

STATESMAN IN-DEPTH: MICHAEL MORTON CASE

# PROSECUTOR TO PROSECUTED?

Then the district attorney and now a state judge, Ken Anderson faces unprecedented court of inquiry into his conduct in trial that sent an innocent man to prison.



### THE APOLOGY: NOV. 16, 2011

District Judge Ken Anderson faced the media to apologize to Michael Morton for his wrongful murder conviction and nearly 25 years in prison. This week, Anderson again takes center stage as an unprecedented court of inquiry determines whether he should face charges of withholding evidence as the prosecutor in Morton's case.

LAURA SKELDING / AMERICAN-STATESMAN 2011

By Chuck Lindell  
clindell@statesman.com

Exactly 16 months after Michael Morton was freed from prison, an unprecedented hearing will begin Monday in Georgetown to determine if his prosecutor, former Williamson County District Attorney Ken Anderson, should himself be prosecuted and possibly jailed.

Anderson faces a court of

inquiry, a rare and uniquely Texas procedure that will examine allegations that he lied and conspired to conceal evidence – in violation of the law and a judge's order – that could have spared Morton from serving 25 years in prison in the beating death of his wife.

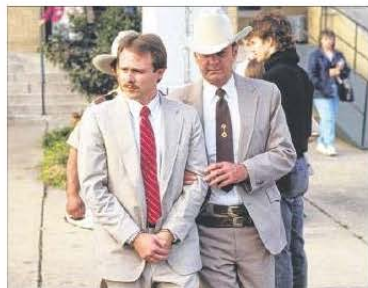
In the time since DNA tests confirmed his innocence, Morton – who is expected to testify Monday – has worked to rebuild his life, particu-

larly his relationship with son Eric, who was 3 when he was arrested, and a granddaughter born shortly after his release.

Anderson's fortunes, meanwhile, have fallen.

Once synonymous with Williamson County's tough-on-crime image, Anderson was a politically astute, award-winning district attorney for 16 years. Praised as a tenacious

Anderson continued on A9



### THE CONVICTION: FEB. 17, 1987

After being convicted of killing his wife, Michael Morton was led from the Williamson County Courthouse by Sheriff Jim Boutwell. He was imprisoned on a life sentence.

MIKE BOROFF / AMERICAN-STATESMAN 1987



### THE RELEASE: OCT. 4, 2011

With his lawyer John Raley at his side, Michael Morton left the Williamson County Courthouse as a free man after DNA evidence indicated that someone else had killed his wife.

RICARDO B. BRAZZIELL / AMERICAN-STATESMAN 2011



# Court of inquiry differs from trial

**Anderson**  
Continued from A1

advocate for child victims, he was a sought-after speaker and the co-author of several legal reference books. When Gov. Rick Perry needed to fill a state district court vacancy, Anderson was the natural choice.

In an American-Statesman interview shortly after becoming a judge in 2002, Anderson pointed to Morton's conviction and life sentence as a career highlight, the toughest of his two dozen murder trials. He recalled six weeks of 16-hour days preparing for trial, hampered by a circumstantial-evidence case — there was no murder weapon, confession or eyewitness — but resolute in his belief that Morton was guilty.

Anderson's legacy was shaken when Morton's conviction unraveled in the summer and fall of 2011. The man accustomed to wearing the white hat quickly found himself the villain in a story that became national news.

Anderson also found himself embroiled in two legal fights.

A lawsuit filed by the State Bar of Texas accused him of professional misconduct in his handling of Morton's prosecution, leading to a future civil trial that could result in a reprimand, disbarment or temporary loss of his law license.

More serious is this week's court of inquiry, which will take place in the same Georgetown courthouse where Anderson still serves as a judge.

The inquiry will resemble a trial, but with several essential differences.

Up to 20 witnesses will be questioned and cross-examined in an effort to reconstruct events before, during and after Morton's 1987 trial for the murder of his wife, Christine, in their Williamson County home.

But the court of inquiry will not end with a verdict of guilt or innocence for Anderson, who has denied wrongdoing in the case.

Instead, the judge appointed to preside over the court — state District Judge Louis Sturns of Fort Worth — will determine whether there is reason to believe state laws were broken in the way Anderson prosecuted Morton. If the answer is yes, state law requires Sturns to issue an arrest warrant charging Anderson with one or more crimes, potentially leading to a criminal trial.

In that way, a court of inquiry is closer to a grand jury, which decides whether there is enough evidence to proceed to trial.

Unlike a grand jury, however, the court of inquiry will be open to the public, and Anderson's



In a sworn deposition, Ken Anderson said he didn't recall any of the recently discovered evidence. But the former prosecutor said he routinely shared such information with defense lawyers. LAURA SKELDING / AMERICAN-STATESMAN 2011

Read previous coverage of the Michael Morton case with this story at [statesman.com](http://statesman.com).

angered, when their final round of appeals uncovered evidence they believed should have been disclosed under a ground-breaking 1963 U.S. Supreme Court decision, *Brady v. Maryland*, which required prosecutors to provide defense lawyers with evidence that could be favorable to the accused.

Working on the fly in the summer and fall of 2011, the lawyers submitted a two-part court filing that claimed Morton was innocent based on DNA tests that linked Mark Alan Norwood to the 1986 murder of Christine Morton and another woman who also was beaten to death in her bed, Debra Masters Baker of Austin, in 1988.

Norwood has since been charged with capital murder in both killings. His trial in Morton's death is set to begin March 18 in San Angelo.

