

**STATE OF TEXAS V. MICHAEL MORTON
THE MICHAEL MORTON STORY:
HOW A TALE OF INJUSTICE LEAD TO A REFORMED SYSTEM OF JUSTICE**

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I. INTRODUCTION

“Vindication is very, very good, but it’s something I knew all along ... it’s really nothing new for me.”¹

A. *Summary of Key Facts*

Picture this: You are out to dinner with the woman of your dreams and your brilliant 3-year-old son.² Tonight is unlike any other night because: you’re celebrating your 32nd birthday and your son’s heart surgery recovery.³ For Michael Morton, that day was August 12, 1986.⁴ This was one of his best days and Michael Morton felt he had it all.⁵ However, that next day everything changed and it all made a turn for the worst.⁶

The next morning, as Morton left for work, he was unaware that it would be the last time he would see his wife alive.⁷ Later that day, the Morton’s neighbor noticed their son outside alone.⁸ Prompted to go look for Christine Morton, the neighbor entered the Morton’s home and found her dead in the bedroom.⁹ Her body was found on the bed under a comforter, with a basket and suitcase on top of it.¹⁰ Christine suffered head trauma caused by multiple blows.¹¹

¹ Josh Levs, *Innocent Man: How Inmate Michael Morton Lost 25 Years of His Life*, CNN JUSTICE (Dec. 4, 2013, 2:53 PM), www.cnn.com/2013/12/04/justice/exonerated-prisoner-update-michael-morton.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Wade Goodwyn, *Free After 25 Years: A Tale of Murder and Injustice*, NPR (April 28, 2012), www.npr.org/2012/04/28/150996459/free-after-25-years-a-tale-of-murder-and-injustice.

⁸ *In re Morton*, 326 S.W. 3d 634, 637 (Tex. App. 2010).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

In 1987, Michael Morton was convicted for the murder of his wife, despite there being no evidence linking him to the crime.¹² Additionally, Michael Morton was a loving and caring man who had no criminal history.¹³ For someone like Michael Morton, committing such a heinous crime against a person he loved dearly did not seem conceivable.¹⁴ However, wasting no time to prosecute, despite Michael Morton not being the typical suspect, the State's theory of the case was that Morton became enraged and in a fit of sexual frustration, he killed his wife after she declined sex with him on his birthday.¹⁵ Further corroborating the State's theory was a note Morton left to Christine expressing his true motive, *i.e.*, "a dispute over sex."¹⁶ "The State [also] argued that" in an effort to make the crime-scene appear that a robbery occurred, Morton staged it¹⁷. To further complete the State's theory, they argued that Morton had ample time "before arriving at work" to discard of Christine's purse and his gun.¹⁸

The note read: "Chris, I know you didn't mean to, but you made me feel really unwanted last night.¹⁹ After a good meal, we came home, you binged on the rest of the cookies, then with your nightgown around your waist and while I was rubbing your hands and arms, you farted and fell asleep.²⁰ I'm not mad or expecting a big production.²¹ I just wanted you to know how I feel without us getting into another fight about sex.²² Just think how you might have felt if you were left hanging on your birthday."²³

¹² Motion to Recuse Williamson Cnty. Dist. Attorney and for Appointment of Indep. Prosecutor at 1, State of Texas v. Michael Morton, 26th Jud. Dist. Ct., Williamson County, Tex. Aug. 17, 2011 (No. 86-452-K26) [hereinafter Motion to Recuse].

¹³ Motion to Recuse, *supra* note 11, at 1.

¹⁴ Motion to Recuse, *supra* note 11, at 1.

¹⁵ Motion to Recuse, *supra* note 11, at 1-2.

¹⁶ Motion to Recuse, *supra* note 11, at 2.

¹⁷ Motion to Recuse, *supra* note 11, at 2.

¹⁸ Motion to Recuse, *supra* note 11, at 2.

¹⁹ Morton v. State, 761 S.W. 2d 876, 877 n.2 (Tex. App. 1988).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

This note found in the Morton's bathroom, turned out to be Morton's fate.²⁴ Morton's legal team argued, "Morton didn't do it, and we don't know who did it."²⁵ Although not much of a defense at all, it was the truth, however, it was not enough to keep Michael Morton from being wrongfully convicted. Perhaps this alone is a major flaw in our criminal justice system. The fact that truth alone is not enough, it is all about what can be proven in court. Even if that "proof" may lead to the wrong person being convicted.

On February 23, 1987, a jury found Michael Morton guilty of his wife's murder and sentenced him to life imprisonment.²⁶ With Morton's conviction, a jury felt they had performed their civic duty and made the world a safer place.²⁷ Except, they put the wrong man away. This was primarily due to the jury's limited access of information during the trial. Neither the jury nor the defense lawyers were made aware of the evidence "concealed by Williamson County law enforcement."²⁸ This evidence, if made available during the trial could have vindicated Michael Morton. Not everyone was oblivious to this information, especially the Sheriff's Office and District Attorney John Bradley, both of whom were well aware of this pertinent evidence.²⁹

For twenty-five years, Michael Morton has retained his innocence and that he had nothing to do with his wife's demise.³⁰ After his conviction, Morton appealed and the judgment of the district court was affirmed.³¹ In 2005, Morton filed a Motion for Post-

²⁴ Goodwyn, *supra* note 6.

