

# WHAT SHOULD COUNSEL DO IN A BITE MARK CASE?

Competency of Counsel Issues in the  
Post-Conviction Context

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# Wrongful Convictions

➤ 1,064  
exonerations  
nationwide

## The National Registry of EXONERATIONS

### The National Registry of EXONERATIONS

A JOINT PROJECT OF MICHIGAN LAW & NORTHWESTERN LAW

CURRENTLY 1,064 EXONERATIONS



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#### ABOUT THE REGISTRY

The National Registry of Exonerations is a joint project of the University of the Michigan Law School and the Center on Wrongful Convictions at Northwestern University School of Law. We provide detailed information about every known exoneration in the United States since 1989—cases in which a person was wrongly convicted of a crime and later cleared of all the charges.

#### BROWSE EXONERATION CASES

To see the list of exonerations and information about them, browse our ever-growing database. We currently have more than 1,060 recorded.

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#### FEATURED EXONERATIONS



**George Allen, Jr.**  
State: MO

**Date of Exoneration:** 1/18/2013

George Allen, Jr. was convicted of rape and murder in St. Louis, Missouri, in 1983, based on a coerced false confession and forensic fraud. He was freed in 2013 after DNA testing excluded Allen as the source of semen left at the scene, and it was discovered lab reports that had been altered to hide the fact that biological evidence recovered did not match Allen's blood type.



**Charles Wilhite**  
State: MA

**Date of Exoneration:** 1/17/2013

Charles Wilhite was convicted of murder in December 2010, based on false eyewitness identifications. He was exonerated in 2013 after a key witness recanted his testimony, saying he had lied in order to get out of jail and that prosecutors had pressured him to identify Wilhite. (Photo of Wilhite and daughter Iesha courtesy of The Springfield Republican.)



**Bennie Starks**  
State: IL

**Date of Exoneration:** 1/7/2013

Bennie Starks was convicted in 1986 of a kidnapping and rape in Lake County, Illinois. He was released from prison in 2006 after DNA tests eliminated him as the rapist, but Lake County prosecutors continued to argue that he was guilty. Six years later, in 2012, a new State's Attorney was elected and dismissed the case in January 2013. (Photo courtesy of Innocence Project)



**Seth Penalver**  
State: FL

**Date of Exoneration:** 12/21/2012

Seth Penalver was sentenced to death in Florida in 1999 for a triple murder after his first trial ended with a hung jury. No physical evidence linked him to the crime and two supposed eyewitnesses testified they could not identify him. His conviction was reversed and he was acquitted on December 21, 2012, when new evidence confirmed that police pressured witnesses to identify him and concealed a payment to one witness. (Photo Copyright by Cal Deal)

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➤ **302 DNA  
exonerations**

**INNOCENCE PROJECT**



# WRONGFUL CONVICTIONS AS A RESULT OF BITEMARK EVIDENCE

- **130 DNA exonerations where convictions were based upon flawed forensics.**
  - Some were “bitemark” cases.

# Proven Errors in Bite Mark Cases

- Willie Jackson (1989)
- Ray Krone (1992)
- Calvin Washington (1987)
- Bennie Starks (1986)
- Kennedy Brewer (1995)
- Dan Young. Jr. (1990)
- Harold Hill (1990)
- Roy Brown (1992)
- James O'Donnell (1998)
- Robert Stinson (1985)
- Levon Brooks (1990)
- Gregory Wilhoit (1987)
- Jeffrey Moldowan (1990)
- Michael Cristini (1990)
- Douglas Prade (1997)



