FOR THE MIDDLE DISTRICT OF TENNESSEE

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U.S. DISTRICT COURT
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MRS. JANET KIRKPATRICK, **Next Friend for Paul Dennis Reid, Jr.** Petitioner, v. RICKY BELL, Warden, Riverbend Maximum Security Institution Respondent.	)	No. _____ POST-CONVICTION EXECUTION IS IMMINENT SCHEDULED April 29, 2003

MOTION FOR STAY OF EXECUTION AND THE APPOINTMENT OF COUNSEL BY NEXT FRIEND ON BEHALF OF PAUL REID

Comes Mrs. Janet Kirkpatrick, as next friend on behalf of Paul Reid, and respectfully requests that the Court (a) stay Mr. Reid's execution,*see* 28 U.S.C. § 2251, (b) allow Mrs. Kirkpatrick to proceed as Mr. Reid's next friend, and (c) enforce Mr. Reid's federal statutory rights to counsel, expert (including mental health experts), and investigative assistance,*see* 21 U.S.C. Section 848(Q)(4)(b), to facilitate the investigation, preparation, and filing of a petition for writ of habeas corpus. For cause, Petitioner shows as follows:

1. Mr. Reid is an indigent, mentally ill, death-sentenced inmate in the custody of Respondent. He was tried for, convicted of, and sentenced to death on

first degree murder and other charges in Davidson County, Tennessee. The state court judgment was affirmed on direct appeal by the Tennessee Supreme Court, *State v. Reid*, 91 S.W.3rd 247 (Tenn 2002), which thereupon scheduled Mr. Reid's execution for April 29, 2003.

2. If he so chooses, Mr. Reid is entitled--by the United States Constitution and by federal statute--to file a petition for writ of habeas corpus in this court challenging the constitutionality of this state court judgment. He is also entitled by federal statute to the appointment of qualified counsel, experts and investigators, and other support *before* the filing of a petition for writ of habeas corpus in this court, *see* 21 U.S.C. Section 848,[1] and to a stay of the scheduled execution. *McFarland v. Scott*, 114 S.Ct. 2568 (1994). However, Mr. Reid–who has long-standing, long-recognized, mental diseases and defects--has stated in correspondence (but not in court) that he does not wish to enforce his right to

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[1]Mr. Reid does not have counsel and is "unable to obtain adequate representation." 21 U.S.C. Section 848(Q)(4)(b). He was represented at trial and on direct appeal by the Metropolitan Public Defender Office, but that office cannot appear in Federal Court or in state post-conviction proceedings.

The Post Conviction Defender cannot appear in federal court without a court order, T.C.A. § 40-30-306, and could not become involved in any manner in Mr. Reid's case until after the direct appeal process was completed. *See* T.C.A. § 40-30-302. The PCDO's request to be appointed by the Tennessee Supreme Court was denied, over one dissent, and April 22, 2003. The Office of the Federal Public Defender cannot undertake representation in this Court because of a conflict of interest.

these federal protections.

3. Petitioner is Paul Reid's sister and she believes that Mr. Reid's actions are irrational, are the result of his mental illnesses and defects, and that they do not constitute a "choice" in any but the most mechanical of senses. She wishes to proceed in this action as next friend for Mr. Reid. *See* Appendix 1, herewith.

4. Petitioner Mrs. Kirkpatrick thus has standing to proceed on Mr. Reid's behalf and to enforce those rights that Mr. Reid would enforce were he not affected by his mental diseases and defects. Under these circumstances, this Court has the jurisdiction to enter an order staying Mr. Reid's execution and invoking the statutory rights provided by Congress. *See Whitmore v. Arkansas,* 495 U.S. 149 (1990).

A. THIS COURT HAS JURISDICTION TO CONSIDER THIS NEXT FRIEND PETITION

1. Mrs. Kirkpatrick is Mr. Reid's sister and is dedicated to his interests

a. A "next friend" petition "has long been an accepted basis of jurisdiction" in federal courts. *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990); *see also United States ex rel. Bryant v. Houston*, 273 F. 915, 916 (2d Cir. 1921)("The practice of a next friend applying for a writ is ancient and fully accepted.")(citing cases); James S. Liebman & Randy Hertz, Federal Habeas Corpus Practice and Procedure § 8.3a, at 211 n.3 (2d ed. 1994) ("American next friend-procedures track those recognized in England as long ago as the 17th century."). Such

petition's are welcomed to protect those inmates, capital and non-capital, who suffer from a "mental disease, disorder, or defect that substantially affect[s the prisoners'] capacity to make an intelligent decision." *Whitmore v. Arkansas, supra*, 495 U.S. 164-65.

