

# YOU

IT COULD HAPPEN TO YOU!

## Leading a New Culture of Accountability in Justice

The California Report on  
Prosecutorial Misconduct



*With the Support of The Jeffrey Deskovic Foundation for Justice*



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2532 Santa Clara Ave., #186  
Alameda, CA. 94501  
[itcouldhappen@rochester.rr.com](mailto:itcouldhappen@rochester.rr.com)  
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## Executive Summary

It Could Happen to You is a coalition that spreads awareness about the rate of wrongful prosecutions, prosecutorial misconduct and its many impacts to society. The organization recommends and advocates for common sense criminal justice policy reforms to prevent prosecutorial misconduct and promote uniform best practices for prosecutors.

This report summarizes 16 cases of prosecutorial misconduct in which California courts have either exonerated individuals or ordered new trials as a result of the misconduct of prosecutors and/ or verbally reprimanded the prosecutor for violating rules of misconduct. This includes 3 cases in which wrongfully convicted sat on death row.

This prosecutorial misconduct includes intentionally withholding evidence the accused is legally entitled to, failure to disclose and reveal the true name and addresses of witnesses, and misleading jurors in opening and closing statements at trial.

While the duty of a prosecutor is to enforce rules of conduct in society and establish just consequences for individuals who break these rules, when prosecutors break their own rules, there are no consequences.

Indeed, every other profession judge, police, doctors, religious leaders, bankers, insurance agents, teachers, tradesmen, athletes, chefs and even hair dressers have enforceable codes of conduct and systems of improvements or discipline when these codes are violated. It Could Happen To You believes the cases summarized in this report are just the tip of the iceberg as currently there is no independent, transparent body capable with the skills to investigate or deter prosecutorial misconduct. At present the State Bar does not maintain a public record of exactly how many complaints have been filed against prosecutors or the outcome of investigations pursued by the Bar. Nor does the State Bar initiate its own oversight and investigation of the office of the district attorney to ascertain that prosecutors are upholding the laws and codes of professional conduct.

What we do know is that the Northern California Innocence Project in collaboration with Veritas in 2010 identified more than 4000 cases of prosecutorial misconduct in California between 1997 and 2009 in which the defense raised misconduct as an issue. The collaborative research project found 707 cases in which prosecutorial misconduct had occurred. Of those 707 cases, 67 prosecutors had committed prosecutorial misconduct on more than one occasion. Yet in 13 years only six prosecutors were disciplined. In fact, research by It Could Happen to You and the Jeffrey Deskovic Foundation for Justice, reveals that over the course of 26 years the State Bar has disciplined only 13 Prosecutors.

The time has come for the State of California to take prosecutorial misconduct seriously before more reputations are destroyed by malicious prosecutions, more individuals have years of liberty stolen from them due to wrongful convictions or worst of all, an innocent man or woman is executed



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**Editor Notes**

The sentencing data for these select wrongful convictions were derived from court opinions and the National Registry of Exonerations, a project of the University of California Irvine Newkirk Center for Science & Society, University of Michigan Law School, and the Michigan State University College of Law. It was founded in 2012 in conjunction with the Center on Wrongful Convictions at the Northwestern University School of Law. The Registry provides detailed information about every known exoneration in the United States since 1989.

Additional data was derived from the 2010 Northern California Innocence Project/Veritas Report: *Preventable Error: A Report on Prosecutorial Conduct in California 1997-2009* & US Department of Justice 2022 Report: *Investigation of Orange County District Attorney's Office and the Orange County Sheriff's Department*

*California's 282 wrongful convictions are fourth in the nation following Illinois, New York & Texas.*

*All reasonable measures have been taken to ensure the quality, reliability, and accuracy of the information in this report. If you believe there is an error, we encourage you to contact us.*



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## *People v Barry Williams*

**County:** Los Angeles

**Crime:** Murder

**Convicted:** 1986

**Sentence:** Death

**Judgment Reversed:** 2016

**Exoneration:** 2021

**Case Summary/The National Registry of Exonerations:** “In January 2021, nearly 35 years after Barry Williams was sentenced to death for murder in a case riddled with police and prosecutor misconduct and five years after the conviction was overturned, the Los Angeles County District Attorney’s Office dismissed the case. “

**Comments of United States District Court-Central District of California :** “In conclusion, given the magnitude of the prosecution’s combined substantial errors in this case, this Court cannot agree that Petitioner’s verdict was one “worthy of confidence. Citing *George v. Comacho*: “The prosecuting attorney represents a sovereign whose obligation is to govern impartially and whose interest in a particular case is not necessarily to win, but to do justice.”

