

Wrongful Convictions in California Capital Cases



**A Report by Death Penalty Focus
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www.deathpenalty.org

Introduction

Since the reintroduction of the death penalty in California in 1977, more than 800 men and women have been sentenced to death. Over 650 of these men and women currently sit on death row – more than any other state in the country.

An in-depth investigation by *San Francisco* magazine in 2004 revealed that California has wrongfully convicted over two hundred men and women of serious crimes, including capital murder, just since 1989 – again, more than any other state.¹

These facts raise the question: how many innocent men and women has California convicted and sentenced to death?

This report details the cases of thirteen men and one woman who were convicted of first degree murder in California and later freed after a court concluded that they had been wrongfully convicted. The individuals in this report spent an average of fifteen years behind bars and cumulatively spent 211 years in prison, demonstrating that it frequently takes many years – years that these men and women will never get back -- before a wrongful conviction is discovered. And in some cases the problem was discovered not by routine legal review, but rather by extraordinary circumstances – frequently extra-judicial – such as an investigation led by a newspaper or journalist.

These cases demonstrate two fundamental points: 1) that if the pace of executions in California over the last thirty years had been faster, there is a substantial likelihood that innocent people could have been executed; and 2) despite the immense suffering they endured, the individuals described in this report are actually the lucky ones—for their innocence was ultimately uncovered. For every one of the wrongful conviction cases we know about, there is every reason to believe that there are others who have not been lucky enough to have their innocence uncovered. Not every innocent defendant is fortunate enough to have a snitch recant his testimony or to have the real killer come forward, or even to have the district attorney reinvestigate the case.

Given that nearly a third of all death row prisoners have yet to secure habeas counsel and have any meaningful review or reinvestigation of their cases completed, and given that more than 200 cases are waiting for review by the California Supreme Court, it may be years before we discover additional wrongful convictions among those currently sitting on death row. As a result of this immense backlog, we simply do not know how widespread the problem of wrongful conviction in capital cases is.

Nationally, in the 1226 cases that have been completely resolved either through execution or exoneration, 1099 cases resulted in execution² and 127 cases in exoneration³. This gives us an

¹ “Innocence Lost”, *San Francisco* magazine; Martin, Nina, November 2004

² Death Penalty Information Center, site accessed 3/27/08,
<http://www.deathpenaltyinfo.org/article.php?scid=8&did=146>

approximate error rate for resolved capital cases of 10%. Even if one is extremely conservative and cuts this rate in half to 5%, in California, statistically this would mean that as many as thirty three men or women currently on death row may have been wrongfully convicted. How many of these cases will be discovered and result in the release of the innocent person and how many will result in execution? These are questions we cannot know the answers to.

In the meantime, we have an opportunity to learn from the wrongful convictions that have already been unearthed and take every measure possible to prevent similar injustices from occurring in the future.

About the Cases

In six of the cases discussed in this report, the individuals were actually sentenced to death. In three cases, prosecutors sought a death sentence but the jury chose life without parole instead. Five other significant wrongful conviction cases are included because in at least four of these cases, a death sentences likely would have been sought if legal decisions had not temporarily barred prosecutors from doing so. In the fifth case, one wrongful murder conviction subsequently led to another murder conviction which resulted in a death sentence.

In all of these cases, following the courts' reversal of the wrongful conviction, the individual was acquitted on retrial of the charge of murder or the prosecution chose to dismiss the murder charge.

All of the fourteen cases detailed here suffer from at least one (and in most cases two or more) of the commonly known causes of wrongful conviction: inadequate defense, false testimony from an informant witness or co-defendant, mistaken eyewitness identification, false confession, or misconduct by the police or prosecutor.

While three of these cases came from Los Angeles County the rest came from nine different counties across California, indicating that wrongful conviction is not an isolated problem.