b. To qualify as a next friend, a person must "be truly dedicated to the best interest of the person on whose behalf [s]he seeks to litigate,"*id.*, 495 U.S. at 163, and a close relative -- such as a parent,*Franklin v. Francis*, 144 F.3d 429, 432 (6th Cir. 1998), or a sibling,*id.* ("there is *no dispute* that *the* mother and *sister* are dedicated to the best interests of Berry");*see also Lonchar v. Zant*, 978 F.2d 637, 641 (11th Cir. 1992)("*no-one disputes* that Kellogg, as Lonchar's *sister*, is sufficiently dedicated to the interests of her brother" to be next friend) -- qualifies.

c. Mrs. Kirkpatrick is Mr. Reid's sister, not "'an intruder or uninvited meddler,'" *Whitmore, supra*, 495 U.S. at 164 (citations omitted), and is dedicated to his interest:

> 1. I am the sister of Paul Dennis Reid. I am his older sister. I testified on his behalf at his sentencing hearings.
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> 2. On April 24, 2003, I traveled to Tennessee from my home in Texas so that I could see my brother. I visited with Paul for two hours last evening.
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> 3. I am not an expert in mental illness, but, given my knowledge of Paul, I believe that he is gravely ill. It is clear to me that the only reason he is trying to give up his appeals is because of his illness. Paul is not acting rationally.

> 4. Because I believe that my brother is not capable of making a rational decision, I have requested the Federal Public Defenders Office, and attorneys suggested by that office, to represent me so that I may act in the place of my brother to protect his interests. I am acting in my brother's best interests and for no other reason. I love my brother.

See Appendix 1.

2. Mr. Reid is not thinking rationally

a. Inasmuch as there can be no legitimate dispute that Mrs. Kirkpatrick is dedicated to her brother's interests, she must be allowed to proceed as a next friend if Mr. Reid suffers from a mental disease and/or defect, and if that disease and/or defect either (a) prevents him from understanding his legal position and the options available, or (b) prevents him from making a rational choice between his options. *Whitmore, supra*, 495 U.S. at 166; *Rees v. Peyton*, 384 U.S. 312, 314 (1966); *In re Cockrum*, 867 F.Supp. 484, 485 (E.D. TX 1994); *Franklin v Francis*, 144 F.3d 429, 433 (6th Cir. 1998).

b. There is also no legitimate dispute that Mr. Reid suffers from more than one serious mental disease or defect. The following documentation is taken directly from the Tennessee Court of Criminal Appeals' decision in*State v. Reid*, No. M1999-00803-CCA-R3-DD, May 31, 2001 (Appendices 2 and 3, herewith).

1. The defense presented the following evidence at sentencing. Dr. Xavier F. Amador, a clinical psychologist, evaluated Mr. Reid and diagnosed him as suffering from paranoid schizophrenia and brain damage. He testified that Mr.

Reid had longstanding delusions about government surveillance and had been treated over the years for brain dysfunction or psychotic disorder.

2. Dr. Kessler, a neuroradiologist, testified that brain images revealed Mr. Reid "suffered shrinkage and acquired damage to the left temporal lobe of the brain which was likely caused by an injury to the head after age six or seven," and that Reid "exhibits mild to moderately severe functional abnormality in the left temporal lobe of his brain."

3. Dr. Auble, a clinical neuropsychologist, evaluated Mr. Reid and testified that he has brain damage "which impairs his ability in a pervasive manner." Persons with Reid's mental defect "have delusions and other disorders associated with their thinking," as did Reid, but "he responded well to medication for treatment of his psychosis."

4. Other testimony documented Reid's birth defects (malformation of his ear), severe head injuries and skull fractures as a child and teenager, and his maternal familial history of mental illness.

5. The state's rebuttal evidence included the testimony of Dr. Dan Martell, a forensic neuropsychologist, who "testified on cross-examination that he believed Appellant does suffer from a delusional disorder ... which can affect one's behavior." Martell testified that "persons suffering from delusional disorders experience peaks and valleys, in that there are times when the disorder is

in remission." Martell testified that Reid was hesitant to talk to him about the government surveillance "because he did not want this information made known to the jury." Martell testified that the delusional disorder was in remission.

6. Dr. Helen Mayberg, a professor of psychiatry and neurology, testified that Reid did have temporal lobe abnormalities that were probably congenital.

c. Inasmuch as the experts agree that Mr. Reid suffers from a mental disease or defect which, according to state expert Martell, may affect Mr. Reid differently at different times, the only remaining issue is whether Mr. Reid's mental diseases and defects **now** either (a) prevent him from understanding his legal position and the options available, or (b) prevent him from making a rational choice between his options. *Whitmore, supra*, 495 U.S. at 166. They do.

d. Three experts have seen Mr. Reid in the last two days. They report the following:

Keith A. Caruso, M.D.[2]

> **RELEVANT HISTORY:**
> Reid has sought to abandon any further appeals of his two 1997 death sentences for the murders of Steve

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[2]As discussed in footnote 5, *infra*, Mr. Reid was tried in a second case in Nashville after the trial in this case. Because of serious questions about Mr. Reid's competence, the trial court judge in the second case appointed Dr. Caruso to evaluate Reid. After Dr. Caruso found Reid to be incompetent, other experts were appointed. After lengthy hearings, Reid was found competent to stand trial.