*Bottom Line:*

### **Attempted CA State Bar Discipline:**

- ***The California State Bar sought discipline for Barry William’s Prosecutor, Carmen Trutanich: In 2017 the Bar issued the following statement “The State Bar Board of Trustees in October recommended enactment of a proposed new ethics rule regarding the special duties of prosecutors in criminal cases (Rule 3.8), specifically addressing their responsibility to disclose evidence to the defense—The claim--" [Trutanich] (1) knowingly failed to disclose and reveal the true name and address of a percipient witness that was identified under an alias; and (2) presented testimony from an unnamed detective that Respondent knew (or was grossly negligent in not knowing) was false. ”***
- ***2018: Attorney Carmen Trutanich appealed to the CA Supreme Court. The CA Supreme Court dismissed the case stating: “While the three-decade delay does not violate the limitations period (Rules Proc. of State Bar, rule 5.21), the court does not find the reason for the delay to be overly compelling. This is especially true when the reason for the delay is balanced against the substantial harm to Respondent.”***



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## **People v. Cole Allen Wilkins**

**County:** Orange

**Crime:** Felony Murder

**Convicted:** 2017

**Sentence:** 26 years to life

**Resentencing:** 2020

### **Comments of Court of Appeal of the State of California Fourth Appellate District Division Three:**

- “Before a retrial, Wilkins learned that certain California Highway Patrol (CHP) officers had destroyed and altered their initial reports, which contained differing opinions about the causes of the collisions. The prosecution failed to disclose this exculpatory evidence. Wilkins filed a motion to recuse the Orange County District Attorney (OCDA), and a motion alleging outrageous government conduct. The trial court found prosecutorial misconduct, but did not recuse the entire OCDA's office. As a sanction, the court excluded felony murder as a theory of liability during the retrial... Prior to the retrial, Wilkins moved to recuse the entire OCDA's office due to the alleged destruction and altering of CHP police reports... The court did not recuse the entire OCDA's office, but the court did recuse the two former prosecutors (now superior court judges\*) who were substantially involved in the first trial.”
- “At the retrial, the jury found Wilkins guilty of second degree murder under an implied malice theory. We find that there was insufficient evidence to sustain the conviction. We will therefore exercise our discretion and reduce Wilkins's second degree murder conviction to involuntary manslaughter.”

***\*The California Commission on Judicial Performance*** opened an investigation into Superior Court Judge Michael Murray investigating his performance as prosecutor on People v. Wilkins: In 2022 after a 7 day hearing “all matters were dismissed”. ***“The masters concluded that using Brady to justify punishing an individual prosecutor, now judge, for alleged misconduct is not what Brady is designed to do.”***

***Bottom Line:***

### **State Bar Discipline**

None on public record.



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**People v Vicente Benavides**

**County:** Kern

**Crime:** Murder

**Convicted:** 1993

**Sentence:** Death

**Exoneration:** 2018

**Case Summary/The National Registry of Exonerations:** “On April 19, 2018, 68-year-old Vicente Benavides was released from California’s death row, 25 years after he was sentenced to death for the rape, sodomy, and murder of a 21-month-old girl in Delano, California. His convictions were vacated and the charges were dismissed after numerous experts concluded that the girl had never been raped or sodomized, and that the medical evidence used to convict Benavides was wrong.”

**Comments of California Supreme Court:** *In re: Vicente Benavides on Habeas Corpus*

- “Respondent [the state] now concedes that false evidence was introduced at trial and that petitioner's convictions of substantive sexual offenses, special-circumstance findings, and judgment of death must be vacated. Respondent urges us to reduce the murder conviction from first to second degree. We decline to do so. The judgment is vacated in its entirety. “
- “The evidence now shown to be false was extensive, pervasive, and impactful. What the jury might have concluded in its absence is an exercise in speculation. For example, the prosecutor argued in closing that Consuelo died either as a result of sodomy alone, or from sodomy, rape, and assault. The jury was expressly invited to conclude that the child was killed by petitioner's sexual assault. That argument was tainted by the false evidence. In that light, the jury had scant need to consider other theories, and no ability to do so outside the pall cast by the completely repudiated testimony.”

