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Do the DNA in death case

THE ISSUE A Death Row inmate's request to get evidence in his case tested for DNA should be granted, and if the evidence isn't there, his sentence should not be carried out.

Of course the evidence in the case of Death Row inmate Thomas Arthur should be tested for DNA.

In our view, all convicts tried before the development of today's scientific methods should be able to get DNA testing if it could prove their innocence. But it should especially be available to those who, like Arthur, are facing a sentence of death.

Unfortunately, Arthur's efforts to get DNA testing in his case have met with resistance from state prosecutors and from Gov. Bob Riley, too. Now, there are questions about whether some of the evidence even exists.

Specifically, prosecutors have said they don't know what happened to rape evidence collected the day of the murder from the victim's wife. Judy Wicker at first claimed an intruder raped her and killed her husband, Troy. Later, in a deal to get out of prison, she changed her story and said she had paid Arthur, her lover, to commit the murder.

Arthur admits an affair with Mrs. Wicker, but has steadfastly denied killing Mr. Wicker. Earlier this year, another inmate confessed to the crime. In the wake of that confession, and the state's admission it couldn't find the rape evidence, courts postponed Arthur's imminent execution and are now looking anew at his request for DNA testing.

The hope is the tests will be ordered. Although we understand there are legal guidelines judges must follow, justice requires tests of any biological evidence that exists in the case.

If the same murder took place today, the evidence certainly would be subjected to DNA screening, and with good reason. This science not only clears innocent people, but convicts the guilty. Among those arguing for DNA tests in Arthur's case is the acclaimed Innocence Project, which has used genetic science to clear more than 100 prisoners, often implicating the real rapists and killers at the same time.

Alabama should have better provisions in place to make DNA tests available in old cases like Arthur's. At least half of all states have procedures in place to get tests done after the fact. In Alabama, laws have been repeatedly proposed to set up criteria, but they haven't made it through the Legislature.

But our legislators' inaction is no excuse to proceed with an execution when there is a chance a now-routine scientific test could prove a man innocent. DNA tests should be ordered, with the blessing of prosecutors. If the evidence can't be produced, it's hard to imagine how the state can then justify putting Arthur to death.

This isn't to say we believe Arthur is innocent. But serious questions have been raised, and we believe Arthur should not be

executed unless and until these questions are answered.

If the questions cannot be answered, Riley should exercise his single-handed authority to commute Arthur's sentence of death.

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