

## **How Prosecutorial Incentives Drive Wrongful Convictions**

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Michael Morton was 32 years old when he was sentenced to life in prison on February 17, 1987. He was found guilty of murdering his wife, Christine Morton, because—as the prosecution argued—she was not intimate with him on his birthday. His defense could not prove multiple occurrences of that day: Morton was at work when the murder occurred, his wife’s credit card was stolen and used elsewhere, Morton’s son, Eric, witnessed the murder, and Eric repeatedly established that “Daddy was not home.” The prosecution never turned over this exculpatory evidence to the defense at trial, even after the judge demanded that it hand over all such evidence.<sup>1</sup> *Brady v. Maryland*, a landmark U.S. Supreme Court decision that established the “Brady Rule”—requiring prosecutors to disclose any evidence favorable to the accused that is material to either guilt or punishment—mandated that the prosecution do so.<sup>2</sup> Morton’s rights under *Brady v. Maryland* were explicitly violated, leading him to spend a little under 25 years in prison before he was released on October 4, 2011, and exonerated on December 11, 2011, by DNA evidence.<sup>3</sup>

The prosecutor in Morton’s case, Ken Anderson, had no ties to Morton and no personal reason to bury this evidence. He, however, was preparing to run for District Court Judge in Williamson County, and in an elected prosecutorial culture, conviction rates matter.<sup>4</sup> He pursued Morton’s conviction despite a substantial body of evidence that disproved his guilt. Wrongful convictions driven by prosecutorial misconduct are the predictable outcome of a criminal justice system that evaluates prosecutors on conviction rates rather than accuracy. Reducing these wrongful convictions requires two structural reforms: replacing conviction rates with accuracy-based prosecutorial performance indicators (PPIs) and implementing open-file

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<sup>1</sup> The Innocence Project, "Michael Morton," The Innocence Project, accessed April 26, 2026, <https://innocenceproject.org/cases/michael-morton/>.

<sup>2</sup> *Brady v. Maryland*, 373 S. Ct. 83, (May 13, 1963). <https://supreme.justia.com/cases/federal/us/373/83/>.

<sup>3</sup> The Innocence Project, "Michael Morton," The Innocence Project.

<sup>4</sup> Brandi Grissom, "Judge Ken Anderson Resigns Amid Ethics Lawsuit," The Texas Tribune, last modified September 24, 2013, <https://www.texastribune.org/2013/09/24/judge-ken-anderson-resigns-amid-ethics-lawsuit/>.

discovery nationwide, in which the prosecution provides the defense with everything in its file, from witness statements to police reports.

In many U.S. jurisdictions, prosecutorial performance is tied to conviction rates through explicit financial rewards. These financial incentives can become problematic as they push prosecutors to reach a guilty verdict by any means necessary. In 2010, Carol Chambers, District Attorney (DA) of Colorado's 18th Judicial District, implemented a bonus program offering prosecutors financial rewards averaging \$1,100 for felony conviction rates exceeding 70%, excluding plea deals and mistrials from the calculation.<sup>5</sup> Additionally, Chambers handed out Christmas bonuses to prosecutors who took on capital cases.<sup>6</sup> These incentives produced documented misconduct in the case of Mario Owens, who was convicted and put on death row for the killing of a state lawmaker's son and his fiancée. Prosecutors offered money, gift cards, and even cars to witnesses to compel their testimony and never disclosed these deals to the defense. Some of these gifts were even paid directly from Chambers' bonuses. One witness received \$3,400 in benefits, including Christmas cash; another faced threatened murder charges if he refused to cooperate. The withholding continued under Chambers' successor, who revealed another file of secret witness payments two years into the appeals process. For seven years, courts imposed a gag order keeping Owens' appeal secret. The trial judge, growing skeptical of the state's case, was abruptly removed officially over a personnel matter, though that explanation remains disputed.<sup>7</sup> These many instances of prosecutorial abuses stem from these incentives, and

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<sup>5</sup> Molly McDonough, "DA Offers Cash Rewards for Prosecutors Who Hit Conviction Goals," ABA Journal, American Bar Association, last modified March 25, 2011, [https://www.abajournal.com/news/article/da\\_offers\\_cash\\_rewards\\_for\\_prosecutors\\_who\\_hit\\_conviction\\_goals](https://www.abajournal.com/news/article/da_offers_cash_rewards_for_prosecutors_who_hit_conviction_goals).