*Bottom Line:*

**State Bar Discipline**

None on public record.



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**People v. Deshawn Reed**

**County:** Alameda

**Crime:** First and Second Degree Murder

**Convicted:** 2014

**Sentence:** Life without Parole

**Exoneration:** 2017

**Case Summary/The National Registry of Exonerations:** “In January 2017, California’s First District Court of Appeal reversed Reed’s conviction and ordered a new trial. In a lengthy opinion, the appellate court found judicial error, prosecutorial misconduct, false testimony by police, and a litany of failures by Reed’s defense lawyer that culminated in a “miscarriage of justice.”

**Comments of Court of Appeal:** “We---find that the prosecutor presented material false evidence at trial, and that all of these errors combined to deprive petitioner of a fair trial. Accordingly, we will grant the habeas petition and vacate the judgment of conviction in its entirety.”

**Awarded Compensation:** \$369,460

*Bottom Line:*

**State Bar Discipline**

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**People v. Scott Dekraai (Part 1)**

**County:** Orange

**Crime:** Murder

**Convicted:** 2014

**DA's Office Recused:** 2014

**Sentence:** Life without Parole

**Comments of the Court of Appeal of the State of California Fourth Appellate District Division Three:**

- “The trial court recused the entire Orange County District Attorney’s (OCDA) office from prosecuting Scott Dekraai’s penalty phase after he pled guilty to eight counts of murder...In conclusion, the trial court stated the supplemental evidence established that when the DA presented false or intentionally misleading testimony, regardless of whether it was aware, it violated Dekraai's due process rights requiring additional sanctions detailed above. The court also stated the supplemental evidence established the DA in this case is unable to comply with its constitutional and statutory discovery obligations because of a conflict of interest and the conflict demonstrates the OCDA will not ensure the prosecution team will comply with its discovery orders; the court noted that since its January 2013 discovery order, the DA had produced over 30,000 pages of discovery. The court concluded the conflict of interest required recusal of the OCDA and the Attorney General must prosecute the penalty phase.
- “[W]e must rely on our prosecutors to carry out their fiduciary obligation to exercise their discretionary duties fairly and justly—to afford every defendant, whether suspected of crimes high or petty, equal treatment under the law.” (Hollywood v. Superior Court (2008) 43 Cal.4th 721, 734 (Hollywood).) “The first, best, and most effective shield against injustice for an individual accused, or society in general, must be found not in the persons of defense counsel, trial judge, or appellate jurist, but in the integrity of the prosecutor.” (Corrigan, On Prosecutorial Ethics (1986) 13 Hastings Const. L.Q. 537, italics added.)”

Continued...



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***People v. Scott Dekraai (Part 2)***

**Comments from Executive Summary-U.S. Department of Justice Civil Rights Division (October 13, 2022)**  
***“Investigation of the Orange County District Attorney’s Office and the Orange County Sheriff’s Department.” Retrieved from <https://www.justice.gov/opa/press-release/file/1542116/download>***

- “The United States has conducted an extensive investigation of the Orange County District Attorney’s Office (OCDA) and the Orange County Sheriff’s Department (OCSD), pursuant to our authority under the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601 (previously codified at 42 U.S.C. § 14141). We have determined that there is reasonable cause to believe that the Orange County District Attorney’s Office and the Orange County Sheriff’s Department engaged in a pattern or practice of conduct—the operation of a custodial informant program—that systematically violated criminal defendants’ right to counsel under the Sixth Amendment and right to due process of law under the Fourteenth Amendment.”
- “We opened our investigation in December 2016 amid serious concerns that the custodial informant program operated by OCDA and OCSD had undermined confidence in the criminal legal system in Orange County.<sup>1</sup> The custodial informant program came to light in 2014 during OCDA’s prosecution of Scott Dekraai for mass murder. *People v. Dekraai* involved multiple rounds of evidentiary hearings about the custodial informant program over the course of three years. Dozens of witnesses from OCDA and OCSD testified about the program. The hearings resulted in the court-ordered recusal of OCDA from the Dekraai case and, ultimately, the dismissal of the death penalty from consideration.”

*Bottom Line:*

**State Bar Discipline**

None on public record.