Morton's appeal also claimed Anderson violated Morton's right to a fair trial by hiding favorable evidence. Arguing that they needed to investigate the allegation in case the Texas courts turned down the innocence claim, the lawyers successfully pushed to force Anderson to be deposed under oath about his role in the Morton investigation and trial.

Morton's lawyers capped their investigation with a 144-page court report detailing their accusations and seeking a court of inquiry to examine three violations they laid at Anderson's feet:

- Tampering with physical evidence, a felony, for concealing records or documents to impair their availability as evidence.
- Tampering with a government record, a misdemeanor, for concealing official reports.
- Contempt of court for failing to comply with a pretrial order from Lott, who asked to see the reports and notes from Wood, the primary investigator, to determine if they contained favorable evidence.

Anderson's lawyers vigorously fought the allegations, saying they were based on a misreading of Lott's order, incomplete facts and outright falsehoods.

District Judge Sid Harle disagreed, finding probable cause to believe that Anderson didn't comply with Lott's order and wasn't truthful when, during a pretrial hearing, he assured Lott that he had no favorable evidence to disclose to defense lawyers.

On Feb. 10, 2012, Harle asked the Texas Supreme Court to convene a court of inquiry, concluding that "the record contains evidence that a public official may have committed serious misconduct."

One week later, Sturns was appointed to lead the court of inquiry.

Contact Chuck Lindell at 912-2569.

## KEY PLAYERS IN THE COURT OF INQUIRY

**LOUIS STURNS**  
The state district judge from Fort Worth will preside over the court. The Republican has been a judge for eight years, including almost two years on the Texas Court of Criminal Appeals, and has served on the Department of Public Safety Commission and Texas Ethics Commission.



**RUSTY HARDIN**  
His job, as attorney pro tem, is to call and question witnesses and present evidence to help Sturns decide if any laws have been broken. A leading defense lawyer — clients have included former major league pitcher Roger Clemens and ExxonMobil — Hardin also spent 15 years as a prosecutor.

**ERIC NICHOLS**  
The lead lawyer defending Ken Anderson. Before leaving the Texas attorney general's office in 2010, Nichols directed the office's prosecutors and law officers and successfully prosecuted seven members of a breakaway Mormon sect for child sexual assault and bigamy at YFZ Ranch in West Texas.



lawyers will be there to question witnesses, raise objections and present their own evidence.

There also will be no prosecutor. Instead, a Sturns-appointed "attorney pro tem" — noted defense lawyer Rusty Hardin, aided by several members of his Houston law firm — will present evidence, question witnesses and perform any task that Sturns believes will help him understand the issues.

"It's not a trial. It's an evidentiary hearing for the judge to hear from both sides," Hardin told the American-Statesman recently. "And it's not like a trial where there's a prosecutor trying to get somebody convicted. I think our role is to try to make sure the judge has all the evidence before him so he can make an informed choice."

When the testimony is over, Sturns can issue an immediate ruling or take the matter under advisement.

**Disputed evidence**  
Hardin declined to reveal his witness list, but the American-Statesman has learned that he will question Morton and his trial lawyers — Bill Allison, now a University of Texas law professor, and Bill White, who is still a defense lawyer in Austin.

Allison and White submitted sworn statements in 2011 saying Anderson didn't discuss or reveal any of the recently discovered evidence that, they believed, could have helped their client's defense, including:

## YEARS ON THE CASE

Chuck Lindell, who has covered legal affairs since 2005, has written 45 stories on Michael Morton's case, beginning in 2008 with an appeal pressing for the DNA tests that would eventually lead to his exoneration.

- Two transcripts of a police interview with Christine Morton's mother, Rita Kirkpatrick, who revealed that the Morton's 3-year-old son, Eric, witnessed the murder and said Michael Morton wasn't home the time. One transcript was found in sheriff's department files, and a shorter version was discovered in Anderson's trial file.

- A police report about suspicious behavior by an unidentified driver of a green van who, a neighbor said, on several occasions parked and walked into the wooded area behind the Morton house. A copy of the report also was found in Anderson's trial file.

- A note to Sgt. Don Wood, the sheriff's lead investigator, indicating that Christine Morton's credit card might have been used in San Antonio two days after her death.

- A police report saying a \$20 check made out to Christine Morton had been cashed a week after her death. This report has since been revealed to be innocuous; bank records showed it was Michael Morton who cashed the check. Morton recently said he didn't remember doing so.

Allison and White said they would have seized upon any of that information to support the defense theory that Christine Morton was killed by a stranger while her husband was at work.

Anderson, in a sworn deposition taken by Morton's lawyers in 2011, said he didn't recall any of the recently discovered evidence and didn't remember sharing it with Morton's lawyers. However, Anderson said he routinely shared such information with defense lawyers and was sure he would have done so in the Morton case.

Anderson's lawyers, in prior court appearances, also have argued that the evidence wouldn't have had to be disclosed under rules in force in the late 1980s, contained information that couldn't have been presented at trial or included facts already known to defense lawyers. They also said the statute of limitations has long passed on prosecuting the former prosecutor.

Other witnesses to be called this week include members of the sheriff's department and district attorney's office during the Morton investigation and trial.

But the difficult task of joggling memories and reconstructing events 26½ years after Christine Morton's death will be further hampered by several deaths, including those of former Williamson County Sheriff Jim Boutwell and William Lott, Morton's trial judge. Several potential witnesses are also in poor health, including

Wood, who said in a 2011 deposition that his memory suffered because of advanced diabetes and several strokes, and Kirkpatrick, who was said to be too ill to testify.