<sup>6</sup> Susan Greene, "Three men still on Colorado's death row after judge denies capital appeal," Colorado Independent, last modified September 14, 2017, <https://www.coloradoindependent.com/2017/09/14/ruling-expected-in-owens-death-penalty-appeal/>.

<sup>7</sup> Radley Balko, "In Colorado, a shocking case of prosecutorial abuse," *The Washington Post* (Washington, D.C.), September 25, 2017, <https://www.washingtonpost.com/news/the-watch/wp/2017/09/25/in-colorado-a-shocking-case-of-prosecutorial-abuse/>.

thus Owens' lawyers have sought to vacate Owens' death sentence on grounds of prosecutorial misconduct. The appeal ultimately failed; the Colorado Supreme Court acknowledged the prosecutorial misconduct but still affirmed his convictions, illustrating that documented misconduct rarely produces meaningful consequences.<sup>8</sup>

Even when no formal bonus structure exists, prosecutors face powerful informal incentives, such as electoral ambition, peer reputation, and promotion, that drive them to ensure convictions by any means necessary. A study analyzing prosecutorial behavior across 43 North Carolina districts over 12 years found that incumbents running for re-election increased the number of convictions obtained from jury trials in the prior year, doing so “to gain notice in the news, appear hawkish to voters, obtain greater sanctions, deter challengers in the general election, and to be successful in the primary.”<sup>9</sup> Even in the most conservative estimate, contested elections produced a 24.3% increase in total trial convictions in a district.<sup>10</sup> This distortion persists because conviction rates, even though they are a poor instrument for measuring prosecutorial quality, are the main way prosecutors are evaluated by DAs and the public, both formally and informally. As Gordon and Huber (2002) demonstrate, a prosecutor may inflate their record by dropping or settling cases they are unlikely to win, producing high conviction rates without ensuring justice.<sup>11</sup> Voters cannot correct this because they do not know when prosecutors do this; thus, voting based on wins is the only electoral strategy available to them, regardless of their priorities.<sup>12</sup> The electoral mechanism that is supposed to ensure prosecutorial quality instead distorts it, making conviction rates a flawed and reinforcing metric.

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<sup>8</sup> Balko, "In Colorado."

<sup>9</sup> Siddhartha Bandyopadhyay and Bryan C. McCannon, "The Effect of the Election of Prosecutors on Criminal Trials," *Public Choice* 161, nos. 1-2 (2013): 26, <https://doi.org/10.1007/s11127-013-0144-0>.

<sup>10</sup> Bandyopadhyay and McCannon, "The Effect," 3.

<sup>11</sup> Sanford C. Gordon and Gregory A. Huber, "Citizen Oversight and the Electoral Incentives of Criminal Prosecutors," *American Journal of Political Science* 46, no. 2 (2002): 335, <https://doi.org/10.2307/3088380>.

<sup>12</sup> Gordon and Huber, "Citizen Oversight," 335.

These formal and informal incentives for conviction move prosecutors to withhold exculpatory evidence, coerce guilty pleas, and pursue weak cases. A 2021 study examining 200 DNA exonerations found that the prosecution intentionally withheld exculpatory evidence in 37% of cases. Those violations were clearly intentional, but when including those appearing motivated by police and prosecutors' beliefs that they already intend to convict, that number becomes 81%.<sup>13</sup> Prosecutors are incentivized to secure convictions as quickly as possible to boost their numbers, which leads to the intentional overlooking of real facts in real cases. These incentives also change how prosecutors approach cases. Gould et al. (2021) state, "in more than four of five confirmed Brady violations state officials were so desirous of a conviction or so certain that they had caught the 'right guy' that they were blind to holes in the evidence."<sup>14</sup> Further, Ralston et al. (2023) found that when plea-bargain convictions count toward a prosecutor's conviction rate, the number of plea offers increases and the trial penalty rises, structurally coercing defendants into guilty pleas regardless of actual guilt, all for the end goal of improving the conviction rate they are incentivized to increase.<sup>15</sup> The innocent defendant facing a choice between a plea deal and a risky trial is the predictable casualty of a system that measures wins rather than accuracy.

Prosecutorial misconduct, driven by these incentives, persists because established deterrents are structurally insufficient. The National Registry of Exonerations notes 30% of exonerations result from prosecutorial misconduct, yet only 4% of those prosecutors are disciplined, and even then, the consequences were minimal.<sup>16</sup> The Center for Prosecutor Integrity

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<sup>13</sup> Jon B. Gould et al., "The Syracuse Law Review," g 71, no. 4: 1065, <https://lawreview.syr.edu/wp-content/uploads/2021/12/1061-1119-Gould-et-al.pdf>.