Wrongful Capital Convictions That Resulted in a Death Sentences

1. Oscar Lee Morris – Freed in 2000

County of conviction: Los Angeles

Years imprisoned: 16

Wrongful conviction factors: perjury by an informant and prosecutorial misconduct

Oscar Lee Morris was freed in 2000 after sixteen years in prison - six of them on death row - when the key witness that had testified against him, informant Joe West, recanted his testimony. Los Angeles County Superior Court Judge William Pounders reversed his murder conviction and granted Morris a new trial. Prosecutors declined to try Morris anew, and he was set free.⁴

³ Death Penalty Information Center, site accessed 3/27/08,
<http://www.deathpenaltyinfo.org/article.php?did=412&scid=6>

⁴ "Freed from Death Row, Man Sues City, Police", *Los Angeles Daily Journal*, Roemer, John, Oct. 29, 2002

Morris was convicted and sentenced to death in 1983 for the 1978 murder of William Maxwell. His case was marred by the controversial use of testimony from West, a felon granted leniency in exchange for his testimony, and the prosecution's failure to divulge this special relationship to the defense before or during the trial.

The chief prosecutor in the case, Arthur Jean, Jr., is today a Los Angeles County Superior Court Judge. In a deposition about the case, Judge Jean said, "I wish I wasn't on record having participated in giving him [Morris] something less than a perfect trial, but I am. It's an embarrassing situation that I didn't do well at the trial, and I didn't handle things well. And misjudgments occurred, and I made them. And it's tough to look people in the eye and 'fess up with them sometimes."

Jean told the jury in Morris's case that "there is no evidence, not a shred, and you would know if it existed, if Mr. West got any benefit...in the handling of his criminal case."

Records show that Joe West in fact received a reduced sentence on a felony auto theft charge in return for his testimony against Morris, as well as termination of his prison sentence for a parole violation.

The California Supreme Court vacated Morris' death sentence in 1988 because of the prosecutor's conduct,⁵ but it was not until 1997 – eleven years later- that Joe West finally confessed that he had fabricated the entire case against Morris in return for favorable treatment in at least two criminal cases.

In 1998, the California Supreme Court ordered a new evidentiary hearing. Following the hearing, Los Angeles Superior Court Judge, William Pounders, reversed Morris's conviction and ordered a new trial. Lacking any credible evidence against Oscar Lee Morris, the Los Angeles District Attorney's Office declined to retry him and he was finally released in 2000.

2. Lee Perry Farmer, Jr. – Freed in 1999

County of conviction: Riverside

Years imprisoned: 18

Wrongful conviction factors: ineffective assistance of counsel

Lee Perry Farmer Jr. was convicted of fatally shooting 18-year-old Riverside resident Erich Allyn Schmidt-Till in June 1981. He spent eight years on death row until his death sentence was overturned by the California Supreme Court. The penalty phase retrial held in 1991 ended with Riverside jurors reducing his sentence to life without parole.⁶

⁵ *People v. Morris* (1988) 46 Cal. 3d 1.

⁶ *San Francisco Daily Journal*, May 13, 1998

In 1997, the Ninth Circuit Court of Appeals overturned Farmer's murder conviction, holding that Farmer's trial attorney, Joseph Myers, was ineffective because he had ignored a confession by Farmer's co-defendant, Charles Huffman.

On January 15, 1999, Farmer was acquitted of murder in a retrial by a jury. The jury was convinced that Farmer's former co-defendant, Charles Huffman, had in fact committed the murder after hearing his multiple confessions to the murder, including his confession to his own trial counsel in confidence.⁷ At the retrial, Farmer was convicted of an unrelated burglary, and was subsequently released with time served - having spent a total of 18 years in prison.

3. Troy Lee Jones – Freed in 1996

County of conviction: Fresno

Years imprisoned: 14

Wrongful conviction factors: ineffective assistance of counsel

In June of 1996, the California Supreme Court overturned the conviction and death sentence of Troy Lee Jones ordering a new trial because he was not adequately defended at his original trial in 1981 for the murder of Carolyn Grayson.⁸

Chief Justice Ronald George wrote for the unanimous court, “[w]e conclude that the defense counsel’s performance before and during the guilt phase of the trial was marked by numerous deficiencies and that the cumulative impact of counsel’s shortcomings at that phase of the proceeding was prejudicial with regard to the judgment of guilt.”⁹

The Court found that Jones’ defense attorney, Hugh Wesley Goodwin, failed to conduct an adequate pretrial investigation, interview possible witnesses, obtain a relevant police report, or seek pretrial investigative funds. The court also stated, “[t]aking into account the nature and extent of defense counsel’s inadequate performance, and the evidentiary weakness in the prosecution’s case...there is a reasonable probability that the outcome of the guilt phase would have been different but for the cumulative impact of defense counsel’s numerous failings.”

