IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

LINDA MARTINIANO, Next Friend for PAUL DENNIS REID, JR.	)	
	)	Case No. 3:06-00632
vs.	)	
RICKY BELL, Warden	)	

- -

BEFORE THE HONORABLE TODD J. CAMPBELL, CHIEF JUDGE

TRANSCRIPT

OF

PROCEEDINGS

June 27, 2006

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APPEARANCES:

For the Petitioner: Mr. Henry Martin
Federal Public Defender
Nashville, TN

Mr. Mark Olive
Attorney at Law
Tallahassee, FL

Mr. Nick Hare
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Office Post Conviction Defender

For the Respondent: Jennifer L. Smith
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I N D E X

The above-styled cause came on to be heard on June 27, 2006, before the Honorable Todd J. Campbell, Chief Judge, when the following proceedings were had, to-wit:

THE COURT: Thank you. Good morning. Welcome. Please be seated. Apologize for the delay.

Late last night a motion for stay of execution was filed, and I set a hearing for this morning. And I wanted to lay out some context for what is to be decided today and then of course hear from the parties. The first thing point that needs to be made is Mr. Reid is scheduled to be executed after midnight tonight. And the case is in an unusual posture.

First of all, Mr. Reid has not completed his state post conviction process. Mr. Reid has not filed a federal habeas case, which he is entitled to do by statute. And if Mr. Reid pursued those things, he would be entitled to a stay of execution to pursue those cases. The petition that's been filed states that Mr. Reid does not want to pursue those options. In other words, he is a volunteer for execution and that he is incompetent to make those decisions for himself.

And the other unusual thing about this case is there has been specific and direct guidance from the Sixth Circuit Court of Appeals about the process that we need to follow. As many of you may recall, in 2003 we had a similar sort of proceeding. The Court denied Mr. Reid's sister's

request for a stay of execution and was reversed by the Sixth Circuit and was given some specific direction. The Sixth Circuit Court of Appeals says that the criteria for the Court at a preliminary hearing on these matters is to determine whether there is any evidence that would raise a reasonable doubt about Reid's competence and entitle him to a full evidentiary hearing and that the burden is on the moving party to establish that. And this Court was directed as follows.

The Sixth Circuit said, We grant the stay of execution until such time as the district court has an opportunity to conduct a full evidentiary hearing allowing the state to evaluate Reid and concerning evidence concerning his competency. In the event the Court finds Reid to be incompetent, then it should allow a suitable person to proceed as next friend. And if he is found competent to waive his further appeals, then the next friend should not be appointed.

So in the view of the Court, we really have a two-step process here based on that specific guidance three years ago from the Court of Appeals. The first question is the preliminary hearing question under Harper v. Parker about whether there is any evidence that would raise a reasonable doubt about Mr. Reid's competence that would entitle him to a full evidentiary hearing, and, if so, the Court is directed

to hold a full evidentiary hearing.

And I am prepared to do both of those things today.

In the opinion of the Court, the legal standard is set out in the Rees case, and it is by a preponderance of the evidence.

Specifically, the U.S. Supreme Court in Rees versus Payton established a standard of whether the individual has the capacity to appreciate his position, make a rational choice with respect to continuing or abandoning further litigation or, on the other hand, whether he is suffering from a mental disease, disorder or defect which may substantially affect his capacity in the premises.

So the bottom line is Mr. Reid had he -- should he decide to pursue those cases, he is entitled to a stay. According to the papers that are filed, he does not want to pursue those. And the allegation is that he is incompetent to make that decision, and the Sixth Circuit has set out the case law for the Court to follow.

So that's the context. I have read what has been filed and understand it and am prepared to go forward. Mr. Martin, how do you intend to proceed?

MR. MARTIN: May it please the Court, first like introduce the persons at my table.

THE COURT: Okay.

MR. MARTIN: I am Henry Martin, Federal Public Defender. To my immediate right, Mark Olive, an attorney from Tallahassee, Florida, also admitted to Tennessee bar and appeared in the proceeding that the Court referred to in 2003.

THE COURT: I recall Mr. Olive. Welcome back.

MR. MARTIN: Of course to Mr. Olive's right is the real party in interest, Paul Dennis Reid. To his right, Mr. Nick Hare, staff attorney with the Office of Post Conviction Defender for Tennessee and one of the attorneys who represent Mr. Reid in litigation in state court.

THE COURT: Welcome.

MR. MARTIN: Also in the courtroom is Ms. Linda Martiniano who is the named petitioner in this matter and is the sister of Mr. Reid.

I should also state for the record again that I am here with some qualifications on my appearance here. As the Court knows from the previous proceeding, a member of my staff now was trial counsel for Mr. Reid in his trial in Tennessee.

THE COURT: Is that Mr. Baker?

MR. MARTIN: Yes, sir, David Baker is still with me, so that if the stay is granted and this case proceeds in habeas corpus litigation, I would have -- I and my office would have a conflict of interest and would not be able to

participate in representation.

I would then make a recommendation to the Court as to who should be counsel. Mr. Olive would be included in that recommendation along with other local counsel here to assist in the representation. Mr. Olive is prepared to participate in these proceedings today because of time involved, because his exposure to the case.

I also I should note that I am somewhat limited in my ability to participate because my staff is also engaged at this moment in similar efforts to try to get stay of execution for another client of our office that we represented for a number of years. When I was here before, I had the assistance of Capital Habeas Unit, do not now, so I have to rely primarily on Mr. Olive to proceed for Mr. Reid and Ms. Martiniano today.

It is our position that the papers that were filed late yesterday do establish -- make the initial showing of incompetence on behalf of Mr. Reid to make a decision whether to litigate in post conviction or more particularly here in habeas corpus. All of the records from 2003 proceeding I believe are there. In addition, more current materials, updated report from Dr. Woods.

THE COURT: Can you come up to the podium so I can hear you better?

MR. MARTIN: I am sorry. Yes, sir. Before the

Court are all the materials that the Court considered in 2003.

In addition, we have submitted to the Court more recent materials, including psychiatric report from Dr. George Woods who has seen Mr. Reid very recently and has submitted a report. There also are affidavits from a lawyer and investigator in the Office of Post Conviction Defender who have spent a considerable amount of time with him recently. A number of other affidavits of people who have spent time with Mr. Woods recently. I am sorry, 2005 January report from Dr. Pam Auble regarding her evaluation of Mr. Reid at that time in her report. We believe and I would ask the Court at this time to make those all a part of the record for consideration as evidence in the determination as to whether or not we have made the initial showing.

THE COURT: They are part of the record. Do you intend to call any witnesses?

MR. MARTIN: May I confer a minute with Mr. Olive?

THE COURT: Right now what I am trying to do is find out what the parties' intentions are, and once that's established, we'll decide how we're going to proceed.

MR. MARTIN: Yes, sir. Let me I guess qualify my answer on this as well. We do have witnesses, but we believe as we read the Sixth Circuit's opinion that the Court

referred to, we believe that if we establish that initial preliminary showing that what that Court anticipated was a full evidentiary hearing with opportunity for discovery, exchange of witnesses in advance, we know that the state has witnesses here today. We have seen people come into the courtroom that we believe they intend to call if there is a hearing today. We haven't interviewed those people. We anticipate those people may have access to documents that may or may not be available to us. We have not had opportunity to do any kind of discovery of those witnesses.

And so we believe what the Court should do today is to determine that there is evidence to establish the threshold showing that Mr. Reid suffers from a mental disease that causes him to be unable to make a rational choice, grant a stay and set this matter for a full evidentiary hearing before which we'd have an opportunity to do discovery in the case. And then to present that the full evidentiary hearing at that time. If the Court denies us that opportunity, we do have witnesses that we're prepared to put on today.

THE COURT: Thank you. If the State could identify who is all here and what your view of things is, please.

MS. SMITH: Yes, Your Honor, Jennifer Smith for the State Attorney General.

THE COURT: Can you come up to the podium?

MS. SMITH: This is Alice Luster as well, Your Honor, and Elizabeth Ryan all from the State Attorney General's Office.

THE COURT: Glad to have you.

MS. SMITH: Thank you, Your Honor.

THE COURT: You are welcome. What's your view of the posture and the course that the Court needs to follow?

MS. SMITH: Your Honor, our view largely coincides with what Your Honor recited. Obviously the Sixth Circuit looked at the case and found that a more extensive evidentiary proceeding should have occurred the last go-round. The allegations and the affidavits that have been presented in support of the current position I don't think are substantially different from those that were presented in 2003. Nor do we think they are substantially different from those that were presented to the state courts prior to the previous two determinations of competency to stand trial. But be that as it may, the Sixth Circuit obviously felt that further evidentiary proceedings were warranted.

THE COURT: Well, let me make one point of clarification. The last time we were here after all those events I described occurred, Mr. Reid changed his mind and initiated state proceedings which mooted out the prior case. And I wanted to make sure that we all are aware of that significant change as well as that this particular case

arises out of the murders in Montgomery County, and the prior case dealt with Davidson County issues.

MS. SMITH: I understand that, Your Honor. Significantly with that difference also comes the distinction that there was no specific competency hearing in the Davidson County case, whereas there has been a competency hearing in connection with the Montgomery County convictions at the time of trial, prior to trial which was affirmed by our Tennessee Supreme Court just last year. So that is a significant difference, and I think that the Supreme Court's opinion just a reading of that bears out the similarities between that those allegations and these.

THE COURT: Let me just ask you a preliminary matter. Do you contest whether there has been the preliminary showing under Harper versus Parker?

MS. SMITH: Were it not for the Sixth Circuit's direction in Kirkpatrick versus Bell, we would contest that. That's why I began by saying that the allegations are not substantially different. We think that viewing the allegations before the Court now and before the state court in 2000, there really is no substantial difference. Given that similarity and given the state court's determination on that issue and the lack of any significant change that there really has not been a sufficient showing to warrant an evidentiary hearing. However, we do understand the Court's

constraints with respect to the Kirkpatrick case, and notwithstanding the mooting of that I do think that has a bearing so I think arguably a sufficient showing for hearing has been made but would certainly maintain the position that given the similarities and the evidence presented in state court and what's been presented now that there really is nothing significantly different.

We do disagree, however, with Mr. Martin's contention that the Sixth Circuit's decision supports a stay on the basis of a prima facie showing or a showing of reasonable doubt on the issue of competence in order to obtain a stay, one must file a habeas petition. And the only way to get a habeas petition to a next friend is with a showing both of an individual with significant interest plus a finding of incompetence. And that requires more than simply a showing of reasonable doubt.

THE COURT: Well, correct me if I am wrong, but what I am hearing you say is that in light of the specific direction from the Court of Appeals that the State is not contesting that the preliminary showing has been made under Harper versus Parker but that you are prepared to go forward with an evidentiary hearing today. Or are you not?

MS. SMITH: We are prepared to go forward with an evidentiary hearing today. I am not sure I am willing to go so far as to say that we don't contest it. But I think that

the Court is constrained under that decision. But in any event, we are prepared to go forward today and in answer to the Court's question about sort of the course of things --

THE COURT: Well, you either need to contest it or not contest it because I need to know what standards we're applying. So it is your choice. You are the advocate for the State, and I accept that, but you're not going to have it both ways. Going to step on one side of the line or the other.

MS. SMITH: Then I am going to step on the side of the line that contests it, Your Honor. I do think what the Supreme Court found recently in its decision yesterday denying the stay and a comparison of the allegations indicates no significant change. If that showing is not sufficient to show incompetence to stand trial, it surely is not sufficient to show incompetence for next friend purposes.

THE COURT: All right. Is the State of Tennessee prepared to go forward to present evidence on the preliminary showing issue and then if that is shown is it prepared to go forward to present evidence for a full evidentiary hearing?

MS. SMITH: We are prepared to present at least one witness on the preliminary showing, Your Honor. Just a lay witness. Obviously with the timing, we have not had an opportunity to even request an evaluation of Mr. Reid, we certainly would prefer. Given the timing of it, that's not

possible under the circumstances so we are prepared to go forward with one lay witness and some documentary evidence.

THE COURT: Well, again I am going to ask you to make a very clear decision which is are you ready to go forward or not? When the State was here last time, it essentially refused to participate and then went up to the Court of Appeals and created the inference that it hadn't had time to prepare. So I need to know whether you are ready to go forward or not or whether you are asking for additional time.

I didn't make this schedule. This was filed 6 o'clock last night. Everyone has been aware since at least 2003 that these issues were out there. So I have to take the fact that there is an execution scheduled later today just after midnight tonight and make decisions based on that. You need to make a decision one way or the other. Are you ready to go forward or not?

MS. SMITH: Your Honor, as I stated, and maybe I wasn't clear, we are prepared to go forward. We have evidence here today. I only qualified that because like Your Honor, we did not make the schedule in terms of the filing of this particular petition. Didn't have a lot of control over that. So we were not able to get any sort of expert testimony. However, we are prepared to go forward with what we are able to gather in the last 12 hours.

THE COURT: Okay. All right. Well, the stage is set. Everything is contested. So Mr. Martin, burden is on the movant.

MR. MARTIN: Yes, sir, we would first ask for the exclusion of witnesses in the case.

THE COURT: Under Rule 615, anybody who is here to be a witness would need to step out until your time to testify.

