

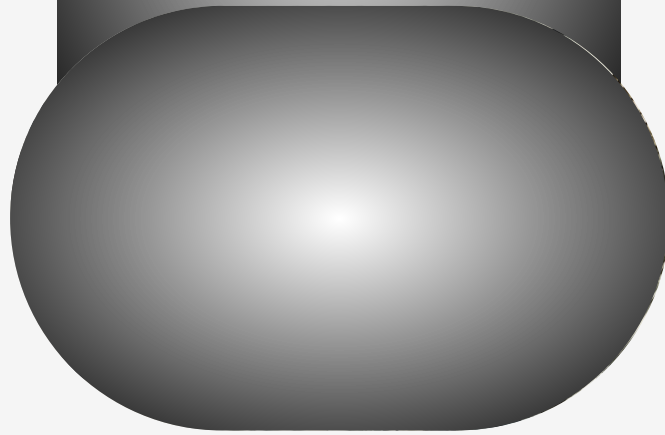


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NEW REPORT— The Truth Will Always Come Out: Prosecutorial Misconduct, *Brady* Violations, and Lack of Justice in Oklahoma

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Oklahoma's justice system is stacked against us.

Our Executive Director, Colleen McCarty and three fearless Summer Research Fellows set out to answer one question: If we know prosecutorial misconduct has mired some of Oklahoma's most high profile cases, how many people are sitting in prison because their right to a fair trial was violated?

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The Executive Summary:

The Truth Will Always Come Out examines the deep-rooted issues of prosecutorial misconduct, particularly focusing on the withholding of exculpatory evidence in Oklahoma criminal trials, in violation of the landmark U.S. Supreme Court ruling in *Brady v. Maryland*. The duty of prosecutors to disclose evidence favorable to defendants is critical to ensuring the fairness of the justice system, yet, systemic failures and a lack of accountability have contributed to wrongful convictions across the state.

The introduction outlines the immense power held by prosecutors and the potential for abuse when the pursuit of convictions overshadows the duty to ensure justice. The report illustrates that Oklahoma has a troubling history of Brady violations, where material evidence has been suppressed, and defendants have been denied a fair trial. High-profile cases such as *Glossip v. Oklahoma*, which is currently before the U.S. Supreme Court, underscore the pervasiveness of these issues.

The legal background provided in Section II discusses the evolution of the Brady rule and how it has been applied at the federal and state levels, including Oklahoma's resistance to implementing the rule effectively. Despite clear judicial mandates, Oklahoma courts have rarely granted relief based on

Brady violations, with few cases, like *Munson v. State*, resulting in reversals.

Section III explores local cases of prosecutorial misconduct, including the wrongful convictions of Adolph Munson, Michelle Murphy, Corey Atchison, and others. These cases highlight a pattern of withheld evidence, coerced confessions, and prosecutorial overreach. The misconduct in these cases has not only destroyed lives but also eroded public trust in the justice system.

In Part IV, the report details the methodology used to identify potential Brady violations in over 500 current Oklahoma cases where people are serving time currently, narrowing down to nine cases where prosecutorial misconduct is highly probable. The research reveals that many murder cases involving multiple defendants and young individuals are particularly susceptible to prosecutorial misconduct, often involving hidden plea deals or unexamined exculpatory evidence.

The findings in Section V estimate that up to 30% of cases in Tulsa, Oklahoma, and Pontotoc counties from the relevant periods may involve prosecutorial misconduct. This troubling figure suggests that many incarcerated individuals may have been denied a fair trial.

Finally, Section VI offers key recommendations for reform, which are displayed below.

The Recommendations:

Amend Oklahoma Court of Criminal Appeals Rule 3.11

The current rules for the Oklahoma Court of Criminal Appeals do not allow

for record supplementation in the event of a *Brady* violation. The rule on record supplementation only currently allows for two things: for the inclusion of exhibits that may have been wrongfully excluded at the proceedings; and for the supplementation of the record if the appellant is claiming ineffective assistance of counsel.[1]

This rule was written and has been in effect since after the Munson case discussed above. It would be a simple yet meaningful change to add the opportunity to supplement the record with suspected Brady material—or to at least make a record of Brady issues on Direct Appeal.

With no opportunity to make this record on Direct Appeal, defendants are often left facing steep procedural hurdles later on down the line if they want to bring up *Brady* in their cases. Even though one cannot waive a constitutional right, the Oklahoma Court of Criminal Appeals often interprets the lack of bringing a claim earlier as a lack of due diligence, allowing them to bar the claim for review under the Post Conviction statute.[2] This leads defendants on a circular merry-go-round where their *Brady* claims are never explored, reviewed, or granted relief.