²⁵ *Id.*

²⁶ *In re Morton*, 326 S.W.3d 634, 637 (Tex. App. 2010).

²⁷ Goodwyn, *supra* note 6.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Motion to Recuse, *supra* note 11, at 2.

³¹ *Morton v. State*, 761 S.W. 2d 876, 876 (Tex. App. 1988).

Conviction DNA pursuant to Chapter 64 of the Texas Code of Criminal Procedure.³² This was the first step towards proving his innocence. “Under Texas Code of Criminal Procedure chapter 64, a convicted person may submit to the convicting court a motion for forensic DNA testing of evidence containing biological material.”³³ One of the requirements to order testing is that identity must have been “an issue in the case.”³⁴ “Moreover, the convicted person must establish by a preponderance of the evidence that he would not have been convicted if exculpatory results had been obtained through DNA testing, and that the request for the proposed DNA testing is not made to unreasonably delay the execution of sentence or administration of justice.”³⁵ This too proves to be another flaw in our criminal justice system. Who is to say what evidence would or would not have convicted an individual if it were not used at the trial at the time? There is no way definitively to say how any evidence would have affected the outcome of the case, unless that evidence was available during the trial. To suggest otherwise is simply unfair and establishes a grave injustice.

In addition to these requirements “for . . . DNA testing, the evidence must have been . . . [acquired] in relation to the offense that is the . . . [premise of the disputed] conviction and have been in the . . . [ownership] of the State . . . [amid] the trial of the offense.”³⁶ “The evidence must [at present] exist, must be in a condition making DNA . . . [conceivable], and must have been subjected to a . . . [tie of care] sufficient to establish that it has not been substituted, . . . [interfered] with,” supplanted, or changed in any

³² Motion to Recuse, *supra* note 11, at 7.

³³ *In re Morton*, 326 S.W.3d 634, 638 (Tex. App. 2010); *See also* TEX. CODE CRIM. PROC. ANN., art. 64.01(a) (West 2009).

³⁴ *In re Morton*, 326 S.W.3d at 638; *See also* CRIM. PROC., art. 64.03(a)(1).

³⁵ *In re Morton*, 326 S.W.3d at 638; *See also* CRIM. PROC., art. 64.03(a)(2).

³⁶ *In re Morton*, 326 S.W.3d at 638; *See also* CRIM. PROC., art. 64.01(b).

material regard.³⁷ “In the event that testing is ordered, after the results have been examined the convicting court must hold a hearing and make a finding as to whether, had the results been available during the trial of the offense, it is reasonably probable that the person would not have been convicted.”³⁸ In 2005, the post-conviction request for DNA was denied in part, and approved in part, by the District Court.³⁹ In 2010, Morton appealed the District Court’s ruling, which was affirmed in part and reversed in part.⁴⁰

B. *A Notable Case: Why State of Texas v. Morton is so Momentous*

Perhaps the greatest impact of the Michael Morton case is that the case helped to change the judicial system in the state of Texas. Additionally, it helped shed light on the injustices in our society regarding wrongful convictions. There was significant prosecutorial misconduct in this case, which could have prevented Michael Morton from losing twenty-five years of his life. It is important to educate others on the Michael Morton story and the unnecessary injustice that occurred in his case. This case made history, not only by changing Texas laws and ensuring a more improved justice system, but also by taking action when a prosecutor conducted prosecutorial misconduct and was jailed for his transgressions. To comprehend the criticalness of this case, it is essential to understand the effect wrongful convictions have on the wrongfully convicted and society.

Due to our society’s Constitutional assurances against wrongful convictions, there is a compelling level of trust in criminal trials.⁴¹ The Supreme Court, with its oftentimes-reserved flows of progress, has started to confront the dependability difficulties raised by

³⁷ *In re Morton*, 326 S.W.3d at 638; *See also* CRIM. PROC., art. 64.03(a)(1)(A).

³⁸ *In re Morton*, 326 S.W.3d at 638; *See also* CRIM. PROC., art. 64.04.

³⁹ *In re Morton*, 326 S.W.3d 634, 636 (Tex. App. 2010).

⁴⁰ *Id.* at 648.

⁴¹ Jennifer E. Laurin, Book Note, 90 TEX. L. REV 1473, n.1 (2012) (reviewing BRANDON L. GARRETT, CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG (2011)).