<sup>14</sup> Gould et al., "The Syracuse," 1088.

<sup>15</sup> Jason Ralston et al., "Prosecutor Plea Bargaining and Conviction Rate Structure: Evidence from an Experiment," *Public Choice* 196, nos. 3-4 (2023): 20, <https://doi.org/10.1007/s11127-023-01081-w>.

<sup>16</sup> Samuel R. Gross et al., *Government Misconduct and Convicting the Innocent*, 12, September 1, 2020, <https://repository.law.umich.edu/other/165/>; Gross et al., *Government Misconduct*, 120.

examined 3,625 identified cases of prosecutorial misconduct over 50 years and found that public sanctions were imposed in fewer than 2% of them, with only 14 prosecutors suspended or disbarred.<sup>17</sup> The structural reasons for this gap are well established. Joy (2006) documents that prosecutors facing misconduct findings are rarely disciplined internally or externally, that absolute immunity shields them from civil liability, and that appellate courts routinely dismiss proven misconduct as harmless error, leading courts and commentators to conclude that existing restraints on prosecutorial misconduct “are either meaningless or nonexistent.”<sup>18</sup>

Fixing this requires two structural interventions that directly combat the distortions caused by these incentives: replacing conviction rates with accuracy metrics—that is, measures of charging integrity, discovery compliance, and conviction review—and mandating open-file discovery. Existing frameworks for measuring accuracy already exist and should be more widespread. Criminologists from Florida International University and Loyola University Chicago partnered with prosecutors' offices in Chicago, Milwaukee, Jacksonville, and Tampa to develop a menu of 55 prosecutorial performance indicators (PPIs), explicitly designed to redefine success for prosecutors to reward accuracy.<sup>19</sup> The PPIs include measures of discovery compliance, charging integrity, and dedication to conviction integrity, directly targeting the incentive distortions documented in the previous paragraphs. The second intervention addresses the mechanism through which those distorted incentives most commonly produce wrongful convictions: the suppression of exculpatory evidence. As Joy (2006) argues, “an open file

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<sup>17</sup> Christopher Zoukis, "Prosecutorial Misconduct: Justice Denied as the System Turns a Blind Eye," *Criminal Legal News*, Human Rights Defense Center, last modified February 18, 2020, <https://www.criminallegalnews.org/news/2020/feb/18/prosecutorial-misconduct-justice-denied-system-turns-blind-eye/>.

<sup>18</sup> Peter A. Joy, "The Relationship between Prosecutorial Misconduct and Wrongful Convictions: Shaping Remedies for a Broken System," *Wisconsin Law Review* 2006 (November 2006): 426, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=948307](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=948307).

<sup>19</sup> Besiki Luka Kutateladze et al., "Prosecutorial Performance Indicators," *Prosecutorial Performance Indicators*, last modified 2024, <https://prosecutorialperformanceindicators.org/>.

discovery obligation would help to eliminate one of the major forms of prosecutorial misconduct—the suppression of material evidence, which is a leading cause of wrongful convictions. Under an open file discovery regime, the prosecutor could still seek a protective order to withhold some information from the defense counsel, but such a system would require a court to review the request.”<sup>20</sup> Open-file discovery removes the prosecutor’s unilateral authority to determine what counts as material evidence. However, Gould et al. (2021) caution that open-file discovery alone cannot prevent all Brady violations, since evidence that never enters the prosecutor’s file remains invisible to the defense.<sup>21</sup> This is precisely why both reforms are necessary together: the PPIs realign what prosecutors are rewarded for, and open-file discovery removes the structural opportunity to suppress evidence in pursuit of those rewards.

Michael Morton spent nearly 25 years in prison for a crime he did not commit. His prosecutor, Ken Anderson, served five days in jail. That disproportion is the system functioning exactly as its incentives dictate. As long as prosecutors are evaluated on conviction rates, they will optimize for conviction rates. The practice of Brady violations, coerced guilty pleas, and the withholding of evidence by prosecutors is the predictable outcome of a structure that rewards the wrong metric. Morton’s case resulted in a court of inquiry, a criminal contempt conviction, and the passing of the Michael Morton Act, a Texas law requiring prosecutors to disclose exculpatory, mitigating, and impeaching evidence to the defense. Wrongful convictions do not usually lead to these results. There is no evidence of misconduct in most cases, and no investigations are underway. Innocent people continue being kept in prisons while their accusers receive promotions for successfully completing their cases. Replacing conviction rates with accuracy metrics and mandating open-file discovery will not end the problem of prosecutorial

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<sup>20</sup> Joy, "The Relationship," 425.