MR. OLIVE: Could we have one moment, Your Honor, just on order of witnesses?

THE COURT: Yes, sir.

(Pause in proceedings.)

THE COURT: Who would you like to call as your first witness?

MR. OLIVE: Dr. Woods, Your Honor.

PETITIONER'S PROOF

GEORGE W. WOODS

was called, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OLIVE:

THE COURT: You may proceed.

Q. Good morning.

A. Good morning.

Q. State your name again, please.

A. George Woods, W-o-o-d-s.
Q. Where do you live, sir?
A. Oakland, California.
Q. What is your profession?
A. I am a physician specializing in neuropsychiatry.
Q. Do you have a private practice?
A. Yes, I do.
Q. Where is that?
A. In Oakland, California.
Q. And going back to your profession, what does that mean exactly?
A. I am a psychiatrist that specializes in looking at neuroscience. It is really looking at neurological aspects of behavior as well as psychiatric aspects of behavior.
Q. And what is your education?
A. I went to Westminster College in Salt Lake City, Utah. Graduated in 1969. Majored in psychology, English and history. Minored in sociology, biology.

I then went to the University of Utah Medical Center. Graduated in 1977.

I then did a straight medical internship at Alameda County General Hospital.

I then did a psychiatric fellowship at Pacific Presbyterian Hospital in San Francisco, California, and I was chief resident my last year.

I then did a fellowship with National Institute of Mental Health and the American Psychiatric Association in geriatric psychopharmacology which is the study of the interaction of medications and the body particularly in the elderly.

That was the extent of my formal education. I continue my continuing education credits, et cetera.

Q. Are you licensed?

A. I am licensed in California, yes.

Q. As medical doctor?

A. That's correct.

Q. And are you certified, board certified?

A. I am board certified in psychiatry. By the American Board of Psychiatry and Neurology.

Q. What does that mean to be board certified?

A. Board certification is an elective, a choice that one can make after you finished your training. There is two parts to it. There is a written test that one has to pass, and then there is a oral examination. That is, the time that I took it in 1992 that consisted of an evaluating a live patient, creating a diagnosis and history. And if you pass that, then you are then allowed to be designated as board certified.

The American Board of Psychiatry and Neurology control both the board for psychiatry and for neurology. If

you are a psychiatrist, your test is 70 percent psychiatry, 30 percent neurology. If you are a neurology, your test is 70 percent neurology, 30 percent psychiatry.

Q. All right. And you indicated to me that there was an attachment submitted with the petition, Attachment 14, which purports to be two affidavits submitted by you in these actions. I am not sure you have that number.

A. I do.

Q. Okay. And you told me that there was a mistake in one of these with respect to your background and qualifications you wanted to correct. Could you tell us what that is.

A. Yes. In the last --

MR. OLIVE: Your Honor, do you have the attachments?

THE COURT: Yes, sir.

THE WITNESS: In the last affidavit on page 2.

Q. The last meaning the last in time?

A. Most recent, yes.

Q. June 22nd is the first of the two affidavits.

THE COURT: I am with you.

THE WITNESS: Okay. June 22nd, that's correct. It notes on page two I received my board certification in psychiatry and neurology in 1992. That is incorrect. I received my board certification in psychiatry from the American Board of Psychiatry and Neurology. If you look at

the previous affidavit dated May 22nd, 2006, again on page 22, the first paragraph it notes it correctly. I received my board certification in psychiatry from the American Board of Psychiatry and Neurology in 1992.

Q. So this was a typo that you didn't catch the typographical error?

A. Yes. I am sorry.

Q. And are you on any committees?

A. Yes. I am on the scientific committee of the International Academy of Law and Mental Health. I am on the executive committee of the International Academy of Law and Mental Health. I am on the health advisory board of the -- on the advisory board of the Health Law Institute at DePaul University. I am on the board of directors of the Center for African Peace and Conflict Resolution out of South Sacramento State University in Sacramento. I think those are probably the most relevant committees.

Q. And have you taught in your field?

A. Yes. From 1996 through 2000, I taught in the Department of the Post Grad Fellowship in forensic psychiatry at the University of California at Davis in the department of psychiatry.

I currently teach a course at Morehouse School of Medicine in Atlanta, Georgia on clinical aspects of forensic psychiatry.

Q. You mentioned at the outset that you had a clinical practice in neuropsychiatry. Did I quote you correctly?
A. That's correct.
Q. Tell us, please, again in lay person's terms what neuropsychiatry is.
A. Neuropsychiatry is -- well, let me say this. In the last 20 to 25 years, we've come to understand that there are diseases of the brain that present with what used to be thought of as psychiatric symptoms. And so consequently what we now see is that there are diseases of the brain as well as the diseases of the body that can create symptoms that historically have been thought of as, quote, psychiatric.

For example, hyperthyroidism is a disease of the body that can present as manic depression or what's now called bi-polar disorder. There are other diseases of the body that can present psychiatrically. And so with the changes in neuro-imaging, the ways we can look at the brain, we now realize that the dichotomy, the difference between this is body and this is mind is really no longer true and that there are significant neurological diseases that are the foundation of a lot of psychiatric and psychological symptoms. And that's really the neuropsychiatry is the recognition that there is often a neurological basis to many of the psychiatric disorders that we see.
Q. That is at least one of your specialties; is that

correct?
A. That's correct.
Q. You see patients on a regular basis?
A. Yes, I do.
Q. Tell us about that.
A. I have a clinical practice. I consult with a number of hospitals in the area on people that have head injuries that have infectious diseases that have affected their brains. I do psychotherapy. I do medication management.
Q. You see patients on a regular basis?
A. Right.
Q. Is that fair to say?
A. Yes.
Q. Have you reviewed -- you obviously have reviewed your affidavit because you caught an error. Are you confident that the rest of the background and qualifications in your affidavit is accurate or correct?
A. Yes, I am.
Q. Have you testified before as an expert in neuropsychiatry or qualified in any other subspecialty of psychiatry?
A. Yes.
Q. How many times and in state, federal courts? Just give us a general description.
A. I have testified in both state and federal courts. I

qualified in neuropsychiatry. I have qualified in psychopharmacology. I have qualified in -- I have been qualified in psychiatry.

Q. All right, sir. And how many times would you approximate you have been admitted, qualified to express your opinion in a state or federal court?

A. I'd say perhaps 70 times over the last 20 or 25 years.

Q. Do you know Mr. Reid?

A. Yes.

Q. How do you know him?

A. I was asked in late 2004 to evaluate Mr. Reid, and I have interviewed him on three separate occasions.

Q. Do you recognize him sitting in the courtroom here today at counsel table?

A. Yes, sir.

Q. Do you recognize him?

A. I do.

Q. Don't need to point him out, but you do recognize him?

A. Yes.

Q. Were you asked to come to any forensic conclusions with respect to Mr. Reid?

A. Yes.

Q. Have you come to forensic conclusions with respect to Mr. Reid?

A. Yes, I have.

Q. In particular, have you come to a conclusion with respect to whether under the Rees standard which was referenced earlier in court he is competent to proceed in these proceedings?
A. Yes, I have.
Q. Are you board certified in forensic psychiatry?
A. No, I am not.
Q. Have you been qualified to express opinions, forensic opinions in psychiatry?
A. Yes, I have.
Q. Why are you not board certified?
A. I have chosen not to become board certified in forensic psychology.
Q. Why is that?
A. Well, I have taught forensic psychiatry at the University of California, as I mentioned, and now at Morehouse School of Medicine. It is my belief that the board certification process for forensic psychiatry does not include adequate clinical foundation and to really make it a specific subspecialty, and so I have chosen not to take those boards.

MR. OLIVE: Your Honor, before I get into the opinions of the witness that the witness has come to, I would proffer him as an expert in the field of neuropsychology qualified to form and express opinions in this court with

respect to that subspecialty.

THE COURT: Any objection?

MS. SMITH: No, Your Honor.

THE COURT: He can give his opinion.

MR. OLIVE: Thank you, Your Honor.

THE WITNESS: Thank you, Your Honor.

THE COURT: You are welcome.

Q. Have you diagnosed Mr. Reid?

A. Yes.

Q. What is your diagnosis?

A. My diagnosis is is that Mr. Reid suffers from a left temporal lobe dysfunction with resultant schizophrenia form, schizophrenia-like psychosis.

Q. You know I am going to ask, don't you? What does that mean?

A. Sure. Mr. Reid has a history of psychotic behavior. He also has a history of learning disabilities, specifically spelling disabilities, reading disabilities. He also has history of language impairments what we call expressive language versus -- and receptive language. Expressive language impairments are when someone cannot express language effectively. It is not that they can't make themselves understood, but they may use unusual words, what we call neologism. They may use unusual sentence structure.

Receptive language is when someone doesn't hear

language effectively. You can have two -- these are all called aphasic syndromes. So you can have receptor aphasia; you don't hear things accurately. And expressive aphasia; you don't express things accurately. And Mr. Reid has been evaluated by a speech pathologist and found to have both expressive and receptive aphasia.

He has also been found to have motor impairments. And when I say motor, he is less strong on his right side. His right hand is less strong than his left hand. Your right hand is really controlled by the left side of your brain.

And so what we see are a number of factors that point to potential left-sided, left hemisphere impairments in Mr. Reid. As it turns out in this particular case, we also have pictures what we call neuro-imaging that reflect that type of impairment. And you can actually if you were to just look at Mr. Reid carefully, look at Mr. Reid carefully you can see that there is what we call dysmorphic. There are dysmorphic changes in Mr. Reid's skull. The left side of his brain right over what we call the temporal lobe is clearly impacted. It is clearly dented. And there is no history of him having any type of trauma to the left side of his skull, rather it was early when he was 13 or 14 to the right side of his skull.

We also have neuro-imaging of his brain, magnetic resonance imaging which is a picture of how the brain is

structured. And a picture of how that brain is structured again shows that the left temporal lobe of his brain, the left temporal lobe of his brain, the part of the brain that actually comes down on both sides and kind of right about here kind of curves up and under right about here.

Q. Okay. You are for the record -- looked like you were looking for a flip chart. But for the record, you are putting your hand on either side of your forehead behind your eyes?

A. Right by the ears coming down right by the ears is where the temporal lobes curve up under and kind of the brain kind of -- the rest of the brain kind of sits on the temporal lobes. What we see in the magnetic resonance imaging structurally is that Mr. Reid's brain is impaired. That his brain structure is impaired.

And there is really no -- there is a consensus that the magnetic resonance imaging shows impaired left temporal lobe. What we also have --

Q. Impaired means physically, not functionally. You can see a physical structural impairment?

A. Mr. Reid's brain is structurally impaired.

Q. It is an organ that is not formed the way it should be formed; is that accurate?

A. That's exactly correct. Besides the structural impairment, there is in fact a functional impairment. And

what functional impairment means is there is testing that has been done by Dr. Kessler here at Vanderbilt University that shows that the -- and the testing is called, big words, positron emission tomography or a PET scan.

Q. There is an Attachment 10 submitted in the appendix says PET scan images of Paul Reid; is that what you are referring to?

A. Yes.

Q. And you are familiar with that?

A. Yes.

Q. Go ahead.

A. That's report of Dr. Kessler's. So the positron emission tomography, the PET scan, is designed to show how the brain functions as opposed to how the brain is structured. And what Dr. Kessler's testing reflected was that on the PET scan shows a decreased functioning in that left temporal lobe. In the same area that we see structural damage, we see functional damage as well. That part of the brain just doesn't work as well.

Now, what we then have is a structural part of the brain that is clearly malformed. We have imaging that says that that part of -- that same part of the brain does not function very well. We have examples from academic, his academic career showing problems with spelling, problems with naming, which is also a function of the left temporal lobe.

Problems with memory, which is also a function of the left temporal lobe. Problems with right-sided arm motor strength, which is also a function of the left temporal lobe.

So we see a number of factors that impact, that reflect that left temporal lobe is not working effectively.

Q. Let me refer you to Attachment 7 in the appendix which is a chart of various diagnoses beginning in 1964. You may not have a copy.

MR. OLIVE: If I can approach the witness.

THE COURT: Yes.

MR. OLIVE: I think His Honor has one.

MS. SMITH: Is that a particular attachment?

MR. OLIVE: Seven.

MS. SMITH: Thank you.

Q. You indicated in your answer that there had been a history of problems or diagnoses in the case?

A. Yes.

Q. And I wondered if you could look at this chart and tell me if you are familiar actually of what the background documents that support these items?

A. I am -- well, let me look for a moment. I am familiar with the background documents that support these findings.

These are -- yes.

Q. All right. I don't have a copy of that with me. I gave you my copy, but I am generally familiar with it. Starting

in 1964 and continuing on until whatever the last date is on the chart are a series of diagnoses and prescribed medications on several occasions; is that correct?

A. That's correct.

Q. Does this chart or do these documents that you reviewed that are summarized in this chart form any basis or part of the basis of your opinions in this case?

A. Yes, they do.

Q. How did it help you in this case?

A. What we see, and may I say that this particular chart is a reflection of really a summary of the medical records of Mr. Reid from the age of seven through 2000. These are summaries of medical records from childhood evaluations at the Blue Bird Clinic, even above that. It is a summary of records from the Rusk State Hospital in Texas. Summary of records of the Texas Department of Correction. It is a summary of records from the Harris County Psychiatric Facility.