Amending Rule 3.11 would provide a more level playing field for defense attorneys on appeal to bring up these issues. A full copy of the text of the Rule is available in *Appendix A*.

[1] Ok. Ct. Crim. App. Rule 3.11(B).

[2] Okla. Stat. tit. 22 § 1089 et. seq.

Find Model Legislation And More In The Full Report

The Recommendations:

Open-File Discovery Reform

Open file discovery mandates that all evidence—whether inculpatory or exculpatory—be disclosed to the defense automatically and early in the process. Open file discovery is a policy that requires the prosecution to share all evidence and information in its possession with the defense, ensuring a fairer and more transparent legal process. Implementing such a system in Oklahoma would bring significant improvements to the administration of justice, as seen in other states that have adopted similar policies.

Open file discovery requires prosecution to share **all** evidence and information in its possession with the defense. This includes evidence that is exculpatory, as well as any other material evidence that could be relevant to the defense's case. Oklahoma should require that all evidence be disclosed to the defense automatically and early in the process, without the need for specific requests. Clear deadlines for the prosecution to turn over evidence to defense should be set and prosecutors should be required to turn over evidence to ensure the defense has adequate time to review and prepare. Ongoing training for prosecutors on the importance of full disclosure is crucial.

Find A Model Bill For Open File Discovery In The Appendix Of The Full Report

Prosecutorial Oversight

Prosecutors are some of the most powerful elected officials in public office. In Oklahoma, they are elected over prosecutorial districts which can make up one

or more counties. There are twenty-seven elected district attorneys in

Oklahoma. There is currently no oversight structure of prosecutors other than elections.[1] However, Oklahoma prosecutors are almost never challenged in elections. In 2022, 23 of the 27 district attorneys were elected by default because they faced no opponent.[2] In addition, there is really no oversight of prosecutors that can ensure misconduct or other misdeeds are punished appropriately – other than the statutory process for removal from office which is difficult and usually prosecuted by the local District Attorney himself.

Many states have recognized this gap in government accountability and have elected to establish prosecutorial oversight bodies.

Prosecutorial oversight involves creating mechanisms to hold prosecutors accountable for misconduct or failure to adhere to ethical standards. In some jurisdictions, this includes the establishment of an independent, appointed prosecutorial oversight board, or the possibility of electorally recalling prosecutors who violate their duties. Regular audits of prosecutorial practices and data would help to identify potential issues early and address them before they lead to wrongful convictions.[3]

[1] “Why Holding Prosecutors Accountable is So Difficult,” The Innocence Project, <https://innocenceproject.org/why-holding-prosecutors-accountable-is->

so-difficult/

[2] Keaton Ross, *Most Oklahoma District Attorney Races Are Uncontested*, *Oklahoma Watch* (May 24, 2022), <https://oklahomawatch.org/newsletter/most-oklahoma-district-attorney-races-are-uncontested/>.

[3] Innocence Project, *Prosecutorial Oversight: A Report on the Need for Transparency and Accountability in the Criminal Justice System* (2021), https://www.prisonpolicy.org/scans/innocenceproject/prosecutorial_oversight.pdf.

Learn More About Prosecutorial Oversight In The Full Report

Conviction Integrity Units

Conviction Integrity Units (CIUs) have become a vital mechanism in the criminal justice system for rectifying wrongful or problematic convictions. CIUs are specialized units within prosecutors' offices that focus on re-examining cases where evidence of innocence, prosecutorial misconduct, or other significant errors may have led to a wrongful conviction. For District Attorney offices in Oklahoma, establishing a CIU could be transformative in reducing wrongful convictions and restoring public trust in the legal system.

Practically, the first step in establishing a CIU within a District Attorney's office is defining its mission, which should center on the pursuit of justice by investigating potential wrongful past convictions. Crucially, *the CIU must operate independently from the prosecutorial teams that secured the original convictions to avoid conflicts of interest*. Independence ensures that the CIU can objectively review cases without bias or undue influence, which is critical for maintaining the unit's integrity and credibility.

CIUs typically function within a collaborative framework, where cases are reviewed based on referrals from various sources, including defense attorneys, innocence organizations, internal audits, and even the courts. The collaborative

model is essential for ensuring that all parties—prosecutors, defense teams, and investigators—are held accountable and work together towards uncovering the truth.

Read How Conviction Integrity Units Work In The Full Report

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