DNA.⁴² Generally, throughout policy quarters there is far more prominent attention to the dangers connected with wrongful conviction, however little action has been taken accordingly.⁴³ Producing force for change requires not only more data about how mistakes are created but also innovative plans regarding change.⁴⁴ “The limited accessibility of technological advances available at trial [cannot suggest that every] criminal conviction involving biological evidence, is suddenly” flawed.⁴⁵ This would place doubt on our entire justice system. The issue involves understanding how to tackle DNA’s effectiveness to establish innocence without ousting our secured criminal justice system.⁴⁶

C. *Intent of Case note: Revealing the Roadmap*

This note seeks to reveal the importance of Post-DNA Convictions and how they are essential to saving one’s life; specifically Michael Morton. This note will address the Michael Morton story and provide insight from all the parties involved. In addition, this note will address the issues and factors that go into controlling a wrongful conviction, whether it is eyewitness misidentification, flawed scientific evidence, or prosecutorial misconduct. In doing so, this note will provide data from scholarly sources regarding wrongful convictions throughout the nation and how they range from state to state. Also, how injustice of wrongful convictions affects the entire society.

This note will provide background and procedural information that occurred in the Michael Morton case which eventually lead to his conviction, and the steps Michael Morton’s legal team had to overcome in order to prove his innocence, over the

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See id.*

prosecutor's constant objections. A brief overview of the Innocence Project and the extreme role they played in overturning Michael Morton's conviction will be discussed.

Furthermore, this note will reveal the unimaginable misconduct demonstrated by the prosecutor. A full discussion of the undisclosed information, evidence, and unfollowed leads will reveal the ways in which justice was not served in this particular case. Additionally, this note will reveal the way in which the prosecution portrayed Michael Morton and did not consider any other suspects, in doing so another murder was committed. A significant fact about this case is that the prosecutor was actually punished for his misconduct, and that will be discussed, as well as, his own words for his actions.

Finally, this note will provide an analysis on the impact Michael Morton had on creating a more reformed justice system in Texas. How after his release, twenty-five years later, Michael Morton was not concerned with compensation, but rather change, and to ensure that what happened to him would not happen again. This note seeks to reveal the truth of the Michael Morton case and explain how prison affected him and played a major role in his life. How it changed him for the better but made him question our judicial system. This story is one that I intend to shed light on and provide important background and details to provide familiarity with the case so one can understand that wrongful convictions occur in our time but sometimes they can be avoided, such as in the Michael Morton case.

⁴⁶ *See id.*

II. BACKGROUND AND PROCEDURAL HISTORY

“He found the murdered woman lying in bed, covered with a quilt, with a suitcase and a laundry hamper stacked on top of the quilt.”⁴⁷

A. *The First Step: Chapter 64 Proceedings*

Two years after Michael Morton was convicted in the 26th Judicial District Court in Williamson County, he appealed, and the conviction was upheld.⁴⁸ “In 2005, pursuant to chapter 64 of the Texas Code of Criminal Procedure, . . . [Morton] filed a motion for forensic DNA testing of evidence containing biological material that he believed may undermine the basis for his conviction.”⁴⁹ The motion was denied, in part, causing Morton to appeal the District Court’s decision, which was later affirmed in part and reversed in part.⁵⁰ This decision was precisely what Michael Morton needed to help establish and prove his innocence.

In Morton’s 2005 motion, he requested testing of the following: “(1) vaginal, oral, and rectal swabs collected from Christine’s body at her autopsy, hairs found entwined in her right hand at the crime scene, fingernail clippings taken from her hands, and the nightgown recovered from her body; (2) a blood-stained bandana recovered from behind the Morton’s house; (3) certain biological material collected from Mildred McKinney, who was the victim of a murder that occurred in the Morton’s neighborhood approximately six years before Christine’s murder; and (4) fingerprints recovered from both the McKinney and Morton crime scenes for purposes of comparative analysis.”⁵¹ On August 8, 2006, the District Court issued an order requesting testing on the first classification of testing, but denied testing for the bandana.⁵²

The most influential piece of evidence of the above listed is the bandana because it singlehandedly played the biggest role in overturning Michael Morton’s conviction. It is

⁴⁷ Morton v. State, 761 S.W. 2d 876, 877 n.2 (Tex. App. 1988).

⁴⁸ *In re Morton*, 326 S.W.3d 634, 648 (Tex. App. 2010).

⁴⁹ *Id.* at 636.

⁵⁰ *Id.* 636-37.

⁵¹ *Id.* at 637.

⁵² *Id.*

imperative to understand the role of the bandana, as well as the background and mystery behind it. An officer found the bandana not far from the Morton's home, shortly after Christine Morton's body was discovered.⁵³ This information was indicated in the officer's report; however, he the bandana was never collected.⁵⁴ Christine Morton's brother who retrieved it from the site later provided the bandana to the state.⁵⁵ The bandana was covered in bloodstains.⁵⁶ The bandana was later confirmed through testing to contain human blood.⁵⁷ However, due to the lack of technology accessible at the time, the blood type could not be determined.⁵⁸

The court's analysis in determining whether the DNA testing should be allowed on the bandana was critical to Michael Morton's case. In deciding whether to allow the testing, the court considered several factors, which eventually led to the court allowing the DNA testing. In analyzing the facts and the evidence, the court stated, "if then, the bandana were found to contain Christine's blood and the DNA of a person other than Morton, we think that adding this DNA evidence, which corroborates Morton's theory of an unknown intruder, could have influenced the jury's verdict in appellant's favor."⁵⁹ The DNA of someone other than Morton would be a significant degree of proof establishing Morton's innocence.⁶⁰ Finally in 2010, the Court of Appeals overturned the District Court's August 8, 2006 order, to the extend it granted testing on the bandana.⁶¹

⁵³ *Id.* at 638.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *In re Morton*, 326 S.W.3d at 638-39.

