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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,¹ 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 exclusion² – to raise

¹ 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.

² 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