And then toward the end in from 1997 through 2000 what we have is a summary of neuropsychological testing that was done by Dr. Pam Auble as well as Dr. Danny Martel. We have a report of Dr. Helen Mayburg when she was at the University of Toronto. She is now at Emery. A report of Dr. Helen Mayburg. We have findings of Dr. Caruso in 2003. We have examinations by Dr. Xavier Amador, so those are really

from 1997 to 2000.

Prior to 1997, however, what we really see are a series of records that start at the age of seven which was when Mr. Reid first came to school. He was -- did not go to elementary school. First came to school at the age of seven Did not -- I am sorry, did not go to kindergarten. First came to school at the age of seven in the first grade, and Dr. Yates at that time noted, who was a psychologist, noted the possibility of organic difficulties.

Q. What does that mean? Is that the same thing you have been -- could it be the same thing you are talking about organic difficulties meaning damage to an organ or an organ that's structurally unsound?

A. Yes. What we see with Dr. Yates did a Bender-Gestalt, a screening instrument that is used to look at -- when I say screening, it is an instrument that is used to look to see if there is a possibility of neurological problems. In this particular case, organic really reflects neurology. It can reflect any medical problem, but in this case it really reflects neurology. And it notes that even at the age of seven, according to the Bender-Gestalt there was some difficulties, and those difficulties impaired Mr. Reid's ability to function at age level.

Q. In your patients, do you frequently get a Bender-Gestalt from someone given at age seven -- let me say it differently.

Is this a unique finding, a consistent finding, is it unusual or normal?
A. That's an interesting question. This is an unusual finding for someone this young.
Q. That's what my point was.
A. Right. And this is particularly unusual finding for someone this young because someone that is seven years old, their brain is still forming in multiple ways. The Bender-Gestalt is what we call a growth instrument. It is not a very sophisticated test, and to find impairment on such a gross instrument at such a young age really speaks to something that perhaps may be more congenital, may have occurred earlier rather than to trauma.
Q. Other than a head injury during childhood or adulthood?
A. That's correct.
Q. So from birth?
A. Probably, yes.
Q. You are familiar with head injuries later?
A. Yes.
Q. At page seven there apparently was the suspicion at least, or is it a finding of brain damage?
A. Well, certainly by the next two years there was in fact a finding of brain impairment. I think it is important to note, Mr. Olive, that at this time in 1966 there wasn't the ability to look at CT scans or MRIs, other types of testing

in the way that we are able to look at now. So brain damage was really inferred from the kind of testing they could do.
Q. In other words, they would test how the brain was working?
A. Exactly.
Q. And then if it didn't appear to be working correctly, they would diagnose brain damage?
A. That's exactly right.
Q. So that test you are referring to is a pen and pencil test or pencil and paper test?
A. It is a pencil and paper test where one draws certain figures. One is asked to duplicate certain figures. And it is a fairly, as I said, it is a fairly simple test. It is normed for children, so they should be able to do pretty well on it.
Q. This chart that goes on for several pages, I asked did it form any of the basis of your opinion, and you said yes. It appears to have multiple diagnoses over multiple decades of mental illness. Not to lead you, but is that accurate or inaccurate?
A. That's correct.
Q. Do those diagnoses and those treatments over those years reflect consistency with your diagnosis, inconsistency, are they congruent or what?
A. The symptoms that Mr. Reid is treated for are consistent

with my diagnosis.
Q. And those symptoms are?
A. Delusions. Organized psychotic thinking. Difficulty with language. A lot of writing. Incorporating people into those delusions.
Difficulty with language. Difficulty with memory. Difficulty with reading and spelling. But the most consistent of course is the delusional concept.
Q. All right. And what does that have to do with left temporal lobe dysfunction which is at least in your most recent report Attachment 14 at paragraph 8 is what you have concluded Mr. Reid suffers from a neurological disorder, left temporal lobe dysfunction?
A. Left temporal lobe dysfunction has an extremely high incidence of psychotic behavior. The probably the world's expert in this is Lishman from England. In his book, The Cerebral Consequences of Organic Psychiatry, he talks about left temporal lobe syndrome and the kinds of difficulties that you can. Not only when there is perhaps a seizure disorder but when there are problems with the left temporal lobe. What you develop are -- what you can develop are psychosis, organized psychoses, psychoses that can be either bizarre or nonbizarre. Psychoses that typically occur late at adolescence through your twenties, they start at that point. They don't start right off the bat. It often takes

15 or 20 years before they develop, before they become organized. As time goes by, they become increasingly organized.

And the relationship between what's called schizophrenia form psychosis and left temporal lobe impairment is extremely well known. What we have in this particular case is someone that not only has functional impairment as judged by the positron emission tomography, the PET scans, but someone that has the structural impairment as well. PET scans are only clinically indicated -- see if I can remember this -- only clinically indicated in four areas: stroke, dementia, obsessive compulsive disorder, and dysfunction of the left temporal lobe. So there really are no other areas in which you would really rely upon a PET scan in order to help define or very few in order to help define your diagnosis. As it turns out, this is one of them.

Q. You may have done this and I missed it, but how is it that damage to the left temporal lobe, a lay person like myself would think, all right, you would do poorly on an IQ test or you would do poorly driving a car or you would not function properly in terms of those social skills. But you are saying delusions result from such damage, and that's what I don't understand.

A. The first step is paranoia. Paranoia results from this damage because as the temporal lobes -- as the brain

develops, the temporal lobes are the throughway from the frontal lobe which is called the really the seat of executive functioning, ability to sequence one's thoughts, ability to sequence one's behavior, ability to move from one task to the other to structures further in the back, the amygdala, for example, which is one of the seats of emotions. And the temporal lobes are the only parts of the brain that can -- that hold all different components of the brain: gray matter, white matter. The temporal lobe is really the only part of the brain it is kind of like the throughway so things have to go from the frontal lobe, which kind of organizes things, kind of makes you understand how things work. The frontal lobes are that part of the brain that tells you that those five thousand trees are a forest. The amygdala, the back part of the brain, is a part of the brain that says that is a twig and not a snake, that allows you to organize your brain so that when you look at something, you understand what it is. You can put it in emotional perspective as well as intellectual perspective.

If the temporal lobes are not working correctly, if the temporal lobes somehow disrupt that relationship between the frontal lobes and the amygdala, delusions can occur because you don't understand. And I don't mean completely, but it is difficult to understand how things work. If I can give you an example.

Q. Is it fair to say that a person with such damage could experience external stimuli different than someone without such damage?
A. Exactly.
Q. So your perception of what's going on may be different than nondamaged brain?
A. Your perception is different, Mr. Olive, but not only is your perception different; your ability to process that perception accurately is different. So they are both impaired.
Q. And that seems to be closely related?
A. That's correct.
Q. Those two items.
Have you read the diagnoses of doctors not just from '64 forward but those that you have read about since the time this case began?
A. Yes.
Q. For example, Dr. Amador and Dr. Martel, other doctors involved in the case?
A. Yes.
Q. Have you had an occasion to consult with Xavier Amador in this case?
A. Yes, I have.
Q. Are you familiar with the fact that he testified before this court in 2003?

A. Yes, I am.
Q. Have you read that testimony?
A. Yes, I have.
Q. Have you read other of his testimony in these proceedings?
A. Yes, I have.
Q. And his reports?
A. Yes.
Q. And those would be reports included in the background packet that was filed with the petition?
A. That's correct.
Q. Did you confer with Dr. Amador yesterday?
A. Yes, I did.
Q. Who is Dr. Amador professionally? You have already identified him as an expert, as a witness in these cases, but what is his profession, and why did you confer with him?
A. Dr. Xavier Amador is a clinical psychologist that is a -- was a professor at Columbia University. Was on the board of directors of the National Institute of Mental Illness and is well known in his field as a schizophrenia researcher.

MR. OLIVE: Your Honor, if I could have an exhibit marked, or I would mark them myself if that's the correct protocol.

THE COURT: We'll mark them.

MR. OLIVE: And I have an extra for Your Honor as well. If you want to wait until it is admitted, I will wait. Otherwise --

THE COURT: You can pass it up.

Q. You have before you an exhibit which I will indiscriminately mark as Exhibit 1 in these proceedings, imaginatively enough. Have you seen this affidavit before, sir?

A. Yes, I have.

Q. When have you seen it?

A. Yesterday evening. I had the opportunity to review it.

Q. Have you spoken with Dr. Amador?

A. Yes.

Q. About this case?

A. Yes.

Q. Are you familiar with his earlier diagnoses in this case?

A. Yes.

Q. What were they?

A. Dr. Amador had several. He made the diagnosis of schizophrenia, chronic paranoid type. He made the diagnosis of cognitive disorder, not otherwise specified. He made the diagnosis of psychotic disorder secondary to a general medical condition. He made the diagnosis couple more that also related to psychotic disorders.

Q. Is his previous diagnosis of schizophrenia consistent or inconsistent with the diagnosis that you have given here about the temporal lobe?
A. Certainly Dr. Amador's description of the symptoms of psychosis and the symptoms of paranoia are consistent with my diagnosis of temporal lobe dysfunction. The psychosis that occurs in temporal lobe dysfunction is described as a schizophrenia-like psychosis because you can have paranoia. You can have what are called ideas of reference believing that people have certain roles, believing that people are saying things about you. You can have many of the symptoms that one sees in schizophrenia. So in that sense, our diagnoses are consistent.
Q. Have you reviewed this document, Exhibit 1?
A. Yes, I have.
Q. Have you relied upon it to any degree or consulted with him with respect to the matters in it?
A. I have consulted with him, and I have reviewed it, yes.
Q. Paragraph 18. He says, After consultation with you, I am of the opinion within a reasonable degree of professional certainty that Mr. Reid has a psychotic disorder with delusions due to a general medical condition.
Is that your diagnosis?
A. That's consistent with temporal lobe dysfunction, yes.
Q. Are you familiar with whether this was a diagnosis that

he provisionally gave in an earlier declaration?
A. This was a provisional diagnosis of Dr. Amador.
Q. What is a provisional diagnosis?
A. Is a diagnosis where it is strongly felt by the clinician that that diagnosis should be included, but the clinician may feel as though they could not have sufficient evidence at that time to formally make that diagnosis.
Q. If this diagnosis to be accepted, he has made that diagnosis; is that apt?
A. That's correct.
Q. It would be hearsay, but was it your understanding that he spoke with Mr. Reid yesterday?
A. Yes.
Q. And when was the last time -- that is, Dr. Amador spoke with Mr. Reid?
A. That's correct.
Q. When was the last time you spoke with Mr. Reid?
A. Last week.
Q. That's fine. It is reflected in your report. And the information that you received from Dr. Amador with respect to these conversations, is that the type of information that experts in your field would normally and regularly rely upon in forming and expressing opinions?
A. Yes.
Q. And the information in this affidavit, similarly the

same question?
A. That's correct.
MR. OLIVE: Your Honor, I would move this affidavit into evidence at this time.
MS. SMITH: Your Honor, we object to the admission of the affidavit on hearsay grounds except to the extent that it forms the basis of the witness's testimony. But to the extent that it is being offered as a substantive opinion as to Mr. Reid's competence, we object.
THE COURT: I am going to allow it into evidence as something that Dr. Woods relied upon.
MR. OLIVE: Thank you, Your Honor.
Q. Dr. Woods, you have given us a diagnosis and given us really sort of hypothetically in some circumstances how that diagnosis could produce delusions, hallucinations, thought disorders, et cetera. Have those things manifested in Mr. Reid's life?
A. Yes.
Q. Could you describe for us what those manifestations have been most recent if you would. Don't have to go back. To what's most critical at this time.
A. Sure. Mr. Reid has expressed a long-standing paranoid, bizarre in my opinion, delusion that he is controlled and everyone that is associated with him is controlled by scientific technology. Scientific technology is a group that

he believes is part of the government that starting in 1985 began to videotape and audiotape his every movement. And I mean literally 24/7. Scientific technology has provided scripts to his attorneys. Scientific technology has provided scripts, transcripts of his life to judges in his first trials. Scientific technology has provided transcripts of his life to other inmates and have controlled every waking movement and has tortured him since 198-- since at least 1985.

Mr. Reid notes that scientific technology has the ability to impair his reading. It has the ability to rewrite things that he has written. Scientific technology coaches other inmates. Coaches his legal team, so that they will follow in this overarching and overwhelming scientific experiment.

Mr. Reid's belief, in my opinion delusional belief, that scientific technology controls so much of his life that he has foregone any activity related to his trial and his legal proceedings. As he said to me, I haven't spent five minutes on any legal proceedings. Most of Mr. Reid's time has been involved in trying to expose scientific technology.

Q. To whom?

A. Well, initially to his legal team. But as one becomes involved with Mr. Reid, they often become, in his opinion,

part of that scientific technology, since everyone is being coached, myself included. Anyone that's visited him, anyone on his legal team, the other inmates, the other correctional officers, they are all part of this delusional constellation.