⁵⁷ *Id.* at 639.

⁵⁸ *Id.*

⁵⁹ *Id.* at 644.

⁶⁰ *Id.*

⁶¹ *Id.* at 648.

B. *The Next Step: Obstacles Overcome by Morton's Legal Team*

This was a great victory for Michael Morton and his legal team; however it would take several years before the bandana would actually be tested. The process was a long process and one that required hard work and dedication from Morton's legal team. Because his attorneys played such a vital role in proving his innocence, and showed constant persistence, it is important to provide their part throughout this case, as well as the constant restraints they had to overcome with no help from the prosecutor.

Michael Morton and his long-term legal counsel spent several years attempting to gather the DNA results, requested over the District Attorney's constant protests.⁶² One would think that the District Attorney would want to right the wrongs, by establishing one's innocence in an effort to identify the true perpetrator.⁶³ On June 30, 2011, the day when a DNA testing report by Orchid Celimark Research Center, revealed that Christine Morton's blood and hair were discovered on a stained bandana.⁶⁴ Additionally, and most devastating of all, Celimark discovered that the blood and hair of Christine Morton was blended with the DNA of someone other than Michael Morton.⁶⁵ On Tuesday, August 9, 2011, twenty five years after Michael Morton was convicted, both legal parties received notice that a 'hit' had been retrieved, identifying the true source of DNA co-mingled with the blood and hair of Christine Morton that was found on the bandana.⁶⁶

Texas, after twenty-five years since the death of Christine Morton, was finally positioned to rectify an inconceivable miscarriage of justice.⁶⁷ Due to his wrongful conviction, Michael Morton not only lost his wife and guardianship of his son, but he lost

⁶² Motion To Recuse, *supra* note 11, at 2.

⁶³ Motion to Recuse, *supra* note 11, at 2.

⁶⁴ Motion to Recuse, *supra* note 11, at 2.

⁶⁵ Motion to Recuse, *supra* note 11, at 2.

his liberty, while the real perpetrator that killed his wife evaded apprehension.⁶⁸ This piece of information questioned the entire prosecution and investigation of Michael Morton. His legal team was determined to find out how he was wrongfully convicted and imprisoned for a crime he didn't commit.

The DNA testing further proved what Michael Morton already knew, that he was innocent. It also showed that something unfair and unfortunate occurred throughout his trial and his legal team worked extensively to get to the bottom of it. Michael Morton's legal team was able to identify the prosecutor, who at the time was John Bradley ("Bradley"), as the culprit for this misfortune of injustice that occurred with Michael Morton. Bradley was the prosecutor during the Chapter 64 proceedings and appeals process, but Ken Anderson was the prosecutor during the trial and conviction of Michael Morton. Morton's legal team wanted Bradley to admit that he intentionally withheld pertinent evidence to prove Morton's innocence, which had been in the State's possession for over two decades.⁶⁹

Finally, through an open records act solicitation to "Williamson County Sheriff's Office ("WCSO")," these documents were obtained, despite Bradley's opposition.⁷⁰ They unfathomably reinforce the notion Morton initially presented to the Court in 2005, that Christine's death was caused by an intruder.⁷¹ Among other leads, Bradley neglected to bring to the Court's attention a taped interview with Christine Morton's mother shortly after her funeral.⁷²

⁶⁶ Motion to Recuse, *supra* note 11, at 3.

⁶⁷ Motion to Recuse, *supra* note 11, at 3.

⁶⁸ Motion to Recuse, *supra* note 11, at 3.

⁶⁹ Motion to Recuse, *supra* note 11, at 4.

⁷⁰ Motion To Recuse, *supra* note 11, at 4.

⁷¹ Motion To Recuse, *supra* note 11, at 4.

⁷² Motion to Recuse, *supra* note 11, at 4-5.

[T]he interview reveal[ed] that (1) the victim's mother reported that her grandson, Eric, had personally witnessed the murder, (2) Eric not only gave a detailed (and factually corroborated) account of the crime, but was certain that a man who was not "Daddy" actually murdered Christine, and (3) the victim's mother urged the WCSO's investigator to abandon the theory that the crime was "domestic" in nature and to instead - in her words - go out and "look for the monster" who committed the crime; and (4) the investigator resisted, suggesting instead (and without any supporting evidence) that Michael might have committed the murder while wearing a scuba diving suit that made him unrecognizable to his only son.⁷³

Since 2005, John Bradley and his delegates protested all post conviction requests made by Morton's legal team at every court level.⁷⁴ Despite an unsolved murder nearby with immensely similar characteristics and facts distinctive to this crime, John Bradley opposed DNA testing.⁷⁵ Prosecutors are held to a high standard, to ensure justice is served and to seek the truth. This is something Bradley fell vastly short of in the case of Michael Morton. This particular circumstance is extremely sad and unimaginable and creates problems for prosecutors everywhere.