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## **People v Jamal Trulove**

**County:** San Francisco

**Crime:** Murder

**Convicted:** 2010

**Sentence:** 50 to life

**Judgment Reversed:** 2014

**Second Trial:** 2015

**Acquittal & Exoneration:** 2015

**Comments of Court of Appeal of California, First District, Division Two:** The Court stated in *People v Trulove*, that “On rehearing and reexamination of all of the issues, we reverse, based on one of defendant's several appellate claims, that being that he received ineffective assistance of counsel because his trial counsel did not take any action in the face of *highly prejudicial prosecutorial misconduct*.”

- “The prosecutor's arguments improperly relied on facts not in evidence ”
- “...a prosecutor's reference to facts not in evidence is " 'clearly misconduct', because such statements 'tend to make the prosecutor his own witness—offering unsworn testimony not subject to cross-examination.”
- 

**Awarded Compensation: 13.1 Million Dollars**

*Bottom Line:*

**Attempted CA State Bar Discipline:**

- University of San Francisco, Law Professor Lara Bazelon filed with the California State Bar against Jamal Trulove’s prosecutor Linda Allen. The Bar rejected the claiming it was time-barred, Bazelon appealed and was again denied.
- Bazelon then petitioned the CA Supreme Court- “Jamal Trulove spent six years in prison after being wrongfully convicted due to highly prejudicial prosecutorial misconduct where Allen presented false evidence during closing argument. The Court of Appeal reversed Trulove’s conviction, finding that Allen had simply made up the false evidence “out of whole cloth.” Allen’s misconduct contributed directly to Trulove’s wrongful conviction; when she retried Trulove and was not permitted to commit the same misconduct, Trulove was acquitted.”
  - *Petition denied.*



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## **People v. Johnny Baca**

**County:** Riverside

**Crime:** Murder

**Convicted Second Trial (first trial ended in a mistrial):** 1997

**Sentence Third trial:** 70 to life

**Judgment Reversed:** 2015

**Sentence fourth trial:** 55, 4 months to life

**Comments of the United States Court of Appeals for the Ninth Circuit:** Baca v. Adams (Before Circuit Judges Alex Kozinski, Kim McLane Wardlaw, and William A. Fletcher)-

- Judge Kozinski: “It’s a little disconcerting when the state puts on evidence, the evidence turns out to be fabricated, nothing happens to the lawyer and nothing happens to the witness and so I have to doubt the sincerity of the state when it says this was some sort of big mistake. I would have to think if someone lied on the stand and this is a criminal case the first thing that would happen is that there would be a prosecution of the witness and if the lawyer had any complicity in it that the lawyer would get disbarred... And why was that, why was he not disciplined? What kind of encouragement does that give to young prosecutors?”-- “Talk to the Attorney General and make sure she understands the gravity of the situation and understands that we take it very seriously. This does not speak well for the prosecutors in California, doesn’t speak well for the Riverside County DA’s office, and speaks very poorly for the Attorney General’s office.”
- Judge Warlaw: “Is that the practice of the Riverside County prosecutor, to put on prosecutors who lie? And then that’s OK because we have this other evidence?... “...and I understand why they do that, they are elected judges , they’re not going to be reversing these things. But it condones it by not reversing the conviction on that basis, and not making the state do it right without the lies.”

**Press Enterprise:** *Destroyed evidence could derail third trial for man twice convicted in Riverside County double homicide*-November 23<sup>rd</sup> 2018: “Appellate courts at the state and federal level ruled that Baca’s first two trials were tainted by ineffective counsel and prosecutor misconduct. Now-retired Riverside County prosecutor Robert Spira was determined to have lied on the witness stand, denying that a jailhouse snitch was offered a deal for testifying against Baca when, in fact, the informant’s sentence was reduced from 14 to 11 years.”

*Bottom Line:*

### **State Bar Discipline**

*None on public record*



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**People v. Ronald Ross**

**County:** Alameda

**Crime:** Attempted Murder

**Convicted:** 2006

**Sentence:** 25 to life

**Exonerated:** 2013

**Case Summary/The National Registry of Exonerations:** “Ross’s lawyers discovered that prosecutors failed to turn over evidence that Abner [a witness] had given several more statements about his identification prior to trial, but never said he was certain that Ross was the gunman...On February 22, 2013, faced with the mounting evidence of Ross’s innocence, the Alameda County District Attorney’s Office requested that his convictions be vacated. The motion was granted, the charges were dismissed and Ross was released.”