Q. So people that he meets in the ordinary course of his daily affairs become part of the delusion?

A. That's correct. In some way or another, they become part of the -- they may give him certain signals that let him know that they are part of it. They -- and what happens is that his delusion really is informed by his neurological deficit, for example. Mr. Reid has impairments in what's called episodic memory. This is a memory that allows you to recall a story, recall a short story, perhaps recall what you had for dinner last night. Mr. Reid may be able to recall that event, but his ability to sequence the facts of that event are often impaired.

Mr. Reid believes, for example, that things that his attorneys have said to him or things that have occurred at previous times in his life repeat themselves. And that in fact his attorneys have said -- are saying the exact same thing to him that they said a year ago, for example. He gave me a description of in his first trial the judge in his trial and the district attorney said certain phrases that had to be part of a transcript they were given of his life in 1986 because this was something that happened in private and no

one knew that. And obviously the only way that they could have known that was for them to have been given his transcript by scientific technology.

So what you see is the neurological impairments of memory, of sequencing, of mental flexibility intertwined and in fact create and inform the delusional material.

Q. What is the progress of this disease or damage? Does it improve, does it get worse, and have either occurred in this case, to your knowledge?

A. Most neurological impairment that is congenital as opposed to acquired deteriorates over time.

Q. Gets worse?

A. Gets worse. And gets worse at a more rapid rate. For example, children that are born with Down's Syndrome, for example, Trisomy 21, will develop dementia often at a much faster rate. Will in fact become demented at times in their late thirties, early forties. So you see that congenital impairments of the brain tend to get worse over time, and Mr. Reid described to me a real change in these last six years with him where his memory, his ability to read has become impaired. He often feels as though scientific technology precludes him from being able to write effectively. He described it there are times when his thinking, the word that he used, was more incoherent than it had been. So he certainly sees a decrease in these last six years.

Q. Referring again to Exhibit 1, Dr. Amador's affidavit, paragraph 25. I am sorry. Yes, paragraph 25 at the next page after number 25, so it is five lines up 26. During my one-hour conversation with him today, he became paranoid about me and accused me of being manipulated by ST.

Then it goes on and says, This is the first time I have been incorporated into his delusions in this manner.

Did you speak to Dr. Amador about that?

A. Yes, I did.

Q. Does this indicate to you anything about the progress or progression of the illness?

A. Yes. Well, there are two parts to it. Let me rephrase that. Certainly in any paranoid delusion, particularly those that are caused either by schizophrenia or by any organic paranoid delusion, people become involved and included in those paranoid delusions as time goes by. So it is not unusual that Dr. Amador, given his contact with Mr. Reid, would become involved in that paranoid delusion.

But the sequence in which that occurs should be clear as well. And the sequence is you become involved in the delusion, and then you become told that you are involved in the delusion. So the fact that there is two things that are important here, not only that Dr. Amador is now involved in the delusion, but that Mr. Reid felt it important that Dr. Amador know that he was in fact involved in Mr. Reid's

paranoid delusion.
Q. He goes on in paragraph 28 to state, Today Mr. Reid's speech was pressured. His thought processes were disordered, and several delusions, hallucinations were readily apparent. His mood fluctuated from warmth and affection to anger and paranoia. In the time that I have known him, I have never found him to be this ill and out of touch with reality.
Did you speak with Dr. Amador about that, and did you rely upon this information?
A. Yes, I did.
Q. Would this indicate that he is better or worse off than in 2003, for example?
A. He is certainly symptomatic in ways that we have not seen since 2003. These are the types of symptoms that really created multiple diagnoses for Mr. Reid. The idea that his mood is fluctuating certainly would speak to the 2003 evaluation of Dr. --
Q. Amador?
A. Blocking on his name. Caruso.
Q. Okay.
A. Dr. Caruso.
Q. That's in the appendix also, and you relied upon that?
A. That's correct. Who diagnosed him as schizoaffective disorder, which you have to have kind of this mood fluctuation. Mr. Reid has also been on Lithium in the past,

which again you have to have these kind of mood fluctuations, so it really speaks to a level of both emotional as well as cognitive deterioration.

Q. You refer in your affidavit the most recent one at paragraph 16 to Mr. Reid's writings. And that they are reflective of his inability to understand his legal position, et cetera. Could you tell us a little bit about that.

A. Mr. Reid has a symptom of temporal lobe impairment that's called hypergraphia. And hypergraphia is just what it says, a lot of writing, hyper graphic. And Mr. Reid writes fairly often. He writes a lot. It is his belief that he is able to remember long conversations verbatim and to go back to his cell and write those conversations word for word, except for the impairment of scientific technology from time to time.

The writings that I have seen of Mr. Reid, and I have not had the opportunity to read the entire tome is about 800 pages long. There are other series of letters, et cetera. But what I have read, and as Mr. Reid described to me, very little of this writing reflects anything about his court case. In fact, the great majority of this writing reflects his ability or his desire to expose scientific technology and to allow the world to know that he is the last or the latest of a series of scientific technology experiments that include President George Bush, Senior

fainting in Japan, President George Bush, Junior choking on a pretzel in the White House, the fatal airplane accident of John F. Kennedy, Junior and others, the development of Alzheimer's by President Reagan.

When you look at Mr. Reid's writings, they are all they are consistently about the impact that scientific technology has had on him and on his life.

And the other part of his writings are about his history, his life in Texas. It is extraordinarily inaccurate from the facts that I have available to me. So what's missing, and Mr. Reid acknowledges to me what's missing, is an ability to focus on his case, an ability to utilize his attorneys to further his legal position.

Q. Let me turn to that standard under Rees versus Payton. Is Mr. Reid suffering from a mental disease or defect?

A. Yes.

Q. And you have given us that diagnosis?

A. That's correct.

Q. Does that disease or defect prevent him from understanding his legal position and the options available to him?

A. Yes.

Q. How so?

A. Mr. Reid believes that his legal team -- well, there are a number of ways. First of all, as relates to his team. Mr.

Reid believes that his legal team, his entire legal team is totally under the control of scientific technology. The last time that I saw Mr. Reid last week, I went in with one of the investigators, Ms. Westfall, and one of his lawyers, Ms. Gleason. And Mr. Reid started the conversation out with -- I am sorry, that's not accurate. With Ms. Westfall and Mr. Hare. And Mr. Reid started the conversation out by singling out Ms. Westfall and saying that he wanted to apologize to her. Apparently he had said some difficult things to her earlier in a previous conversation. And when I saw him, he wanted to apologize because he said he realized that she really did not have control over the series of events that occurred because of course she was under the control of scientific technology, just like all of us are.

As Mr. Reid and I talked, he would -- and he was very talkative. But from time to time, he would make it clear to me that, I realize that you are being coached, and I realize that you are under the control of scientific technology. They have told you what to --

Q. Referring you, you are the you?

A. Right. I am the -- right. I don't know how to say, yes. And that he recognized that I was really under the domination, under the direction of scientific technology.

I asked Mr. Reid how much time he had spent in the law library and how much time he had spent just researching

his case, and his direct answer was, I haven't spent five minutes in the law library. And it is interesting because in looking through the testimony from the 2003 hearing, similar questions were asked of Mr. Reid. And if one goes back and looks at Mr. Reid's testimony, you will see that when those questions were asked, Mr. Reid did not directly answer them. He did not say how much time he had spent. He did not say what he had done. Looking for that material.

And in fact, in the only instance that I am aware of in which Mr. Reid did look at the 2003 hearing, what he pulled out of it was that Mr. Olive had used a word and had used the word in the plural rather than in the singular. And by using the word in the plural, it was an indication that Mr. Olive knew that the scientific technology was in fact controlling the entire circumstance.

So this is really -- these are the ways in which Mr. Reid believes that scientific technology controls the entirely legal landscape.

Q. And another question. If you said he suffers from mental disease or defect, does that prevent him from making a rational choice among his options?

A. Yes.

Q. How so?

A. Mr. Reid's choices are driven by paranoid psychosis. Mr. Reid's choices -- for example, Mr. Reid's belief that his

attorneys are in collusion with scientific technology and, therefore, are not willing to explore legal avenues that he thinks are relevant, that his attorneys are not willing to file specific motions that he thinks are important, in spite of the fact that there is ample evidence that his attorneys have both filed motions and have been actively participating or attempting to participate in his defense. There is no evidence that Mr. Reid has, as he told me this, there was no evidence that Mr. Reid has read any of those motions. There is no evidence that Mr. Reid has referred to any of those motions. That every time that Mr. Reid has come out on the three occasions that I have seen him, the material that he has available has never been legal material. It has always been his own personal writings.

And I have had the opportunity, as I have noted, he has allowed me the opportunity to read many of those writings, not by a long shot all of them.

Q. Do those contain the scientific technology delusions?

A. That's correct. It is interesting because one of the things that Mr. Reid does is that he keeps a thesaurus and a dictionary. He has a list of words that he says he doesn't know. And in a very, I think, admirable way, he tries to list the words that he doesn't know and go to his dictionary and go to his thesaurus to look them up. If you look through that list, there are very, very few legal terms. They really

refer to a number of other things, travel or science, for example.

Mr. Reid talks about the Russian experiments were done in the thirties looking at low frequency radio emissions that made people sick. He's looked at other experiments that he believes made people sick in Oregon. He talks about these informations. But I asked him specifically, Have you spent time in the library? He said no. Have you reviewed law materials? He said no. In fact, what he told me was that he gets legal information about his case from the television. And as I already noted, that he hasn't spent five minutes looking at his case because he believes it is all under the control of his paranoid delusion, scientific technology.

Q. Well, does he believe he has a paranoid delusion? I think you may have misspoken there. It is under -- he has paid no attention to his case because it is beyond his control based on his delusion; is that?

A. Yes.

Q. Does he want to appear competent or incompetent?

A. He wants to appear competent. He believes that this is true. He believes that scientific technology is absolutely true. And he believes that scientific -- and he will say things like scientific technology talk to his mother and father and actually showed them videotapes as well as transcripts to show them that this was true, this were true.

He also recognizes that other people see this is very odd and don't believe it. And this is an important point because this is really when you are looking at trying to discriminate between schizophrenia and schizophrenia form psychosis, the kinds of psychoses that occur in neurologically derived illnesses, this is exactly what you often see is that the delusions are somewhat encapsulated. That is a poor word. Encapsulated means that it is kind of locked in, it only covers a small area. That's really not accurate. Mr. Reid can kind of function around it.

But he also notes that scientific technology affects his, eating, it affects when he wakes up, when he goes to sleep, and so it really is pervasive, really covers a lot of bases. However, as it relates to his legal system, it is his belief that it controls all aspects of his life and his legal system.

Q. Why isn't this just all made up?

A. Well, there have been some indications in the late seventies, 1978 perhaps, 1979 that there were mental health providers that believed Mr. Reid made up psychiatric symptoms. However, what we have here is an internal consistency. Mr. Reid would have to be a neuroanatomist, so he would have to know that not only is his would spelling be a part of temporal lobe problems, not only would language be a part of temporal lobe problems, not only would reading be a

part of temporal lobe problems, not only would having a weaker right hand be a part of left temporal lobe problems because what happens in the brain is that right at the edge of the temporal lobe right here, there is a called the motor strip. And this part of the brain right here, this motor strip controls the right.

Q. Pointing to the top of your above your left ear?

A. I am sorry. Right.

Q. Coming down the side of your head?

A. Down right the ear. That strip right there. The motor strip controls the right side of the body. There is a motor strip on the left side that controls the right side of the body. So Mr. Reid to have right-sided dominant hand weakness says that there is a problem in the left side of his brain. We have pictures of that. Consequently, to be able to manufacture not just the psychosis but each and every neurological impairment, structural impairment, functional impairment, educational impairment, academic impairment would be quite a feat.

Q. So you don't think he is making it up?

A. Not making it up.

Q. Or he is not malingering is the term of art in your field?

A. That's correct.

Q. You are confident of that?

A. Yes, I am.
Q. Do you have an opinion with respect to whether Mr. Reid has a rational understanding of why he is to be executed?
A. He -- yes, I do.
Q. All right. And it is?
A. Mr. Reid believes that he is to be executed because scientific technology cannot afford to be exposed. And they are more than willing to sacrifice him to keep from being exposed.
Q. Does he think he is poised to expose scientific technology?
A. He does. He is about 700 pages into it. He believes that there is a lot of editing that needs to be done. If you have actually seen his writing, you will see that there are multiple pages that are rewritten. That are pages that are glued to other pages. But he feels as though, what he tells me, is that one of the results of his death is to expose scientific technology to be the next in line of the Reagans and Bushes and Kennedys that have been affected by scientific technology. And that his death would further expose or make people wonder, wow, was Paul Reid right all along, and was there in fact scientific technology.
Q. Does he also claim innocence in that he will expose his innocence by exposing scientific technology?
A. Yes.

Q. Well, if he is on the verge of exposing scientific technology, why would he not continue his appeal because then he would expose them?
A. He believes that scientific technology has control of the entire legal process. And so he really has no ability in that sense.
Q. He is not -- is he using logic or not using logic?
A. It is not a logical precept.
Q. Let me go through some items and ask you whether you relied upon them in coming to your opinions in this case, sir.

And they are contained in the appendix. I don't think you have if I could -- you don't have this document this says Appendix Index at the top?
A. I don't think so.
Q. But many of the items that are in this index are items I believe that you have reviewed.

