2007/dec/nr122407-2.htm; City of Houston, SECOND SUSPECT ARRESTED IN 2007 MURDER CASE (2008), *available at* http://www.houstontx.gov/police/nr/2008/oct/nr100608-8.htm.

[62] Leslie Wilber, *Does it Pass the Smell Test?*, VICTORIA ADVOCATE, July. 12, 2009; Miller v. City of Yoakum 2-4, et. al, 6:2009cv00035 (S.D. Tex filed May 12, 2009).

officials who sponsored him by Rex Easley, an able lawyer from Victoria.[63] In the course of these pending lawsuits a great deal of information has come to light about Pikett and his work. Mr. Easley located several experts to analyze, review and evaluate Pikett's work.

Each of these professionals is a well-known leader in the field of scent lineups. They carefully reviewed documents, videos, and testimony to determine whether Pikett was using professional methods and whether his results were reliable. Each of these men submitted lengthy affidavits setting forth their findings. These affidavits are attached to this report in their entirety. A brief summary of what these experts have to say about Pikett and his lineups is set forth below.

Robert Coote, a professional scent-dog handler from the United Kingdom and the former head of an all-British canine police unit, said of Pikett's methods after watching a videotape of him performing a scent lineup: "This is the most primitive evidential police procedure I have ever witnessed. If it was not for the fact that it is a serious matter I could have been watching a comedy."[64] Mr. Coote went on to say that "in all [his] experience working dogs, [he has] never, ever heard of or seen such an operation. It goes against all the principles of tracking and trailing."[65]

Douglas Lowry, a retired Maryland State Police officer and the current president of the National Police Bloodhound Association (NPBA), testified extensively about Pikett's scent lineup procedures. Although in his Motion for Summary Judgment in the Buchanek case, Pikett claimed that his practices were modeled after those of the NPBA, Mr. Lowry points out in his affidavit that the NPBA decided several years ago to do away with the training of scent lineups at their training schools and seminars because "very few bloodhound teams were found to be consistently proficient in working scent line-ups." He went on to explain that there are "too many variables involved with this type of scent work and unless a handler could show through documented training records that their bloodhound was working at a consistent 100% without a miss, it was difficult to have this scent identification method accepted by judges and the court system." Based on his review of the facts of Mr. Buchanek's case, Mr. Lowry said that the scent lineup procedures "conducted on March 15, 2006 and again on March 21, 2006 by Deputy Pikett and his bloodhounds were not consistent with the method previously described and taught by instructors of The National Police Bloodhound Association, Inc. at training schools and seminars." He went on to say of Pikett's work: "I do not believe or feel that either scent line-up exercise is credible or reliable", noting that it looked as if Pikett was cueing his dog throughout one exercise. He concluded his report by saying:

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[63] Buchanek v. City of Victoria, et. al, 6:2008cv00008 (S.D. Tex. filed Jan. 29, 2008); Miller v. City of Yoakum, et. al, 6:2009cv00035 (S.D. Tex filed May 12, 2009).
[64] Leslie Wilber, *Does it Pass the Smell Test?*, VICTORIA ADVOCATE (July 12, 2009).
[65] See Bob Coote Expert Witness Report. Appendix A.

"It is my opinion that Deputy Keith A. Pikett is doing a disservice to police bloodhound teams throughout the country that are credible and reliable in their work ethics and habits. It is my belief that Deputy Pikett...intentionally misspoke concerning the capabilities and expertise of his scent discriminating bloodhounds in given situations."[66]

Another expert consulted by Mr. Easley was Steven Nicely, a professional police dog trainer and instructor. Mr. Nicely said, "As a professional police service dog trainer and instructor I can say with reasonable certainty Sgt. Pikett is not acting in good-faith to avoid incorrectly identifying someone as a potential suspect." In regard to a videotape of a scent lineup he viewed he had this to say: "When the theory of odor and its transfer are reviewed, and then coupled with the claimed abilities of Sgt. Pikett's dogs, Sgt. Pikett knowing the location of the targets in this line-up is the most logical conclusion or deduction." After an extensive review and analysis of Pikett's procedures and actions, Mr. Nicely concluded that: "It is my opinion Sgt. Pikett as a trainer and handler is an unprofessional charlatan....[he] is incompetent as a police service dog trainer."[67]

Pikett has now come under attack from other quarters. As the lawsuits continue to expose his scent lineups for what they are, a small group of skilled lawyers have mounted increasingly successful attacks on this junk science in individual court cases.

