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31<sup>st</sup> March, 2011

*Extremely Urgent:  
Execution of Cleve Foster in Texas*

Dear Mr. Wiinberg,

I am writing to you on a matter of extreme urgency and gravity. As you are aware, you have made the decision to take no meaningful action with respect to the use of your product in executing prisoners in the US. That is not an acceptable position, and I am prompted to write to you today to apprise you of what will, I fear, be the first of many requests for a proper response.

I would be grateful if you could confirm to me by email ([cstaffordsmith@gmail.com](mailto:cstaffordsmith@gmail.com)) by 9am (BST) tomorrow morning (Friday) that you will carry out an analysis of the new Texan protocol to help save the life of Cleve Foster, who is to be executed with your drugs on April 5<sup>th</sup>, in Texas.

Mr Foster's execution will be historic – for all the wrong reasons. The Texas Department of Corrections intends to carry out an experiment on Tuesday, mixing three drugs that have never been used together in clinical procedures and – without conducting a single controlled trial – injecting the cocktail directly into the veins of a living human being.

Mr Foster has always protested his innocence. DNA evidence does not connect him to the case, and another man has confessed to this crime. Unfortunately, the US justice system turns a blind eye to such injustice: in no case has the Supreme Court ever recognized that an execution should be barred “merely” because the prisoner is innocent. In plain English: under the law as it currently stands, whether Mr Foster committed the crime is not constitutionally relevant to whether he should be killed with Lundbeck drugs.

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Patrons: Alan Bennett, Julie Christie, Martha Lane Fox, Gordon Roddick,  
Jon Snow and Marina Warner.

Your company has an obligation to prevent the State of Texas from experimenting on Cleve Foster with Lundbeck's pentobarbital.

I need not tell you of the extremely high level of care and caution that, under normal circumstances, goes into all clinical and medical experimentation. The effects of the new procedure could be torturous. Following the injection of Lundbeck pentobarbital, the prisoner will be injected with pancuronium bromide, a drug which will paralyse him and begin to asphyxiate him. The pancuronium is not administered for the benefit of the "patient" – it is cosmetic, designed to ensure that no witnesses are able to see how Mr Foster writhes and suffers if the Lundbeck drug does not take effect.

The prisoner will then be injected with potassium chloride, a drug which is known to cause 'excruciating pain that has been likened to having one's veins set on fire.' See *Baze v. Rees*, 553 U. S. 35, 53 (2008) (if the anesthetic does not work properly, there is an "unacceptable risk of suffocation from the administration of pancuronium bromide and pain from the injection of potassium chloride").

The truth is that we don't know what will happen when Texas carries out their lethal experiment on Tuesday. As expert anesthesiologist, David B. Waisel explains, '[t]he use of pentobarbital as an agent to induce anesthesia has **no clinical history** and is **non-standard**. [...] The combination of significant unknowns from a lack of clinical history related to using pentobarbital to induce anesthesia ... puts the inmate at risk for **serious undue pain and suffering**' *Expert Report of David B. Waisel, MD*, Oct. 29, 2010 [emphasis supplied].


As you know, my colleagues met with Lundbeck representatives earlier this month. They inform me that despite your reluctance to alter your contracts, your company does not want Lundbeck drugs to be used in executions and has pledged to do all it can to prevent this. Thus far, however, Lundbeck has offered only words, with no meaningful action.

As a primary, **extremely urgent**, matter I am therefore asking you to do the following: conduct an analysis of the new lethal injection protocol that the Texas Department of Corrections intends to test out on Mr. Foster on Tuesday, and provide me with a report by 5pm Friday (April 1, 2011) concerning the medical and scientific dangers that Mr Foster faces. A copy of the protocol is attached.

Such an evaluation, which would cost very little effort from you, would be potentially helpful for the U.S. lawyers who are trying to help prevent Lundbeck's drugs being used to kill people. Given your public commitment to do 'everything you can' to stop Lundbeck's drugs being used in executions, I'm certain you'll be keen and quick to assist in this matter.

I know that time is short. Such is the nature of a death penalty emergency. I have worked in this field for more than 25 years, and I am afraid your company is about to learn how little time we are given to save lives. At this stage in the proceedings, there is very rarely any time for sleep if the prisoner is to have any hope of justice. We will need your experts' analysis by **5pm (BST) tomorrow (Friday)** so that his US lawyers are able to use it to try to stop his execution. Any later, and it will be too late to act in a meaningful way.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Clive', followed by a long horizontal line that extends across the width of the signature area.

Clive A. Stafford Smith, OBE  
Direct line: 07940 347125  
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cc. Steen Hemmingsen, Lundbeck Foundation  
Lars Barfoed, Minister for Justice  
Lene Espersen, Minister for Foreign Affairs  
*And as before*