C. Undisclosed Information: The Lost Files

Michael Morton's defense team believed throughout his trial and appeals process that the prosecution was withholding evidence.⁷⁶ Their suspicions were confirmed when the prosecutors failed to call the chief investigator, Sgt. Wood to testify at trial.⁷⁷ They expressed their concerns with the court, which was assured by prosecution that all evidence had been turned over.⁷⁸ "On August 26, 2011, the sealed file containing the

⁷³ Motion to Recuse, *supra* note 11, at 5.

⁷⁴ Motion to Recuse, *supra* note 11, at 8.

⁷⁵ Motion to Recuse, *supra* note 11, at 8.

⁷⁶ *TEXAS MAN FREED AFTER SERVING NEARLY 25 YEARS FOR MURDERING HIS WIFE THAT NEW DNA EVIDENCE SHOWS HE DIDN'T COMMIT*, INNOCENCE PROJECT (Oct. 4, 2011), www.innocenceproject.org/Content/Texas_Man_Freed_After_Serving_Nearly_25_Years_For_Murdering_His_Wife_That_Dna_Evidence_Shows_He_Didn't_Commit.php.

⁷⁷ *Id.*

⁷⁸ *Id.*

documents that were given to the trial judge was opened and reviewed by the present court and parties, and the exculpatory documents that the Innocence Project received through the Open Records Act were not included in the file reviewed by the trial judge.”⁷⁹

Under this act, it was revealed that several pieces of evidence were not disclosed to Morton’s legal team.⁸⁰ Among other things, this included a report to WCSO two days after Christine Morton’s murder regarding her missing Visa card being located in San Antonio, and that a police officer could identify the perpetrator.⁸¹

Also, a report by WCSO that a neighbor had “on several occasions observed a male park a green van on the street behind [the Morton’s] address, then the subject would get out and walk into the wooded area off the road.”⁸² In addition, there was a typewritten WCSO message “reporting that a check made out to Christine Morton . . . [had been forged and cashed] nine days after her murder.”⁸³

Based on this evidence provided to the defense, it is clearly evident that Michael Morton would not have been convicted of this crime if the prosecution had turned over the required evidence pointing to his innocence. “From the tip about the credit card to the man in the green van behind the Morton house to Eric’s eyewitness account of his mother’s murder—all of this evidence was withheld from the judge in the case and the defense attorneys.”⁸⁴

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

D. *Prosecutorial Misconduct: An Abuse of Power to the Powerless*

The prosecutor at the time of Michael Morton’s trial was Ken Anderson (“Anderson”), who during the time of the appeals process and Chapter 64 proceedings had become a judge for the State of Texas. After the bandana DNA results were revealed, and his misconduct was exposed, “he held a press conference.”⁸⁵ During that conference, Anderson stated, “as district attorney at the time, and as woefully inadequate as I realized it is, I want to apologize for the system’s failure to Mr. Morton and to every other person who was adversely affected by this verdict.”⁸⁶ He did not acknowledge his own failures or own up to the fact that he was responsible for sending an innocent man to prison.

In February 2013, Anderson was called before a court of inquiry as to whether he intentionally concealed evidence that ultimately “sent an innocent man to prison for twenty-five years.”⁸⁷ “Anderson testified that ‘the system screwed up’ and that he did nothing wrong.”⁸⁸ He had no remorse or sorrow and appeared more concerned about defending his image and “what me and my family have been through for eighteen months of false accusations” than acknowledging his role in “abus[ing] his power as a prosecutor to . . . [ruin] the life of an innocent man.”⁸⁹

Despite his constant persistence of false allegations, Anderson later acknowledged his role by pleading guilty to withholding evidence in the Michael Morton case, which

⁸³ *Id.*

⁸⁴ Goodwyn, *supra* note 6.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Bennett L. Gershman, *Ken Anderson Court of Inquiry Shows Prosecutorial Misconduct at its Worst*, THE HUFFINGTON POST (Feb. 2, 2013, 12:04 PM), http://www.huffingtonpost.com/bennett-l-gershman/ken-anderson-court-of-inq_b_2664315.html.

⁸⁸ *Id.*

⁸⁹ *Id.*

ultimately sent an innocent man to prison.⁹⁰ Among other things, Anderson failed to disclose eyewitness statements indicating that Morton was not the perpetrator.⁹¹ But instead of disclosing this evidence, Anderson chose to withhold it and watch an innocent man get convicted.⁹² During Morton's imprisonment, Anderson rose to become a judge.⁹³ "Anderson pled to criminal contempt, and as part of the deal, he will have to give up his law license, perform 500 hours of community service, and spend ten days in jail."⁹⁴ This punishment hardly compares to the twenty-five years Morton spent in jail. However, the fact of the matter is that a prosecutor was reprimanded for his transgressions.⁹⁵ In situations such as this unfortunate miscarriage of justice, there are rarely consequences for prosecutors.⁹⁶ In fact, this was the first, which is what makes this case so monumental. Anderson's conviction stands out as a win for society and will hopefully deter future infractions of prosecutorial misconduct.⁹⁷

Another tragic, yet preventable event took place as a result of Anderson's transgressions. Once the blood on the bandana was identified as Mark Alan Norwood's, the Innocence Project began searching for similar murders to Christine Morton, and they ultimately found one.⁹⁸ In a neighboring area, "more than a year after Christine

⁹⁰ Mark Godsey, *For the First Time Ever, a Prosecutor Will Go to Jail for Wrongfully Convicting an Innocent Man*, THE HUFFINGTON POST (Nov. 8, 2013, 4:12 PM), http://www.huffingtonpost.com/mark-godsey/for-the-first-time-ever-a_b_4221000.html.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Goodwyn, *supra* note 6.