Hardin said he expects to call 15 to 20 witnesses. The court of inquiry is set to last five days but could be pushed into next week, depending upon how much evidence is presented by Anderson's lawyers — Eric Nichols, Mark Dietz and Knox Fitzpatrick — and how aggressively they cross-examine witnesses.

Nichols declined to discuss his plans for the case or say if Anderson would be called as a witness. Hardin cannot force Anderson to testify, but he has the option of showing Sturns some or all of Anderson's deposition, which was videotaped.

## Court of inquiry

A court of inquiry — typically convened to examine allegations against elected officials and other issues of public interest — has been a feature of the Texas Code of Criminal Procedure since 1965 but has never been used to examine suspected misconduct by a prosecutor.

Anderson's court of inquiry will be the first thanks to an aggressive, and creative, push by Morton's legal team, including Houston lawyer John Raley and Innocence Project of New York attorneys Barry Scheck and Nina Morrison.

The lawyers said they were dismayed, then



**CONTINUING COVERAGE: COURT OF INQUIRY**

'I don't want revenge. I don't want anything ill for Judge Anderson. I don't. But I also realized that there are consequences for our actions, and that there needs to be accountability.'

Michael Morton

# Attorneys spar over evidence in 1987 trial

Former DA accused of 'pattern' of withholding favorable information.

By Chuck Lindell  
clindell@statesman.com

GEORGETOWN – Riveting testimony by Michael Morton, and sharply worded battles over evidence, punctuated Monday's opening of a court of inquiry that is examining whether former prosecutor Ken Anderson improperly hid evidence that could have helped Morton defend himself against a murder charge in 1987.

One of the most intense exchanges was sparked when Rusty Hardin, acting in a role similar to prosecutor, moved late Monday to introduce three documents that were newly discovered in files kept by Anderson when he was Williamson County's district attorney.

Hardin said the documents, when combined with other records that he had presented earlier, showed a "pattern and practice" of withholding favorable information from defense lawyers, contradicting Anderson's claims that he always disclosed such evidence as required by law.

**Court** continued on A4



Former Williamson County District Attorney Ken Anderson enters the court of inquiry Monday. Anderson lawyer Eric Nichols argued the case hinges on one point: whether Anderson complied with a judge's order in the Michael Morton trial. RICARDO B. BRAZZIELL / AMERICAN-STATESMAN

Date: Feb 5, 2013; Section: The Second Front; Page: A4

## Morton spent 5 hours testifying

### Court

Continued from A1

"The file is replete with stuff they should have let the defense attorneys have," Hardin said. "This is three more things in the DA's files that should have been tendered to the defense. The fox doesn't get to guard the hen-house."

The documents were not displayed but included, according to testimony, two police reports – one about a burglar alarm going off in the neighborhood the morning Morton's wife, Christine, was killed – and information about an alleged, but unexplained, death threat left on an answering machine of somebody who knew Christine Morton.

Anderson lawyer Eric



Much of Michael Morton's testimony revolved around a transcript that revealed a conversation with his 3-year-old son.

RICARDO B. BRAZZIELL / AMERICAN-STATESMAN

See more photos from the court of inquiry and read previous coverage of the Michael Morton case with this story at [statesman.com](http://statesman.com).

Nichols objected, saying the documents were not relevant to the proceedings, which he said hinged on one point – whether Anderson complied with an order by trial Judge William Lott to provide him with certain information before Morton's trial

in 1987.

At other times, Nichols and two other lawyers representing Anderson objected to the tone of some of Hardin's questions, saying they were inflammatory or needlessly antagonistic.

Hardin frequently responded that his questions merely reflected the truth as shown in records.

In the end, state District Judge Louis Sturns accepted the documents.

Morton served almost 25 years of a life sentence for his wife's murder before DNA evidence led to his exoneration in 2011.

Morton, the first witness called, spent more than five hours testifying, with breaks.

Much of his testimony revolved around two key pieces of evidence: a transcript found in sheriff's department files of a conversation between the lead investigator, Sgt. Don Wood, and Christine Morton's mother, Rita Kirkpatrick, and a shorter version of the transcript recently found in Anderson's trial file.

The transcripts revealed that Kirkpatrick

told Wood about a disturbing conversation she had just had with the Mortons' 3-year-old son, Eric, 11 days after Christine Morton's death. Eric said he had seen his mother crying as a "monster" hit her, Kirkpatrick said, adding that Eric said his father was not home at the time.

Hardin asked Morton if, before his trial or "during 25 years in the penitentiary, did you ever know there was a tape and transcript in the sheriff's department files about this conversation?"

Morton: "No, sir. It was a complete shock to me."

Later, Hardin asked Morton what he wanted out of the court of inquiry, which is a rarely used proceeding to determine if any state laws had been broken in the way Anderson had prosecuted Morton. If the answer is yes, state law requires Sturns to issue an arrest warrant charging Anderson, potentially leading to a criminal trial.

Morton glanced briefly at Anderson, now a state district judge, who was sitting about 15 feet away

at the defense table.

"I don't want revenge. I don't want anything ill for Judge Anderson. I don't," Morton said. "But I also realize that there are consequences for our actions, and that there needs to be accountability. Without that, every single thing falls apart."

