



Written by [Alex Newman](#) on November 23, 2013

## First Prosecutor Jailed for Deliberately Convicting Innocent Man

For the first time ever, according to legal experts focused on the subject, a prosecutor who deliberately sent an innocent man to prison by withholding evidence is himself going to be jailed. The case surrounds Michael Morton, a Texas man convicted in 1987 of murdering his wife, and former prosecutor Ken Anderson (shown), the state official responsible for Morton spending 25 years in prison. Anderson withheld crucial evidence in the case as district attorney that could have cleared Morton of the charges.



Of course, experts say the problem is widespread — [especially at the federal level](#) — but the fact that there has been a semblance of accountability in this case is being applauded as a “good start.” According to multiple investigations and legal experts, because of official “immunity,” officials who commit deliberate misconduct are virtually never punished. Instead, they tend to get promoted, say lawyers and experts commenting on the issue.

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More than two decades after the Texas trial that sent an innocent man to prison for what would have been the rest of his life, the ex-prosecutor who led the effort is finally [spending time behind bars](#). After pleading guilty to intentionally failing to disclose all the facts in the case, Anderson is set to be punished for “criminal contempt.” Critics say the “punishment” — 10 days in jail, 500 hours of community service, a small fine, and the loss of his law license — amounts to little more than a slap on the wrist considering the severity of the crimes.

However, despite the mild consequences, lawyers working to secure justice nonetheless celebrated the historic decision to hold an official responsible. According to [court documents](#) and the [Innocence Project](#), which works to free prisoners whom it believes have been wrongfully incarcerated, Anderson withheld crucial evidence in the case that almost certainly would have set Morton free if it had been presented. Among the most important facts that the ex-prosecutor failed to disclose: Statements from the only eyewitness to the murder saying that Morton was not the culprit.

Official documents also show that investigators with the sheriff’s office compiled significant amounts of evidence during the case that suggested Morton was not responsible for his wife’s brutal 1986 murder. Anderson was aware of the information, documents show, but instead decided to curtail further investigations while “ignoring” all of the contradictory evidence. In a move that surprised the lawman involved, then-District Attorney Anderson also refused to call the chief investigator on the case as a witness during the trial.

“What makes today’s plea newsworthy is not that Anderson engaged in misconduct that sent an innocent man to prison,” [observed](#) Ohio Innocence Project Director Mark Godsey, a law professor at the University of Cincinnati, in response to Anderson’s pleading guilty. “Indeed, while most prosecutors and



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police officers are ethical and take their constitutional obligations seriously, government misconduct — including disclosure breaches known as Brady violations — occurs so frequently that it has become one of the chief causes of wrongful conviction.”

According to Godsey, it is actually a worldwide problem that officials responsible for jailing innocent people — not based on honest mistakes, but on malicious intent using ethical and legal violations — are almost never held accountable. In many cases, he [wrote in the \*Huffington Post\*](#), the crooked public servants end up being promoted, as was mentioned by others above. In ex-prosecutor Anderson’s case, for example, he eventually became a judge. “What’s newsworthy and novel about today’s plea is that a prosecutor was actually punished in a meaningful way for his transgressions,” Godsey explained.

Driving home the point, Godsey outlined several other examples of cases where government officials, allegedly through misconduct and abuse of power, sent innocent people to prison. A case he worked on in Ohio, for instance, sent an innocent man to prison for 20 years based on official misconduct — with authorities in the case reportedly withholding and manipulating evidence that would have exonerated the man, intimidating defense witnesses, and more. A higher court eventually acknowledged the misconduct and freed the man in question. Instead of accountability for the perpetrators, however, all they received was promotions, Godsey noted.

In Texas, observers and commentators acknowledged the leniency of Anderson’s supposed punishment, but said the fact that he is being held accountable at all is a positive development. “Ten days in jail won’t give Morton those 25 years of his life back. Nothing can,” the *Austin American-Statesman* said in an [editorial](#) about the troubling saga. “The most we can say for Anderson now is he stands as a lesson for other prosecutors who seek convictions at the expense of justice.”

According to official findings in the Texas case, after spending nearly 25 years in prison and losing his young son in the process, Morton was exonerated by the Texas Court of Criminal Appeals based on “findings of actual innocence.” The evidence that ultimately ended up setting him free included the results of DNA testing obtained in 2011, which eventually helped secure the conviction of another man for the brutal beating and murder of Morton’s wife. This year, Mark Norwood was convicted of the murder, and he was recently charged with another, similar murder in Austin.

After being cleared of wrongdoing in the case, though, Morton did not leave it at that. Instead, he filed a report alleging that the prosecutor in question, Anderson, had perpetrated several serious crimes in the case including “tampering with or fabricating evidence,” tampering with government records, and finally, criminal contempt of court. It was the last charge that finally stuck when Anderson pleaded guilty, but only because of a precaution taken by the judge in Morton’s original trial — a court measure that eventually led to Anderson being held accountable.

“Fortunately, there is something very simple that judges across the country can do to eradicate this problem,” wrote Innocence Project Ohio chief Godsey, referring to the fact that officials who engage in misconduct are virtually never held accountable. “All judges, state and federal, should issue the standing ‘ethical rule order’ proposed by the Hon. Nancy Gertner and Innocence Project Co-Founder Barry Scheck. The proposed order requires prosecutors to disclose, pre-trial, all evidence that ‘tends to negate the guilt of the accused or mitigates the offense.’”

According to Godsey, Anderson’s conviction “stands out as an extreme aberration in a society where police and prosecutorial misconduct goes largely unpunished.” Because of their “immunity,” officials involved in such lawless perversions of justice are almost never held to account. However, Anderson’s



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punishment “is a step in the right direction,” Godsey said, urging more accountability to prevent more tragedies going forward.

“Hopefully, today’s result will deter rogue cops and prosecutors in the future from engaging in similar misconduct,” the law professor and Innocence Project leader concluded. “But this will happen only if judges across the country do what the judge did more than 25 years ago in the Morton case: issue an order requiring that proper disclosure to the defense, or risk criminal contempt proceedings.”

As *The New American* [reported](#) in 2010, the problem of prosecutorial misconduct is hardly an isolated phenomenon. At the federal level, a six-month investigation by *USA Today* [uncovered](#) a pattern of “outrageous” and “flagrant” violations among federal prosecutors, whose abuses resulted in innocent citizens being put in prison, countless wasted tax dollars, and lives destroyed. Judges specifically reported prosecutorial misconduct in hundreds of cases, and most instances are, of course, never discovered.

“Federal prosecutors are supposed to seek justice, not merely score convictions,” explained the hard-hitting newspaper article about the investigation, entitled “[Prosecutors’ conduct can tip justice scales.](#)” The paper’s inquiry found that “prosecutors repeatedly have violated that duty in courtrooms across the nation.” Among the problems identified: prosecutors lying to judges and juries, hiding evidence, and breaking plea agreements.

The *USA Today* investigation discovered a pattern of “serious, glaring misconduct,” according to Pace University law professor and prosecutorial-misconduct expert Bennett Gershman. “It’s systemic now, and the system is not able to control this type of behavior,” he said. “There is no accountability.” Even more alarming, perhaps, Gershman and another high-profile public-defense attorney in New York told *USA Today* that its findings were merely “the tip of the iceberg.”

*Photo of Ken Anderson: AP Images*

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