MR. OLIVE: If I could approach the witness, Your Honor, and stand next to him and show him this as I go through it.

THE COURT: Yes.

MR. OLIVE: Thank you.

Q. Actually why don't you just recite the ones that you have reviewed with the numbers that are there.
A. Sure. Attachment 2, psychiatric evaluation and

curriculum vitae of Keith A. Caruso, M.D.

Attachment 3, declaration and curriculum vitae of Xavier Amador.

Attachment 5, letter from Pamela Auble, Ph.D.

Attachment 6, handwritten letter to court clerk from Paul D. Reid, Junior.

Attachment 7, chart entitled Paul Reid, Junior axis one diagnosis.

Attachment 9, order of dismissal and transfer of case for civil commitment proceedings, District Court of Harris County, Texas, 7-24-78.

Attachment 10, PET scan images of Paul D. Reid, Junior.

Attachment 11, Killer tired of being a, quote, lab rat, unquote. Tennessean, 4-24-03.

Attachment 13, affidavit of Linda Martiniano, 6-22-06.

Attachment 14, affidavit of George W. Woods, Junior, M.D. 6-22-06.

Attachment 15, competency evaluation and affidavit by Pamela Auble, Ph.D., ABPP-TN, 1-15-05.

Attachment 16, affidavit of Kelly A. Gleason, 6-25-06.

Attachment 17, affidavit of Connie Westfall, 6-25-06.

Q. What were those last two? I am sorry, the numbers
A. Attachment 16 and 17.
Attachment 21, petition for post conviction relief, 9-23-05.
Attachment 27, petition for post conviction relief by and through Linda Martiniano, Kelly Gleason and Connie Westfall as next friend 5-23-06.
I believe that's it.
MR. OLIVE: Your Honor, many of these people are or will be available to testify depending on how the hearing gets bifurcated, but at this point in the proceeding I would move the admission of these documents only on the basis of basis of the expert's opinion. And I am not going to mark them all separately unless the Court wants me to. I think we have enough paperwork with the appendix that's been submitted.
THE COURT: They have been submitted with the petition. I will admit them under 703 as what he relied on.
MR. OLIVE: Thank you, Your Honor.
Q. Sixteen and 17, are those declarations of defense team members?
A. Yes.
Q. Do they indicate in your review of them whether over the last couple of years they perceived that Mr. Reid has deteriorated in his symptoms?

A. That's correct.
Q. And have you relied upon that deterioration?
A. Yes, I have.
Q. So to summarize, you do have an opinion to a reasonable degree of medical and scientific certainty as to whether Mr. Reid suffers from a medical disease and defect?
A. Yes.
Q. You have stated what that is similarly a opinion to a reasonable degree of medical and scientific certainty that it prevents him from understanding his legal position and the options available to him?
A. That's correct.
Q. And that prevents him from making a rational choice among his options?
A. That's correct.
Q. And similarly that he does not have a rational understanding of why he is to be executed?
A. That's correct.

MR. OLIVE: If I could have a moment, Your Honor.

THE COURT: Yes.

MR. OLIVE: Your Honor, on Attachment 14, which is the witness's own writings, I would move the admission into evidence not just as something he relied upon. I assume he wasn't relying on his own work to come to his opinion.

THE COURT: Any objection?

MS. SMITH: No objection.
THE COURT: Granted.
MR. OLIVE: For purposes of preliminary showing, Your Honor, I have no further direct examination.
THE COURT: All right.
MS. SMITH: Could I request a brief ten-minute recess to organize my notes prior to cross-examination?
THE COURT: Yes, ma'am, we'll take a brief break.
(A recess was taken.)
THE COURT: You can proceed any time you are ready.
MS. SMITH: Thank you, Your Honor. I apologize for the delay.
THE COURT: I am happy to give you the time you need to be prepared. You are entitled to that.
MS. SMITH: Thank you, Your Honor.
THE COURT: You are welcome.

CROSS-EXAMINATION

BY MS. SMITH:

Q. Dr. Woods, you testified about interviewing Mr. Reid on three separate occasions. Can you tell us the approximate length of those meetings, if you recall .

A. Sure. And I apologize, but I didn't catch your last name.

Q. Jennifer Smith.

A. Yes, Ms. Smith. Thank you.
I would say that they were about an hour and a half to two hours each.
Q. Okay. And are the dates of those reflected in your report?
A. Yes.
Q. Your most recent being I guess June 20th?
A. That's correct.
Q. That was just last week?
A. That's correct.
Q. Did you make any tape recordings of those conversations or video recordings of those meetings?
A. No, I did not.
Q. Okay. So we don't have any summary prepared -- did you prepare any summaries of the conversations?
A. No. My report is typically the summary of my meetings.
Q. Okay. The materials that you listed in terms of reviewing as a basis of your testimony those listed in the appendix index, is that an exclusive list of the materials that you reviewed prior to your testimony here today?
A. No.
Q. Okay. What else did you review in addition to those materials listed in the appendix?
A. I reviewed the neuropsychological testing of Dr. Pamela Auble and Dr. Danny Martel, and I reviewed the testing as

well as their reports. I reviewed testimony of Patricia Allen Casey, of Daniel Martel, of Helen Mayburg, of Pamela Auble, Xavier Amador during the I believe it was the first 1999 trial. I reviewed a report by a Dr. Burnett. I reviewed a report by, as I mentioned, Dr. Caruso. I think that's about it.

Q. So is it fair, and this is what I am hearing you say, but is it fair to say that the materials that you reviewed were reports of other mental health professionals prepared in connection with litigation?

A. Yes. As well as the mental health reports previously from 1978 on.

Q. Okay. Did you -- do you base your opinion on or did you review in preparation for your testimony any other records or medical or mental health records of Mr. Reid?

A. I certainly took into consideration his mental health records from 1964 through 2000.

Q. Through 2000?

A. Yes. Through which would include his childhood records and early adolescence and early adulthood. I think that's about it.

Q. Okay. At the beginning of your testimony, you testified that one of the things that you do in your field is to look for the neurological aspects of behavior.

A. Yes.

Q. What steps did you take to ascertain Mr. Reid's behavior aside from your interviews with him?
A. Well, I reviewed his own writings. I reviewed the declarations of his legal team. I reviewed the reports of other mental health professionals that had interviewed him and his behavior while he was with them. I reviewed his behavior during the 2003 proceedings here as well as his testimony.
Q. Okay.
A. And I think that's about it.
Q. Did you interview any employee at Brushy Mountain State Prison or at River Bend to ascertain his behaviors in the course of his daily life at the prison?
A. No, I did not.
Q. Okay. Did you review any records maintained by the prison that would document his behaviors and any distress or other things that might be manifested through behavior at the prison?
A. Not at the prison. I think the only records that I reviewed of his behavior within a institutional setting was his the records the Rusk State Hospital and the Texas Department of Corrections.
Q. What percentage of your practice is clinical versus forensic?
A. About 30 percent of my practice is forensic. About 70

percent is clinical.
Q. Okay. What I hear you saying in your testimony, and correct me if I am wrong, essentially the delusional system that Mr. Reid has maintained from the time of his trial which you are aware of from reading the reports of his prior mental health professionals has essentially remained the same. It is the same delusional system; is that correct?
A. That's correct. It is deeper, but its basic premises are the same.
Q. It is the same set of basic beliefs about monitoring and scripting of his life and his legal proceedings and those types of things?
A. Yes. I would suggest that the only change has been a deepening of their impairment of his own intellectual functioning.
Q. Are you aware that he has stated in the past that those beliefs are just made up?
A. Yes.
Q. And you are aware that he has denied holding the beliefs at some times and he has stated that he holds the beliefs at other times?
A. Yes.
Q. So he has been inconsistent in what he relates to mental health providers or others in his the strength of those beliefs?

A. Well, there certainly have been times when he has denied those beliefs. I think the overall consistency has been an acknowledgment of them even at times when he has initially started to deny them. The only consistent denial that I have seen of these particular beliefs really occurred with Dr. Burnett in his interview. Even in 2003 in the court proceedings, he initially shied away from acknowledging those beliefs. But by the end of it, he acknowledged that they in fact existed. So I think you are right there have been times when he has denied them, but his consistent stance has been that they are there.

Q. So I think we agree that sometimes he says he has them, sometimes he says he doesn't. There are individuals who report that he has, and this is my term, bragged about his ability to malinger or words to that effect?

A. Back in the 1970s, yes.

Q. You testified earlier that you diagnosed a left temporal lobe dysfunction?

A. That's correct.

Q. And symptoms of that would include a history of psychosis?

A. Yes.

Q. Was Mr. Reid psychotic when you met with him in any of the three?

A. Oh, absolutely.

Q. He was psychotic?
A. Every time I saw him.
Q. Is he psychotic today?
A. Well, I haven't talked to him, but you can't see psychosis.
Q. There aren't behaviors that would manifest?
A. Not necessarily. What you really -- psychosis is really a disorder of thought rather than a disorder of behavior. So a person can in fact look like they are functioning totally appropriately. It is a thought disorder rather than a behavior manifestation.
Q. So your testimony is that you are able to determine what Mr. Reid's thoughts are?
A. No.
Q. In the absence of any manifestation externally?
A. No.
Q. You determine what his thoughts are based upon what he tells you?
A. Exactly.
Q. So you are relying on his reports to you?
A. That's correct.
Q. Okay. Now, on his the other deficiencies are things like language issues that you mentioned and learning disabilities?
A. Yes.

Q. That these are also manifestations of his temporal lobe impairment. Are you aware that Mr. Reid has completed college-level courses?
A. Well, I am aware that he's completed precollege-level courses to take college-level courses.
Q. He's completed a course, for example, in criminal justice?
A. I am aware of that. I know that most of his courses were courses to on how to study and how to be successful in college.
Q. He was able to relate to Dr. Matel during a previous evaluation the 13-step process in Tennessee for appeals in the capital punishment process?
A. Yes.
Q. So his learning and language disabilities did not affect his ability to retain that information and then to subsequently relate it to someone in an evaluation?
A. In that situation, that is correct.
Q. Okay. On the chart that you referenced, I think it was Attachment 7?
A. I think so, yes.
Q. The axis one diagnosis. Did you prepare that document?
A. No, I did not.
Q. But you indicated that you have reviewed all of the records on which the document was based?

A. That's correct.
Q. Okay. Turn to page six if you would. There were several diagnoses beginning in 1998 with Dr. Kessler, '99 Dr. Amador, I note that on several of these -- under the diagnosis comments, for example, the 3-12-99 entry for Dr. Amador lists incompetent to stand trial.
A. Yes.
Q. Okay. You are aware of course that the state court rejected that opinion and actually concluded that Mr. Reid was competent to stand trial?
A. I believe that's correct.
Q. Okay. And as well on the next page, March 6, 2000, the opinion of Dr. Pamela Auble of incompetence and the opinion of Dr. Keith Caruso in the next line of incompetence, those conclusions as well were rejected by the state courts?
A. That's correct. Actually and there is another difficulty with Dr. Caruso. He actually made the diagnosis of schizoaffective disorder rather than delusional disorder, so that's correct.
Q. Despite the fact in that top line there, March 29, 1999, Dr. Martel diagnosed delusional disorder and brain damage, his ultimate conclusion was in fact that Mr. Reid was competent to stand trial in spite of those disorders; is that correct?
A. I believe that's correct.

Q. And in fact, the state court so held that despite those disorders, Mr. Reid was met the standard for competence to stand trial?
A. I believe that's correct.
Q. Since I believe you stated -- well, let me ask you just to clarify. You have not reviewed Mr. Reid's medical records maintained by the Tennessee Department of Correction; is that correct?
A. That is correct.
Q. So you are -- maybe are you aware that or have you been -- has anyone reported to you that there is no notation of any mental health referrals in the course of his records at Brushy Mountain, would that surprise you if there was no mental health referrals?
A. No, it would not surprise me.
Q. Have you been informed that there were no mental health referrals during that period that he's been incarcerated?
A. I think that I am aware of that, although I don't have any verification or records to document that. But that was my understanding.
Q. Are you aware that Mr. Reid is not currently taking -- under any medication for any mental disorder?
A. Yes.
Q. And you testified earlier I think you would actually diagnose -- I mean you would actually prescribe some

medication were he in your care?
A. I don't recall saying that.
Q. I am sorry. I may have misunderstood you saying you might have recommended he take Lithium. Maybe you said he had a history of?
A. I did.
Q. I misunderstood you. Are you aware that there are no indications of mental illness in any of the records at Tennessee Department of Correction that would lead any of the personnel working there to make a mental health referral?
A. I not having seen those records, I would not be aware of that, but I would accept that.
Q. Would it surprise you?
A. No.
Q. That he is able to maintain himself in the prison setting without giving any indication of mental illness?
A. Well, I think that he has actually given -- let me back up for a moment because I think what he has is neurological illness with psychiatric manifestations. So the idea that somehow his behavior would necessarily have to reflect psychosis or some type of mental illness, I think it really comes out in ways that would probably not be recognized by the courts. His relationship with his attorneys. In his writings, for example, there really is no reason for the office-- for the correctional officers to read his writings,

for example. Or to tell him to stop writing that kind of thing.
Q. This again is based, if I understand it, on his representations to you, on his representations to his attorneys about his subjective beliefs?
A. And his writing.
Q. And his writings that might reflect his subjective beliefs?
A. It could, yes.
Q. Would you agree with me that there is aside from the writings now you have mentioned, that aside from the writings in terms of his affect, his behavior here in court, his behavior in his meetings with you that would indicate that he is not able to control himself or is not aware of his surroundings? I think I have asked you two questions in there, but if you can answer the two questions. Has he ever behaved inappropriately in your presence?
A. That's a very interesting question. Has he ever acted out in a violent or aggressive manner, no.
Q. Has he in your meetings with him does he appear to have maintained appropriate personal hygiene?
A. Yes.
Q. Is he well groomed?
A. Yes.
Q. Is he polite?