Hardin then invited Morton to tell Sturns what he wanted from the judge. "Your honor, I don't know all the ins and outs of the legal system and what's ahead, but I ask that you do what needs to be done, but at the same time be gentle with Judge Anderson," he said, his face red and his voice choking up.

According to Morton's lawyers, who pushed for the court of inquiry, the transcripts between Wood and Kirkpatrick were among five documents that Anderson failed to disclose to Morton's trial lawyers.

One item had already been discounted as potential evidence: a report of a \$20 check made out to Christine Morton that had been cashed after her death. Bank records later

showed it was Michael Morton who cashed the check. Morton testified that he didn't remember doing so until he was recently shown bank records.

On Monday, Nichols noted that a second item – a note to Wood indicating that Christine Morton's credit card might have been used in San Antonio two days after her death – also turned out to be less than the "bombshell" Morton's lawyers had portrayed. In fact, Nichols said, her credit cards were inside a pocketbook introduced as evidence in Morton's trial.

Hardin later said it didn't matter what is known today about the strength of the evidence. The disputed evidence had to be turned over so Morton's lawyers could check it out for themselves, he said.

The court of inquiry will resume at 8 a.m. Tuesday with an eight-hour videotaped deposition of Anderson, taken in 2011 by Morton's lawyers.

Contact Chuck Lindell at 912-2569.



CONTINUING COVERAGE: ANDERSON INQUIRY

# 'Monster transcript' crucial Morton issue



Ken Anderson (left), sitting in a Georgetown courtroom Tuesday next to attorney Knox Fitzpatrick, sees a 2011 videotape of himself testifying for Michael Morton's lawyers. RICARDO B. BRAZZIELL / AMERICAN-STATESMAN

In video, Anderson says if boy's claim was in his file, then he shared it.

By **Chuck Lindell**  
clindell@statesman.com

GEORGETOWN — The “monster transcript,” a recently discovered police report revealing that Michael Morton’s 3-year-old son witnessed his mother’s murder, became a focal point Tuesday in the court of inquiry examining whether former

prosecutor Ken Anderson hid evidence that could have helped Morton’s defense.

The transcript of a telephone interview with a Williamson County sheriff’s investigator revealed that Eric Morton talked about a monster hurting his mother while his father, Michael Morton, was not home.

The transcript, which fit a defense theory that Christine Morton was killed by a stranger, was a frequent point of contention during more

Watch an interview with Michael Morton, see more photos from the court of inquiry and read previous coverage of the case with this story at [statesman.com](http://statesman.com).



than six hours of a videotaped deposition of Anderson that was played for the court.

The 2011 deposition showed Anderson — speaking softly and frequently looking uncom-

**Anderson** continued on B6



Date: Feb 6, 2013; Section: Obituaries; Page: B6

# Assistant says boss knew of transcript

## Anderson

Continued from B1

fortable as he was grilled by Morton lawyer Barry Scheck – repeatedly declining to answer questions because he could no longer remember most details of Morton’s 1987 trial.

Nevertheless, Anderson insisted that he must have revealed all favorable evidence to Morton’s trial lawyers, as required by law, because that was his usual practice when he was Williamson County’s district attorney.

“There’s no way on God’s green earth, if that was in my file, I wouldn’t have told them that Eric said that a monster had killed his mother,” Anderson said in the deposition.

Morton served 25 years in prison before DNA tests confirmed his innocence in 2011.

Wednesday’s witnesses will include Morton’s trial lawyers, Bill Allison and Bill White, who have previously said under oath that Anderson never discussed the transcript or other potentially favorable evidence, including a police report about the driver of a suspicious green van who had parked behind the Morton house on several occasions.

On Tuesday, the court also heard from one of Anderson’s former assistant prosecutors, Kimberly Gardner, who said not only was Anderson



Kimberly Gardner, a former assistant prosecutor in Ken Anderson’s office during the Morton trial, testifies Tuesday.

RICARDO B. BRAZZIELL / AMERICAN-STATESMAN

aware of the “monster transcript,” but he discussed strategies for dealing with Eric’s testimony should it come up during Morton’s trial.

Gardner recalled an informal meeting at the district attorney’s office with Anderson and Mike Davis, an assistant prosecutor in Morton’s case. “Ken was talking about the Morton case. He said, and I remember him leaning up against a door jamb ... with his arms crossed, and he said, ‘The kid thinks a monster killed his mother,’” Gardner said.

Gardner also read from an affidavit, which she had provided to Morton’s lawyers shortly after he was released from prison, in which she recalled Anderson and Davis discussing a possible rebuttal argument – that Morton was the killer but wore his scuba-diving wetsuit to hide his identity and portray himself as the monster that Eric saw.

That would also explain why police could not find any blood-covered clothes belonging to Morton, Gardner recalled, because a wetsuit could be easily washed off afterward.

Gardner added that she was conflicted in her testimony because she liked Anderson and felt “highly” grateful toward him for giving her a job

when she was a young lawyer.

“It’s very hard to do this, because I don’t want to be here, but I know what I heard,” she said.

The disputed transcript was a typed police report of a telephone interview with Christine Morton’s mother, Rita Kirkpatrick, as she related a troubling conversation with Eric.

The transcript was found in sheriff’s department files, and a shorter version was discovered in Anderson’s trial file.

In the deposition played Tuesday, Anderson said several times that the transcript contained the type of information he was careful to share with defense lawyers. But he also added that he was not required to divulge the transcript because, under the law of the time, he had to share only admissible evidence.