**Case Summary/Northern California Innocence Project:** “Williams said he was told to identify Ross as the gunman, by the detective who presented him with the photographic lineup, and Williams did so because he owed the detective a favor. Ross’ lawyers also discovered that Prosecutors failed to turn over evidence which included statements from Abner [a witness] about the gunman’s identification, which never stated certainty that Ross was the gunman. It was also discovered that after Williams’ recantation, a prosecutor and detective visited the prison where Williams was serving time for an unrelated charge, in which Williams recanted his recantation. Ross’s lawyers contended that Williams’ second recantation was coerced.”

**Awarded Compensation:** \$229,000

*Bottom Line:*

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### **People v Obie Anthony**

**County:** Los Angeles

**Crime:** Murder

**Convicted:** 1995

**Sentence:** Life without parole

**Exonerated:** 2011

**Case Summary/The National Registry of Exonerations:** "...Northern California Innocence Project took over the case in 2008. They established that in addition to fabricating his eyewitness testimony, \*Jones had perjured himself when he claimed that he had received no benefit for his testimony. In fact the district attorney had granted him favorable treatment on a pimping and pandering charge he was facing, and the trial prosecutors failed to inform the court or the defense that Jones had presented perjured testimony. On October 1, 2011 a judge vacated Anthony's conviction because of ineffective assistance of counsel and prosecutorial misconduct, and he was released on October 4<sup>th</sup>. Prosecutors dismissed the charges on November 18, 2011." \*John Jones was the identifying witness

**Comments of Court of Appeal, Second District, Division 7, California:** The Court stated in IN RE: Obie Steven ANTHONY III on Habeas Corpus that "On September 30, 2011, the trial court issued a 24-page order granting Anthony's habeas petition. The trial court found that Anthony had established "his conviction was based on material false testimony," explaining that the evidence showed the prosecution's "key witness" had "specifically lied to the jury" and subsequently recanted his identification of Anthony. The court also found Anthony had established "there was prosecutorial misconduct at trial because the deputy district attorney did not correct false testimony and suppress[ed] favorable evidence." The court found the district attorney had, among other things: failed to correct the "key witness's" statement that he had not received special treatment in exchange for his testimony; withheld from the defense statements from additional persons who had allegedly witnessed the crime; and failed to inform the defense that a trial witness had "incorrectly picked a 'filler' " the first time he was shown a photographic lineup of suspects.

***Awarded Compensation: City of Los Angeles: \$8.3 million; Los Angeles County: \$895k; State of California: 581k; Federal: 5.2 million***

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**People v Eric Green**

**County:** Alameda

**Crime:** Murder

**Convicted:** 1998

**Sentence:** 30 to life

**Judgment reversed:** 2008

**Comments of United States Court of Appeal Ninth Circuit:** (D.C. No. CV-02-00923-SBA) “Because “just one racial strike calls for a retrial,”---and because the evidence shows the prosecutor’s stated reasons for striking Deborah P. were not genuine, we reverse and remand to the district court with instructions to grant the petition for writ of habeas corpus if the State of California does not grant Green a new trial within 180 days of the filing date of this order.”

- “During jury selection, Green made a motion to dismiss the empaneled jurors after the prosecutor used six of twelve peremptory challenges to strike all six African American venire members who were called to the jury box. Green, an African-American, asserted the prosecutor had stricken these venire members based on race.”
- “The trial court denied Green’s motion, and a majority of the California Court of Appeal affirmed Green’s conviction.”

**Bottom Line**

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**People v. Aaron Cooper**

**County:** Alameda

**Crime:** Kidnapping, Carjacking, Murder

**Convicted:** 1996

**Sentence:** 71 to life

**Judgment Reversed:** 2004

**Comments of the Court United States District Court :** “The court has determined that there was a Confrontation Clause violation that was not harmless error. The court has also determined that Cooper's right to due process was violated because there was insufficient evidence to support the murder conviction — a determination which shows that it was not harmless error. The court also has determined that there was prosecutorial misconduct, but found that the instances of prosecutorial misconduct alone did not have a substantial and injurious effect on the verdict. This requires that the court determine whether Cooper has shown cumulative error. (The California courts did not discuss this claim.)