# Wrongful Convictions/Arrests as a Result of Bitemark Evidence

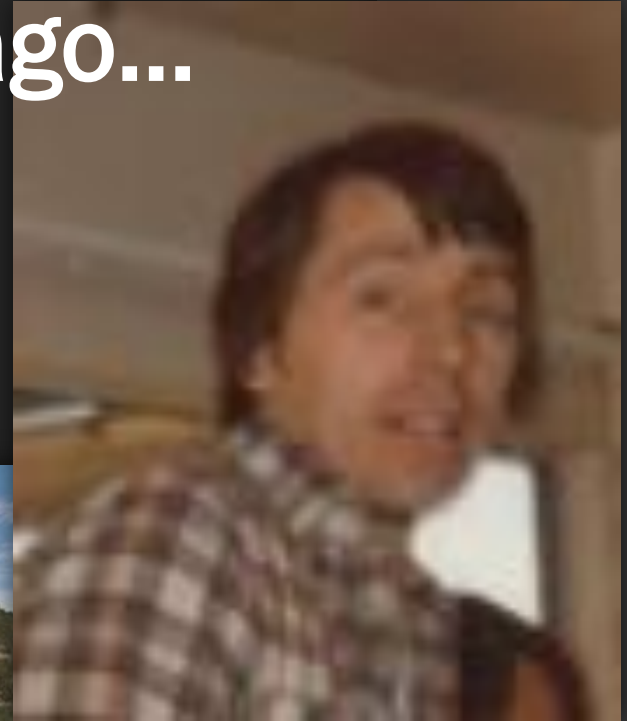
## ➤ Others have been arrested and released

- Anthony Otero (1994)
- Dale Morris, Jr. (1997)
- Edmund Burke (2004)
- Leigh Stubbs (2000)
- Tami Vance (2000)
- Ricky Amolsch (1994)
- Anthony Keko (1991)
- Dane Collins (1989)

## ➤ Others are still fighting for their freedom

- William Richards (1997)

Nearly 20 years ago...