No court would have declared such a young boy competent to testify, he said, and rules against hearsay-based testimony would have precluded his grandmother from discussing the conversation on the stand.

An incredulous Scheck repeatedly challenged that assertion, but Anderson didn’t budge.

Contact Chuck Lindell at 912-2569.

# Revenge is a dish best served not at all

Wrongly jailed for 25 years, man turns other cheek to his prosecutor.

GEORGETOWN – Sometimes it's difficult to comprehend what some people are capable of doing.

Sometimes it's something tragic: A young man opens fire in an elementary school. Sometimes it's something trivial: There are people who voluntarily listen to rap music.

And sometimes it's something transcendent.



**Ken Herman**

I saw the latter Monday in a Williamson County courtroom witness box, and I'm not sure I can comprehend it. It came from a man freed in October 2011 after 25 years in prison on a wrongful conviction in the 1986 slaying of his wife.

"I don't want revenge,"

Michael Morton testified. "I don't want anything ill for Judge Anderson. I don't. But I also realize that there are consequences for our actions and that there needs to be accountability because without that, every single thing falls apart."

Ken Anderson, now a state district judge, was the Williamson County district attorney who got what he now acknowledges was a wrongful conviction that brought Morton's life sentence. Now

**Herman** continued on **B6**



# No one expected 'gentle' request

## Herman

Continued from B1

Anderson is the subject of a court of inquiry that could lead to criminal charges for withholding evidence that could have helped Morton, now cleared in the case.

There's a tables-are-turned feeling at the proceeding. Anderson, like a defendant and represented by lawyers he is paying, sits quietly at a table in a courtroom a few doors down from the one bearing his name. Morton, with a ready smile, mingles easily with folks in the crowded courtroom.

Patricia Morton, Michael's mom, told me Monday she is just "hoping for justice." She offered no specifics, but Phillip Baker did when I spoke with him outside the court building.

"He should do jail time," Baker said of Anderson, adding, "If they whitewash this, there should be a riot."

Baker's wife, Debra, was beaten to death in 1988. Mark Alan Norwood is now charged in the slayings of Baker and Christine Morton, and Phillip Baker believes his wife might not have been killed if Anderson had not improperly focused on Morton.

Morton spent about five hours testifying Monday. Houston lawyer Rusty Hardin, whose role is akin to prosecutor, ended his first round of questions by asking Morton, "What were those 25 years like?"



Michael Morton (right) sits with his mother, Patricia (left), and fiancée, Cynthia Chessman, before a video is shown Tuesday in court. RICARDO B. BRAZZIELL / AMERICAN-STATESMAN

Morton – 32 when his wife was killed, 58 now – paused, then said, "Brutal. I always said I never liked it but ... after a couple of decades I got used to it. I got used to the lack of privacy, restriction of movement, the violence, the forced associations, the lack of seeing my son. A million and one little things you take for granted. You can't even imagine. Clothes that are comfortable. People that are honest. Food that tastes good. A comfortable bed to sleep in."

Morton said he was "stunned" when he learned Anderson had withheld evidence he was required to share with the defense.

"What purpose, what motivation?" Morton said.

And then Hardin asked what you'd ask, "For those of us who find you surprisingly unconsumed with bitterness, how would you explain that?"

That's when Morton, living every inmate's dream of seeing his prosecutor on the hot seat, citing the "grace of God," said it's not about revenge.

Hardin, referring to state District Judge Louis Sturns of Fort Worth, who is hearing the case, fin-

ished with this: "What is your request of this judge?"

You can't, but try to put yourself in Morton's position at that moment. Could you (even if, like Morton, you'd received \$2 million and additional ongoing payments from the state for improper incarceration) have resisted the justifiable urge to seek to use the court of inquiry, to the fullest extent possible, as a court of injury? Could you have said anything like he said?

"Your Honor, I don't know all the ins and outs of the legal system and what's ahead, but I ask you do what needs to be done," Morton said. "But at the same time, be gentle with Judge Anderson."

Even if the grace of God – or whatever positive force moves you – steered you from revenge, could the word "gentle" have crossed your mind or lips, as it did in a man with 25 years' worth of reasons for revenge?

Sometimes it's difficult to comprehend what some people are capable of doing.

kherman@statesman.com; 445-3907.



## CONTINUING COVERAGE: ANDERSON INQUIRY

# Lawyer: Hidden evidence would have aided defense

By **Chuck Lindell**  
clindell@statesman.com

Bill White, one of two lawyers who represented Michael Morton at his 1987 murder trial, testified adamantly and repeatedly Wednesday that former prosecutor Ken Anderson never told him about two key pieces of evidence that “would have made the defense.”

Taken together, the evidence recently discovered in prosecution or law enforcement files would have “put meat to the bones” of the defense theory that Morton’s wife, Christine, had been killed by an unknown



**Former prosecutor Ken Anderson is accused of hiding evidence from attorneys.**

intruder, White said.

“Nobody knows what would’ve happened if we had it, but we didn’t,” White said on the third day of a court of inquiry examining whether Anderson, when he was Williamson County district

**Anderson** continued on **A4**

# Suspicious man, child statement held back?

## Anderson

Continued from A1

attorney, illegally hid evidence that was favorable to Morton, who spent 25 years in prison for a murder he didn't commit.