The Fresno County District Attorney’s office dismissed all charges against Jones in November 1996, after he had been on death row for fourteen years.¹⁰

4. Patrick Croy – Freed in 1990

County of conviction: Siskiyou

Years imprisoned: 19

Wrongful conviction factors: erroneous jury instructions, ineffective assistance of counsel

⁷ *San Jose Mercury News*, Jan.1, 2003

⁸ *In re Jones* (1996) 13 Cal. 4th 552.

⁹ “California Death Sentence Reversed Due to Incompetence”, *The Recorder*, Goodin, Dan, June 28, 2006

¹⁰ *Associated Press*, November 19, 1996

Patrick Croy was convicted of the 1978 murder of Police Officer Bo Hittson in Placer County. He was sentenced to death in 1979.¹¹

In 1978, Croy was working as a logger in Yreka when a weekend of partying led to an ill-fated shoot-out between police and a group of men and women, including Croy. Croy was convicted of attempted robbery, conspiracy to commit murder, attempted murder, assault, and the murder of a police officer. The jury did not convict Croy of intentionally killing the officer, but convicted him based on the theory of felony murder-that he intentionally committed a robbery that resulted in the officer's death.

In 1985, Croy's conviction and death sentence were overturned. The California Supreme Court found that the trial judge had read the wrong instructions to the jury, allowing the jury to convict Croy of robbery even if he did not intend to steal. Because the murder conviction was based on the theory that Croy had intentionally committed a robbery that had caused the officer's death, the murder conviction was reversed.

The case was re-tried in 1990 and Croy's attorney, Tony Serra, presented evidence that Croy acted in self-defense during the shoot-out, including evidence that Croy himself was shot twice during the altercation, expert testimony regarding the antagonistic relationship between law enforcement and the local Native American population at the time of the crime, and that Officer Hittson had a blood alcohol level of .07 at his time of death. Croy was acquitted of murder, attempted robbery, and attempted murder based on self-defense. The trial court entered a finding that, if the conspiracy and assault charges had been included in the retrial, Croy would have been acquitted of them as well. Yet, because the California Supreme Court had left conspiracy and assault charges in place, Croy was resentenced on those charges. He was given ten years probation and released from custody in 1990 after having served twelve years.

In 1997, after serving seven years on probation for the lesser charges related to the original conviction, Croy was returned to prison for a probation violation and given an indeterminate life sentence.

In 1997, a petition for writ of habeas corpus was filed in federal court asking for the entire judgment of the 1979 trial to be vacated.¹² On January 30, 2004, the Magistrate Judge Dale A. Drozd granted the writ, finding that Croy had received ineffective assistance of counsel in his 1979 trial. As a result, all of the remaining convictions from the 1979 judgment were vacated in 2005.¹³

The Attorney General objected to these findings and the case was transferred to U.S. District Court Judge Frank Damrell.

¹¹ "The story of Hooty Croy reveals unsettling truth about America", *Monterey County Weekly*, Thurman, Chuck, November 29, 2001

¹² *Croy v. Attorney General*, No. CIV S-97-1235 (E.D. Cal. 1997).

¹³ The conspiracy conviction was the focus of the federal writ because it carried an indeterminate life sentence, whereas the assault conviction, which carried a 5 year sentence, had long since run out.

On February 18, 2005, Judge Damrell adopted the Findings and Recommendations of the Magistrate Judge in full, overturning and vacating the conspiracy conviction. The government elected not to appeal, Siskiyou County decided not to re-try the case, and Croy was finally released on March 20, 2005, having spent a total of 19 years in prison, seven of which were on death row.