Hampton and Sarah Jackson. He stated of his decision that "the seed was planted in 1992 (sic) after (his) conviction at the first trial and it ripened over seven years (sic)." He stated that when he got his execution date, he decided to abandon his appeals, stating that he would do so "because I don't want the government messing with me anymore. That is the reason I am abandoning my appeals."

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Reid stated tearfully that he had "just wanted to fit in, have a normal life since getting out of prison in 1995." Instead, the military government "had taken 19 years of (his) life." Reid was asked if he would still want to die on Monday if the conspiracy against him could be stopped. Reid could not conceive of any way that the military government's tormenting him could be stopped and allowed that he had "lost hope." Reid was specifically asked if it was just that he had lost hope that his appeals would be successful and stated that his desire to die was due to the military government's torment through "the ringing in (his) ears, mind torture, and body flickering."

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MENTAL STATUS EXAMINATION:
Reid was a well-groomed white man in prison issue trousers, athletic shoes, and a white tee shirt. He displayed psychomotor agitation, often speaking loudly and gesticulating broadly. He related in a gregarious manner and went to great effort to be polite and respectful, only lapsing from this when he became too excited and would speak over his interviewers.

Reid described his mood as "mecriocre (sic)." When his interviewers looked at him with confusion, he eventually settled on the term "mediocre." However, Reid displayed inappropriately cheerful and euphoric affect in

general, although he had one tearful outburst late in the interview, indicating some mood lability.

Reid's speech was frankly pressured, over-inclusive, and rambling. Reid's thought processes were tangential, with loosening of associations, and frequent flight of ideas. At numerous points, Reid would digress so much that he would lose his train of thought or request that questions be repeated (after several minutes of rambling speech). Reid denied suicidal or homicidal thoughts. Reid suffered from grandiose and paranoid delusions. He denied perceptual disturbance and did not appear to be responding to hallucinations.

His higher cognitive processes were grossly intact. His judgment was severely impaired by his psychosis. His insight was very poor. His intelligence was estimated to be lower average on the basis of his occasional misuse of vocabulary words and concrete thought processes.

DIAGNOSTIC FORMULATION:
Reid suffers from Schizoaffective Disorder, Bipolar Type, Most Recent Episode Manic. His Manic symptoms currently include grandiose behavior and delusions, such as being selected to breed with a millionaire's wife. His grandiose behavior included going to great effort to make certain that none of his interviewers "felt ostracized or excluded." He then brought up instances in which Dr. Amador and I had wronged him in some way and proceeded to forgive us. He also displayed flight of ideas, pressured speech, psychomotor agitation, a decreased need and ability to sleep (limiting him to approximately three hours nightly), impulsivity and intrusiveness, and distractibility.

This is an episodic disorder, meaning that it has a course with exacerbation and remission of symptoms. This disorder is characterized by uninterrupted periods of illness during which, at some time, there is a Manic,

Mixed, or Major Depressive Episode concurrent with symptoms that meet criterion A for Schizophrenia. Reid's criterion A symptoms include paranoid delusions, some of which are bizarre, and frequent derailment of speech, indicating tangential thinking and loosening of associations. I have previously observed him to have negative symptoms, including inappropriate affect and alogia, although his Mania currently obscures such symptoms. Reid appears to have periods of remission to residual symptoms, where he may only experience symptoms in attenuated form, such as encapsulating his delusions so that they are not as evident to others or that he feels less compelled to act on them. Others have diagnosed Reid with Schizophrenia, but his prominent mood symptoms are more consistent with Schizoaffective Disorder.

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Furthermore, **Reid's delusions are bizarre, in that they include mind control, coaching of others by the military government, constant surveillance, psychological experimentation, and a conspiracy to kill him** that long predated the instant offenses. Furthermore, Reid has met criterion A for Schizophrenia as listed above. Finally, Reid appears to have a component of his illness that would qualify for the diagnosis of a mood disorder independent of his delusions. Therefore, Reid is excluded on three of the five criteria for Delusional Disorder.

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There is no indication that Reid is malingering at this time. He fervently denies that he is mentally ill now or ever has been. He has continued to memorize sophisticated vocabulary words for several years now after testimony at one of his trials revealed him to have a deficit in verbal skills. However, much as in my earlier interview with him, Reid continues to mispronounce and

misuse vocabulary words. Reid did volunteer that he had this deficit and had suffered head trauma in the past. However, when his delusions were challenged, Reid maintained his beliefs and stated that we would have to "agree to disagree" about whether or not he was mentally ill. Unlike my earlier interviews with him, Reid made little effort to conceal his delusional beliefs at this time.

