

I have a google alert that searches for mentions of the term “prosecutorial misconduct” . It’s a never ending flow of events, which is unfortunate in and of itself. Its a reminder that power corrupts on a daily basis. This morning’s email brought my attention to an article written by Cornell Law Professor Michael Dorf.

The title of his article ? [“Did The Supreme Court Recognize an Innocent Person’s Right Not to be Executed ?”](#)

When I read the title, I thought it was a trick question of some sort. When I read the article I got sick to my stomach. In particular notice the bold paragraph.

“Twenty years ago, off-duty police officer Mark McPhail was shot and killed in a Savannah, Georgia parking lot. Based on information provided by Sylvester Coles, the police sought Troy Davis for the murder. Davis turned himself in and was charged with the crime. He was found guilty and sentenced to death based on the testimony of eyewitnesses.

Since then, however, nearly all of those witnesses have recanted, claiming in affidavits that they were pressured by police to name Davis as the perpetrator. Meanwhile, additional evidence has been found indicating that Coles, the prosecution’s star witness against Davis, was the actual killer. Yet despite national and international attention—including pleas by former Georgia Governor and U.S. President Jimmy Carter, former Georgia Republican Congressman and federal prosecutor Bob Barr, and even Pope Benedict—neither the Georgia courts nor the Georgia Pardons and Parole Board has seen fit to stop Davis’s execution.

Last week, the Supreme Court offered Davis a ray of hope. In response to his petition for a writ of habeas corpus, the Justices [ordered](#) that a federal district court in Georgia “should receive testimony and make findings of fact as to whether evidence that could not have been obtained at the time of trial clearly establishes [Davis’s] innocence.”

The Court’s order in *Davis* was not unanimous, however. **Justice Scalia, joined by Justice Thomas, [dissented](#). Justice Scalia said that even if the district court were to find Davis to be innocent, there would still be nothing unlawful about executing him.**“

The article then goes on to discuss the various legal issues involved in this issue.

I come back to a single issue. Its not illegal to execute an innocent person. Maybe its time for a constitutional amendment ?