5. Jerry Bigelow – Freed in 1988

County of conviction: Merced

Years imprisoned: 8

Wrongful conviction factors: perjury by a co-defendant informant, false confession, and denied advisory counsel

Jerry Bigelow was convicted of kidnapping, robbing and murdering John Cherry on October 9, 1980 in Merced, California. Bigelow and Michael Ramadanovic had been hitchhiking when Cherry gave them a ride. In exchange for immunity from the death penalty, Ramadanovic testified that Bigelow shot the victim. After Ramadanovic accused Bigelow of the murder, the police persuaded Bigelow to falsely confess by promising him leniency — a promise that would not be kept. Bigelow was sentenced to death after acting as his own attorney at trial. He was only 20 years old and had no more than a ninth-grade education.¹⁴

After eight years on death row, on December 5, 1984, Bigelow's murder conviction and death sentence were overturned by the California Supreme Court on the grounds that Bigelow should not have been denied the assistance of advisory counsel. The Court called the 1981 trial a "farce or a sham," and said that Bigelow was "totally incompetent as a defense attorney."¹⁵

At his retrial, Mr. Bigelow's attorney argued that Michael Ramadanovic, not Bigelow, murdered Cherry. Several witnesses testified that the Ramadanovic had admitted to committing the murder while Bigelow was asleep in the car and without Bigelow's knowledge.

Bigelow was acquitted on the charge of murder at retrial in 1988, after spending 8 years in prison.¹⁶

6. Ernest "Shujaa" Graham – Freed in 1981

County of conviction: Santa Clara

Years imprisoned: 8

Wrongful conviction factors: prosecutorial misconduct during jury selection

In November 1973, while incarcerated in a state prison facility for a petty robbery, Ernest Graham and co-defendant Eugene Allen were charged with killing a state correctional officer at

¹⁴ "Court's action will free inmate from death row", *Los Angeles Times*, Hager, Philip, June 23, 1989

¹⁵ "Inmate walks away from death row after his acquittal", *Los Angeles Times*, Morain, Dan, July 6, 1989

¹⁶ *People v. Bigelow* (1984) 37 Cal. 3d 731

Deuel Vocational Institute¹⁷. Graham had become politically active while in prison, and was an outspoken critic of prison conditions. Graham's first trial resulted in a mistrial when the jury could not agree on a verdict.

Graham was convicted and sentenced to death in 1976 after his second trial. But the California Supreme Court reversed the conviction in 1979 because prosecutors improperly used their peremptory challenges to exclude prospective African-American jurors. The Court noted that Graham and Allen, who are both black, "belonged to the group whose members the district attorney had excluded whereas the alleged victim was a member of the group to which [all] of the remaining jurors belong."¹⁸

Graham's third trial ended in another hung jury. He was acquitted by the jury in his fourth trial in 1981 and ultimately freed.¹⁹

Wrongful Capital Convictions That Resulted in a Sentence of Life Without the Possibility of Parole

Harold Hall – Freed in 2004

County of conviction: Los Angeles

Years imprisoned: 19

Wrongful conviction factors: false confession and perjury by an informant

Harold Hall was convicted of two counts of first degree murder in 1990 in Los Angeles County and was sentenced to life in prison without parole, after the jury rejected a death sentence.²⁰

In 1985, after 17 hours of excruciating interrogation, Hall confessed to the murders of Nola Duncan and David Rainey. A jury convicted him of the double murder but decided against the death penalty after Hall took the stand and declared his innocence.

While in prison, Hall worked diligently on his own case, researching the law, filing motions, and petitioning for help. He held a job in the law library and earned his GED.

An appellate court eventually overturned his conviction in the killing of Rainey, citing insufficient evidence, and Hall continued to push to have his other conviction overturned as well.

In 2003, Hall was granted a new trial by the Ninth Circuit Court of Appeals, which ruled that his rights had been denied by police and prosecutors who relied on a dubious confession and a questionable jailhouse informant.

