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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RICHARD A. LEAVITT,)	
)	CASE NO. CV-93-0024-S-BLW
Petitioner,)	
)	CAPITAL CASE
vs.)	
)	AFFIDAVIT OF DAVID Z. NEVIN IN
A.J. ARAVE, Warden of the Idaho State)	SUPPORT OF EMERGENCY
Maximum Security Prison,)	MOTION FOR ACCESS TO
)	PETITIONER BY EXPERT AND FOR
Respondent.)	ORDER SHORTENING TIME FOR
_____)	RESPONSE

David Z. Nevin, being duly sworn, deposes as follows.

1. I am one of the counsel appointed by this Court to represent Richard A. Leavitt, Petitioner in the case pending before this Court in *Leavitt v. Arave*, No CV-93-0024-BLW.

2. We have been authorized by this Court to have Dr. Charles Honts interview Mr. Leavitt.

1 • AFFIDAVIT IN SUPPORT OF EMERGENCY MOTION FOR ACCESS TO
PETITIONER BY EXPERT AND FOR ORDER SHORTENING TIME FOR
RESPONSE

3. My office had arranged with Dr. Honts and the Warden's Office at the Idaho Maximum Security Institution (IMSI) for that interview to occur on May 18, 2012 at the hour of 1:00 p.m.

4. Yesterday, without notice to either of the counsel for Mr. Leavitt, the State of Idaho sought and obtained a Death Warrant in Idaho State court, which was apparently served on Mr. Leavitt late in the afternoon.

5. This morning, a representative of IMSI contacted my office and informed me that under I.C. § 19-2705, the prison would not permit Dr. Honts access to Mr. Leavitt because he was not an "agent" of Mr. Leavitt's attorneys pursuant to the statute.

6. The statute permits access to an inmate under a warrant of death only by his attorney of record and his or her agents. *See*, I.C. § 19-2705(3) [Persons under death warrant will be allowed contact visits with their attorneys of record and the agents of their attorneys of record. Such visits will take place subject to prison rules. No other contact visits shall be permitted.]. I.C. § 19-2705(5) states "For the purposes of this section, 'agents of the attorneys of record' means employees of the attorneys of record including investigators, paralegals, legal interns and mitigation specialists but does not include retained experts or other independent contractors of the attorneys of record."

7. Immediate access by Dr. Honts is required in order to represent my client. The warrant has set the execution for June 12, 2012. The Executive Director of the Idaho Commission of Pardons and Parole has requested that any documentation in support of a Petition for Commutation be filed as soon as possible. Counsel for Mr. Leavitt has informed

the Executive Director that we will be filing a formal petition no later than May 25, 2012, and supply supporting documentation prior to that date.

8. Without access to my client, I will be unable to prepare the commutation or clemency petition.

9. There is no rational basis for the statute's distinction between mitigation specialists, paralegals, and investigators, on the one hand, and outside experts retained by counsel, on the other. If Dr. Honts were on my staff, under the statute he would have unlimited access to Mr. Leavitt. Even though I arranged to accompany Dr. Honts to the prison, however, the state takes the position that he is excluded, absent a court order.

10. By establishing a short time period before the execution and then denying Mr. Leavitt access to persons who may assist in obtaining a commutation of that execution, the State of Idaho is denying Mr. Leavitt his rights to due process and equal protection of the laws, and imposing cruel and unusual punishment, in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments.

11. If immediate access is not permitted, Mr. Leavitt will be required to pursue a formal stay of the execution. At this time, no stay is being requested; however, it is requested that this Court issue the attached order immediately so that Dr. Honts can conduct his interview this afternoon as scheduled and previously approved by IMSI.

DATED this 18th day of May, 2012.

/s/
David Z. Nevin