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COMPETENCY TO WAIVE HIS APPEALS:
Reid suffers from a severe mental disease, Schizoaffective Disorder, Bipolar Type, and is currently in the midst of a Manic Episode with Psychotic Features. While he grasps his legal position and the options available to him, his severe mental disease prevents him from making a rational choice regarding those options. Specifically, Reid suffers from delusions, which are fixed false irrational beliefs that cannot be shaken in the face of evidence that others would consider to be reliable. Reid currently has persecutory, paranoid delusions that he is being tormented by experiments run on him by the military government and feels that his only relief from this torment will be death. Reid is hopeless that this torment will end otherwise. Thus, Reid is incompetent to waive his appeals.

RECOMMENDATIONS:
Should the Court agree with the opinion that Reid is currently incompetent to waive his appeals, I would recommend that Reid receive treatment. Reid should be administered antipsychotic medication.

Appendix 4, herewith (emphasis added).

Xavier Amador, Ph.D.:

11. I have come to an expert opinion on whether Mr. Reid continues to suffer from a mental disease or defect

and on whether or not he is *currently* competent to drop his appeals. I have formulated an opinion on these matters based on over twenty-five hours of interviews with Mr. Reid conducted over a ten month period (between October 26, 1998 and September 2, 1999) and more recently, approximately four hours of interview conducted yesterday. I also relied upon numerous medical records that span from childhood through October of 1998, school records, his video taped interrogation by the police, a published transcript of an interview broadcast by News Channel Five in Nashville, correspondence from Judge John McBryde, and letters Mr. Reid wrote to a variety of people both prior to his arrest in 1997 and since he has been on death row. **Among the most recent was a 92 page letter dated April 14, 2003** that was addressed to "Court Clerk, twentieth Judicial District, the Tenn. Supreme Court, Governor Phil Bredesen; Attorney General Paul Summers; District Attorney Torry Johnson; Assistant District Attorney Tom Thurman" (hereafter referred to "Reid's letter of 4/14/03"). I **also interviewed James N. Kyne, Ph.D. who has had intermittent contact with Mr. Reid during the past eight months during which his illness has worsened markedly.**

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SUMMARY OF OPINIONS

13. I am of the opinion, within a reasonable degree of professional certainty, that Mr. Reid not only continues to suffer from schizophrenia symptoms and paranoia, but **is in an acute exacerbation** of these symptoms. **Indeed, he is significantly more ill than when I saw him last. In addition, symptoms of mania, which had been reported previously in hospital records, are also currently present.** In addition to the re-emergence of manic symptoms, Mr. Reid continues to exhibit several longstanding cognitive deficits. However,**it is the recently worsened psychotic symptoms that are**

interfering most with his ability to process reality accurately.

14. The following criteria were relied upon to form an opinion on Mr. Reid's competency to drop his appeals at this point in time:

(1) is the person suffering from a mental disease or defect?
(2) if yes, does that disease/defect prevent him/her from understanding his legal position and the options available to him/her?
(3) if the disease/defect does not prevent him/her from understanding the legal position and the options available, does that disease/defect nevertheless prevent him from making a rational choice between his options?

Mr. Reid meets the first and third prongs as he continues to suffer from a longstanding mental disease and defect. ***The mental disease, or mental illness, has worsened considerably since I last evaluated him and is currently making him unable to make a rational choice between the options available to him.***

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17. The primary delusion around which almost every other delusion is organized involves the long-standing belief that he has been under video-taped surveillance twenty-four hours a day, seven days a week, for more than twenty years. Upon his arrest in 1997 he revealed this belief to detectives during their videotaped interrogation of Mr. Reid. Throughout my evaluation of him in 1998 through 1999 he consistently revealed these delusions to me and the other mental health experts (defense, prosecution and court appointed) that examined him. However, he would subsequently deny having said anything about the military surveillance when speaking with his attorneys and when making public statements. Mr. Reid did not ever want to be seen as mentally ill. He is clearly less concerned about that now as he feels people need to know what is happening to him, whether they believe it or not.

18. **The illness has worsened significantly** since last August when the delusions became exacerbated after a head injury that he claims was caused by a corrections officers on July 26, 2002 (inmate grievance on file). He is convinced that the officer that he believes pushed him, inmates, other officers, his previous and current attorneys, and even this writer, are all being coached to say things to him. The coaching is coming from the team which is sadistically "tantalizing" him by giving him opportunities to escape (e.g., leaving loaded guns on the floor of a van he was transported in - see also Reid letter of April 14, 2003), transmitting loud ringing in his ears making it impossible for him to concentrate and to sleep more than two to three hours per night, and bathing him in electromagnetic waves that change his brain and make his skin "flicker." Since August he has became more preoccupied, "terrified," angry and vocal about his belief that he is a military "test subject" and that the team that has been studying him is now "torturing" and trying to kill him.