White and co-counsel Bill Allison, who also testified Wednesday, said they would have remembered, and acted aggressively upon, the two pieces of evidence:

■ The transcript of a police interview revealing that the Mortons' 3-year-old son, Eric, said a "mon-

ster" had attacked his mother while Michael Morton wasn't home.

■ A police report about a suspicious man who had parked a green van on a nearby street and, on several occasions, walked into the wooded area behind the Morton home.

The van report indicated that somebody was casing the Morton home, while Eric's statement placed a stranger inside the house, White testified. Both pieces of information would have helped defense attorneys place other evidence into sharper context, he said, including unidentified fingerprints on an unlocked sliding glass door and inside the bedroom where Christine Morton was killed.

In a taped deposition played in court Tuesday, Anderson said

he couldn't recall if he informed Morton's lawyers about the transcript or the green van report but said he assumed he did because that was his usual practice as district attorney.

On Wednesday, Anderson's lawyers told District Judge Louis Sturns, who is presiding over the court of inquiry, that laws and court precedent in 1987 didn't require prosecutors to turn over evidence that was inadmissible or already known to defense lawyers.

Knox Fitzpatrick, a lawyer for Anderson, said Morton's trial lawyers already knew Eric had seen a stranger in the house. He referred to testimony Monday in which Morton recalled Eric asking him about a man with a big belly and purple or blue shirt who

See more photos from the court of inquiry and read previous coverage of the Michael Morton case with this story at [statesman.com](http://statesman.com).



had taken a shower in the master bathroom.

"The minute you heard that, did you sit right down with Eric and talk to him about it?" Fitzpatrick asked White.

No, White replied, adding later that he didn't consider calling a 3-year-old to testify and didn't want to question Morton about it on the stand because jurors would have dismissed his testimony as self-serving.

Wednesday's proceedings were punctuated by increasingly tense, bordering on hostile, exchanges between Anderson's lead lawyer, Eric Nichols, and Rusty Hardin, who is acting in a role similar to a prosecutor in the court of inquiry.

Nichols strenuously objected to several of Hardin's statements, including one in which Hardin said "we now know that (Anderson) did possess" but didn't disclose evidence favorable to Morton.

Hardin's role, Nichols argued, is not to act as a criminal prosecutor or Morton's advocate but to provide Sturns with information to help him reach a decision.

Hardin fired back, calling Nichols' frequent objections frivolous and a "cockamamie waste of time."

Hardin and Nichols also sparred over a central point in the case — whether Anderson complied with an order from Morton's trial judge, the now-deceased William Lott, to turn over information compiled by sheriff's Sgt. Don Wood, the primary investigator into Christine Morton's death.

Hardin argued that Lott, responding to a defense request that he

review law enforcement documents to determine if they contained evidence favorable to Morton, requested all of Wood's offense reports, handwritten notes and other documents from a six-week investigation.

But Nichols said a careful reading of trial transcripts showed that Lott requested only what Anderson provided — Wood's five-page report detailing Morton's statements to law enforcement on the day his wife was found beaten to death in her bed.

Fitzpatrick added that it made no sense to believe Lott — an experienced, no-nonsense judge — would have let Anderson get away with providing a brief report when he was expecting six weeks of notes and offense reports.

Wednesday's session, which began at 9 a.m., ended at 8 p.m. with Allison still on the stand.

Contact Chuck Lindell at 912-2569.



CONTINUING COVERAGE: ANDERSON INQUIRY

# Court hearing mixed with testy exchanges



Ken Anderson's lead lawyer, Eric Nichols, objects to a question by lawyer Rusty Hardin during Anderson's court of inquiry Thursday. Tempers flared during the hearing. JAY JANNER / AMERICAN-STATESMAN

Lawyers given some latitude, but judge says patience for outbursts had reached a limit.

By **Chuck Lindell**  
clindell@statesman.com

GEORGETOWN – Ken Anderson's court of inquiry, a high-stakes legal drama beset by passages of tedious witness questioning, derailed briefly Thursday when one of Anderson's lawyers erupted in anger, levelling accusations that his client was being unfairly treated.

Throughout this week's hearing, Eric Nichols, Anderson's lead lawyer, has raised numerous objections complaining that attorney pro tem Rusty Hardin was acting as an advocate for Michael Morton instead of doing his job, which is to gather information helpful to District Judge Louis Sturns.

Sturns must determine if Anderson broke state laws when he was Williamson

County district attorney by hiding evidence favorable to Morton during his 1987 murder trial.

Morton, who served 25 years in prison for his wife's murder, was exonerated and freed in 2011.

Tempers flared during attempts by Anderson's lawyers to keep the videotaped 2011 deposition of former sheriff's Sgt. Don Wood from being introduced into evidence because Wood suffered from stroke-related memory problems, and because Anderson's lawyers were not present when he was questioned.

"I do find it ironic that, once again," Hardin began, halting as Nichols jumped up to object.

"Please let me finish," Hardin continued. "I find it fairly ironic we are talking about excluding from the light of day relevant testimony in the case of a man wrongly convicted."

"Judge, we need to stop this," Nichols shouted, slamming his hand on the defense

See more photos from the court of inquiry and read previous coverage of the Michael Morton case with this story at [statesman.com](http://statesman.com).



table and striding to stand directly in front of Sturns.

"I believe in our system, you appoint an attorney pro tem not for the purposes of being an advocate, of being a prosecutor, but for the purposes of presenting evidence," Nichols said. "The constant speeches, the playing to the cameras, is not what a court of inquiry is supposed to be."