A. Extremely.
Q. Okay. Has he ever -- you answered he's never acted aggressively towards you?
A. No.
Q. He's never done anything to make you fearful?
A. No.
Q. Has he ever done or said anything to make you believe that he was not aware that he was in prison?
A. No.
Q. Has he ever done or said anything to you to indicate that he was unaware that he had been convicted of murder?
A. No.
Q. Has he ever done or said anything in your presence to make you -- to indicate that he was unaware that he was under a sentence of death as a result of the conviction?
A. No, he has not.
Q. So he understands the basic factual premise of his confinement?
A. I think basic is the telling word there. He believes that he was in fact set up by scientific technology and that the trial as well as his conviction are aspects of scientific technology's role. But does he understand the process that he went through, absolutely.
Q. Beyond the framing process, he understands that he is in prison under a judgment facing a sentence of death?

A. Yes.
Q. Okay. You referred as well to -- testified to Mr. Reid's long-standing delusions, and this gets back to the scripting and to the scientific technology. I believe you said that he had held those beliefs since 1985?
A. He says about 1985, yes.
Q. Again his report to you about how long he's held?
A. Actually there is also a declaration and testimony in 2003 of his brother-in-law, I believe Robert Kirkpatrick, who says that Mr. Reid around 1987 reflected this same paranoid ideations to him.
Q. I didn't mean to interrupt you. Go ahead.
A. So those are the two that I am most aware of, as well as his sister.
Q. Did he hold the same delusional beliefs in 2003?
A. Well, at least according to the testimony of the prior previous hearing, yes. He started out by denying them, but as you start to look particularly around page 19, I believe you will start to see that he does acknowledge that he believes there is a scientific technology. He does acknowledge that they have had some control over his life.
Q. Okay. Despite that belief, however, in 2003, he did ultimately sign a state post conviction petition; is that correct?
A. That's my understanding, yes.

Q. And that was his choice at that time?
A. Yes.
Q. You testified that he related to you that he hadn't spent five minutes working on any of his legal cases?
A. Yes.
Q. And it was your opinion that he had essentially foregone all legal activity in his cases?
A. Yes.
Q. Would it surprise you to learn that Mr. Reid regularly telephones his legal counsel once a week from the prison at Brushy Mountain?
A. No.
Q. Are you aware that he in fact is required to go through a written request to make those legal calls through the prison?
A. I wasn't aware of that, but I would imagine that would be true.
Q. So there is at least some period devoted to contacting legal counsel and then speaking with legal counsel on the telephone?
A. Yes. There is no question he calls his counsel.
Q. Okay. You testified that his -- about his belief, and this is the one thing that seems to be of more recent vintage, the fact that history repeats itself and he seems to be hearing the same things over and over?

A. I am not sure how recent that is. I certainly know that that's been my experience and his attorneys and investigators have noted that as well for the last several years.
Q. Did he relate it to you in 2003?
A. I didn't see him in 2003.
Q. Did you not testify in 2003? I am sorry.
A. I did not.
Q. I am sorry. That was Dr. Amador. I am sorry. You are aware, however, that he's had multiple capital murder trials?
A. Yes.
Q. So it would not be unusual to hear the same legal phrases over and over again?
A. No, that's absolutely true. If it were just legal phrases, I would agree with you, but in fact that's very important because the examples that I have been given have nothing to do with the law. They really have to do with other types of conversations, and the one, for example, that has to do with the judge and his district attorney actually relates to when he was eight years old and seeing himself in the mirror and not washing his face, so none of them really had to do with any legal statements.
Q. Must have misunderstood your testimony. I thought that you said that there were identical legal statements made to him by his attorneys and by the courts?
A. Identical comments.

Q. Okay. In his multiple capital trials, in his multiple competency hearings?
A. That's correct.
Q. And now his multiple gestures towards volunteering, it actually does seem like history repeats itself for Mr. Reid?
A. This is very interestingly neurological phenomenon called perseveration. It is really where a person like a neurological deja vu where a person will hear something and then they will believe that it occurred at another instance. And what it really reflects is an impairment of episodic memory where people can't recall exactly when something has occurred.
Q. But the memory lapses that you described don't appear to affect his ability to certainly to understand his legal situation?
A. I think they do.
Q. I think you said earlier that he understand he's been convicted?
A. Right --
Q. On a basic level?
A. I was going to say more to his legal situation than being convicted. Certainly he does understand that he has been convicted. He also believes that he is innocent and the reason why he was convicted was because of scientific technology controlling the legal process.

Q. You have worked, I know, on a number of cases in Tennessee, Dr. Woods, and you would agree with me, however, that many death sentenced inmates contend that they are innocent, would you not?
A. Yes.
Q. Some contend that they were framed?
A. Yes.
Q. So that is not unusual. You do just what you find unusual is from -- correct me if I am wrong -- is the basis of the framing, scientific technology aspect?
A. The pervasive quality of the framing.
Q. Okay. Are Mr. Reid's delusions unique to him? Has he made this up?
A. It is a fairly common -- I mean not the term scientific technology is perhaps unique, but it is a fairly classic paranoid ideation.
Q. Would it surprise you, for example, if I told you that the delusion about President Reagan being stricken with Alzheimer's could be drawn directly from the internet?
A. No. In fact, Mr. Reid acknowledges that he has been provided some of this information.
Q. From the internet?
A. From the internet.
Q. Okay. And Mr. Reid also draws some of his beliefs from literature, so to speak?

A. So to speak.
Q. The Warrior's Edge?
A. Yes.
Q. A book written about scientific technology?
A. Yes.
Q. And the use of low frequency radio waves to bombard individuals in a form of warfare that's nonlethal?
A. Yes.
Q. Okay. And the fact that much of this is based in a Soviet era research in the area?
A. Yes.
Q. So his delusions are actually based in -- there is some basis for them. He doesn't pull them out of the air?
A. No, because what you are really describing are reinforcements for his delusions rather than a foundation.
Q. Clearly others hold --
A. I am sorry. Let me finish. What you are really describing are reinforcements, things that he sees on the internet or various places that reinforce it. They are called ideas of reference. These really are the kinds of things that crystallize delusions rather than create delusions.
Q. Okay. Are conspiracy theorists delusional?
A. Some are, some aren't.
Q. Okay. Do you think that are you familiar with the

Warrior's Edge?
A. No, I haven't had the pleasure to read it.
Q. I didn't know if the subject had come up in any of your conversations with Mr. Reid. Actually I should ask you.
A. It actually had come up. He explained his perspective on it fairly thoroughly.
Q. Would you disagree that a lot of the delusions that he holds are based in that writing?
A. I think a lot of the delusions that he holds are reinforced by that rather than based on it. May seem like semantic, but what happens, what happens when someone develops delusion, things that occur in the environment, because they are scanning the environment for a reinforcement of their delusions, becomes incorporated. Like the Warrior's Edge and this stuff in Oregon, those are really things that reinforce his belief rather than shape his belief.
Q. Okay. So if his if he is expressing beliefs that are identical to statements contained in an attachment to a letter filed with this Court on November 17th, 2003, the identity of his beliefs with this writing is coincidence?
A. That are identical to what?
Q. If his beliefs are identical to the contents of the writing?
A. So are you saying that he wrote a letter to the Courts and his beliefs are identical to what he wrote?

Q. I guess I am trying to figure out your point about the reinforcement. I guess I am trying to clarify that.
A. Sure.
Q. What I am confused about is if Mr. Reid makes statements that appear to be identical in many respects to this writing, that in his letters to the Court, to others he seems very focused on this writing?
A. Uh-huh.
Q. And it's come up in your meetings with him. Is it simply coincidence that his beliefs would coincide with that?
A. I see what you are saying. No. It is paranoid ideation. A delusion is a false fixed belief. And once you -- once a delusion has crystallized, you can only think so many things. So you are right in the sense that a paranoid delusion over time as becomes increasingly fixed, it is going to sound very, very similar because it is not like he said Dr. Amador is now a part of the Navy Seals, right? Became a part of scientific technology. And that's what happens in paranoid delusions is that they get information that fits the delusion, reinforces the delusion, and in time becomes part of the delusion.
Q. So he would then adopt portions of this writing as part of his delusion; is that?
A. That's yes, adopt is probably -- adopt implies a level of will that I would probably not agree with of weighing and

deliberation, but certainly they become incorporated into his delusion.
Q. While we're talking about that, I think you had discussed the reasons why you did not believe that Mr. Reid is just making this stuff up?
A. Yes.
Q. And one of the things that you said was that his symptoms are too consistent with the illness itself?
A. Yes.
Q. For him to be making it up. Number one, he is too consistent?
A. Internally consistent, that's correct.
Q. And number two, they are -- in terms of his behaviors. And then number two, they are very consistent with the actual symptoms?
A. That's correct.
Q. Okay.
A. The nonpsychiatric symptoms.
Q. Okay. It is true, however, and I think that you have reviewed much of this testimony based upon the index of attachments, that Mr. Reid has now sat through three trials, multiple competency proceedings where he has listened to experts such as yourself describe all of the symptoms for all of these diagnoses that he's been given; is that correct?
A. That's correct.

Q. He soaks this stuff in as he's sitting in these proceedings; isn't that correct?
A. I could not go that far. He certainly is sitting here.
Q. He's known to adopt writings from the Warrior's Edge. And I know you don't like the use of that word, but certainly those reinforce his beliefs, you said?
A. They reinforce his belief. That's a different question than whether he absorbs this information here. I think that we have got to separate out what happens in court, for example, the psychological testing of Dr. Martel.

When you look at the personality assessment inventory, when you look at the Minnesota Multiphasic Personality Inventory that Dr. Martel did, neither one of them reflect malingering. And that would have been a great opportunity for Mr. Reid to in fact show how he were malingering, to show how psychotic he was. But Dr. Martel, who was a state's witness, first of all, made the diagnosis that Mr. Reid was in fact delusional, a delusional disorder. And then noted if you look at his testing rather than his report, what you will see is that these were defensive profiles. These were profiles, as Dr. Martel noted, where he actually minimized psychiatric symptoms. So in spite of that minimization of psychiatric symptoms, Dr. Martel still found that he had delusional disorder. Although he did not find that, like you said, that he met the statutes of competency.

Q. Would you agree with me that delusions are entirely subjective with the individual? Is that an accurate statement?
A. I am not sure what you mean by subjective.
Q. It is something that only that individual really knows.
A. Wow.
Q. We can look at symptoms, we look at signs?
A. Right.
Q. But in terms of what that individual believes, that's based on what the individual states?
A. Symptoms are subjective. Signs are objective. And certainly you cannot open up one's brain and see a delusion. Nevertheless, what you look for is the internal consistency and the quality of impairment. There are really two. The broad category of delusions are ego-syntonic, delusions where people like their delusion and they enjoy it, and ego-dystonic, delusions where people suffer or feel as though they suffer. You are probably able to see ego-dystonic delusions more effectively than ego-syntonic, but they are subjective. Yes.
Q. Looking directly at the standard that we are here on today, your testimony, as I understand, is that Mr. Reid does suffer from a mental disease or defect?
A. That's correct.
Q. That involves his delusional system?

A. That's correct.
Q. You testified as well, however, that he has a factual understanding of his conviction?
A. He understands that he was convicted.
Q. He has a factual understanding of his death sentence?
A. He understands that he was sentenced to death.
Q. And he has an understanding based upon his action in 2003 that if he signs a petition, he gets a stay?
A. I did not ask him directly why he did that, so I could not -- it would be speculative for me to agree with that, but he certainly did that.
Q. He did that?
A. Yes.
Q. He did that in the face of a pending execution just as we have here today?
A. That's my understanding.
Q. In 2003, he suffered from the same delusional belief system that you describe here today?
A. Yes.
Q. Okay. I don't have any further questions.
A. Thank you very much.
THE COURT: Any redirect?
MR. OLIVE: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. OLIVE:

Q. Doctor, on that last question, if the scenario in 2003 was the United States Court of Appeals for the Sixth Circuit entered a stay of execution on Mr. Reid at that point was not facing execution, and only after he was not facing execution he signed a document that would allow his appeals to proceed in some other court, would that have any impact because the question to you was he knows if he signs a piece of paper he gets a stay, and if in fact there was a stay already, is that a different issue or a different question?

A. It is a different question.

Q. Why?

A. Because a stay for Mr. Reid is mixed. On the one hand, he believes that scientific technology is willing to sacrifice him. On the other hand, he believes that if he has more time to write about them, he may have a greater option of exposing them. So it is not logical, but having a stay in place certainly is a different issue.