¹⁷ *People v. Allen* (1979) 23 Cal. 3d 286

¹⁸ *id*

¹⁹ Phone conversation with now Magistrate-Judge James Larson, October 6, 2003, who represented Graham. Death Penalty Information Center, www.deathpenaltyinfo.org

²⁰ "Patience, resolve fueled man on his long road to freedom", *Los Angeles Times*, Gorman, Anna, August 21, 2004

The District Attorney's office asked for a dismissal based on the passage of time and the unavailability of potential witnesses.

After serving 19 years in prison, Hall was freed in 2004 by Los Angeles County Superior Court Judge William Pounders, who ruled that there was no physical or forensic evidence connecting Hall to the crime. The court also noted that the jailhouse informant had admitted to fabricating notes about Hall's alleged involvement in the killings.

Glen "Buddy" Nickerson – Freed in 2003

County of conviction: Santa Clara

Years imprisoned: 19

Wrongful conviction factors: police misconduct and mistaken eyewitness identification

On September 15, 1984, Nickerson was out with friends when three robbers wearing ski masks broke into the house of his acquaintance John Evans. Evans and his half brother were found dead, and a friend, Michael Osorio, was found in critical condition. Over the course of several months, the police investigated and brought in three suspects, including Murray Lodge, the actual shooter. The then 425-pound Nickerson was identified by an eyewitness who had previously stated that the man he saw weighed between 190 and 200 pounds. Osorio, the only surviving victim, initially claimed he had no idea who the attackers were, but later identified Nickerson after a few conversations with police.

Nickerson was convicted of the two murders in 1987. He faced the death penalty, but was ultimately sentenced to life without parole.²¹

Years later, Brian Tripp, a witness and deputy sheriff, admitted that police had encouraged him to change his eyewitness description so that it would fit their version of events. It was also revealed that police threatened Nickerson's friends, who were with him on the night of the crime, to keep them from testifying, removing his alibi. Police hid evidence and committed perjury when they denied, under oath, the existence of a taped confession by another suspect.

Murray Lodge finally admitted to the murder in 2002 and revealed that Nickerson was innocent, thus laying the groundwork for a two-year legal battle that brought to light the police misconduct which had resulted in Nickerson's wrongful conviction.

On March 17, 2003, U.S. District Court Judge Marilyn Hall Patel vacated Glen Nickerson's murder conviction because she found that "[t]here is almost no evidence in the case against Nickerson which cannot reasonably be questioned as potentially the product of improper police conduct."

Nickerson was finally freed after spending 19 years in prison for two murders he did not commit.

²¹ "Faded Convictions", *San Francisco Chronicle*, Cambron, Tricia, November 14, 2003

Dwayne McKinney – Freed in 2000

County of conviction: Orange

Years imprisoned: 19

Wrongful conviction factors: mistaken eyewitness identification and police misconduct

Dwayne McKinney was convicted of the 1980 murder of Burger King Manager, Walter Horace Bell, Jr., and sentenced to life without parole. The jury narrowly rejected a death sentence.

McKinney was convicted largely on the eyewitness testimony of four young employees at the Orange County restaurant. They were shown photographs of McKinney before he appeared in a lineup, and told falsely by police that he was caught with the proceeds of the robbery and was wearing clothing matching that of the attacker.²²

In 1998, a prison inmate, Charles Edward Hill, wrote to the public defender's office to tell them that he knew who had really killed Bell and that it was not McKinney. The letter prompted separate investigations by the public defender's offices, the prosecutor, and the *Orange County Register*. All three parties determined that Raymond Herman Jackett was most likely the actual perpetrator.

McKinney's trial attorney had known that Jackett could have been the real killer since 1982, but never investigated the lead.

Orange County prosecutor, now District Attorney, Tony Rackaukas said, "I don't think we can feel confident in the conviction at this stage. It's difficult to look back on this case after having gone through the trial...and go back and find out there's another suspect."

In 2000 - nineteen years after his conviction – Rackaukas asked that McKinney's conviction be vacated and Orange County Superior Court Judge Kazuharo Makino ordered McKinney's release.

