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An Injustice on Death Row

To the Editor:

On Tuesday, the United States Supreme Court declined the opportunity to correct an egregious Brady violation that put William E. Kuenzel on Alabama's death row 25 years ago.

Mr. Kuenzel was convicted in 1988 of killing a convenience store clerk. During the trial, the prosecutors assured Mr. Kuenzel's lawyer that, in accordance with the Brady rule, they had turned over all potentially exculpatory evidence to the defense.

Twenty-two years passed before Mr. Kuenzel discovered that the prosecutors had concealed revealing police notes and grand jury testimony that supported his unwavering claim of innocence.

This Brady evidence revealed that the sole witness to the murder, an admitted accomplice who testified against Mr. Kuenzel in exchange for a 10-year prison sentence, originally told the police that he had been at the store with a different man and that Mr. Kuenzel had been at home in bed. The only other witness who placed Mr. Kuenzel at the scene of the crime had admitted to the grand jury that she "couldn't really see a face" as she drove by the store.

Mr. Kuenzel asked the Supreme Court for the chance to present this obvious Brady violation in federal court. The Supreme Court could have cut through the legal thicket of procedural impediments and held the state government accountable for flouting Brady.

But the court refused. As a result, the unthinkable consequence of the toothless Brady rule will be that an innocent man is executed and the prosecutor goes unpunished for his misconduct.

ROBERT M. MORGENTHAU

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The writer, the former Manhattan district attorney, filed an amicus brief in support of William E. Kuenzel.