



Immune from Justice

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Eric Hillman thought the law was clear when he discovered new evidence that could help the man he was prosecuting in 2014. Then a prosecutor in the Nueces County DA's office, Hillman was investigating the case of David Sims, a man charged with "intoxication assault" after flipping a golf cart and injuring a young passenger. But a witness who police hadn't spoken to told Hillman that Sims wasn't drunk; the witness blamed the accident on horseplay, not booze. Hillman knew the information could help in Sims' defense.

Hillman figured he was obligated to tell Sims' attorneys. A landmark, half-century-old U.S. Supreme Court case requires prosecutors to turn over any evidence that could benefit the defense. Plus, Texas lawmakers had unanimously passed the Michael Morton Act the year before, codifying a similar requirement named after a man who was wrongfully convicted and imprisoned for 25 years while exculpatory evidence was hidden. Nueces County DA Mark Skurka even acknowledged the new state law in a memo to local police and prosecutors, writing, "all information in the possession of the prosecutor or the police must be turned over to the defense."

But when Hillman handed over the evidence just before Sims' trial, Skurka fired him. Hillman then sued the Nueces County DA's office for wrongful termination, saying he'd been fired for following state and federal law. It seemed like Hillman had a strong case, but he would soon discover an apparent loophole in state law: Prosecutors who fire subordinates for refusing to withhold evidence may go unpunished.

This March, the all-Republican Texas Supreme Court unanimously dismissed Hillman's suit, ruling that government officials are almost always immune from lawsuits under state law. Per the court, the exemption even covers officials who retaliate against employees for refusing to commit a crime.

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The Innocence Project, the ACLU, the libertarian Cato Institute and dozens of legal scholars who went to bat for Hillman in court say his case underscores the urgent need to close the legal loophole. They say that reforms passed to minimize wrongful convictions are toothless if prosecutors can just fire underlings for doing the right thing.

They're not alone in calling for a fix. Despite ruling against Hillman, Texas Supreme Court Justice Eva Guzman urged the Legislature to address the issue "in light of the underbelly this case exposes." Hillman envisions a "Hillman Amendment to the Michael Morton Act" to avoid future cases like his own. Yet as the end of the legislative session nears, Texas lawmakers haven't even proposed a solution, and an imminent change seems unlikely.

Hillman, who was a police officer before he became a lawyer, says he was blacklisted from law-enforcement jobs after the Sims case and, in some cases, badmouthed by the DA's office. "I sent out 80 applications to different prosecutors and police departments and got back 80 rejections," he told the *Observer*. He hopes officials fix the law soon, given the high stakes: "If prosecutors don't play by the rules, then the whole system falls apart."