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December 3, 2007

**By Facsimile and Overnight Mail**

The Honorable Bob Riley  
Governor of the State of Alabama  
State Capitol  
600 Dexter Avenue  
Montgomery, AL 36130

Re: Thomas Arthur, Set to Be Executed December 6, 2007

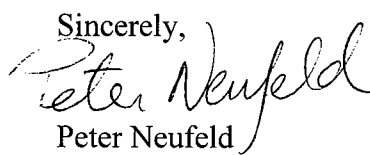
Dear Governor Riley:

On November 5, 2007, in response to a request from your Policy Director Bryan Taylor for guidance on how the Governor's office should address requests for post-conviction DNA testing in capital cases, even where the courts have declined to do so, we sent Mr. Taylor a letter (enclosed here) outlining general guidelines to apply to such requests. We also specifically applied the guidelines to Mr. Arthur's case and provided our assessment that Mr. Arthur's request to the Governor's office for DNA testing should be granted because of the clear way in which DNA testing could provide compelling evidence of Mr. Arthur's innocence. We are now days away from Mr. Arthur's scheduled execution, and we have received no response to our letter or to calls we made to Mr. Taylor's office seeking to follow up on the letter.

We are deeply disappointed by the manner in which the Governor's office has handled Mr. Arthur's request for testing thus far and do not understand the reason for its failure to take action. Your office long ago stated that you did not want to order testing that would delay the execution, yet had your office ordered testing when Mr. Arthur first requested your office to do so at the end of August or even after receiving our letter of November 5, we would already have the results. Thus your decision not to order testing had absolutely nothing to do with not wanting to delay the execution. Had you authorized testing, those results could have provided evidence of Mr. Arthur's innocence and even identified the true killer, or alternatively confirmed Mr. Arthur's guilt and put to

rest any lingering doubts about who killed Troy Wicker, without any delay to the execution.

The time for inaction is now at an end, and the Governor's office has only a few days remaining. We urge your office to issue a stay immediately and implement the DNA testing we recommended. If your office fails to do so, there is much to lose. Allowing an execution to go forward without first conducting DNA testing that could scientifically confirm or refute guilt not only risks putting to death an innocent man, but also does irreversible damage to the public's confidence in the state's criminal justice system and its elected officials.

Sincerely,  
  
Peter Neufeld  
Olga Akselrod

Enc.

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November 5, 2007

Bryan Taylor  
Policy Director  
Office of the Governor of the State of Alabama  
State Capitol  
600 Dexter Avenue  
Montgomery, Alabama 36130

Dear Mr. Taylor:

Thank you for your request for guidance on how the Governor's Office should approach requests for post-conviction DNA testing in capital cases. Especially since Alabama is one of the few states without a statute allowing for access to post-conviction DNA testing,<sup>1</sup> it is crucial that the Governor's Office have a just and sound policy on when such requests should be granted.

Requests for post-conviction DNA testing are made in a few different contexts, such as to develop evidence in support of a motion to vacate a conviction or to modify a sentence, or in support of a request made directly to the executive for commutation, clemency, or other relief. In capital cases where a governor, as opposed to the courts, is considering whether to authorize DNA testing, testing should be authorized where such testing has the potential – assuming that testing will produce an exclusion<sup>2</sup> – to raise

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<sup>1</sup> Currently, 42 states have legislation allowing defendants post-conviction access to DNA testing. The states that do not have such legislation are Alabama, Alaska, Massachusetts, Mississippi, South Carolina, South Dakota, Oklahoma, and Wyoming.

<sup>2</sup> Exclusions can occur in three distinct contexts.

First, testing can produce an exclusion on a material piece of evidence where this exclusion is by itself enough for relief.

Second, there are cases in which testing produces an exclusion and additionally identifies a third-party suspect either through a match of the DNA profile to the profile of a known alternate suspect or through a "cold hit" to a convicted offender's profile in the state or federal DNA databases. As of December 2006, there were almost 4 million convicted offender profiles in the national DNA databank system, available at <http://www.fbi.gov/hq/lab/pdf/codisbrochure.pdf>, and to date, CODIS has aided over 45,000 investigations nationwide through databank hits, including almost 1,800 in Alabama alone. See FBI, CODIS - Investigations Aided, available at <http://www.fbi.gov/hq/lab/html/codis2.htm>. Jeffrey Deskovic and Douglas Warney are just two examples of defendants who were exonerated when a DNA profile developed