McKinney spent 19 years in prison, during which he was stabbed three times.

Wrongful Conviction Cases That Likely Would Have Been Capital Cases

The following four cases would likely have been tried as death penalty cases if they had not occurred during periods when legal decisions precluded use of the death penalty. Three of these cases occurred during the brief *Furman* era, when a U.S. Supreme Court ruling foreclosed prosecutors from pursuing any death sentences.²³ The fourth occurred during the short-lived

²² "A free man: He was convicted of '80 O.C. murder", *Orange County Register*, Pfeifer, Stuart and Saavedra, Tony, January 29, 2000

²³ The *Furman* era refers to the years between *Furman v. Georgia* (1972) 408 U.S. 238. and *Gregg v. Georgia* (1976) 428 U.S. 153.

*Carlos*²⁴ era, when a California Supreme Court ruling prevented prosecutors from seeking death against individuals who did not have intent to kill. All of these cases, if they were tried today, would likely be capital murder cases, as will be shown.

Gloria Killian – Freed in 2002

County of conviction: Sacramento

Years imprisoned: 18

Wrongful conviction factors: perjury of a co-defendant informant, prosecutorial misconduct, and ineffective assistance of counsel

In 1986, Gloria Killian was convicted of “master-minding” the 1981 first degree robbery-murder of Ed Davies²⁵ and was sentenced to 32 years to life in prison. The district attorney intended to seek the death penalty for Killian – as he had successfully won a death sentence for her co-defendant Stephen DeSantis in 1983. But because of the California Supreme Court ruling in *Carlos v. Superior Court*²⁶, the maximum sentence he could seek was 32 years to life. *Carlos* was reversed²⁷ soon after Killian was sentenced.

The charges were based solely on the testimony of career criminal Gary Masse, who had just been sentenced to life without possibility of parole for his role in the same murder-robbery. In a deal with the District Attorney, Masse named Killian as the mastermind of the robbery in exchange for a reduced sentence. The co-defendant, DeSantis, testified in his 1983 trial that Killian had nothing to do with the crime, and that he had never even met her.

At Killian’s trial, Masse denied making a deal with the District Attorney and the prosecutor reinforced Masse’s untruthful testimony during his closing argument. Shortly after the trial, Masse wrote a letter to the prosecutor demanding that his sentence be reduced - as promised - because he had successfully lied for him. Masse then in fact had his sentence reduced from life without parole to life with the possibility of parole. The letter from Masse was never disclosed to the defense. It was discovered years later by attorneys for DeSantis.

In 2000, Masse admitted to federal magistrate Judge Gregory Hollows that he had lied during Killian’s trial, but shortly thereafter Judge Hollows recommended to U.S. District Judge Garland E. Burrell that Killian’s conviction be upheld; and Burrell agreed saying that the perjurious statements were harmless.

In 2002, the Ninth Circuit Court of Appeals reversed Killian’s conviction saying that it was improperly based on the false testimony of Gary Masse. Ninth Circuit Judge Michael D. Hawkins called his testimony “thoroughly discredited.”²⁸

²⁴ The *Carlos* era refers to the years between *Carlos v. Superior Court*, (1983) 35 Cal 3d 131. and *People v. Anderson* (1987) 43 Cal 3d 1104.

²⁵ “Wrongfully Accused?”, *CBS News, 48 Hours*, Van Sant, Peter, September 13, 2003

²⁶ *Carlos v. Superior Court* (1983) 35 Cal 3d 131.

²⁷ *People v. Anderson* (1987) 43 Cal 3d 1104.

²⁸ “Conviction for murder reversed”, *Los Angeles Times*; Weinstein, Henry, March 14, 2002

Killian was released in 2002 after serving over eighteen years- five of those years after the letter from Masse had been discovered.

Clarence Chance and Benny Powell – Freed in 1992

County of conviction: Los Angeles

Years imprisoned: 17 years each

Wrongful conviction factors: police misconduct, mistaken eyewitness identification and perjury by an informant

In 1975, Clarence Chance and Benny Powell were convicted of robbery and the first degree murder of a Los Angeles County Sheriff's Deputy and sentenced to life without parole.