Q. Also you say that he understands his conviction, or you were asked if he understood his that he was convicted and he is under a sentence. And I want to explore that in order to understand. A parrot can be taught to say, I was convicted and I am sentenced to death; is that not correct?

A. Yes.

Q. Whether they have an understanding of that would be facetious. They just are parroting words; is that fair?
A. Yes, I think recognize would probably be a better word.
Q. What does he actually believe as opposed to what does he actually say?
A. He believes that he is innocent. He believes that scientific technology has the tapes since they tape his entire life. That scientific technology has the tape to show that he is innocent and that they are purposely not providing that tape to further this experiment, to continue this experiment.

He believes that scientific technology controls his attorneys. And limits their ability and influences them directly in their ability to provide him legal options. And he believes that the only way -- and the scientific technology has -- is willing to sacrifice him in order to not be exposed.

Q. You were asked what other than what he said to you in face-to-face meetings indicated that he was mentally ill, and you responded it is a disorder of thought, not behavior. Do you recall that?
A. Yes.
Q. And there was a line of questioning that suggests that if, for example, prison guard or people in his environment don't detect signs of mental illness, then he is not mentally

ill. Is that what you were getting from the questions?
A. Perhaps the inference.
Q. What's your reaction? Do you have patients who have delusions that other people don't know about?
A. Absolutely.
Q. Why not?
A. Because paranoia is designed to organize. It depends upon the kind of delusion that you have. If you have an erotomanic delusion, for example, that is based upon some type of sexual acting out it is more difficult to keep that hidden. If you have a grandiose delusion where you think that you are the King of England or something, it is more difficult to keep it hidden. But paranoid delusions are delusions that organize your life. Paranoia organizes your life. Unfortunately, it organizes your life through a paranoid filter so it is not an accurate perspective. And that's why thought disorders, thinking are really the hallmark of paranoid delusions.

If I could just tell a quick story.

Q. Sure.
A. I have a client I saw him down where I shop, and he is a high functioning paranoid schizophrenic. As I was watching him walk down the street, he didn't see me. As I was watching him walk down the street, he would walk six or seven feet away from a person, and then he would get close to the

next person and he would walk six or seven feet away from them. Then he would get to the next person, and he would walk six or seven feet away from them. If you were to look at him and you didn't know him -- I asked him what was going on the next time I saw him. You would think that he was just kind of walking down the street. He had his bags of groceries. He was dressed a little bit strangely, but I live in California so. . .and so when I asked him, he acknowledged that he was afraid of -- this is his delusion -- other people having germs. I had never seen him out of my office. And he was afraid, and so this is the way in which he maneuvers through the world. But he every day he pays his rent, he does these everyday things. He just has this paranoid delusion.

Q. One of the things that you said in response to where you got your belief about his behaviors beyond what he told you was what he had written?

A. Yes.

Q. Things he had written. And you were asked about apparently letters that he had written to the court?

A. Yes.

Q. Have you had an opportunity to review all of the letters that he has written to this court, for example, since 2003?

A. A number of them. I hesitate to say all of them, but I have read quite a number of them.

Q. Okay.
A. I don't know how many are available.
Q. Would you like to be able to read all of them?
A. Yes. I think I probably have. I have read a lot of them.
Q. Okay.
MR. OLIVE: Excuse me, Your Honor. If I can have a second.
THE COURT: Yes, sir.
BY MR. OLIVE:
Q. With respect to his writings, have you heard in the course of your dealings with the case of the term of depositions or the deposition that Mr. Reid was writing?
A. Yes.
Q. And have you had occasion to see actually any part of or all of now 172-page --75-page document entitled Autobiography of Paul Reid in Deposition Form?
A. Yes, I have.
MR. OLIVE: If I could have this handed to the witness. I have an extra, Your Honor. I don't know if you are interested in this two inches of paper or not.
THE COURT: Yes, you can hand it up.
BY MR. OLIVE:
Q. Are you aware that Mr. Reid writes this out in handwriting and sends it to his lawyer's office?

A. Yes, I have actually never seen the -- I have seen the handwritten form. I have not seen the typed form.
Q. And that it gets typed up, returned to him and then he suggests edits?
A. Yes.
MR. OLIVE: If I could have the witness look at this next. I have a copy.
BY MR. OLIVE:
Q. Let me ask you, sir, a hypothetical. Is it a behavior worth noting with respect to your diagnosis that a patient would write this delusional -- if it is delusional story, send it to the office of his attorney, get it back typed up, make edits in it with the suggestion that he was going to use this to expose scientific technology in the near future. You were asked whether there were any behaviors that you observed. Is this writing a behavior?
A. No -- there is no question in my mind, and his writing certainly had a -- was important factor in me looking at his delusions. I might add also was important factor in me looking at his neurological deficits.
Q. Explain that.
A. When you look at his writing and particularly when you look at his handwritten, although this is very useful as well, you see a number of things. On the first page if you were to look at on the left hand side where there are

names --
Q. You are looking at a document we have not identified. The thick document I will have marked as Exhibit 2, the one in your hand right now. And that is the typed up version of the deposition.
A. Okay.
MS. SMITH: Your Honor, may I just interpose an objection to this document? It's not been properly identified, authenticated.
THE COURT: Granted.
MR. OLIVE: Well, Your Honor, I can tie it up later with the people who typed it up and have gotten it.
THE COURT: He says he's never seen it. I can't admit it into evidence when he's never seen it.
MR. OLIVE: May I proffer it?
THE COURT: You can mark it for identification, yes.
MR. OLIVE: Should I just write on it, Your Honor?
THE COURT: Hand it to the court clerk.
BY MR. OLIVE:
Q. If you will assume, Doctor, that this is information that was written and provided by Mr. Reid and typed up by the at his attorney's office. Just assume that.
A. Yes.
Q. That that's the chain of custody.

A. Yes.
Q. All right. Having never seen that first page before but with that information, is that document significant?
A. Yes.
Q. Why?
A. There are words on the first page of this document that are consistent with words on the first page of the handwritten document that I have seen that are the same.
Q. Such as?
A. Scrutator, s-c-r-u-t-a-t-o-r. F-i-n-e dash b-o-u-c-h.
The first scrutator which is, as I said, a word that I had seen and the sentence that I had seen in his handwritten are examples of neologisms. Neologisms are words that are basically created out of whole cloth and reflect impairments in expressive aphasia.
Q. Is that a symptom of the diagnosis?
A. That's correct. That's a symptom of left temporal lobe impairment. If you also look at the language on this page which is consistent with the language that I have seen on his handwritten pages, you will notice that almost every sentence there is either a translation of a French word or a identification of another word. For example, a definition he defines chronicle is history. This is an interesting form of language called stilted language. And stilted language is again a reflection of psychotic thought. Stilted language is

a reflection neurologically of impaired expressive language. Particularly Broca's area number 38. Broca's area is an area in the left temporal lobe that controls both expressive and receptive language. When you have impairments in Broca's area, you have this type of expressive language that often gets unusual. And this page is consistent with what I have seen in his writing in terms of his impairments in expressive language.

Q. With respect to behaviors beyond what you picked up by sitting and speaking with him that you were cross-examined about, you mentioned family members. In the appendix we have a declaration of Janet Kirkpatrick from 4-25-03 of Attachment 1. Did you rely upon that?

A. I don't recall actually seeing Ms. Kirkpatrick's declaration.

MR. OLIVE: Can I approach the witness and see if it refreshes his recollection?

THE WITNESS: I am sorry, I actually had seen this. I apologize.

BY MR. OLIVE:

Q. So is that a family member describing history of mental illness?

A. Well, what she notes that 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 has

tried to give up his appeals is because of his illness. Paul is not acting rationally, although she does not in this declaration describe his history of mental illness.

Q. Thank you. And you did mention the declaration of another sister?

A. That's correct.

Q. Who is that?

A. Linda Martiniano.

Q. And that's Attachment 13. You did review that one?

A. That's right.

Q. Which reflected comments about mental illness and not acting rationally?

A. That's correct.

Q. And you referred to a brother?

A. Actually brother-in-law.

Q. What was that information?

A. Mr. I think it is Robert Kirkpatrick is the brother-in-law of Mr. Reid and in fact met him while they were both at the Alice 2 unit in Texas's state prison. Subsequently married Mr. Reid's sister. And Mr. Robert Kirkpatrick noted these paranoid ideations, this belief that he was under control. Him being in the house and being frightened. This was after he got out of Alice 2. And being concerned about the government controlling family members even as early as 1987-1988.

Q. You were asked about whether you knew that Mr. Reid called his attorney on a weekly basis.
A. Yes.
Q. You said you were aware of that?
A. Yes.
Q. Are you aware of the content of those conversations?
A. Only through the declarations of the attorneys and paralegals and investigators.
Q. And if there were tape recordings of any of those conversations, would that be something you would want to listen to or be able to listen to?
A. I think it could be useful.
Q. The implication was that legal strategy or information was being exchanged during these telephone calls. Was that the implication that you took from the question?
A. Well, the implication was that because he was contacting his legal team?
Q. Yes.
A. The inference was that something useful.
Q. And he was keeping up with his legal affairs?
A. Exactly.
Q. Is that your understanding of what happened during those calls?
A. Not certainly not from the team itself, from Ms. Gleason or Ms. Westfall or Mr. Hare, nor from the declaration.

Q. You mentioned that Dr. Martel in his testing found a, quote, defensive profile, closed quote?
A. Yes.
Q. That is where someone is trying not to be found abnormal?
A. That's right.
Q. So the opposite of it is malingering the wrong way. It is malingering to be found normal?
A. Dissimulation is the larger category. Dissimulation is the presentation of psychiatric symptoms of inaccurate psychiatric symptoms. Malingering is the development of psychiatric symptoms. Defensiveness is the minimization of psychiatric symptoms. And so what we see in his testing was that we had two defensive profiles which means that he was malingering -- I mean he was minimizing his psychiatric symptomatology.
Q. Is that is it since you have a test for it, is it fair to say that it is not uncommon for someone who is mentally ill to minimize it?
A. That's correct.
Q. Is it common?
A. Called denying.
Q. Is it common?
A. It is common.
Q. You were asked whether you had reviewed any prison

records or whether there was anything in any prison records to indicate any mental illness or disease or defect; do you recall that?
A. Yes.
Q. Were you aware, and I am not sure whether you were or you were not, that Mr. Reid was evaluated by a prison psychologist in 2003-2004, given an MMPI II that had an invalid profile and a defensive profile?
A. No, I was not aware.
Q. What is an MMPI II?
A. Minnesota Multiphasic Personality Inventory, Second revision. The first revision came out in 1948, which was a great year, but that's another issue. And the second came out in 1996. And so this is the second revision of the Minnesota Multiphasic Personality Inventory. A defensive profile is a --
Q. Begin with invalid profile.
A. An invalid profile means that you cannot take that profile based upon the findings that have been presented.
Q. And if the conclusion was that the reason it was invalid is because he was trying to appear normal, would that be a defensive profile as you put it?
A. That is a defensive profile.
Q. Would it be relevant to you that in taking a MMPI II, Mr. Reid produced an invalid defensive profile?

A. Yes.
Q. Why? And in 2002-2003 given by a prison psychologist?
A. First of all, it would be consistent with the MMPI II that was given by Dr. Martel. And secondly, it really reflects someone that is not trying to present themselves as having psychiatric problems. It is actually someone that is minimizing any possible -- see, a defensive profile means you are not even responding like someone every day would respond. You know, like someone, okay, this is going on. I have good days. I have bad days.

A defensive profile really reflects someone that is minimizing any type of psychological issue. And that's when it gets to a certain level, that's why it becomes invalid because we all have bad days.
Q. You were asked about the fact that Mr. Reid has sat through court proceedings and has heard and seen legal terms and legal actions and how that might relate to his memory issues of, oh, that's happened before. Do you recall that examination?
A. Yes.
Q. Do you recall instances related by his defense team where they would say something to him and he would immediately say, You said that the last time you were here, or, You said that in 2003, that sort of episode, when it simply wasn't true?

A. Yes.
Q. So the fact that he might have heard legal terms or not or seen things in court or not doesn't impact on your, what did you call it, deja vu neurological?
A. Neurological deja vu or separation.
Q. Why not?
A. Because the instances and examples that Mr. -- that his legal team provided really had nothing to do with legal conversations. They really had more to do with really casual conversations that they would have rather than specific legal issues.
Q. I don't understand how the brain defect would have someone see something occurring in front of them and within moments say that happened last week. How is that a memory problem?
A. It is called confabulation. It really is a function of what we call episodic memory. In order to remember something, you have to have all three components of your memory working. You have to have registration, which means that you get it in. You have to have retention, which means that you are able to hold it. And you have to have recall, which means that you are able to pull it back at the appropriate time . The temporal lobe really controls a lot of memory. And so if you don't recall something in proper sequence, if you can't say, oh, well, this happened here and

this happened here, if you don't recall something in proper sequence, then you can present it in an inappropriate sequential pattern. You present it at a time when it really didn't happen. This is what's called confabulation. Mr. Reid's memory problems are such that he can certainly register stuff. He can get it in. And he can certainly recall it from time to time. He can tell you that something happened. But he doesn't always because of the middle temporal area that controls this kind of memory, he doesn't always sequence it properly. So to say that something happened then and now it is happening again is a sequential error. It is a neurological error of sequence.