The court took a brief recess shortly afterward.

Upon returning, Sturns reminded the audience that a court of inquiry is an unusual proceeding, not operating under the usual rules of evidence, so he has "allowed the lawyers a lot of latitude this week."

Sturns added that while he had granted to same latitude

**Inquiry continued on B3**

Date: Feb 8, 2013; Section: Community News; Page: B3

# Lawyers read letter from mother

## Inquiry

Continued from B1

to the audience – a generally pro-Morton crowd that has occasionally greeted Nichols' statements with laughter or snickers – his patience for outbursts had reached a limit.

Thursday's testimony began quietly enough with Nichols addressing allegations that his client failed to follow an order from trial Judge William Lott, who wanted to see documents to determine if they contained information favorable to Morton.

Lott, Nichols argued, was responding to a defense motion to suppress Morton's statements to law officers on the afternoon and evening of Christine Morton's death. Therefore, Nichols said, Lott wanted to see only the one report that Anderson did in fact deliver – a five-page document detailing the first day of Wood's investigation.

In other events Thursday:

■ Anderson's lawyers read a letter from Rita Kirkpatrick, the mother of murder victim Christine Morton, calling into question events described in the "monster transcript," an investigator's typewritten account of her statement that Eric Morton told her a monster hurt his mother.

"I feel it was greatly embellished and not credible – with me asking leading questions of my 3 years plus 2 months old grandson," she wrote.

Kirkpatrick added that her "memory is not very clear of that nightmarish time" but she clearly remembers Anderson as "a fine, dedicated young



Bill Allison, Michael Morton's murder trial defense lawyer, wipes his eyes after testifying that he let down Morton in the 1987 trial. JAY JANNER / AMERICAN-STATESMAN

## The years since the trial were 'a long, grueling cycle for me.'

Bill Allison, Michael Morton's 1987 trial lawyer

man who was always kind and considerate to me and my family."

Both sides said they declined to call Kirkpatrick as a witness because of her fragile health.

■ The day's most emotional testimony was offered by Bill Allison, Morton's trial lawyer, who was asked by Hardin what he had believed for the past 26 years.

"That an innocent man had been convicted and his son taken away from him by the state," Allison said. "It's hard to explain how I feel. I had felt for a long time that I had really let Michael down somehow."

The years since the 1987 trial were "a long, grueling cycle for me. It was absolutely terrifying for Michael and his family," he said.

■ Hardin finished his presentation Thursday but said he would offer additional evidence after Anderson's lawyers finish with their witnesses.

Nichols began by calling former Williamson County District Attorney John Bradley to explain why he no longer believes that Lott wanted to review

all of Wood's investigative notes, reports and documents before Morton's trial.

Bradley, who acknowledged a long friendship with Anderson makes him "not the most neutral person in this case," had reached the opposite conclusion in a 2011 affidavit prepared by Morton lawyer Barry Scheck with Bradley's input.

Since then, Bradley testified, a more thorough review of records led him to believe that instead of being ordered to submit documents, Anderson volunteered to turn over a Wood report to resolve a dispute with defense lawyers.

"It is my feeling that if there is no court order, there can be no crime" for the court of inquiry to consider, he said.

■ Hardin suggested that Sturns take the case under advisement and perhaps set another court date to allow for closing statements before announcing his decision. Sturns, however, did not indicate his plans.

"I've been assured that both sides will be able to wrap it up by noon tomorrow," Sturns announced to laughter from an audience that has grown used to longer-than-expected sessions since the court of inquiry began Monday.

Contact Chuck Lindell at 912-2569.



**NEW DETAILS: ANDERSON INQUIRY**

# Emotional Anderson: Charges 'outrageous'

Ex-district attorney shows sympathy to Morton, but says defense knew of key testimony.

By **Chuck Lindell**  
clindell@statesman.com

Alternately angry, tearful, defiant and somber, former Williamson County District Attorney Ken Anderson testified in his own defense Friday as his weeklong court of inquiry came to a close with a decision about his fate still weeks away.

At the urging of his lawyer, Anderson turned in the witness box to face Michael Morton, the man he prosecuted for murder in 1987, only to see him exonerated after 25 years in prison thanks to DNA evidence.

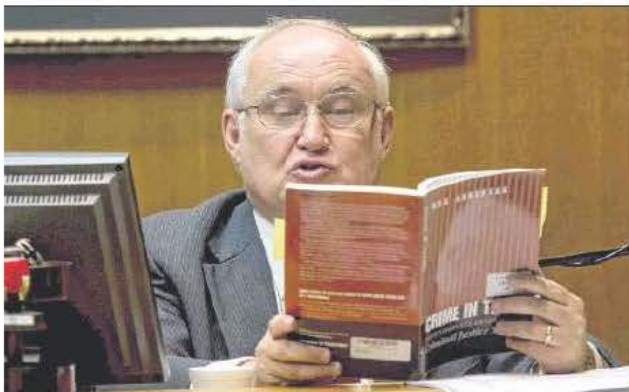
"I know what me and my family have been through in the last 18 months, and it's hell. And it doesn't even register in the same ballpark as what you went through, Mr. Morton," Anderson said, his voice breaking repeatedly.

"I don't know that I can say I feel your pain, but I have a pretty darn good idea how horrible (it was after) what we've gone through ... with false accusations and everything else," Anderson said. "What happened to you was so much worse than that. I can't imagine what you have been feeling."