# August 10, 1993



# DISCOVERY OF PAM'S BODY



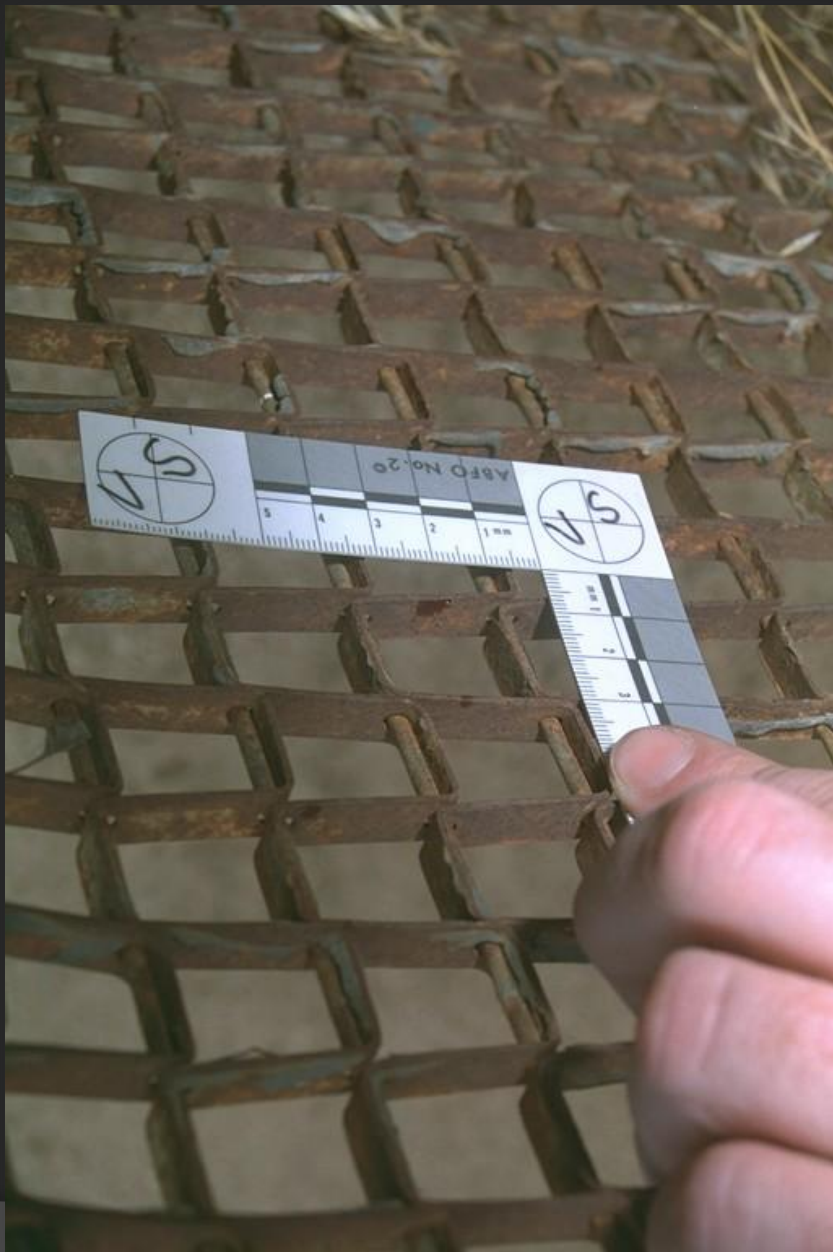
# INVESTIGATION OF THE CRIME



# MANNER OF DEATH



# MANNER OF DEATH



# WEAPONS



# BILL BECOMES A SUSPECT

PROSECUTION'S CASE	DEFENSE CASE
Tumultuous relationship	Pam's family thought Bill would not kill her
No other suspects	Pam's multiple lovers, neighborhood boys
Bill came home and killed Pam	Pam was dead hours before
Bill acted strange	Bill was traumatized by Pam's death
<b>Blue fiber in Pam's nail crack</b>	<b>Never seen by original criminalist who examined fingernails</b>
<b>Blood on Bill's clothing was spatter</b>	<b>Blood on Bill's clothing was transfer (DEAN GIALAMAS)</b>

= Two hung jury trials

= One aborted trial

# THE FOURTH TRIAL



# TESTIMONY OF DR. NORMAN SPERBER (1997)

"So if it was a hundred people that we took in here, I doubt that we would see in a hundred people one tooth lower, submerged like this.

It might be one or two or less. That's kind of a unique feature."

2001

CALIFORNIA  
INNOCENCE

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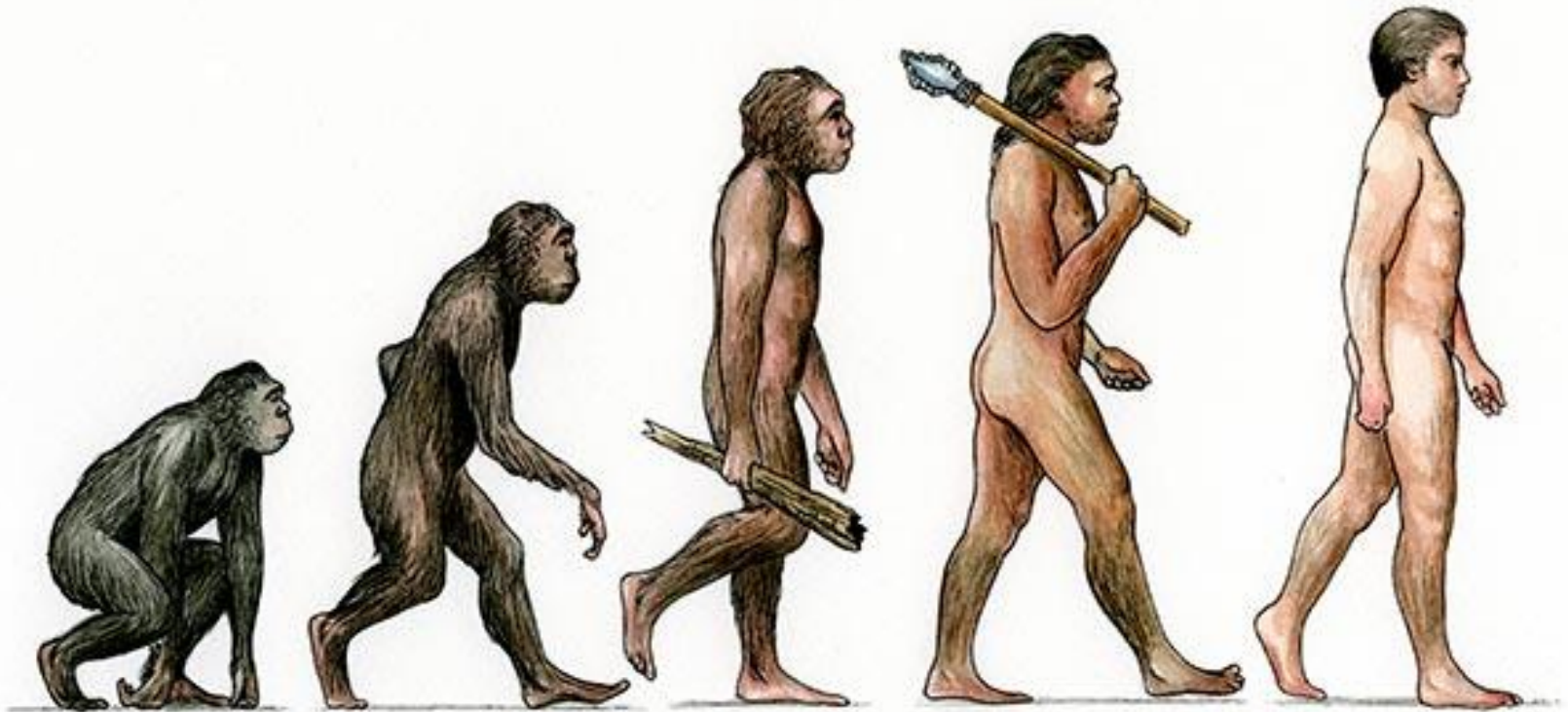
P R O J E C T