19. I agree with that part of Dr. Daniel Martell's expert opinion (see report of 3/29/99) in which he says that Mr. Reid has periods during which his delusions wax and wane in their severity. Specifically, as Dr. Martell pointed out at the time, in persons with this illness periods can exist when delusions may not be so severe as to affect behavior and decision making processes. While at other times, delusions can increase in their severity and in those instances affect behavior and decision making. Exacerbations of illness such as the one Mr. Reid is exhibiting can be caused by natural fluctuations in symptoms over the life course of the illness (waxing and waning) or because of environmental stressors.

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CONCLUSION

26. The delusional beliefs described above, which have

> worsened considerably since the summer of 2002, stem directly from a mental disease and these beliefs form the basis for dropping his appeals. The delusion that he is about to be killed, is being kept from sleeping because of beams coming from the military, the loud incessant ringing in his ears, his skin flickering and the psychological torture associated with promises of freedom and wealth that are repeatedly reneged upon, leave him unable to have a rational understanding of the options available to him. He sees only one option, only death as soon as possible will free him from this torture. In fact, he said "if they could do it [execution] right now, I'd be joyous."
>
> 27. I am deeply concerned that Mr. Reid's illness, despite having a long and well documented history, has not been treated while incarcerated these past six years. Indeed, he described active suicidal feelings and attempts since his incarceration in 1997. One out of ten people with schizophrenia are successful in killing themselves. About one half of all people with the illness will try at least once. If Mr. Reid were my patient, I would petition for an emergency admission and involuntary treatment immediately. His best option, the one that the illness precludes him from seeing, is treatment with antipsychotic medications. It is mental illness, not a military surveillance team, that is making his life "a living hell" and leading him to want to end it by dropping his appeals.

Appendix 5, herewith (emphasis added).

James N. Kyne, Ph.D.

> I met with Mr. Paul Reid, Jr. yesterday evening, the 22nd of April, from 6:30pm to 7:55pm at Riverbend Maximum Security Institution, Nashville, Tennessee.
>
> Our conversation began with my asking him to explain to me why he'd waived his rights to any further appeals

regarding his death sentence. Mr. Reid was eager to explain this to me and spent the balance of our time together doing so.

His explanation turns on his belief that a "military government" has been in control of his life since 1985 when he was first incarcerated. He believes that the "military government" has exercised their powerful control of events through the following means:

(a) coaching ALL persons he's associated with since 1985 on what to say to him and how to behave in his presence, this includes all the inmates and staff in the Texas prison where he was incarcerated, his family members, all people he's encountered since his release from prison in Texas, e.g., women he's asked to dance at night clubs, police officers, prison guards at RMSI and at Brushy Mountain, legal counselors and attorneys on both sides.

(b) placing him under video and audio surveillance 24 hours per day, 7 days per week, with hidden recording devices.

(c) controlling / initiating / causing a series of events to "demonstrate their power" including 1. George H.W. Bush's illness on a trip to Japan during his presidency, 2. George W. Bush's choking on a pretzel and passing out briefly, falling and hitting his head, 3. Bill Clinton's knee problems (Mr. Reid believes the "military government" caused a similar injury to his own knee through remote control), 4. John F. Kennedy, JR's "loss of consciousness" that caused him to fly his plane and passengers into the ocean and to his own and their deaths.

(d) attempting to murder Mr. Reid by causing a high speed accident in which he was involved while driving a truck.

(e) attempting to murder Mr. Reid by scheduling an appointment for him to appear at the Federal Building in Oklahoma City the precise day and

time it was bombed and destroyed.

(f) murdering seven people and placing him near the crimes in geographical and circumstantial ways so as to lead to his being accused and convicted of multiple homicides.

(g) using "scientific technologies" and "radiation technologies" to feed certain thoughts through Mr. Reid's head, cause loud noises to be heard in only his ears which inflicted unbearable pain, and make various "body parts" of Mr. Reid's "flicker."

(h) luring Mr. Reid to place hope and trust in them by promising him repeatedly that they'd award him $25,000,000 for participating in their experiments and never paying this out.

Mr. Reid describes this state of affairs as having begun as an experiment on him designed to test the "military government's" technologies of influence and surveillance but which has turned out to be nothing more than a relentless, sadistic persecution of him with no end other than his pain and suffering.