Three witnesses eventually admitted that Los Angeles police officers had pressured them to falsely finger Chance and Powell as the killers. County prosecutors also found that L.A.P.D. withheld evidence that the jailhouse informant, who testified against Chance and Powell, had actually implicated two other people in the crime and failed two polygraph examinations.

After 17 years in prison and a four-year investigation, both Chance and Powell were released in 1992 due to police misconduct, perjured testimony, and false informant testimony.²⁹ The District Attorney, Ira Reiner, supported their release, saying, "[t]his was a terrible thing that happened. It has been corrected, but it has not been undone."

Upon their release, Los Angeles Superior Court Judge Florence-Marie Cooper gave a judicial apology for the "gross injustice" of the time they spent in prison. "Nothing can be done to return to you the years irretrievably lost," she said.³⁰

Given the fact that this case involved the murder of a Sheriff's deputy, there is a reasonable probability that this would have been tried as a capital case, if the death penalty had been an available option.

Aaron Owens – Freed in 1981

County of conviction: Alameda

Year imprisoned: 9

Wrongful conviction factors: mistaken eyewitness identification

Aaron Owens was convicted of two counts of first degree murder in Oakland in 1973. His conviction for the murders of Stan Bryant and Suenette Cook hinged on the testimony of an eyewitness who survived the attack.

Owens' co-defendant, Glenn Baily, admitted eight years after his conviction that another man, not Owens, had been his accomplice. This new information alarmed prosecutor John Taylor and

²⁹ "Freeing innocent from behind bars is Centurions' mission", *New York Times*, Peterson, Iver, April 1, 1992

³⁰ "Judge apologizes, frees 2 men in 1973 murder", *Los Angeles Times*, Stolberg, Sheryl, March 26, 1992

caused him to reinvestigate the case. Taylor soon realized that the eyewitness had made a critical mistake and that Owens was in fact innocent.

Taylor worked tirelessly for Owens' release. "The district attorney has sufficiently proved to me your innocence," said Alameda Superior Court Judge Alan Lindsay.³¹

Owens was finally released in 1981, having received a full pardon, after nine years in prison. Taylor has publicly stated that if the death penalty had been available to him in 1973, he would have sought it against Owens.

Another Noteworthy Death Penalty Case

Chol Soo Lee - Freed in 1983

County of First conviction: San Francisco (trial moved to Sacramento)

County of 2nd conviction: San Joaquin

Years imprisoned: 10

Wrongful conviction factors: misconduct by police and prosecutors, erroneous jury instructions, and mistaken eyewitness identification

In 1974, Chol Soo Lee was convicted of the first degree murder of Yip Yee Tak with the use of a firearm and was sentenced to life in prison.

The case was tried in Sacramento after a change of venue from San Francisco.

Prosecutors relied on two eyewitnesses who saw the murder, which took place on a Chinatown street corner in San Francisco on June 3, 1973, and on the testimony of a third witness who saw someone fleeing the scene just after the shooting. After suggestive procedures were used by police and prosecutors, including hypnotizing one witness, all three witnesses identified Lee in a police line-up. Based on this eyewitness testimony, Lee was convicted.

In 1977, writer K.W. Lee wrote a series of articles that cast doubt on the validity of Lee's conviction. The articles garnered significant media coverage of the case and generated a community movement in support of Chol Soo Lee.

In October 1977, Lee was charged in San Joaquin County Superior Court with the first degree murder of fellow prisoner, Morrison Needham, which occurred during a prison brawl. The 1974 murder conviction was alleged as a special circumstance making Lee eligible for the death penalty. He was convicted and sentenced to death. Lee maintained that he committed the prison killing in self-defense.