CALIFORNIA WESTERN

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# Post-Conviction Areas of Bite Mark Investigation

# Identify the State of Bite Mark Evidence at Trial vs. Now



# COLLECT & REVIEW DOCUMENTS

- **Collect Trial Transcripts**
- **Collect Crime Scene Photos**
- **Determine if Expert:**
  - Overstated the evidence
  - Made unsupported conclusions
  - Based opinion on all relevant evidence

# DNA TESTING



- **MURDER WEAPONS**
- **HAIR UNDER FINGERNAILS**



# INVESTIGATE EXPERT'S BACKGROUND



# CONSULT EXPERTS FROM TRIAL & SEEK SECOND OPINIONS

➤ **Dr. Norman Sperber**



➤ **Dr. Michael Bowers**



➤ **Dr. Gregory Golden**



➤ **Dr. Ray Johansen**



# IS IT A BITE MARK?



# IF IT IS A BITE MARK, IS IT A HUMAN BITE MARK?

"...this may have been a dog bite...it fits the classic characteristics of a dog bite..."

– Dr. Golden (2009)

# IF IT IS A HUMAN BITE MARK, DID BILL MAKE IT?

"I would rule him out basically on the evidence as I've seen now in hindsight"

"These percentages were based on my own experience and were not scientifically accurate."

– Dr. Sperber (2009)

# IF IT IS A HUMAN BITE MARK, DID BILL MAKE IT?

"I would tend to rule out Mr. Richards now as the suspected biter."

– Dr. Golden (2009)

# IF IT IS A HUMAN BITE MARK, DID BILL MAKE IT?

"The new scientific methods demonstrably contradict the conclusion at trial that Richards could not be ruled out as a suspected biter."

– Dr. Bowers (2009)

# IF IT IS A HUMAN BITE MARK, DID BILL MAKE IT?

"...Due to the very, very poor quality of the bite mark and very little information contained within the bite mark, no, I cannot exclude him or disexclude him..."

– Dr. Johansen (2009)

# BITE MARK TESTIMONY SUMMARY

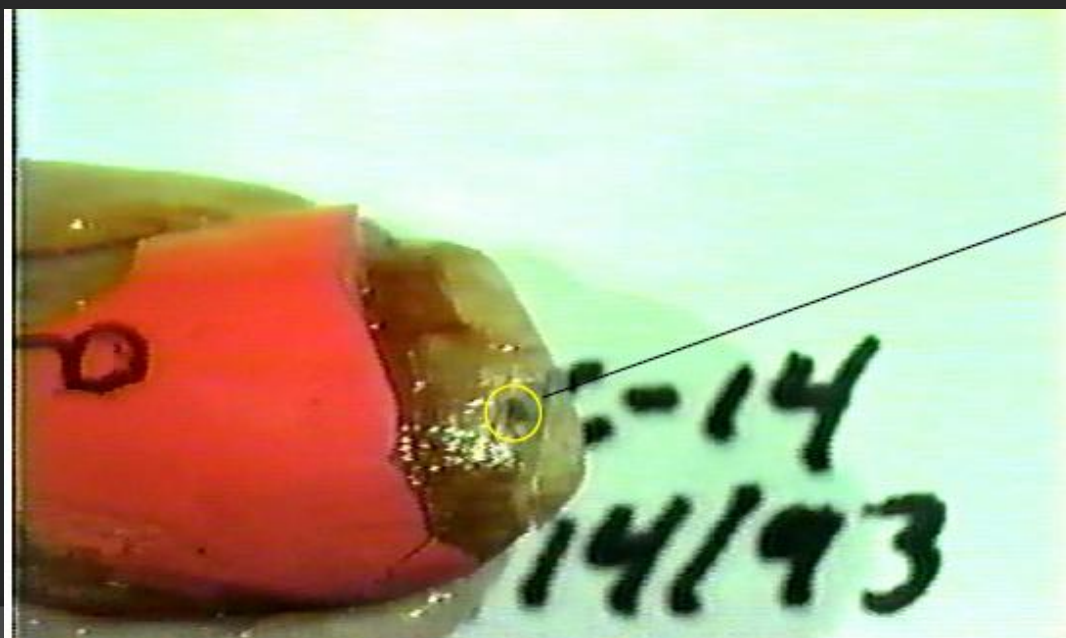
- Two experts ruled Richards out
- One found “no match”
- One couldn’t make a determination either way



