

House Committee on Corrections and Juvenile Justice
Senate Substitute for House Bill 2389
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Attn: Chairman Rep. John Rubin

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Testimony in opposition to Senate Substitute for House Bill 2389

My name is Tom Goldstein. I currently live in Huntington Beach California, where it's 58 degrees. I grew up in Prairie Village and I am an alumnus of Shawnee Mission East High School, class of '67. After graduation I enlisted in the Marine Corps where I served in the Republic of Viet Nam. After my discharge I made my way to California.

In November of 1979 I was arrested for the murder of John McGinest who was gunned down on the streets of Long Beach. The following year I was convicted and sentenced to a term of 27 years to life. My wrongful conviction was based upon systemic flaws of our justice system, the testimony of a drug addict jail house informant, an eye witness, Mr. Campbell, who was coerced by the police to testify that I was the man he saw running from the scene of the crime, and counsel who failed to adequately investigate. My trial counsel was paid but not paid enough. He relied on police reports and conducted no independent investigation.

There was no DNA evidence but through the grace of God I obtained new evidence that resulted in my eventual release in April 2004. This new evidence came from the file of a death penalty case, *People v. Thompson* whose conviction was based in part on testimony from the same informant who testified against me. Their investigation revealed that the informant received substantial benefits for his testimony in my case though he told the jury that he received no benefits. Because credibility of a drug addict is so important the federal court reopened my case, counsel was appointed and an investigator assigned. The investigator located and interview all the witnesses who testified at trial. He and my attorney met with Mr. Campbell at a coffee shop where he revealed that he did not really know who he saw that night but the police "encouraged" him to choose my photo in a photo line-up. He was told that other people had identified me which was a lie and before his testimony the police had to point me out in the court room. Mr. Campbell later testified about all this at a hearing in federal court where he was cross examined.

I would also like to speak today in honor of Tommy Thompson, a man I believe was also not guilty of his crimes.

Tommy was executed in 1998. Had he lived until 2001 his conviction of death would have been overturned and it is likely that he would be a free man today. His case involved a codefendant and the codefendant's girlfriend who was murdered. The prosecutor assigned to the case, Mike Jacobs, was prepared to dismiss charges against Tommy because there was so little evidence against him. Mr. Jacobs refused to utilize the informant because he did not believe the informant was credible. Mr. Jacobs was removed from the case and Sterling Norris, a serial user of informants was appointed.

Their trials were separated. At Tommy's trial Norris argued that Tommy killed the woman to cover up a rape. At the codefendant's trial he argued that she was killed by a jealous lover. These were separate and independent acts. They could not have both been true. In 2001 the California Supreme court ruled in *In re Sakarias* that this type of prosecution violated the US and state constitution.

Since my release from prison in 2004 I pursued a civil rights lawsuit against the City of Long Beach, the detectives and the County of Los Angeles. During the discovery phase of the suit my attorneys discovered four other cases of wrongful convictions involving the same detectives, including Oscar Lee Morris who was sentenced to death and spent several years on death row, who is now a free man.

I've spoken at various universities: Southwestern School of Law, Loyola Law School, Cal State Long Beach, Cal State Irvine, Cal State Pomona and Columbia University in New York. I financially support innocent projects around the country and when called upon speak with Congressmen, Senators and Legislators. I flew to Washington D.C. in 2005 to oppose the Streamline Procedure Act, introduced by Senator Kyle of Arizona which would limit federal review of state death penalty cases and restrict habeas review. Of the various Senators I lobbied (including Senator Brownback) I only had an audience with one Senator – Senator Diane Feinstein and told her that under this law I would still be in prison. With her vote this law never made it out of committee.

I spent many long, wasted and lonely years in prison. Participating in this process gives meaning and value to these lost years. Through my first hand experiences I can unequivocally state that our justice system is flawed. Sometimes the system gets it wrong and we need the appeals process to work in order to win our freedom. I believe that the shortcuts this bill proposes would not serve the public interest nor make our system more reliable. In fact it would make the execution of an innocent man more likely.