Morton's" death, another young Austin mother was beaten to death.⁹⁹ The DNA found at her murder scene was a match when compared with Norwood's.¹⁰⁰

In 1988, Debra Baker left behind her loving husband and two children, and after twenty-three years, her husband, Phillip Baker spoke out stating, "We all got pretty angry when we began to discover that they probably could have found this guy in '86, had they looked, but instead, Ken Anderson simply focused on Michael Morton. We're all extremely angry at him."¹⁰¹ Mark Alan Norwood was found guilty for the capital murder of Christine Morton and was sentenced to life imprisonment.¹⁰²

III. MICHAEL MORTON: A VICTIM OF THE JUSTICE SYSTEM

"The things that I was hanging on to in the world, and he was it. When that was gone, I just cratered. When you are completely without hope, when you are completely without any avenue of escape, when you're not sure of any reason to go on, I cried out to God. I said, OK, I'm done. I got nothing."¹⁰³

A. *In the Words of Michael Morton*

Since his release in October 2011, Michael Morton has participated in several interviews and television broadcasts to tell his story. He has explained how his life changed instantly once his wife was murdered. Morton expressed how he felt betrayed during his time behind bars, not only by his friends and family, but also by the criminal justice system, because justice was not served.

The day Michael Morton was released from prison, he stated "we stepped out of the courtroom and it was a beautiful sunny day and the sun felt so good on my face, I felt

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Mark Alan Norwood Found Guilty Of Texas Murder For Which Michael Morton Was Wrongly Convicted*, HUFF POST CRIME (Mar. 27, 2013, 10:41PM), www.huffingtonpost.com/2013/03/28/mark-alan-norwood-guilty-michael-morton-wrongly-convicted-_n_2970405.html.

¹⁰³ Wade Goodwyn, *Free After 25 Years: A Tale of Murder and Injustice*, NPR (April 28, 2012), www.npr.org/2012/04/28/150996459/free-after-25-years-a-tale-of-murder-and-injustice

like I was drinking in sunshine.”¹⁰⁴ It had been over two decades since Michael Morton was able to feel the sun on his face as a free man and he embraced it. During his time in prison, Morton stated that he “started to think he might die in jail of old age.”¹⁰⁵ Being sentenced to life for a crime he did not commit, he had no reason to believe otherwise.

When his wife was murdered, Michael stated that he “didn’t have the opportunity to grieve for her because everything changed rapidly away from her to me.”¹⁰⁶ He learned of his wife’s murder and had no time to mourn her loss because soon after, he was considered a suspect.¹⁰⁷ Morton stated that the police “literally pulled my son out of my arms because he was screaming for me and his little hand was out and he was being pulled away, that was one of the worst parts.”¹⁰⁸ This would be enough to destroy a person’s entire world, especially after losing the love of your life.

Michael Morton was extremely close to his son who was three years old at the time of the murder. As a child, Morton’s son, Eric, had to visit Morton twice a year.¹⁰⁹ However, as Eric grew up, he realized that he no longer wanted to visit his father in prison.¹¹⁰ Eventually, Eric had his last name legally changed to that of his aunt and uncle.¹¹¹ At that point, Morton, “never felt more gutted and bankrupt, he had nowhere to turn and he cried out to God.”¹¹² When his son decided to change his last name, Morton felt he “hit rock bottom and it was the end of it, when I had nothing left.”¹¹³ Perhaps the

¹⁰⁴ *60 Minutes: Evidence of Innocence* (CBS News television broadcast Mar. 25, 2012), available at <http://www.cbsnews.com/news/evidence-of-innocence-the-case-of-michael-morton-26-03-2012>.

¹⁰⁵ *CNN: An Unreal Dream: The Michael Morton Story* (CNN films broadcast Dec. 14, 2013), available at <http://www.cnn.com/SPECIALS/justice/cnn-films-unreal-dream/index.html>.

¹⁰⁶ *Evidence of Innocence*, *supra* note 101.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

most tragic part of this story is that Michael Morton lost more than his wife, he lost half his life and his son, both of which did not have to happen.

Although Morton lost twenty-five years of his life, he is not a bitter man but instead he is a forgiving man. When asked about how he feels towards Ken Anderson, Morton responded with, “I blame him, but at the same time I forgive him. If you want to be forgiven, you must forgive.”¹¹⁴ These are words that are spoken every day, but it’s one thing to speak them and another to live them. He also stated, “I am not going to spend the rest of my life pointing a finger at him or wanting his head on a stick.”¹¹⁵ Michael Morton is a true inspiration and so much can be learned from him and his story.