It is his belief that the judicial process through which he's come to death row and any further judiciary proceedings (i.e., appeals) are completely controlled by this "military government" and that, as such, he happily awaits a speedy execution as a deliverance from ongoing mental and physical torture at the hands of his persecutors.

When I repeated back to him, for clarification purposes, that he believed the proceedings to be fraudulent and, as such, of no value to him, that he believed the outcome was fixed against him and that this was "basically" why he was waiving his rights to further appeals he replied, very emphatically that it was more than "basically" so … it was "specifically, exactly, particularly" so.

When I asked Mr. Reid if I could have his permission to repeat this information to anyone who might ask me for

the details of our conversation and how he might feel about granting me this permission he replied that he wanted very much for me to repeat this information to anyone who might be interested and to reveal the "real reasons" for his waiving further appeals.

In my opinion Mr. Reid suffers from Schizophrenia, paranoid type, episodic with interepisode residual symptoms (DSM-IV 295.30). A differential diagnosis to be ruled out is Delusional Disorder, mixed type: persecutory/grandiose (DSM-IV 297.1).

The delusional system that is the chief feature of Mr. Reid's mental illness has the effect of blocking Mr. Reid from being aware of:

crushing feelings of personal defectiveness and insignificance --- he has been specially selected by an elite and very powerful group of people for experiments, a very large cash award; thousands of people have been recruited and coached regarding how to treat him … he is very important.

guilt --- he sustains an infantile belief in his own basic innocence and moral purity and is spared completely the adult task of facing and learning to master one's own destructive impulses. All the destructive impulses in the world are in <u>others</u>, none are in him.

responsibility --- he can throw off all responsibility for facing his current circumstances and the consequences of his behavior, i.e., by waiving his rights to any further appeals he can "walk away" from the process of learning to take responsibility and blame the "military government" for destroying any hope he had for a fair trial.

In addition, the fixed and tightly organized delusional system that Mr. Reid "lives in" renders him utterly unable to make rational decisions regarding his circumstances, specifically regarding anything to do with his legal representation.

First, he's unable to meaningfully engage the concepts of guilt and responsibility. He can give a dictionary definition of these terms and superficially make apologies for minor social slights or lapses in his manners (he actually does this in a highly exaggerated manner which is due to the fact that he's not apologizing from any real sense guilt but rather apologizing as a social affectation, he's acting like he can apologize because it appears mature and sophisticated) but he cannot experience guilt in anything close to a mature way. As such he cannot meaningfully participate in a process that has to do with matters of guilt or innocence or responsibility.

Second, he's unable to make decisions about his future that are rational, i.e., based in reality. This is because he's mentally living in an unreal world: one in which his only or best hope for deliverance from the persecutions of an all powerful, sadistic "military government" is to be executed next Tuesday morning.

For Mr. Reid, the execution has nothing to do with guilt or responsibility or punishment for crimes committed. He only sees it as an opportunity to escape a (fictitious) and all powerful enemy.

I first met with Mr. Reid in 1999. I was not meeting with him in my role as a clinical psychologist but rather as a visitor to a death row inmate assigned to me by a fellow parishioner at my church.

At that time he also reported to me a belief in the persecutory delusions outlined above but he seemed then to be less certain of the truth of his delusions.**At this date he presents as much more certain of his irrational beliefs. Ironically, his irrational beliefs support a remarkable purity of inappropriately cheerful affect and a consistency in his mood ("delighted," relieved to be able to put an end to the**

> **ordeal of his imagined persecution by waiving his rights to further appeals) not present when I visited him previously. Then, in *1999*, he demonstrated more anxiety, confusion, constriction of affect, and fear. Now, thoroughly embedded in his delusions, he's remarkably and consistently cheerful and calm. This shift in his emotional presentation is, for me, the most convincing aspect of the clinical picture.** It is quite bizarre to spend an hour and a half with a man scheduled to be executed within the week and find him so happy, calm, and friendly.

Appendix 6, herewith (emphasis added).

3. A stay of execution is appropriate

Under such circumstances, this Court is required to stay the scheduled execution and conduct appropriate inquiries and hearings. *See Smith ex rel. Missouri Public Defender Comm'n v. Armontrout*, 812 F.2d 1050, 1053 (8th Cir. 1987)("The district Court stayed Smith's execution pending an up to date evaluation of his competence, and ordered him transferred to the Federal Medical Center in Springfield, Missouri, for examination and treatment."); *In re Cockrum*, 867 F.Supp. 484, 487 - 94 (E.D. Tex. 1994) (federal district court granted next-friend standing to the capital prisoner's habeas counsel because the next-friend attorney was dedicated to the best interests of the client who suffered from "dysthymia, a chronic mild depression" and other problems, which interfered with his ability to make a rational choice about avenues of judicial review.)