<sup>21</sup> Gould et al., "The Syracuse," 1065.

misconduct immediately. However, it will influence the reward system. The question is not whether reform is possible. Anderson's prosecution proved it is. The question is whether the criminal justice system will extend that accountability beyond the cases it cannot ignore to the thousands it never sees.

## Bibliography

- Balko, Radley. "In Colorado, a shocking case of prosecutorial abuse." *The Washington Post* (Washington, D.C.), September 25, 2017.  
<https://www.washingtonpost.com/news/the-watch/wp/2017/09/25/in-colorado-a-shocking-case-of-prosecutorial-abuse/>.
- Bandyopadhyay, Siddhartha, and Bryan C. McCannon. "The Effect of the Election of Prosecutors on Criminal Trials." *Public Choice* 161, nos. 1-2 (2013): 141-56.  
<https://doi.org/10.1007/s11127-013-0144-0>.
- Brady v. Maryland, 373 S. Ct. 83 (May 13, 1963).  
<https://supreme.justia.com/cases/federal/us/373/83/>.
- Gordon, Sanford C., and Gregory A. Huber. "Citizen Oversight and the Electoral Incentives of Criminal Prosecutors." *American Journal of Political Science* 46, no. 2 (2002): 334.  
<https://doi.org/10.2307/3088380>.
- Gould, Jon B., Samantha L. Senn, Belén Lowrey-Kinberg, and Linda Phiri. "The Syracuse Law Review." *The Syracuse Law Review* 71, no. 4: 1061-119.  
<https://lawreview.syr.edu/wp-content/uploads/2021/12/1061-1119-Gould-et-al.pdf>.
- Greene, Susan. "Three men still on Colorado's death row after judge denies capital appeal." *Colorado Independent*. Last modified September 14, 2017.  
<https://www.coloradoindependent.com/2017/09/14/ruling-expected-in-owens-death-penalty-appeal/>.
- Grissom, Brandi. "Judge Ken Anderson Resigns Amid Ethics Lawsuit." *The Texas Tribune*. Last modified September 24, 2013.  
<https://www.texastribune.org/2013/09/24/judge-ken-anderson-resigns-amid-ethics-lawsuit/>.
- Gross, Samuel R., Maurice J. Possley, Kaitlin Jackson Roll, and Klara Huber Stephens. *Government Misconduct and Convicting the Innocent*. September 1, 2020.  
<https://repository.law.umich.edu/other/165/>.
- The Innocence Project. "Michael Morton." *The Innocence Project*. Accessed April 26, 2026.  
<https://innocenceproject.org/cases/michael-morton/>.
- Joy, Peter A. "The Relationship between Prosecutorial Misconduct and Wrongful Convictions: Shaping Remedies for a Broken System." *Wisconsin Law Review* 2006 (November 2006).  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=948307](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=948307).
- Kutateladze, Besiki Luka, Don Stemen, Rebecca Dunlea, et al. "Prosecutorial Performance Indicators." *Prosecutorial Performance Indicators*. Last modified 2024.  
<https://prosecutorialperformanceindicators.org/>.

- McDonough, Molly. "DA Offers Cash Rewards for Prosecutors Who Hit Conviction Goals." *ABA Journal*. American Bar Association. Last modified March 25, 2011. [https://www.abajournal.com/news/article/da\\_offers\\_cash\\_rewards\\_for\\_prosecutors\\_who\\_hit\\_conviction\\_goals](https://www.abajournal.com/news/article/da_offers_cash_rewards_for_prosecutors_who_hit_conviction_goals).
- Ralston, Jason, Jason Aimone, Lucas Rentschler, and Charles North. "Prosecutor Plea Bargaining and Conviction Rate Structure: Evidence from an Experiment." *Public Choice* 196, nos. 3-4 (2023): 299-329. <https://doi.org/10.1007/s11127-023-01081-w>.
- Zoukis, Christopher. "Prosecutorial Misconduct: Justice Denied as the System Turns a Blind Eye." *Criminal Legal News*. Human Rights Defense Center. Last modified February 18, 2020. <https://www.criminallegalnews.org/news/2020/feb/18/prosecutorial-misconduct-justice-denied-system-turns-blind-eye/>.