B. *Critical Analysis of Wrongfully Convicted: Why This is Important*

The horror story that occurred with Michael Morton is one that has occurred one too many times throughout the United States. It is necessary to understand this serious misfortune with the criminal justice system and how it affects society. In the United States, there have been 225 exonerates by post-conviction since 1989,¹¹⁶ that is a little over 9 exonerations per year since 1989. Proving one’s innocence prior to DNA testing rarely succeeded.¹¹⁷ Texas currently “leads the nation with 36 exoneration . . . [attained] through DNA testing.”¹¹⁸ There were eighty-four exonerations reported in Texas from the years 1989-2011, which at the time was the third highest.¹¹⁹ As one of the leaders in yearly exonerations, Texas soon realized that more needed to be done for the victims of a

¹¹⁴ *An Unreal Dream: The Michael Morton Story*, *supra* note 102.

¹¹⁵ *Id.*

¹¹⁶ Farrah Martinez, *Wrongly Convicted: Victim of the Justice System*, 46-FEB. HOUS. LAW. 26, 27 (2009).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Mallory Simon, *More than 2000 wrongfully convicted people exonerated in 23 years, researchers say*, CNN (May 21, 2012, 10:36 AM), news.blogs.cnn.com/2012/05/21/more-than-2000-wrongfully-convicted-people-exonerated-in-23-years-researchers-say/.

flawed justice system. So in 2007, Texas changed its laws by doubling the compensation received by the wrongfully convicted.¹²⁰ Prior to the new legislation, an exonerated individual could only receive “\$25,000 multiplied by the number of years incarcerated,” but now that amount has increased to \$50,000 per year.¹²¹ Although the state will forever be indebted to the wrongfully convicted, this was a step in the right direction.

A well-known advocate for exonerating the wrongfully accused based on DNA evidence is a group known as the Innocence Project.¹²² The Innocence Project, as well as similar organizations, has received prevalent notoriety throughout the media, and has provided extreme awareness as to the phenomenon of wrongful convictions.¹²³

One of the first and most prestigious legal clinics is the Innocence Project located at Cardozo Law School.¹²⁴ It was opened in 1992 by Barry Scheck and Peter Neufeld, who have since handled numerous prominent cases discussed throughout national media, including, the Michael Morton case.¹²⁵ The Cardozo Innocence Project is known for undertaking people’s cases and proving their innocence through DNA testing.¹²⁶

As government attempts to correct the mistakes of the past, DNA testing is playing an integral role in preventing wrongful convictions.¹²⁷ Wrongful prosecution is a major issue and one that has been recognized by researchers in several studies, such as in the report below:

¹²⁰ Martinez, *supra* note 113, at 28.

¹²¹ *Id.*

¹²² Simon, *supra* note 116.

¹²³ Gwendolyn Carroll, *Proven Guilty: An Examination of the Penalty-Free World of Post-Conviction DNA Testing*, 97 J. CRIM. L. & CRIMINOLOGY 665, 671(2007).

¹²⁴ *Id.* at 672.

¹²⁵ *Id.*

¹²⁶ *Id.* at 673.

¹²⁷ Martinez, *supra* note 113 at 29.

Table 13: Exonerations by Crime and Contributing Factors

	Mistaken Witness Identification	Perjury or False Accusation	False Confession	False or Misleading Forensic Evidence	Official Misconduct
Homicide (416)	27%	<u>64%</u>	25%	23%	<u>56%</u>
Sexual Assault (203)	<u>80%</u>	23%	8%	<u>37%</u>	18%
Child Sex Abuse (102)	26%	<u>74%</u>	7%	21%	<u>35%</u>
Robbery (47)	<u>81%</u>	17%	2%	6%	26%
Other Violent Crimes (47)	<u>51%</u>	<u>43%</u>	15%	17%	<u>40%</u>
Non-Violent Crimes (58)	19%	<u>52%</u>	3%	3%	<u>55%</u>
ALL CASES (873)	<u>43%</u>	<u>51%</u>	15%	24%	<u>42%</u>

COURTESY THE NATIONAL REGISTRY OF EXONERATIONS

This report looks at different contributing factors for wrongful convictions for particular crimes.¹²⁸ Based on this report, official misconduct is the second leading cause for homicide cases when it comes to wrongful convictions. This includes Michael Morton. It is important to learn about wrongful convictions, because the more we know, the more prepared we are to prevent them in the future.¹²⁹

IV. A PUSH FOR NEW LEGISLATION

“I don’t want his head on a stick. I don’t want him to go to prison for forever and a day. What I want is to do what I can do to make sure this doesn’t happen to anybody else.”¹³⁰

A. *The Michael Morton Act: A Change to Texas State Law*

A recent law by Texas to reduce wrongful convictions demonstrates the willingness to change and admit that wrongful convictions are something that needs proper regulation. On May 16, 2013, Texas Governor Rick Perry signed a bill known as the “Michael Morton Act” (Senate Bill 1611) requiring “prosecutors to open their files to

¹²⁸ Simon, *supra* note 116.