³¹ "No killer, Aaron Owens is free at last after seven year sin prison," Associated Press, *Alton Telegraph*, March 7, 1981

In 1978, the Sacramento Superior Court agreed to review the 1974 murder conviction. At this hearing, lawyers for Lee revealed that an additional witness, Steven Morris, had come forward the day after the shooting and told police that he had seen the murder and that Lee was not the assailant. The court ruled that this crucial evidence had been withheld from the defense, and overturned Lee's conviction. In 1980, the Court of Appeals of California for the 3rd Appellate District affirmed the lower court's decision.³²

In 1982, Lee was retried for the murder of Tak and was acquitted.

In 1983, the Court of Appeals for the 3rd Appellate District reversed Lee's conviction and death sentence for the prison murder, citing false testimony of a prison informant and improper jury instructions that were given during the penalty phase of the trial. Two months later, San Joaquin County Superior Court Judge Peter Seires ordered Lee released. Prosecutors then moved to retry Lee on the prison killing charge. Chol Soo Lee, who had served nearly ten years in prison, agreed to plea to a significantly lesser charge that gave him credit for the time served and he was freed from prison.

The case of Chol Soo Lee is a particularly extraordinary because his wrongful conviction for the 1974 murder set off a chain of events that would forever alter and mar his life. If not for the original wrongful conviction, he never would have gone to prison, nor would have ever been involved in the brawl which resulted in the death of prisoner Morrison Needham. And had the original wrongful conviction been alleged as a special circumstance for the prison murder he never would have been sentenced to death.

Conclusion

An examination of these cases reveals that California suffers from the all too common problems known to cause wrongful conviction – even in our most carefully reviewed capital cases. It is fortunate for these death sentenced individuals that the pace of executions in California is slow, because many of them – having spent an average of almost fourteen years in prison - would be dead were it not.

Critics may argue that some of the men and women detailed in this report have not been proven to be factually innocent – even though they have been freed from prison. We included cases in this report based on an objective set of criteria that legally distinguish the guilty from the innocent: 1) the individual was acquitted of murder at retrial; or 2) the individual had his/ her murder conviction overturned and the murder charge was dropped.

We did not attempt to make any subjective judgments based on suspicions or hunches about guilt or innocence; instead we relied solely on the presumption of innocence conferred on these individuals by the American criminal justice system. As Richard C. Dieter, Executive Director of the Death Penalty Information Center has stated:

³² *In re Lee* (1980) 103 Cal.App.3d 615.

To argue that people who have been acquitted at trial are not “actually innocent” because a prosecutor holds some lingering belief in the person’s guilt is to turn suspicion into a permanent stigma. That goes against the most fundamental principle of our constitutional system. No one should have to prove his or her innocence. The status of innocence is a person’s full right unless the state has proven them guilty beyond a reasonable doubt. If we throw out that protection, we have abandoned one of this country’s most important founding principles.³³

Instead of denying the undeniable – that wrongful convictions do happen and that our criminal justice system, administered by humans, is fallible – we should urgently commit to making our justice system more just, fair and accurate. Knowing that we can never completely eliminate the possibility of convicting and executing the innocent, despite our best efforts, we must ask ourselves what is the acceptable margin of error when it comes to the ultimate punishment?

Death Penalty Focus maintains emphatically that *no* such fatal margin of error is tolerable in a society dedicated to the rule of law and the sanctity of human life.

³³ “INNOCENCE AND THE CRISIS IN THE AMERICAN DEATH PENALTY,” A Death Penalty Information Center Report, Dieter, Richard C.; www.deathpenaltyinfo.org, September 2004

Wrongful Conviction Factors

	Mistaken eye-witness identification	Perjury by co-defendant/jailhouse informant	Police misconduct	Prosecutorial misconduct	Ineffective assistance of counsel	Erroneous jury instructions	False confession	Other
Oscar Lee Morris		X		X				
Lee Perry Farmer					X			
Troy Lee Jones					X			
Patrick Croy					X	X		
Jerry Bigelow		X					X	X
Ernest Graham				X				
Harold Hall		X					X	
Glen Nickerson	X		X					
DeWayne McKinney	X		X					
Gloria Killian		X		X	X			
Clarence Chance	X	X	X					
Benny Powell	X	X	X					
Aaron Owens	X							
Chol Soo Lee	X		X	X		X		