Q. Dr. Amador in his affidavit upon which you relied and in his discussions with you perhaps indicates that he ends conversation yesterday with Mr. Reid told him that his mother, Dr. Amador's mother, had died recently. Do you remember that?

A. I do know that she had died recently, yes.

Q. Do you remember the conversation or him relaying the conversation he had with Mr. Reid about it?

A. Yes.

Q. And within moments Mr. Reid said, Wait a minute, you told me a year ago or four years ago she died? Do you remember this?

A. Yes, I do.

Q. Is that an -- what do you make of that?
A. Well, that is an example of the type of sequential behavior, this inability to sequence properly. This is what happens with long-term alcoholics that say or people that have Alzheimer's that will lose their keys and they will say, Someone must have taken my keys. Who moved my keys? Where did they go?

And that is really this problem of sequencing. Because Mr. Reid has two parts of his brain that work relatively effectively, but he's got the gate that does not work. And so consequently, this kind of stuff comes through at inappropriate times.

Q. So when he goes to recall what he's been told, he pulls it from a different time?
A. Yes, out of sequence, right.

MR. OLIVE: If I may have a moment, Your Honor.

THE COURT: Yes, sir.

BY MR. OLIVE:
Q. Do you have any knowledge about the quality of healthcare and monitoring in the prison system that you were asked about on cross-examination?
A. I don't have any direct knowledge.
Q. Would that be relevant?
A. Of course.
Q. Why?

A. Having an understanding of the training as well as the access to both neurological as well as psychiatric care would be very important in an understanding of how effectively people with neurological disorders that have psychiatric manifestations are treated.
Q. And if a unit manager -- you know what a unit manager is, that sort of convey the information you need from your contact with prison systems?
A. Yes.
Q. For some a person who had responsibility for overseeing a given number of inmates were to testify that their impressions of the inmate, would it help you to hear of those statements to assess whether they could or couldn't affect a diagnosis?
A. It certainly could.
Q. Thank you, sir.
THE COURT: Anything else from this witness?
MS. SMITH: Nothing further, Your Honor.
THE COURT: Thank you, sir. You can step down.
THE WITNESS: Thank you.
THE COURT: You are welcome.
(Witness excused.)
MR. OLIVE: If I could have a moment, Your Honor.
THE COURT: Yes.
MR. OLIVE: Your Honor, based upon the Court's

comments and directions at the beginning of the hearing and with the intent of making the preliminary showing through a preliminary hearing and with all of the documents that the Court has before it and the testimony that's been submitted and the exhibits, we think we have crossed that threshold.

We would be happy to continue with the hearing on the merits, but we think we have hit the threshold if that's the bifurcation that the Court wants. Sound like that's what the State contested was both the first step and the second step, and we think we have satisfied the first step.

THE COURT: I understood their comments to mean they were contesting both steps. So you have put on all of the proof you want on the issue of the preliminary showing of whether there is any evidence that would raise a reasonable doubt about his competence?

MR. OLIVE: Correct.

THE COURT: Ms. Smith, is there anything, any evidence you would like to put on that preliminary hearing stage?

MS. SMITH: Could I have one moment, Your Honor?

THE COURT: Yes.

MS. SMITH: Your Honor, I don't think we have any evidence to put on at the preliminary hearing stage. I think our position would be --

THE COURT: Why don't you come summarize your

position then?

MS. SMITH: Just in terms of the initial showing, Your Honor, I think that our position would be that the testimony of Dr. Woods was sufficient in and of itself to establish, number one, that Mr. Reid has an understanding of guilt or innocence, the process of framing the legal system itself, he understands he is a participant in it at least nominally. And he understands at least in his past actions I think this Court can take notice of his past actions in 2003 the fact that actions on his part actually have some effect in that process, and I think that was borne out by Dr. Woods' testimony, despite the delusional belief system that he may operate under that he does have an understanding of the legal system, and he does understand had his actions make a difference in that, so that would be our position that the testimony that the Court has heard so far does not meet the threshold.

THE COURT: Thank you. Any summary by the petitioner?

MR. OLIVE: No, Your Honor.

THE COURT: Well, as I indicated at the outset of this hearing, the direction to this Court from the Court of Appeals when it reversed the previous decision of the Court is pretty direct and clear. The court said that the following would apply. Criteria for the Court at the

preliminary hearing is to determine whether there is any evidence that would raise a reasonable doubt about Reid's competence and entitle him to a full evidentiary hearing on the issue. And the standard dealing with the word competence would be Rees standard, Rees versus Payton, and that's whether he has the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder or defect which may substantially affect his capacity in the premises.

Based on the testimony of Dr. Woods and the documents that he's relied on, I think the petitioner has met the standard. It is a fairly low standard. It is any evidence, I repeat, any evidence that would raise a reasonable doubt about competence. And petitioner has made that threshold showing under Harper versus Parker.

So then the next question is about the full evidentiary hearing. The Court of Appeals expressed before that the State be given a full opportunity to evaluate Mr. Reid and present evidence concerning his competency. And so I need to hear from the State whether they have had a full, fair opportunity to develop all of the evidence they want to develop.

MS. SMITH: Your Honor, I hate to ask the Court's indulgence again. Because I think that my answer to this

question may very well have an impact on this evening's proceedings, I would ask if the Court would permit me some additional time to consult with my supervisors, my superiors at the Attorney General's Office before making that recommendation to the Court. I can make it if the Court forces me to, but I would prefer to --

THE COURT: I want to you make an informed decision. I understand that the Attorney General of the State of Tennessee is the officer holder and that you may need to confer with him or others, and we can take a break for you to do that. That may not be who you are inferring that you need to talk to, but I understand that it is a group decision I guess is the way to put it.

MS. SMITH: I don't mean to delay, and I think a very brief recess. But my feeling from the Court's comments and my understanding of Kirkpatrick that it could very well have a bearing, you know, directly impact the proceedings this evening. So I would like to consult with others on that and give the Court an answer.

THE COURT: Okay. Mr. Martin, you should anticipate that I am going to ask you the same question of whether you have had a full opportunity to marshal the evidence you want to marshal and whether you are prepared to go forward. I want to hear from both parties on that. And if you have formed an opinion, you can express it now. Or if

you want to wait until after the State of Tennessee forms its opinion, that's up to you.

MR. MARTIN: I'd like to wait to hear what they say, and we will discuss it also during this recess.

THE COURT: Okay. We're going to take a recess. If you could let Mrs. Bush, the courtroom deputy, know whenever you are ready to proceed, then we'll do so. But we'll be on your timetable. Thank you.

(A recess was taken.)

THE COURT: Ms. Smith, have you had an opportunity to form an opinion?

MS. SMITH: Yes, Your Honor. I appreciate the time.

THE COURT: You are welcome.

MS. SMITH: Your Honor, the State wishes to exercise its right to have an expert evaluate Mr. Reid. And given the testimony presented today, we think it is important that we be able to have the opportunity to present countervailing expert testimony and to have an independent expert evaluation. However, that will not be possible this afternoon.

Under that circumstance and given the posture of the case, we do not think that a stay of execution is appropriate under Section 2251, which requires the filing of a proper federal habeas petition. And under this Court's

equitable jurisdiction, we do not think that Mr. Reid is entitled to a stay at this point, given the timing of the filing of this action. This execution date has been set since September of last year. It was reinstated in May of 2006. None of the evidence that Your Honor heard today is really significantly different than what was presented in 2003 the last time this case was before the Court. We think that the delay awaiting until nearly 36 hours before an execution is inexcusable and does not warrant the grant of equitable relief in the form of stay of execution at this time.

THE COURT: All right. Let me make sure I understand what you are telling me. You say that the State does want an expert on its behalf to evaluate Mr. Reid, but you are opposing a stay of execution because you believe it has been dilatory in terms of filing this action today, and the Court's otherwise not authorized to issue a stay?

MS. SMITH: That's correct, Your Honor. We don't have sufficient time, given timing of the action which was after business hours yesterday, to fully prepare for a full evidentiary hearing, including independent expert evaluation of Mr. Reid.

THE COURT: All right. Response.

MR. OLIVE: Your Honor, we would be asking for more time and a stay of execution in order to prepare for a

full evidentiary hearing, and Mr. Martin is prepared to address that.

I would address two issues. Certainly we don't oppose their evaluation. Obviously there is authority to enter a stay, as the Sixth Circuit did under similar circumstances in 2003. With respect to delay, as Your Honor foreshadowed three hours ago, everyone knew this was coming. No one has asked to evaluate the petitioner or Mr. Reid from the State side in the last three years. As noted by Judge Gassaway in this case in September of 2005, that transcript of the hearing there in this case, Mr. Reid's competency has always been an issue from virtually the date of his arrest. So this Court knows that this assertion of incompetence to file post conviction by Ms. Gleason and Mr. Hare is not some eleventh-hour contention. That his competency has been in question for a long time.

No one has been surprised by any of this. I can go through the timeline. When the Tennessee Supreme Court of 5-4-06 issued an opinion in this case in the state court action, 19 days later, the next friend petition was filed. Twenty-one days later, the Court acted on it. And then it went through the appellate process.

I note that it got here the day that it got here, but no one was surprised by that. It wasn't a maneuvering to get it here at some point in time. If the state trial court

wanted to act quicker, it could have. If the state Supreme Court wanted to act quicker in the decisions it issued just yesterday establishing the standards for competency in Reid's case, it could have.

I don't think that the public servants that have pursued this action have been dilatory. They have done what they thought was correct and proper, and it just is part of the nature of litigation that we're here at this time. So I think that if the State wants the evaluation, which is their right, having not asked for it previously, that under the authority of the last decision in this case, the stay would be appropriate to allow him to have and schedule full evidentiary hearing.

If you want to be heard on any of our reasons for a full evidentiary hearing and a stay, we can address that too.

THE COURT: Your choice. Mr. Martin.

MR. MARTIN: I had in the introductory remarks had indicated some of the things, kinds of things that we expect to do in preparation for a full evidentiary hearing if we got to that point such as doing exchanges of witness list, doing discovery. Probably would also do document discovery.

In addition, some items have come up based on the cross-examination by Ms. Smith of Dr. Woods that indicate to me that they intend to rely to some degree on some inference

of care within the Tennessee Department of Corrections. That's an issue that we would certainly want to investigate more. I have anecdotal personal information about quality of care, psychiatric care provided to inmates, but nothing to offer today that we would try to develop.

In addition, there is some indication that there would be testimony about or production of some documents from Tennessee Department of Corrections. We probably have some of those, but I don't have any confidence that we have all of those.

That's the kind of thing that we would do in preparation for having a full evidentiary hearing, which we would like to have following stay of execution in time to do that.

THE COURT: All right. Anything else that anybody wants to say about anything?

MS. SMITH: Just one very brief comment. Something that Mr. Olive said struck me. He said everyone knew this was coming, and that's exactly right. Everyone knew this was coming, but the State's hands are tied until the petitioner actually goes into a trial court and we're able to ask for an evaluation. So the timing of this lawsuit which was completely dictated by the petitioner, the Tennessee Supreme Court noted in the order issued yesterday the delay in even filing a notice of appeal from Judge

Gassaway's order in the trial court. It wasn't until Thursday of this past week that the petitioner moved for a stay of execution. The Tennessee Supreme Court moved very quickly on that after it was filed. But days and days went by before it was even filed in the court.

What happens is the petitioner has waited until 6 p.m. the day before a scheduled execution and almost guarantees a stay if the State invokes its right to fully defend against the claim.

It's put the State in untenable position and it is almost a built-in automatic stay, which we don't think the law provides for.

THE COURT: Thank you. The Court of Appeals in its previous decision granted a stay of execution such time as the district court has had an opportunity to conduct a full evidentiary hearing, allowing the State to evaluate Reid and to present evidence concerning his competency. That's exactly the situation we find ourselves in. And at this moment, accordingly, the Court has no choice but to grant the stay of execution, appoint counsel and give the State an opportunity to do an evaluation of Mr. Reid.

To the extent that it is necessary to certify an interlocutory appeal of the Court's findings, I am certifying it so that the State can appeal the Court's finding that there is any evidence that would raise a reasonable doubt.

And of course the State will have an opportunity to consider appealing the stay as well. I am going to reduce my order to writing, and it should be out sometime as quickly as possible early this afternoon, but the parties can go ahead and exercise whatever appellate rights they want to seek in light of the Court's order.

Anything else that we need to talk about today?

MR. MARTIN: Nothing from petitioner.

THE COURT: Thank you.

REPORTER'S CERTIFICATE

I, Cathy B. Leigh, Official Court Reporter for the United States District Court for the Middle District of Tennessee, with offices at Nashville, do hereby certify:

That I reported on the Stenograph machine the proceedings held in open court on June 27, 2006, in the matter of UNITED STATES OF AMERICA vs. RICKY BELL, Warden, Case No. 3:06-00632; that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript (pages 1 through 113) is a true and accurate record of said proceedings.

This the 27th day of June, 2006.

/s/ Cathy B. Leigh
Cathy B. Leigh, RDR, CRR
Official Court Reporter