B. REQUEST FOR ORDER APPOINTING COUNSEL

1. If Mr. Reid rationally chose to pursue his constitutional and statutory rights, this Court would be obligated to appoint counsel to represent him under 21 U.S.C. § 848(q). If Mr. Reid has not rationally rejected these rights, and if Mrs. Kirkpatrick is a qualified next friend, then Mrs. Kirkpatrick, as next friend, "simply pursues the cause on behalf of the detained person, who remains the real party in interest." *Whitmore, supra*, 495 U.S. at 163.[3] Mrs. Kirkpatrick is thus obligated to obtain that to which Mr. Reid is entitled, and so requests that this Court appoint counsel and provide for other services under § 848(q).

2. Undersigned counsel represents Mrs. Kirkpatrick herein only until such time as the Court determines that counsel should be appointed. Undersigned counsel has a conflict: co-counsel at Mr. Reid's trial, David Baker, has recently been hired by undersigned counsel and works at the Office of the Federal Public Defender. The State Post Conviction Defender Office would represent Mr. Reid if appointed to do so by this Court. Undersigned counsel has also located other attorneys who he would recommend that the court appoint along with the PCDO.

C. COMMENT ON TENNESSEE SUPREME COURT ACTION

1. On April 21, 2003, state appellate counsel for Mr. Reid filed a motion in

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[3]Ms. Kirkpatrick is, herself, indigent. *See* Motion to File Next Friend Petition in forma pauperis.

the Tennessee Supreme Court reciting that: (a) Mr. Reid unquestionably suffers from mental diseases and defects; (b) in counsel's opinion from*recent* contacts with and letters from Mr. Reid, Mr. Reid was **currently** not rationally able rationally to chose between his options; and (b) that a qualified expert had opined that Mr. Reid was not currently sufficiently rational to decide to forego further legal avenues. Appendix 7, herewith.

2. Attached to the motion was a letter from Dr. Auble in which she stated as follows:

> From the material available to me from Mr. DeVasher, it is my opinion that Mr. Reid is suffering from a mental disease which consists of psychotic symptoms (delusions and hallucinations). From my previous evaluations of Mr. Reid and from my review of the evaluations of other professionals, this mental disease has been manifested for many years. For instance, in the early 1990's, Mr. Reid wrote numerous letters to government officials regarding the 24 hours electronic surveillance that he felt that was happening to him and how people that he had contact with were actually monitoring his behavior for the government. This disorder has been variously characterized by different professionals as schizophrenia, a psychotic disorder with delusions due to a general medical condition, or as bipolar affective disorder. All of these diagnoses are major mental illnesses.
>
> Mr. Reid's understanding of his legal position and the options available to him are colored by his delusional beliefs that events in his life are controlled by government agencies. In addition, **he is unable to rationally choose among his options because of his mental disease.** As Mr. Reid himself stated, "this is the nightmare that has been existing since 1985, the torture

> of scientific technology employed against me and this is the main reason I elect to drop my appeal to live." *It is unclear what effect prison conditions are having on the voluntariness of his decision at this time* A complete competency evaluation is strongly recommended for Mr. Reid.

Appendix 8, herewith.

3. Dr. Auble is an expert. She provided an expert opinion based upon present circumstances, and that opinion -- if accepted as true -- would require that a stay of execution be entered and someone appointed to represent Mr. Reid. The Tennessee Supreme Court, however, declined to investigate whether Reid was thinking rationally. The Court's summary rejection of counsel's well pled entreaties was unreasonable and contrary to the law and the facts.[4]

4. First, the Tennessee Supreme Court wrote that there had been competency hearings conducted in two of Mr. Reid's other cases, he had been found competent to stand trial (three years ago), and "neither the motion nor the letter present any truly new factual assertions that call into doubt Mr. Reid's present capacity to understand his legal position and options or to make a rational choice between his options." *State v. Reid*, No. M1999-00803-SC-DDT-DD,

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[4]Under the AEDPA, state court rulings on the merits of habeas corpus claims for relief are entitled to some respect in this court under 28 U.S.C. § 2254(d). Because incompetency to waive the right to seek relief is not **aclaim** for relief, 2254(d) is not implicated. *But see Franklin v. Francis*, 144 F.3d 429, 433 (6th Cir. 1998). Furthermore, it is not necessary to "exhaust" next friend status in state court as a pre-condition to invoking federal habeas corpus jurisdiction.

April 22, 2003, p. 3. *See* Appendix 9, herewith. These observations are impertinent and inaccurate, for the following reasons:

(a.) The fact that someone has had to have two competency hearings just to get that person to trial is a red flag that the person's mental condition is often seriously in question. This factors in favor of being careful, not hasty, about the person's mental health.[5]

(b) The trial competency hearings did not address the question that is pertinent here, i.e., whether Mr. Reid's illnesses and diseases have affected his ability to chose to do one thing or another in a rational way. **There has never been a determination that Mr. Reid is unaffected in his selection of options** That was not the forensic question pre-trial; it is the question today.