- “Cooper is entitled to relief on his cumulative error claim.”
- “The prosecutorial misconduct that occurred included eliciting evidence that Cooper was very familiar with guns, had a violent reputation and reportedly had shot at people before this crime took place. Although that misconduct by the prosecutor did not alone have a sufficient impact on the fairness of the trial such that the court could conclude a due process violation had occurred, the cumulative effect of that misconduct.”
- “The improperly admitted statement from Kingdom (i.e., the Confrontation Clause error), plus the insufficient evidence to support the murder conviction (i.e., the Due Process Clause error), considered together, prejudiced Cooper so much that his conviction on all counts must be set aside.”

*Bottom Line:*

**State Bar Discipline**

None on public record.



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## **People v. Quedellis Walker**

**County:** Santa Clara

**Crime:** Murder

**Convicted:** 1991

**Sentence:** Life

**Exoneration:** 2003

### **Case Summary/The National Registry of Exonerations:**

- On January 10, 1991, the body of 34-year-old Lisa Hopewell was discovered in the guest bedroom of her apartment in Cupertino, California. She had been bound, suffocated with duct tape and stabbed.
- On December 10, 1991, a jury convicted Walker of first-degree murder and he was sentenced to 26 years to life in prison. A new defense attorney for Walker later found five witnesses who testified that Walker was not at the murder scene. Dunbar admitted that she had lied to implicate Walker because she was promised leniency on a drug charge—a deal that the prosecution failed to disclose to Walker’s lawyer prior to trial. Moreover, several witnesses were found who identified another man as Bowers’s [co-defendant] accomplice in the murder, and DNA testing on cigarette butts at the scene were linked to the other man, Mark Anthony Swanson. One witness said Hopewell was a heavy drug user who owed Bowers a large drug debt.
- In 2003, the Santa Clara County District Attorney’s office, after conducting its own re-investigation, asked the Santa Clara County Superior Court to grant a state petition for habeas corpus that was filed on Walker’s behalf. Swanson later pled guilty to voluntary manslaughter and was sentenced to 15 years in prison

**Awarded Compensation: \$3,171,000**

*Bottom Line:*

### **State Bar Discipline**

None on public record.



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**People v. Peter Sakarias**

**County:** Los Angeles

**Crime:** Murder

**Convicted:** 1991

**Sentence:** Life

**Exoneration:** 2003

**Comments of the California Supreme Court:** (In re: Peter Sakarias on Habeas Corpus) “The evidence at petitioners' trials showed they both participated in the fatal attack on Viivi Piirisild, which was perpetrated with a hatchet and a knife--petitioners contend their joint prosecutor, Los Angeles County Deputy District Attorney Steven Ipsen, inconsistently and falsely portrayed their respective roles in the attack, attributing to each, in their respective trials, a series of three blows struck to the victim's head with the blade of the hatchet. Petitioners claim this prosecutorial inconsistency deprived them of due process, requiring that their death sentences be vacated.”

- “We agree with Sakarias that the prosecutor violated his due process rights by intentionally and without good faith justification arguing inconsistent and irreconcilable factual theories in the two trials, attributing to each petitioner in turn culpable acts that could have been committed by only one person.”
- “We also agree this violation prejudiced Sakarias, entitling him to relief. We do not decide whether the prosecutor's conduct was a due process violation as to Waidla, as we conclude any such violation *was harmless in his case.*”

*Bottom Line:*

**State Bar Discipline**

None on public record.



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### **People v Gloria Killian**

**County:** Sacramento

**Crime:** Attempted Murder/Burglary

**Convicted:** 1986

**Sentence:** 32 to life

**Exoneration:** 2002

**Case Summary/The National Registry of Exonerations:** In March 2002, the Ninth Circuit U.S. Court of Appeals reversed the denial, granted the petition and vacated Killian's conviction. The appeals court ruled that the failure to disclose letters from Masse [witness/co-defendant], Masse's admitted perjury as well as the trial prosecutor's commenting on Killian's silence was "devastating to one's confidence in the reliability of this verdict."

**Comments of United States Court of Appeals, Ninth Circuit:** *Killian v. Poole*, "Even if the failure to disclose impeachment evidence, Masse's perjury, and the prosecutor's comments on privileged conduct were not each sufficient to justify habeas relief, we note that if ever there were a case for application of cumulative error principles, this is it."