¹²⁹ *Id.*

¹³⁰ Wade Goodwyn, *Free After 25 Years: A Tale of Murder and Injustice*, NPR (April 28, 2012), www.npr.org/2012/04/28/150996459/free-after-25-years-a-tale-of-murder-and-injustice.

defendants and keep records of the evidence they disclose.”¹³¹ This establishes fairness and a chance for the parties involved to receive all necessary information while maintaining a thorough record of everything that takes place. By ensuring a more open discovery process, the Michael Morton Act allows Texas’ criminal justice system to be more receptive to a case even after its trial.¹³² This policy allows broader discovery avenues and removes any restraints in accessing evidence.¹³³

When signing the Bill, Governor Perry stated, “Texas is a law-and-order state, and with that tradition comes a responsibility to make our judicial process as transparent and open as possible.”¹³⁴ He went on to say “Senate Bill 1611 helps serve that cause, making our system fairer and helping prevent wrongful convictions and penalties harsher than what is warranted by the facts.”¹³⁵ Since his release, Morton has been an advocate for new laws ensuring the misfortune he experienced would not occur to others.¹³⁶ The Michael Morton Act is a step in the right direction to help do so.

“The Michael Morton Act is an incredibly important step in creating a more just Texas criminal justice system,” Representative Thompson said.¹³⁷ “It will improve the reliability of criminal convictions and ensure that we have a quality justice system where all relevant evidence and facts are brought to light and allow for more efficient

¹³¹ *Texas enacts “Michael Morton Act” Intended To Reduce Wrongful Convictions*, DEATH PENALTY INFORMATION CENTER (2013), www.deathpenaltyinfo.org/texas-enacts-michael-morton-act-intended-reduce-wrongful-convictions/.

¹³² Press Release, Gov. Perry Signs Senate Bill 1611, The Michael Morton Act (May 16, 2013), *available at* www.governor.state.tx.us/news/press-release/18521.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Brandi Grissom, *Perry Signs Michael Morton Act*, THE TEXAS TRIBUNE (May 16, 2013), <http://www.texastribune.org/2013/05/16/gov-rick-perry-signs-michael-morton-act/>.

¹³⁷ Press Release, Gov. Perry Signs Senate Bill 1611, *supra* note 128.

resolutions to criminal proceedings.”¹³⁸ The Michael Morton Act, Senate Bill 1611, was signed into law on January 1, 2014.¹³⁹

B. *Landmark Ruling: Brady v. Maryland and How it Differs From Michael Morton Act*

“The landmark 1963 U.S. Supreme Court ruling in *Brady v. Maryland* already requires prosecutors to give defendants information that is “material either to guilt or to punishment.”¹⁴⁰ This ruling seems misguided because it calls for a subjective view as to what constitutes “material” or not. This is perhaps another flaw in our criminal justice system because there is no definite way to determine what is considered material to one’s guilt, especially if this evidence was not available during the individual’s trial. It is a grave injustice. This is possibly an issue that the State of Texas realized in passing the Michael Morton Act. Unlike the *Brady* ruling, under the Michael Morton Act, everything must be disclosed regardless of materiality.¹⁴¹ This act seeks to establish fairness and accuracy amongst all parties involved, and, because of that, it should be implemented throughout all states and mandated federally. The Michael Morton Act was the first momentous reform to Texas discovery laws since 1965.¹⁴² Governor Perry said, “it was fitting that his signing of the Michael Morton Act fell almost exactly fifty years after the Supreme Court issued the *Brady* ruling.”¹⁴³ The Michael Morton Act was the Governor Perry’s first public signing ceremony this session.¹⁴⁴

¹³⁸ *Id.*

¹³⁹ *Id.*; see also S.B. 1611, 83rd Leg., 2013 Sess. (Tex. 2013).

¹⁴⁰ Grissom, *supra* note 132.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

V. CONCLUSION

*“Innocent people think that if you just tell the truth then you’ve got nothing to fear from the police. If you just stick to it that the system will work, it’ll all come to light, and everything will be fine.”*¹⁴⁵

The events that took place with Michael Morton are truly devastating and extremely unimaginable. It goes to show that certain people may possess too much power and often times abuse that power. However, in this case there were certain ramifications imposed. Although the punishment inflicted was incomparable to the twenty-five years Michael Morton lost, it shows that the justice system is improving, especially considering it was the first time a prosecutor had been jailed for prosecutorial misconduct.

The most noteworthy and significant outcome of this case is that the injustice of Michael Morton helped to create a reformed justice system in Texas. The Michael Morton Act is proof that states are able to help eradicate the problem of wrongful convictions. Morton’s experiences are the driving force behind the reformation and truly show how he has inspired lawmakers to put aside their differences and make a change to improve the criminal justice system

¹⁴⁴ *Id.*

¹⁴⁵ Josh Levs, *Innocent Man: How Inmate Michael Morton Lost 25 Years of His Life*, CNN JUSTICE (Dec. 4, 2013, 2:53 PM), www.cnn.com/2013/12/04/justice/exonerated-prisoner-update-michael-morton.