# THE BLUE FIBER



*Area where  
fiber mass was  
subsequently  
noted (see  
Figure 5)*



Mass of  
fibers

# THE BLOOD SPATTER

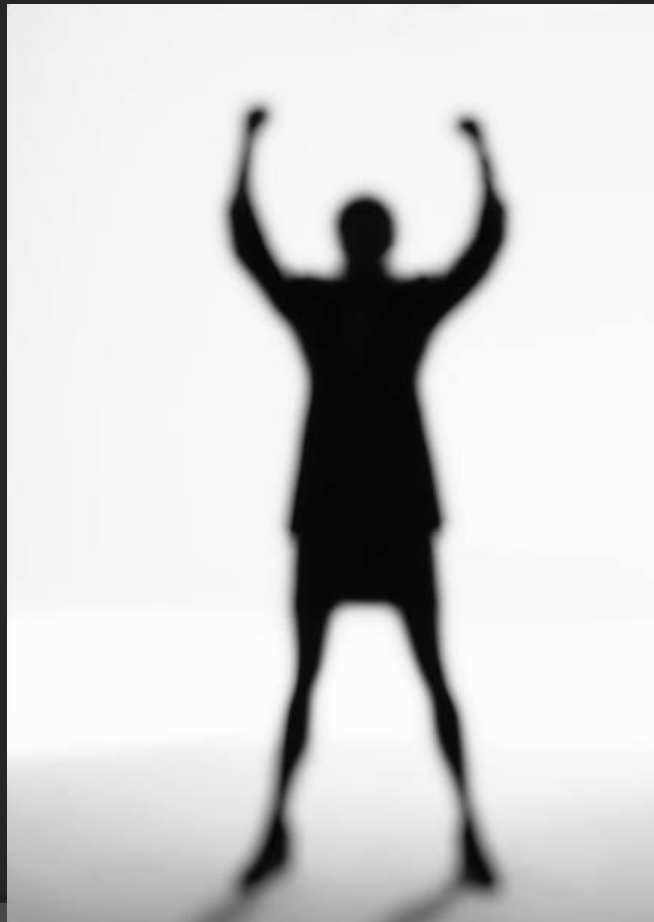


# TWO BITE MARK CLAIMS

1. False Evidence- False Testimony
2. New Evidence- New Bite Mark Techniques/  
Different Biter



**= WIN!!!!**



# or not...

**CALIFORNIA SUPREME COURT OPINION**  
*In re Richards* (2012) 55 Cal.4th 948

## CALIFORNIA SUPREME COURT OPINION

"[P]osttrial advances in technology have raised doubts about the expert's trial testimony without conclusively proving that testimony to be untrue."

"...the information garnered from the technological advances may be presented as newly discovered evidence."

# WHAT CLAIMS SHOULD DEFENSE COUNSEL PRESENT?

- **False Evidence** claims now force the lawyers to have bite mark evidence thrown out completely as a violation of due process.
- **Perjury** claims are unaffected.
- **New Evidence** claims require the identification of the true perpetrator.
- **Ineffective Assistance of Counsel Claims**
  - Failure to challenge
  - Failure to consult experts
  - Failure to challenge statistics

# SUMMARY

1. Poor quality of evidence and prosecution's expert's lack of all relevant information led to:
  - Differing qualified expert opinions at trial
  - Differing qualified expert opinions at hearing
2. Technically, Bill cannot get out due to a “legal” standard he cannot meet
3. The 20 year saga will continue...

