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## TAKING THE BITE OUT OF BITE MARKS

### *Should bite mark evidence go down for the count?*

*By Julius (Jay) Wachtel.* In February 1992 Columbus, Mississippi firefighters found the body of an 84-year old woman inside a smoldering home. She had been murdered with a butcher knife. Two fires were set, apparently to cover up the deed, but neither blaze took hold.

Police didn't discover any biological evidence. However, the victim had injuries consistent with rape. Investigators soon focused on Eddie Lee Howard. He lived nearby and had been in prison twice for sexual assault. Howard was picked up, driven past the crime scene and interrogated. Here is what police detective Dave Turner later wrote:

Again he [Howard] told me that the case was solved and he told me that there was—uh—five or six other individuals involved and to keep investigating the case, that I would find out their roles in this case. Uh—and he asked me if I thought he was crazy. I looked at him and I said, "no, man—you know, I don't think you're crazy" and he said "well I'm not. I'm not crazy" and he said "I had a temper and that's why this happened." And when he said that, I mean shock just went across my body and I felt like at that point this was the guy that had actually committed the murder.

Howard's rambling account, while enough for the cop, hardly made for an airtight case. Howard had serious mental problems, and he would go on to deny committing the crime. Police and prosecutors needed more. According to the pathologist, the victim had suffered bite marks. So the authorities turned to top-gun forensic odontologist, Dr. Michael West. Sure enough, after examining the exhumed corpse Dr. West matched Howard's dentition to bite marks on the victim's neck, breast and arm.

At trial, Howard represented himself. Jurors promptly convicted him and imposed the death penalty. But in 1997 the state supreme court ruled that Howard could not have competently represented himself. A retrial was ordered, this time with a lawyer. He proved equally ineffective. No expert was called to counter Dr. West's testimony, and Howard was again convicted and sentenced to death. These judgments were affirmed by the Mississippi Supreme Court in 2003.

In fact, warning signs about Dr. West had been popping up with some frequency. In 1994 the ethics committee of the American Academy of Forensic Sciences recommended his expulsion for "allegedly failing to meet professional standards of research, misrepresenting data to support a general acceptance of his techniques, and offering opinions that exceed a reasonable degree of scientific certainty." In the same year the American Board of Forensic Odontology (ABFO) cited like reasons for ordering Dr. West's suspension. These moves led a Louisiana judge to set aside the 1994 murder conviction of Anthony Keko, whose dentition Dr. West had positively matched to a bite mark.

There were other disturbing indications of Dr. West's fallibility. In 1992 he gave bite mark evidence in two supposedly unrelated Mississippi murders, leading to the conviction of Kennedy Brewer and, separately, Levon Brooks. Brewer was freed in 2001 when DNA conclusively proved that the real killer was Justin Johnson. Levon Brooks was freed seven years later. Again, the real killer had been Johnson.

But it's not just Dr. West. The Innocence Project faults bite mark evidence for fourteen wrongful convictions that were ultimately set right by DNA. "Only" four of the foul-ups are attributable to Dr. West.

In 2009 the National Research Council landed a seemingly crushing blow on bite mark evidence. Its landmark report, "Strengthening Forensic Science in the United States: A Path Forward," in effect called the technique non-scientific:

The fact is that many forensic tests—such as those used to infer the source of toolmarks or bite marks—have never been exposed to stringent scientific scrutiny.

The ABFO, whose members play a major role in the identification of human remains, continues to offer certification in bite mark analysis. To his credit, Dr. West is no longer in that business. Although he now freely concedes that bite marks are subject to error, Dr. West nonetheless disowns responsibility for Eddie Lee Howard's predicament: "I didn't put him on death row, the State of Mississippi did."

Eddie Lee Howard has spent more than two decades on death row. Meanwhile the mechanism of Mississippian justice grinds on. Last year, on motion of the Mississippi Innocence Project, the state's supreme court ordered that all evidence gathered in the case be comprehensively re-analyzed for DNA. Two weeks ago, Howard's defense team filed a follow-up brief that seeks to vacate his conviction. After an exhaustive search, technicians had found DNA on only a single (yet crucial) item. Here are the key sentences from page 32 of the brief:

A small amount of male DNA was detected on the blade of the butcher knife, the presumed murder weapon.

Y-STR testing was conducted on that sample. The results exclude Howard as the source.

Howard remains on death row.