*Bottom Line:*

**Disciplinary Action Taken:**

*California State Bar admonished Prosecutor Christopher Cleland for his misconduct in the case.*



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**People v Oscar Morris**

**County:** Los Angeles

**Crime:** Murder

**Convicted:** 1983

**Sentence:** Death

**Resentenced:** 1990

**Sentence:** Life in prison.

**Exoneration:** 2000

**Case Summary/Innocents Database of Exonerations:**

"Oscar Lee Morris was wrongly convicted of first-degree murder and robbery in 1983 and sentenced to death. In 1988 the California Supreme Court affirmed Morris' convictions, but reduced his sentence to life in prison. He was resentenced to life in prison in 1990. Oscar Morris was freed in 2000 after 16 years in prison – six of them on death row – when his chief accuser issued a recantation and Los Angeles County Superior Court Judge William Pounders granted Morris a new trial. Prosecutors declined to try Morris anew, and he was set free. "Morris's case was marked by the controversial use of testimony from a felon granted leniency for his testimony, and the prosecution's failure to divulge this special relationship to the defense during the trial. The star witness later confessed that he had fabricated the entire case against Morris in return for favorable treatment in at least two criminal cases he was involved in."

*Bottom Line:*

**State Bar Discipline**

None on public record.



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**People v Eugene Allen**

**County:** San Francisco

**Crime:** Murder

**Convicted:** 1976

**Sentence:** Death

**Judgment Reversed:** 1979

**Comments of California Supreme Court:** (Crim. No. 19519. Supreme Court of California. February 13, 1979)

“As we shall explain, under the guidelines articulated in Wheeler defendants in the instant case clearly established a prima facie case that the prosecution was exercising its peremptory challenges in an unconstitutional fashion. Inasmuch as the record contains no justification for the prosecution's challenged course of conduct, our Wheeler decision establishes that the trial court erred in rejecting defendants' objections to the jury selection process and in permitting the case to be tried by a jury from which black prospective jurors had been unconstitutionally excluded. Accordingly, we conclude that the judgments must be reversed.”

*Bottom Line:*

**State Bar Discipline:**

None on public record.



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## **Alameda**

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### **San Joaquin**

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**California Cases**  
***Prosecutorial Misconduct***  
***Deemed HARMLESS ERROR***  
***1997-2009***

**Alameda**

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### **Imperial**

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## **Northern California Innocence Project/Veritas Report- Prosecutors Disciplined 1997-2009**

- **Santa Clara County deputy district attorney Benjamin Field was suspended for four years in 2010 for misconduct in multiple cases over a decade, including violating a court order, withholding evidence in two separate cases and making a deceptive closing argument.**
- **San Joaquin County deputy district attorney Michael Freeman stipulated to withholding evidence from the defense, resulting in a public reprimand in 2009.**
- **Santa Clara County deputy district attorney Peter Waite was publicly reprimanded in 2009 for suppressing an expert opinion that was favorable to the defense in a burglary, rape and robbery prosecution.**
- **Sonoma County deputy district attorney Brooke Halsey was suspended for three years in 2007 for multiple violations, including suppression of evidence, misleading a judge and making false representations in court.**
- **Butte County deputy district attorney Leo Barone was suspended for one year in 2005 for failing to disclose exculpatory evidence and making misrepresentations to the court and defense.**
- **San Diego County deputy district attorney James Fitzpatrick was placed on probation for two years in 2005 for willfully failing to disclose exculpatory evidence to the defense, violating a court order and being untruthful.**

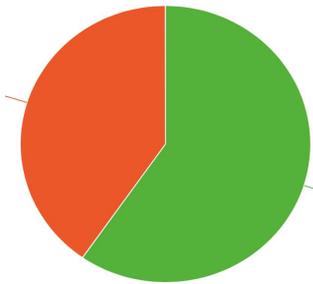
## Appendix B

# Northern California Innocence Project - 2017 Update

### Contributing factors to Wrongful Conviction:

201  
exonerations

Perjury/False Accusation was a contributing factor in 123 of these cases  
Official Misconduct was a contributing factor in 120 of these cases  
Mistaken identification was a contributing factor in 67 these cases  
Bad forensic evidence was a contributing factor in 30 of these cases  
False confessions have been a contributing factor in 9 of these cases



59.7% of exoneration cases in CA had official misconduct as a contributing factor to wrongful conviction. Prosecutorial misconduct falls within this category. The Innocence Project found that prosecutorial misconduct is a factor in 36-42% of all wrongful conviction cases, across the US.