Anderson's anger boiled over later, particularly under questioning by attorney pro tem Rusty Hardin, a Houston defense lawyer acting in the role of prosecutor in the court of inquiry.

Anderson, a state district judge in Georgetown since 2002, lashed out at the court

**Inquiry** continued on A10



### FORMER PROSECUTOR ON THE STAND

Ken Anderson defends his performance as Williamson County district attorney on the stand Friday in the last day of his weeklong court of inquiry over accusations that he hid evidence helpful to Michael Morton's trial defense in 1987. RICARDO B. BRAZZIELL / AMERICAN-STATESMAN

Date: Feb 9, 2013; Section: The Second Front; Page: A10

## Morton: Anderson 'struggling with denial'

### Inquiry

Continued from A1

of inquiry process as unfair and at accusations that he hid evidence helpful to Morton's trial defense as "bogus" and "outrageous."

"I spent my life savings defending myself on accusations that we now all know are baseless," he said. "I had to spend the money for lawyers, so I've worked my entire life, and now they have it."

Moments after Anderson addressed him from the stand, Morton said he wasn't expecting

Anderson to speak directly to him.

"This is raw. It caught me really off guard. I wasn't prepared for it," Morton said. "I'm not sure — and I'm sure he would completely agree — but I'm not sure he has a complete grasp of what this is all about, not personally."

By the time Anderson completed almost 6½ hours of testimony, with a few brief recesses and no lunch break, Morton was clearly upset with what he called Anderson's "equivocations."

"I think we saw someone who is still struggling with denial and anger, and possibly a man, who has been at least three decades in a position of power, for the first time having to answer for his actions, and he's very uncomfortable with that," Morton said. "I honestly don't feel



Michael Morton sits next to his mother, Patricia Morton, Friday on the last day of testimony. Morton said he doesn't feel that former prosecutor Ken Anderson 'senses any responsibility.' RICARDO B. BRAZZIELL / AMERICAN-STATESMAN

that he senses any responsibility."

District Judge Louis Sturns, who presided over the court of inquiry, will determine if Anderson broke state laws by inten-

tionally withholding favorable evidence from defense lawyers before Morton's 1987 trial for the murder of his wife, Christine, who was beaten to death while lying in bed in their southwest Williamson County home.

Sturns said his scope of inquiry will focus on three alleged violations:

- Tampering with physical evidence, a felony, for concealing records or documents to impair their availability as evidence.

- Tampering with a government record, a misdemeanor, for concealing official reports.

- Contempt of court for failing to comply with a pretrial order from trial Judge William Lott, who had asked to see the reports and notes from the primary investigator of Christine Morton's murder to determine if they contained favorable evidence.

A decision could be more than two months away.

Sturns gave the court reporter 30 days to prepare a transcript of the inquiry, a daunting task that could easily result in a request for an extension. Once the transcript is complete, lawyers for

See more photos from the court of inquiry and read previous coverage of the Michael Morton case with this story at [statesman.com](http://statesman.com).

both sides will have three weeks to submit proposed findings of fact and conclusions of law.

After that, Sturns said, he will schedule another hearing at the Georgetown courthouse "at a date to be determined."

Morton's lawyers have accused Anderson of failing to disclose a police report about a suspicious green van seen in the Mortons' neighborhood and two versions of the "monster transcript," a taped police interview in which Rita Kirkpatrick, the mother of murder victim Christine Morton, related a conversation she had with the Mortons' 3-year-old son, Eric.

Kirkpatrick said that Eric had said he saw a monster hurt his mother, had described key details of the crime scene and had said his father wasn't home at the time.

Anderson said he had no memory of Eric's monster or the van but repeatedly insisted he believed he had discussed the information with defense lawyers because that was his standard practice.

In earlier testimony, both of Morton's trial lawyers insisted that they were told nothing of Eric's outcry or the van — information they said they would have pounced on as central to the defense theory that an unknown intruder had killed Christine Morton.

Much of Hardin's questioning of Anderson focused on a landmark U.S. Supreme Court decision, *Brady v. Maryland*, which said a defendant's right to a fair trial generally required prosecutors to disclose evidence helpful to the defense.

Anderson said the

Brady rule in force in 1987 wouldn't have required him to turn over the transcripts because they contained evidence that couldn't be admitted at trial because a 3-year-old wasn't considered competent to testify and because the boy's grandmother couldn't testify about the conversation under rules against hearsay.

In addition, Anderson said, the Brady rule doesn't apply to information already known to defense lawyers. The fact that Eric had seen his mother's killer was known to "everybody," or at least everybody who read one of three *American-Statesman* stories that quoted police officials as saying that Eric had probably seen the murder, Anderson said.

Hardin noted that key details in the transcript were never published in the newspaper.

"There's not one single bit of evidence anywhere in the world ... that anybody knew that Eric said his father wasn't there, is that correct?" Hardin asked.

"Everyone was on notice that Eric had seen something," Anderson said.

"I was asking you if the fact that Eric said his father wasn't there was known," Hardin said. "Nobody knew, did they, that Eric had told his grandmother that his father wasn't there at the time his mother was beaten to death?"

"People in the sheriff's office knew it, I knew it, Rita Kirkpatrick knew it," and anybody Kirkpatrick told also knew it, Anderson said.

"That's a good point. Then why wouldn't you tell the defense?" Hardin asked.

"As far as I know, I did tell the defense," Anderson replied.

Contact Chuck Lindell at 912-2569.