In San Jacinto County—home of the prosecutor who hyped scent lineups as being "as reliable as DNA"—attorneys Shirley Baccus-Lobel and Billy Ravkind tried a murder case in June of this year. The case against their client was based on a scent lineup performed by Pikett and his dogs. After an incisive and well-educated cross-examination of Pikett by Ms. Baccus-Lobel the jury returned with a verdict of "Not Guilty" in thirteen minutes.[68]

Days later, on June 16, 2009, attorney Steven Gilbert succeeded in preventing Pikett from testifying in a case in his home county. After a thorough presentation by Mr. Gilbert, the Fort Bend county district judge ruled that Pikett was not qualified to testify as an expert because Pikett's scent lineups lacked reliability.[69]

Other lawyers, like Eric Sunde in Houston, have also been successful in preventing the use of scent lineup evidence in court cases.[70]

An able lawyer from Fort Bend County, Derek Smith, has amassed a huge amount of information on Pikett and his "science." Mr. Smith has carefully prepared

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[66] See Affidavit of Douglas H. Lowry. Appendix A.
[67] Affidavit of Steven D. Nicely. Appendix A.
[68] Alex Wukman, *Jury Says Winfrey Not Guilty of 2004 Murder*, EASTEX ADVOCATE, June 15, 2009.
[69] Transcript of Pretrial Hearing at 163-65 (Volume 2), Texas v. Justin Alexander (2009).
[70] Affidavit of Eric Sunde (August 15, 2009).

a soon-to-published paper for defense attorneys throughout the state to use in attacking scent lineups.

SOME CONCLUSIONS ABOUT SCENT EVIDENCE

Is the evidence derived from any scent lineup reliable? Is it scientific? Should it be used in Texas criminal cases?

The answer to these questions is "no."

In its report to Congress, the National Research Council said that:

"There are two very important questions that should underlie the law's admission of and reliance upon forensic evidence in criminal trials: (1) the extent to which a particular forensic discipline is founded on a reliable scientific methodology that gives it the capacity to accurately analyze evidence and report findings and (2) the extent to which practitioners in a particular forensic discipline rely on human interpretation that could be tainted by error, the threat of bias, or the absence of sound operational procedures and robust performance standards. These questions are significant… So it matters a great deal whether an expert is qualified to testify about forensic evidence and whether the evidence is sufficiently reliable to merit a fact finder's reliance on the truth that it purports to support."[71]

Scent lineups fail every test set out above. They are not founded on a reliable scientific methodology. Practitioners like Pikett rely entirely on their on their own interpretations—interpretations that, as we have seen, are riddled with errors and by the desire to please police and prosecutors. The "science" of scent lineups in Texas has no rules, procedures or performance standards. It is being practiced by "experts" without expertise according to no rules except their own.

Answering the question of why this "science" ever came to be used in the courtrooms of this state is beyond the scope of this report. Sadly, the use of these phony techniques joins a long list of other law enforcement frauds used to convict the innocent. As usual, the government has persisted in using this junk and it has been up to a few bold lawyers to try to solve the problem.

These efforts, no matter how noble or strong in individual cases, are not enough to put an end to this practice.

Prosecutors and police are continuing to use scent lineups throughout the state. They are apparently hoping that the controversy over the use of scent lineups will somehow go away and they can get back to business as usual.

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[71] STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD, *supra* note 3, at 87.

Their thinking is probably right: the efforts of lawyers in a few cases will never be enough to eradicate the widespread use of scent lineups in Texas. As long as the government of this state fails to act more people will be accused and convicted on the basis of this unscientific and phony "evidence."

WHAT HAS TO BE DONE

The appellate courts of this state have failed to prevent police and prosecutors from using junk science like scent lineups. The fact that Pikett and others of his ilk are still being used in criminal cases and given free rein to victimize the innocent is a sad comment on the quality of the Texas criminal justice system.

Action will have to be taken by the legislative and executive branches of government to prevent the further use of this "science." We call on those branches of government to do the following:

1.   We call on the Forensic Science Commission of the State of Texas to conduct a full investigation into the use of scent lineups and to prohibit them from being used;

2.   We call on the Timothy Cole Advisory Panel on Wrongful Convictions to investigate the role that junk science has played in Texas's growing number of false convictions and to report their findings to the legislature;

3.   We call on the Governor's Office to immediately suspend the giving of grant money to any police agency using scent lineups and to issue an executive order forbidding the use of this phony "science" by law enforcement;

4.   We call on the prosecutors of this state to reverse their unjust course and immediately cease and desist from any further use of scent lineups in criminal cases;

5.   We call on all police agencies in this state to stop using scent lineups immediately;

6.   We call on the Attorney General of Texas to stop using scent lineups, to conduct a full and complete investigation into every case in which scent lineups have been used, and to aid in the release of any person convicted on such testimony;

7.   Finally, we call on the legislature to pass meaningful laws prohibiting the use of junk science in the courtrooms of this state and to allow for the release of citizens who have been victimized by it.