### What is being done about Prosecutorial Misconduct in California?

The Northern California Innocence Project identified more than 4,000 federal and state cases on appeal in CA between 1997 and 2009, in which the defense raised prosecutorial misconduct as an issue. Of those 4,000 cases, courts found prosecutorial misconduct harmful enough to reverse the conviction, declare a mistrial or bar the evidence in just 159 of them.

707 cases were examined by The Northern California Innocence Project, in which prosecutorial misconduct was found, between 1997 and 2009. Of those 707 cases, 67 prosecutors had committed misconduct in more than one case, including three who committed misconduct four times, and two prosecutors who had committed misconduct five times. Of those 707 cases, only six prosecutors were disciplined.

It is not required that courts forward all findings of misconduct to the State Bar, which investigates allegations of attorney misconduct. Courts are not currently required to forward cases in which they decide the misconduct was harmless.

In 2016, committing Prosecutorial Misconduct became a felony in the state of California. Under this law, Prosecutors who intentionally alter or withhold evidence from the defense, can face up to three years in jail.

- ❑ In 2018, Andrew Ganz, an assistant district attorney in San Francisco, was found guilty of 4 counts of prosecutorial misconduct, one being he, "failed to disclose detailed discussions investigators and prosecutors had with a forensic pathologist whose findings contradicted a key prosecution theory in the case". He is not, however, facing three years of jail time, but instead faces a 90-day suspension from practicing law, and two years of probation.

**Appendix C**  
**Department of Justice**  
**10/13/2022 Press Release**



Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, October 13, 2022

**Justice Department Finds Civil Rights Violations by Orange County, California,  
District Attorney's Office and Sheriff's Department in Use of Jailhouse Informants**

Assistant Attorney General Kristen Clarke of the Justice Department's Civil Rights Division announced today, based upon a thorough investigation focused on custodial informant activity from 2007 through 2016, that the Orange County District Attorney's Office and the Orange County Sheriff's Department operated a custodial informant program that systematically violated criminal defendants' Sixth Amendment right to counsel and Fourteenth Amendment right to due process of law.

Specifically, the department found reasonable cause to believe that Orange County prosecutors and Sheriff deputies violated the Sixth Amendment by using jailhouse informants to elicit incriminating statements from people who had been arrested, after those individuals had been charged with a crime. The department also found that Orange County prosecutors violated the Fourteenth Amendment by failing to disclose exculpatory evidence about those custodial informants to criminal defendants. The department believes that OCDA and OCSD stopped using informants as agents of law enforcement to obtain statements from charged defendants in the Orange County Jail in 2016.

The Justice Department provided a comprehensive, written report of its investigative findings to the Orange County District Attorney and Sheriff. The report explicitly acknowledges the reforms that the District Attorney's Office and the Sheriff's Department have implemented already, and identifies the additional remedial measures that the department believes are necessary to fully address its findings.

"All persons who are accused of a crime are guaranteed basic constitutional protections that are intended to ensure fairness in criminal proceedings and due process of law," said Assistant Attorney General Kristen Clarke. "Prosecutors and law enforcement officers have an obligation to uphold these rights in their fight against crime and in their pursuit of justice, including in the way that they use custodial informants against criminal defendants. The failure to protect these basic constitutional guarantees not only deprives individual defendants of their rights, it undermines the public's confidence in the fundamental fairness of criminal justice systems across the county."

The evidence uncovered by the department reveals that custodial informants in the Orange County Jail system acted as agents of law enforcement to elicit incriminating statements from defendants represented by counsel, and that for years Orange County Sheriff deputies maintained and concealed systems to track, manage, and reward those custodial informants. The evidence also reveals that Orange County prosecutors failed to seek out and disclose exculpatory information regarding custodial informants to defense counsel.

The department opened this investigation in 2016. The department reviewed thousands of pages of documents, conducted numerous site visits and interviewed dozens of witnesses, including Orange County prosecutors. The department also monitored developments in criminal cases, including those that culminated recently. Orange County officials cooperated throughout the investigation.

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