(c) Even if the three year old competency determinations*had* addressed and resolved (for 2000) the issue that is*now* pertinent (i.e., rational option

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[5]The competency hearings to which the Court referred occurred after the trial in this case. No competency hearing occurred in this case, but Mr. Reid faced a capital trial in Montgomery County and a second one in Davidson County following the trial herein. Those cases (which contain the records of the competency hearings) are on appeal–the second Davidson County trial has not yet had any briefs filed, and the Montgomery County appeal is pending in the Tennessee Court of Criminal Appeals, Case No. M2001-02753-CCA-R3-CD. Briefing is not even completed, and oral argument has not been set. The competency question is an issue in the Montgomery appeal, and will be in the Davidson County appeal.

Thus, the Tennessee Supreme Court relied upon non-final, in litigation, competency determinations to deny a state court hearing.

selection), the state's own expert -- Dr. Martell-- recognized that "persons suffering from delusional disorders experience peaks and valleys." The showing made to the Tennessee Supreme Court this week was that Mr. Reid is "peaking," which was incorrectly rejected as "not new." This despite the Court reciting that Dr Auble had reviewed "letters *recently* written" and offered her expert opinion *"based upon **these** letters."*! The letters were from 2003, not 2000, and contain myriad new factual assertions.[6]

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[6]The Tennessee Supreme Court quoted from a letter the Court received from Mr. Reid in which he stated that he had lost confidence in the judicial system and wanted to be executed, things that were "certainly not irrational" according to the Tennessee Supreme Court. Had the Court ordered an evidentiary hearing as requested by counsel, or had the Court given due consideration to the pleading that was filed, the utter irrationality of Mr. Reid's "choice" would have been patent: Mr. Reid lacks confidence because he insanely thinks his judges, lawyers and juries are under military or government control, and he thinks he has been convicted because the military and government do not want to pay him the millions they owe him for their scientific experiments on him. While it may be rational under some circumstances to want to give up because one has been convicted and has no confidence in the system, the circumstances here are different. Reid is forlorn and forsakes assistance because of his*current* mis-perception of reality. The Court made no reference to the new allegations in Dr Auble's report taken from at least five other letters written in 2003 and explaining these current "reasons for dropping his appeals"*today* which, if true, are irrational, i.e., "not only have the government-military-CIA and NSA controlled all of the actions of the people around him, but they have bragged to him how they have controlled these people and set him up." This is new, and it is crazy: "this nightmare that has been existing since 1985, the torture of scientific technology employed against me and *this is the main reason I elect to drop my appeal to live*"

The Court also made no mention of the fact that Mr. Reid asked that the Court obtain a copy of a letter that he had written to "the Twentieth Judicial

5. Second, the Tennessee Supreme Court wrote that "[i]n our opinion, the letter of Dr. Auble filed in support of the motion is similar to the materials found inadequate to warrant a stay in" *West v. Bell*, 242 F.3d 338, 342 (6th Cir. 2001). In fact, in *West* lawyers filed a motion "hop[ing] to conduct an investigation of West's mental health." *Id.*, 242 F.3d at 339. "The district court conducted a hearing," and because West would not speak the court entered a stay of execution. *Id.* The Sixth Circuit held that counsel had showed "at most" that there were some "conceivable difficulties in West's mental health, but no evidence that ... the prisoner does not have 'capacity to appreciate his position and make a rational choice.'" *Id.*, 242 F.3d at 341 (citing/quoting *Rees, supra,* 384 U.S. at 314.). *Here, by contrast,* ***all experts agree*** *that Mr. Reid has mental diseases and defects (as opposed to West's vague "conceivable difficulties in mental health") and direct evidence from a qualified and competent expert was presented that Reid is not thinking rationally at this very moment because of his illnesses. West is* totally inapposite.

6. Thus, the Tennessee Supreme Court's treatment of the issues before it is neither controlling nor persuasive. Counsel showed the Tennessee Supreme Court that there was a serious current question concerning whether Mr. Reid's long

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District" detailing a conversation he had had with his attorneys. Had the Court done as asked, a 92 page missive (not counting the appendixs) would have been found, *see* Appendix 10, herewith, in which Mr. Reid recites even more new facts.

documented mental illnesses and defects had caused him irrationally to give up his federal constitutional and statutory rights. The manner in which the Tennessee Supreme Court "resolved" these questions leaves that judgment a nullity.

WHEREFORE, Mrs. Janet Kirkpatrick respectfully requests that the Court allow her to proceed as next friend for Mr. Reid, that the Court enter an order staying the scheduled execution, and that the Court appoint counsel.

Respectfully Submitted,

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By: