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### Pizzuto v. State Clerk's Record v. 1 Dckt. 47709

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IN THE SUPREME COURT OF THE STATE OF IDAHO

Gerald Ross Pizzuto, JR , Plaintiff  
vs  
State Of Idaho, Defendant

Supreme Court Case No. 47709-2020

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Second Judicial District,  
in and for the County of Idaho

HONORABLE JAY P. GASKILL

Jonah Horwitz  
SAPD  
Attorney for Appellant  
702 W Idaho St. Ste. 900  
Boise, Idaho 83702  
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Lanny LaMont Anderson  
AG  
Attorney for Respondent  
PO Box 83720  
Boise, Idaho 83720-0010  
Lamont.anderson@ag.idaho.gov

IDAHO COUNTY DISTRICT COURT

**CASE SUMMARY**  
**CASE NO. CV-2003-34748**

Gerald Ross Pizzuto, JR , Plaintiff  
 vs  
 State Of Idaho, Defendant

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 Ü  
 Ü  
 Ü

Location: **Idaho County District Court**  
 Judicial Officer: **Gaskill, Jay P.**  
 Filed on: **06/20/2003**  
 Case Number History:

CASE INFORMATION

Statistical Closures  
 03/28/2008 Closed

Case Type: **H1c- Post Conviction Act Proceedings (District Court)**

Case Status: **03/28/2008 Closed**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number CV-2003-34748  
 Court Idaho County District Court  
 Date Assigned 10/02/2019  
 Judicial Officer Gaskill, Jay P.

PARTY INFORMATION

Respondent

State of Idaho

*Lead Attorneys*  
**Anderson, Lanny LaMont**  
*Retained*  
 208-334-4539(W)

Subject

Pizzuto, Gerald Ross, Jr

**Horwitz, Jonah Joshua**  
*Retained*  
 208-331-5541(W)

DATE

EVENTS & ORDERS OF THE COURT

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06/19/2003	Initiating Document - New Case Filed <i>New Case Filed</i>	
06/19/2003	ROA - Converted Event <i>Filing: U -petition for post conviction relief raising Atkins Virginia Paid by: x Receipt number: 0091579 Dated: 6/20/2003 Amount: \$.00 (Cash)</i>	
06/19/2003	Affidavit <i>Affidavit of Joan M. Fisher in Support of Petition for Postconviction relief raising Atkins V. Virginia</i>	
07/09/2003	Motion <i>Motion for Summary Dismissal of Petition for Post Conviction Relief Raising Atkins V. Virginia</i>	
07/09/2003	Motion <i>Motion to Disqualify Judge</i>	
07/09/2003	Brief Filed <i>Brief in Support of Motion for Summary Dismissal</i>	
07/10/2003	Order	

IDAHO COUNTY DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. CV-2003-34748**

*Order Re: Disqualification of Judge*

07/22/2003	 Order <i>Order Assigning Judge</i>
08/04/2003	 Motion <i>Motion for Automatic Disqualification of in the alternative motion to disqualify with cause</i>
08/04/2003	 Affidavit <i>Affidavit of Prejudice in support of Motion for Automatic Disqualification or in the alternative motion to disqualify with cause</i>
08/04/2003	 ROA - Converted Event <i>Memorandum in support of motion for automatic disqualification, or in the alternative motion to disqualify with cause</i>
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10/25/2004	 Motion <i>Motion to Permit Additional Testing Complete Neuropsychiatric Evaluation</i>
10/25/2004	 Affidavit <i>Affidavit in Support of Motion to Permit Additional Testing to Complete Neuropsychiatric Evaluation</i>
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11/15/2004	Hearing Held <i>Hearing result for Telephonic Scheduling held on 11/15/2004 09:30 AM: Hearing Held</i>
11/15/2004	Hearing Scheduled <i>Hearing Scheduled (Motion 12/07/2004 09:30 AM)</i>
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11/18/2004	 Order <i>Order Assigning Judge</i>
12/03/2004	 ROA - Converted Event <i>Supplemental Memorandum in Support of Motion for Automatic Disqualification, or in the Alternative, Motion to Disqualify with Cause</i>
12/07/2004	Hearing Held <i>Hearing Held</i>
12/07/2004	 Court Minutes

**CASE SUMMARY**  
**CASE NO. CV-2003-34748**

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*Order*
- 01/31/2005  Motion  
*Motion for Permission to File Appeal of Interlocutory Order*
- 01/31/2005  ROA - Converted Event  
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- 02/04/2005  Request  
*Request to Set Hearing Date and Time on Petitioner's Motion for Permission to File Appeal of Interlocutory Order*
- 02/08/2005  Petition  
*Petition for Appointment of Special Prosecutor*
- 02/24/2005  Response  
*Response to Petition for Appointment of Speical Prosecutor*
- 03/04/2005  Order  
*Order for Appointment of Special Prosecutor*
- 04/01/2005 Hearing Scheduled  
*Hearing Scheduled (Telephonic Scheduling 04/13/2005 09:30 AM)*
- 04/01/2005  Notice of Hearing
- 04/11/2005  Response  
*Response to Petitioner's Motion for Permission to File Appeal of Interlocutory Order*
- 04/13/2005 Interim Hearing Held  
*Hearing result for Telephonic Scheduling held on 04/13/2005 09:30 AM: Interim Hearing Held*
- 04/13/2005 Hearing Scheduled  
*Hearing Scheduled (Telephonic Status Conference 04/22/2005 09:00 AM)*
- 04/13/2005  Notice of Hearing  
*Notice Of Hearing*
- 04/13/2005  Court Minutes
- 04/19/2005  Objection  
*Objection to Appointment of Speical Prosecutor and Motion to Strike Response to Petitioner's Motion for Persionion to File Appeal of Interlocutory Order*
- 04/22/2005 Interim Hearing Held  
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- 04/22/2005 Hearing Scheduled  
*Hearing Scheduled (Telephonic Scheduling 06/13/2005 09:30 AM)*

**CASE SUMMARY**  
**CASE NO. CV-2003-34748**

04/22/2005  Order  
*Order Re: Appeal of Interlocutory Order*

04/22/2005  Brief Filed  
*Briefing Schedule*

04/22/2005  Court Minutes

06/13/2005 Interim Hearing Held  
*Hearing result for Telephonic Scheduling held on 06/13/2005 09:30 AM: Interim Hearing Held*

06/13/2005  Court Minutes

07/05/2005  Brief Filed  
*Petitioner's Brief in Opposition to Respondent's Motion for Summary Dismissal of Petition for Post-Conviction Relief Raising Atkins V. Virginia*

07/06/2005 Hearing Scheduled  
*Hearing Scheduled (Telephonic Status Conference 08/24/2005 09:30 AM)*

07/06/2005  Notice of Hearing  
*Notice of Telephonic Status Conference*

08/01/2005 ROA - Converted Event  
*Reply Brief in Support of Respondent's Motion for Summary Dismissal*

08/19/2005  Affidavit  
*Affidavit of Ron Dias*

08/19/2005  Affidavit  
*Affidavit of Gaye W. Momerak*

08/19/2005  Affidavit  
*Affidavit of Kismet A. Winslow*

08/19/2005  Affidavit  
*Affidavit of William C. Matson*

08/19/2005  Affidavit  
*Affidavit of Margaret Herzog*

08/19/2005  Affidavit  
*Affidavit of Paul L. Ircink*


















08/19/2005  Proof of Service

08/24/2005 Continued  
*Hearing result for Telephonic Status Conference held on 08/24/2005 09:30 AM: Continued*

08/26/2005 Hearing Scheduled  
*Hearing Scheduled (Oral Argument 09/01/2005 09:00 AM)*


08/26/2005


**CASE SUMMARY**  
**CASE NO. CV-2003-34748**


-  Notice of Hearing  
*Notice Of Hearing*
  
- 09/01/2005  Court Minutes
  
- 09/23/2005  Affidavit  
*Affidavit of Joan M. Fisher*
  
- 09/23/2005  Supplemental Brief Filed  
*Supplemental Reply Brief in Opposition to Respondent's Motion for Summary Dismissal and Statement of Material Facts in Support for Summary Judgement*
  
- 09/23/2005  Motion for Summary Judgment  
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- 10/13/2005  Response  
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- 10/31/2005  Reply  
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- 12/16/2005 Interim Hearing Held  
*Hearing result for Oral Argument held on 09/01/2005 09:00 AM: Interim Hearing Held*
  
- 12/16/2005  Order  
*Opinion and Order*
  
- 12/19/2005  Motion  
*Motion that costs of appeal be at county expense*
  
- 12/19/2005  Notice of Appeal
  
- 01/19/2006  Stipulation  
*Stipulation*
  
- 01/19/2006  Notice of Appeal  
*Amended Notice of Appeal*
  
- 01/25/2006  Order  
*Order (costs of appeals shall be at county expense)*
  
- 05/15/2006  Order  
*Order Assigning Judge*
  
- 12/03/2007  ROA - Converted Event  
*Opinion*
  
- 02/26/2008  ROA - Converted Event  
*Opinion*
  
- 03/28/2008  Remittitur  
*Remittitur*


**CASE SUMMARY**  
**CASE NO. CV-2003-34748**


03/28/2008 **Petition Denied**  
Party (Pizzuto, Gerald Ross, Jr)


09/23/2019  Notice of Substitution of Counsel  
*Notice of Substitution*


09/25/2019  Motion  
*Motion to Alter or Amend Judgment*


09/25/2019  Memorandum In Support of Motion  
*Memorandum in Support of Motion to Alter or Amend Judgment*


10/01/2019  Disqualification and Order to Reassign


10/02/2019  Order  
*Assigning Judge*

10/04/2019  Order  
*for Telephonic Scheduling Conference*

10/04/2019  Amended  
*Order for Telephonic Scheduling Conference*


10/07/2019  Motion  
*Motion to Take Judicial Notice*


10/07/2019  Response  
*Response to Petitioner's Motion to Alter or Amend Judgment*


10/07/2019  Affidavit in Support of Motion  
*Affidavit of LaMont Anderson In Support of Motion to Take Judicial Notice*


10/16/2019 **CANCELED Telephone Conference (10:45 AM)** (Judicial Officer: Gaskill, Jay P. :Location: Courtroom 1)  
*Vacated*


10/16/2019 **Telephone Conference (1:30 PM)** (Judicial Officer: Gaskill, Jay P. :Location: Courtroom 1)

10/17/2019  Scheduling Order  
*Briefs and Argument*

11/14/2019  Reply  
*Reply Brief in Support of Motion to Alter or Amend Judgment*

11/26/2019  Notice of Hearing  
*Notice of Hearing*

11/27/2019  Response  
*Response to Motion for Judicial Notice*

12/05/2019  Amended



# CASE SUMMARY

## CASE NO. CV-2003-34748

*Amended Affidavit of LLA with Exhibits*

12/10/2019	 <b>Oral Argument</b> (1:00 PM) (Judicial Officer: Gaskill, Jay P.)
12/10/2019	Case Taken Under Advisement (Judicial Officer: Gaskill, Jay P. )
12/10/2019	 Court Minutes
01/06/2020	 Memorandum <i>Opinion and Order on Motion to Alter or Amend Judgment Pursuant to I.R.C.P. 60(b)(6)</i>
01/10/2020	 Amended Notice of Appeal <i>Amended Notice of Appeal</i>
01/10/2020	 Motion <i>Motion that Costs of Appeal be at County Expense</i>
01/10/2020	 Memorandum In Support of Motion <i>Memorandum in Support of Motion that Costs of Appeal be at County Expense</i>
01/10/2020	 Notice of Hearing <i>Notice of Hearing</i>
01/15/2020	 Response <i>Response to Petitioner's Motion Re Costs of Appeal</i>
01/22/2020	 Reply <i>Reply in Support of Motion that Costs of Appeal be at County Expense</i>
01/28/2020	 <b>Motion Hearing</b> (10:00 AM) (Judicial Officer: Gaskill, Jay P. :Location: Courtroom 1)
01/28/2020	 Court Minutes
02/11/2020	 Order <i>Granting Motion that Costs of Appeal be at County Expense</i>
02/18/2020	 Order <i>Augmenting Appeal</i>
02/18/2020	 Transcript Filed
02/28/2020	 Reporter's Notice of Transcript(s) Lodged
03/13/2020	 Appeal Cover/Title Page
03/13/2020	 Exhibit List/Log
03/13/2020	 Clerk's Certificate of Service

DATE

FINANCIAL INFORMATION

**Other Party** Unknown Payor

IDAHO COUNTY DISTRICT COURT

**CASE SUMMARY**

**CASE NO. CV-2003-34748**

Total Charges	0.00
Total Payments and Credits	0.00
<b>Balance Due as of 3/13/2020</b>	<b>0.00</b>

FEB 18 2020

IN THE SUPREME COURT OF THE STATE OF IDAHO

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Shaw Clark*  
DEPUTY

GERALD ROSS PIZZUTO, JR.,

Petitioner-Appellant,

v.

STATE OF IDAHO,

Respondent.

**Order Augmenting Appeal**

Supreme Court Docket No. 47709-2020

Idaho County District Court No.  
CV-2003-34748

WHEREAS, a Clerk's Record and Reporter's Transcripts having been filed with this Court in prior appeal No. 32679-2006, *Gerald Ross Pizzuto, Jr. v. State* (Idaho County No. CV-2003-34748); therefore,

IT IS HEREBY ORDERED that this Record on Appeal shall be augmented to include the Clerk's Record and Reporter's Transcripts filed in prior appeal No. 32679-2006, *Gerald Ross Pizzuto, Jr. v. State* (Idaho County No. CV-2003-34748).

IT IS FURTHER ORDERED that the District Court Clerk shall prepare and file a Limited Clerk's Record with this Court, which shall contain the documents requested in this Notice of Appeal together with a copy of this Order, but shall not duplicate any document included in the Clerk's Record filed in prior appeal No. 32679-2006. The designated Court Reporter shall prepare the transcript of the Hearing held on December 10, 2019, and submit it with a Notice of Lodging to the District Court Clerk on or before Monday, March 16, 2020. The due date for filing the Clerk's Record and Reporter's Transcripts shall be set for April 20, 2020.

DATED this 14th day of February, 2020.

For the Supreme Court

*Karel A. Lehrman*  
Karel A. Lehrman, Clerk

Jonah J. Horwitz, ID Bar No. 10494  
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Email: Joan\_Fisher@fd.org

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

GERALD ROSS PIZZUTO, JR.,	)	<b>Case No. CV 03-34748</b>
	)	
Petitioner,	)	<b>SUBSTITUTION OF COUNSEL</b>
	)	
v.	)	
	)	
STATE OF IDAHO,	)	<b>(CAPITAL CASE)</b>
	)	
Respondent.	)	
	)	
_____	)	

PLEASE TAKE NOTE that Jonah J. Horwitz substitutes as counsel of record for  
Petitioner Gerald Ross Pizzuto, Jr., in place of Joan M. Fisher.

DATED this 23rd day of September 2019.

/s/ Jonah J. Horwitz  
Jonah J. Horwitz

/s/ Joan M. Fisher  
Joan M. Fisher

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of September 2019, I served the foregoing document on all interested parties, who are set forth below, via iCourt file and serve:

L. LaMont Anderson  
Deputy Attorney General  
Chief, Capital Litigation Unit  
Statehouse Mail, Room 10  
PO Box 83720  
Boise, ID 83720-0010

Joan M. Fisher, ID Bar No. 2854  
801 I Street, Third Floor  
Sacramento, California 95814  
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Facsimile: (916) 498-6656  
Email: Joan\_Fisher@fd.org

/s/ L. Hollis Ruggieri  
\_\_\_\_\_

L. Hollis Ruggieri

Jonah J. Horwitz, ID Bar No. 10494  
Federal Defender Services of Idaho  
Capital Habeas Unit  
702 W. Idaho, Suite 900  
Boise, Idaho 83702  
Telephone: (208) 331-5530  
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Attorney for Gerald Ross Pizzuto, Jr.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

GERALD ROSS PIZZUTO, JR.,	)	<b>Case No. CV 03-34748</b>
	)	
Petitioner,	)	<b>MOTION TO ALTER OR AMEND</b>
	)	<b>JUDGMENT PURSUANT TO</b>
v.	)	<b>IDAHO RULE OF CIVIL</b>
	)	<b>PROCEDURE 60(b)(6)</b>
	)	
STATE OF IDAHO,	)	<b>ORAL ARGUMENT REQUESTED</b>
	)	
Respondent.	)	
	)	<b>(CAPITAL CASE)</b>
_____	)	

Because the Ninth Circuit has held that the Idaho judiciary's resolution of the claim at bar is inconsistent with binding precedent from the United States Supreme Court, and because of prior counsel's negligence, Petitioner Gerald Ross Pizzuto, Jr., respectfully moves to alter or amend the judgment entered against him. Specifically, Mr. Pizzuto requests that the Court reopen the case, vacate the order denying relief on December 16, 2005, allow him an opportunity to request leave to amend his petition, and set an evidentiary hearing to take testimony on whether he is constitutionally immune from execution under the Eighth Amendment by virtue of his intellectual disability. The motion is supported by a contemporaneously filed memorandum.

DATED this 25th day of September 2019.

/s/ Jonah J. Horwitz

Jonah J. Horwitz

Attorney for Gerald Ross Pizzuto, Jr.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of September 2019, I served the foregoing document on all interested parties, who are set forth below, via iCourt file and serve:

L. LaMont Anderson  
Deputy Attorney General  
Chief, Capital Litigation Unit  
Statehouse Mail, Room 10  
PO Box 83720  
Boise, ID 83720-0010

/s/ L. Hollis Ruggieri

L. Hollis Ruggieri





## I. Background

Mr. Pizzuto is a capital inmate confined by the State of Idaho. He was convicted of first-degree murder and sentenced to death in this Court in 1986. Since then, there has been extensive litigation over his convictions and sentence. Here, Mr. Pizzuto will only present the background relevant to the issues currently before the Court.

That background begins on June 19, 2003, when Mr. Pizzuto filed a successive petition for post-conviction relief in Idaho County District Court. In that petition, Mr. Pizzuto alleged that he was intellectually disabled<sup>2</sup> and therefore immune from execution under the Eighth Amendment, as interpreted by *Atkins v. Virginia*, 536 U.S. 304 (2002). This Court summarily denied the petition without an evidentiary hearing on December 16, 2005. In a two-page order, the Court found that the petition was untimely and, without written elaboration, that it “failed to raise a genuine issue of material fact.” Op. & Order, filed Dec. 16, 2005, at 2. On appeal, the Idaho Supreme Court determined that the district judge’s timeliness ruling was in error. *See Pizzuto v. State*, 146 Idaho 720, 727 (2008). For purposes of the appeal, it regarded Mr. “Pizzuto’s petition as being filed timely.” *Id.* Nevertheless, the Idaho Supreme Court affirmed the denial of post-conviction relief on the substance of Mr. Pizzuto’s *Atkins* claim. *See id.* at 728–35.

Mr. Pizzuto then pursued the same claim in federal habeas and a panel of the Ninth Circuit ruled on it on August 14, 2019. In that ruling, the Ninth Circuit concluded that the Idaho Supreme Court’s adjudication of Mr. Pizzuto’s *Atkins* claim “was inconsistent with the clinical

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<sup>2</sup> The authorities at one time referred to “mental retardation” rather than “intellectual disability.” However, the latter phrase is now the accepted one. *See Hall v. Florida*, 572 U.S. 701, 704 (2014). Mr. Hall will accordingly use the expression “intellectual disability” except when quoting older material.

definitions in place at the time of the state court’s decision” and that it “violated” constitutional principles embraced by the United States Supreme Court. *Pizzuto v. Blades*, 933 F.3d 1166, 1181, 1188 (9th Cir. 2019). Still, the Ninth Circuit was unable to grant the writ, as it was hamstrung by the federal habeas standard of review. Specifically, the habeas statute demands a showing that the state court unreasonably applied the caselaw that existed at the time of its decision. *See id.* at 1181. In the Ninth Circuit’s view, even though the Idaho Supreme Court’s opinion was erroneous under current law, its errors were not so obviously forbidden by U.S. Supreme Court precedent *at the time* as to satisfy that unforgiving test. *See id.* at 1185. Consequently, the Ninth Circuit denied relief, while emphasizing that its disposition did “not preclude the Idaho courts from reconsidering those questions in light of intervening events.” *Id.* at 1190. Consistent with the Ninth Circuit’s invitation, Mr. Pizzuto now moves to reopen this case so that the state courts can consider his intellectual-disability claim under the correct, contemporary clinical standards and law.

More procedural history is presented below where necessary.

## **II. Legal Standard**

“A petition for post-conviction relief is a civil proceeding, governed by the Idaho Rules of Civil Procedure.” *Stuart v. State*, 149 Idaho 35, 40 (2010). As relevant here, I.R.C.P. 60(b)(6) provides that “[o]n motion and just terms, the court may relieve a party . . . from a final judgment” for “any . . . reason that justifies relief.” Motions under Rule 60(b)(6) are “committed to the discretion of the trial court.” *Eby v. State*, 148 Idaho 731, 734 (2010). A Rule 60(b)(6) motion should be granted where there are “unique and compelling circumstances justifying relief.” *Miller v. Haller*, 129 Idaho 345, 349 (1996).<sup>3</sup>

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<sup>3</sup> In this pleading, unless otherwise noted, all internal quotation marks and citations are omitted, all alterations are in original, and all emphasis is added.

### **III. Argument**

Mr. Pizzuto first establishes the timeliness of his motion and then its merits.

#### **A. The Motion is Timely**

Motions made pursuant to Rule 60(b)(6) must be filed “within a reasonable time.”

I.R.C.P. 60(c)(1). “What constitutes a reasonable time is based upon the facts of each case.”

*Fisher Sys. Leasing v. J & J Gunsmithing & Weaponry Design*, 135 Idaho 624, 628 (Ct. App.

2001). In *Davis v. Parrish*, 131 Idaho 595, 597 (1998), the Idaho Supreme Court categorized a

Rule 60(b) motion as timely where it was filed roughly three months after the litigant had notice of the basis for seeking to alter or amend the judgment. As outlined below, the predicate for Mr.

Pizzuto’s motion is the new Ninth Circuit opinion, which was handed down less than two months

ago on August 14, 2019. Furthermore, he has acted diligently in assembling a detailed motion in

this complex capital case involving an extensive procedural history and difficult scientific

subject matter. Per *Davis*, his motion is not time-barred.

If another framework governs, the motion is still timely. Under Idaho Code § 19-2719(5), a successive post-conviction petition by a death row inmate is only permitted where the prisoner raises the claim within forty-two days of when he “knew or reasonably should have known of” it. *Pizzuto*, 146 Idaho at 727. The provision does not control here, because Mr. Pizzuto is not asserting a new claim. Rather, he is attempting to reopen a claim that he has already alleged, one that was previously found timely by the Idaho Supreme Court. *See supra* at 2. That said, in the event the Court borrows the forty-two-day rule as delineating the reasonable amount of time here, Mr. Pizzuto has satisfied it. The motion at hand has been filed within forty-two days of the triggering event, i.e., the Ninth Circuit’s August 14 opinion, and it is timely under whatever standard applies.

## **B. The Motion is Meritorious**

There are two bases for retracting the previously entered judgment in light of the Ninth Circuit opinion: 1) the opinion erodes the bases for the prior state court decisions denying Mr. Pizzuto's *Atkins* claim; and 2) the opinion exposes prior counsel's negligence and its consequences. Mr. Pizzuto takes each in turn.

### **1) The Ninth Circuit Opinion Undermines the Idaho Supreme Court Decision**

To begin, the state courts' treatment of Mr. Pizzuto's *Atkins* claim was revealed as erroneous by the Ninth Circuit under the latest scientific and legal standards. Additional proceedings are thus justified in order for the state courts to utilize the correct standards and ensure that an intellectually disabled man is not executed, an event that would be plainly forbidden under the Constitution.

As mentioned, the U.S. Supreme Court announced in *Atkins* that the Eighth Amendment bars the execution of intellectually disabled offenders. *Atkins* indicated that medical literature defined intellectual disability as comprising three features: 1) subaverage intellectual functioning; 2) significant limitations in adaptive skills; and 3) manifestation before age eighteen. 536 U.S. at 318. In a footnote, the *Atkins* Court observed that "an IQ between 70 and 75 or lower" is "typically considered the cutoff IQ score for the intellectual function prong of the mental retardation definition." *Id.* at 309 n.5. Idaho's legislative codification of *Atkins* tracks the same three categories. *See* Idaho Code § 19-2515A(1). Importantly, though, the statute defines the first prong as an IQ of 70 or below. *See* § 19-2515A(1)(b).

In Mr. Pizzuto's case, the Idaho Supreme Court had before it "only one IQ score," "a Verbal IQ of 72" from 1985. *Pizzuto*, 146 Idaho at 729. According to the Idaho Supreme Court,

that score was not low enough. As the court explained, “the legislature did not require that the IQ score be within five points of 70 or below. It required that it be 70 or below.” *Id.*

The Ninth Circuit deemed that approach “inconsistent with the clinical definitions in place at the time of the state court’s decision.” *Pizzuto*, 933 F.3d at 1181. It noted that pursuant to those definitions, intellectual disability “does not require an IQ of 70 or below; it requires ‘an IQ of *approximately* 70 or below.’” *Id.* (quoting American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 49 (4th ed. 2000) (“DSM-IV”) (emphasis in original)). The Ninth Circuit in *Pizzuto* drew from *Hall* the lesson that “an IQ test score represents a range rather than a fixed number” since “[e]ach IQ test has a standard error of measurement of plus or minus five points.” *Id.* at 1175. By way of example, “[a] score of 71 . . . is generally considered to reflect a range between 66 and 76.” *Id.* (quoting *Hall*, 572 U.S. at 713). “A court, therefore, may not cut off the inquiry when a defendant scores between 70 and 75 on an IQ test,” as a “strict IQ test score cutoff of 70” is constitutionally unacceptable. *Id.* at 1175–76. “In effect,” the Ninth Circuit continued, *Hall* “expands the operational definition of mental retardation to 75” in light of the standard error of measurement. *Id.* at 1182.

As the Ninth Circuit saw it, the Idaho Supreme Court was not faithful to those well-established scientific principles. Instead, substituting its own perceptions for the “clinical standards, the Idaho Supreme Court required an offender to establish an IQ of 70 or below under all circumstances, regardless of the offender’s deficits in adaptive functioning.” *Id.* “In doing so,” the Ninth Circuit went on, the Idaho Supreme Court “failed to recognize that ‘it is possible to diagnose Mental Retardation in individuals with IQs between 70 and 75 who exhibit significant deficits in adaptive behavior.’” *Id.* (quoting DSM-IV at 41–42). As a consequence,

the Idaho Supreme Court’s opinion was, in the words of the Ninth Circuit, “contrary to the clinical definitions in place at the time.” *Id.*

Despite acknowledging the Idaho Supreme Court’s mistakes, the Ninth Circuit was constrained to uphold its mandate. This was only because, to the Ninth Circuit’s mind, “[a]t the time of the state court’s decision in 2008, it was not yet apparent that states were required to define intellectual disability in accordance with these prevailing clinical definitions.” *Id.*

Nonetheless, the Ninth Circuit observed that “[i]t is *now* clear” that the Idaho Supreme Court’s method is constitutionally prohibited by more recent proclamations from the U.S. Supreme Court in the form of *Hall, Brumfield v. Cain*, 135 S. Ct. 2269 (2015), and *Moore v. Texas (Moore I)*, 137 S. Ct. 1039 (2017). *Id.* at 1182–84. As mentioned earlier, the Ninth Circuit went out of its way to stress that its opinion did “not preclude the Idaho courts from reconsidering” their rulings “in light of intervening events,” such as the three U.S. Supreme Court opinions just listed.

The time for such reconsideration is now.

To see why, it is important to understand the legal effect of the Ninth Circuit’s opinion. Mr. Pizzuto has a federal constitutional and statutory right to seek habeas relief from his sentence in the U.S. courts. *See Boumediene v. Bush*, 553 U.S. 723, 745 (2008) (noting that the Suspension Clause protects a prisoner’s right to seek the writ of habeas corpus); *see also* 28 U.S.C. § 2254 (codifying the right to pursue habeas review of state judgments in the federal court system). The Ninth Circuit has jurisdiction over any federal issues that come to the fore in the State of Idaho. *See* 28 U.S.C. §§ 41, 1291, 1294. Given those basic principles, the Ninth Circuit’s statements about Mr. Pizzuto’s case are the law for purposes of the post-conviction proceeding here. It follows that under the law, as it now stands, the Idaho Supreme Court’s resolution of Mr. Pizzuto’s *Atkins* claim is unconstitutional. While the Ninth Circuit could not

remedy the unconstitutionality because of the limitations of habeas review, this Court can and should. It is difficult to imagine more “unique and compelling circumstances justifying relief,” *Miller*, 129 Idaho at 349, than when an opinion from a competent court uncovers the unlawfulness of a previous judicial decision, and vacatur of the judgment is warranted.

Apart from highlighting the conflict between the Idaho Supreme Court and the clinical standards in place at the time of its ruling, the Ninth Circuit also underscored the fact that the clinical standards have evolved since that time. *See Pizzuto*, 933 F.3d at 1190 (“Although the Idaho courts rejected Pizzuto’s *Atkins* claim in 2008, they did so without the benefit of . . . the most recent iterations of the . . . clinical standards.”). Most notable in that regard is the Ninth Circuit’s commentary on the Flynn effect. “The Flynn effect refers to the observation that IQ scores have been increasing over time” as test norms become outdated. *Id.* at 1184 n.10. As one court to cover the matter with particular thoroughness put it, “the Flynn Effect is well established scientifically” and it means that an older IQ score should be “correct[ed]” by a downward adjustment that reflects how long ago the test was given and when it was normed. *United States v. Hardy*, 762 F. Supp. 2d 849, 866 (E.D. La. 2010).

The Ninth Circuit recognized in Mr. Pizzuto’s case that the Flynn effect has been endorsed by recent clinical standards, including the eleventh edition of the manual put out by the Association of Intellectual and Developmental Disabilities (“AAIDD-11”) and the DSM-V. *See Pizzuto*, 933 F.3d at 1184 n.10. The AAIDD-11 was published in 2010 and the DSM-V was published in 2013. *See Hall*, 572 U.S. at 705, 727 n.1. When the Idaho Supreme Court released its decision on Mr. Pizzuto’s *Atkins* claim in 2008, these sources had not yet come into being. In closing its opinion, the Ninth Circuit reiterated that because of that timing the Idaho Supreme Court had been unable to effectuate the current consensus of the medical community, which

“now advise[s] that ‘best practices require recognition of a potential Flynn Effect when older editions of an intelligence test (with corresponding older norms) are used in the assessment or interpretation of an IQ score.’” *Pizzuto*, 933 F.3d at 1190 (quoting AAIDD-11 at 37).

Before the Idaho Supreme Court, the only IQ score under review was a 72, which was obtained on the Wechsler Adult Intelligence Scales, Revised (“WAIS-R”) in 1985. *See Pizzuto*, 146 Idaho at 729. “The WAIS-R was originally normed in 1978.” *Hardy*, 762 F. Supp. 2d at 863. Due to the Flynn Effect, there is “an inflation rate of about 0.3 points per year after the test is normed.” *Id.* at 860. Compensating for the Flynn Effect, then, the 72 drops to 69.9. Remember that Idaho’s statute demands a showing of an IQ of 70 or below. *See* § 19-2515A(1)(b). Even under the Idaho Supreme Court’s inflexible approach, this would bring Mr. Pizzuto within the protection of the statute, providing yet another reason to reopen the case.

In these various ways, the Idaho Supreme Court’s opinion has been uprooted both legally and factually by the Ninth Circuit decision, and the case ought to be revived to allow for a full, fair consideration of Mr. Pizzuto’s intellectual disability under the current medical standards and caselaw.

## **2) The Ninth Circuit Opinion Reveals Prior Counsel’s Negligence**

Mr. Pizzuto’s second ground for reactivating the case flows from the serious missteps made by his prior attorney in these post-conviction proceedings, a type of Rule 60(b) theory that has been expressly approved of by the Idaho Supreme Court. *See Eby*, 148 Idaho at 734–38. As set forth below, those missteps induced the Ninth Circuit to later deny him habeas relief, the most dire repercussion imaginable.

In a nutshell, prior counsel fell short of her duties by needlessly undercutting her own request for evidentiary development. Although counsel “moved for additional psychological testing,” she “did not notice the motion for a hearing,” *Pizzuto*, 933 F.3d at 1172–73, which she



ought to have done had she wished to have it adjudicated, *see, e.g., State v. Ayala*, 129 Idaho 911, 915 (Ct. App. 1996). The Ninth Circuit remarked that counsel’s omission likely flowed from the rationale that “because the court had erroneously denied the motion to disqualify, any order entered by the court on the question of testing would be void.” *Pizzuto*, 933 F.3d at 1173 n.2. That interpretation of counsel’s motivation is reinforced by a subsequent pleading from counsel, where she suggested that any order entered by the judge was an “extra-jurisdictional act and *void ab initio*.” Obj. to Appointment of Special Prosecutor, filed Apr. 18, 2005, at 1. Such logic was deeply flawed.

As an initial matter, counsel’s supposed tactics cannot adequately explain her conduct. Assuming *arguendo* that a judge acts *ultra vires* when he rules on a motion while a disqualification request is pending, the request here was not pending forever. The Idaho Supreme Court denied counsel’s request to carry out an interlocutory appeal on the disqualification issue on June 23, 2005. *See* Ex. 1 at 9.<sup>4</sup> The issue was then dead. After that point, there certainly was no conceivable basis for holding off on the request for testing. Yet six months elapsed after the failure of the interlocutory appeal and before the district court denied the post-conviction petition, and still no notice of hearing was filed. *See* Op. & Order, filed Dec. 16, 2005. Even if the legal foundation of counsel’s plan was sound, her execution of it was anything but.

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<sup>4</sup> For any exhibit that was not consecutively paginated in the original, Mr. Pizzuto has added a footer in the bottom-left corner in the form “Ex. 1, p. 1.” His citations are to those footers, where they exist.

Insofar as it is necessary, Mr. Pizzuto requests that judicial notice be taken of the documents contained in Exhibit 1, which were filed in the interlocutory appeal referenced above. *See* I.R.E. 201(c) (providing that judicial notice is mandatory for court records filed either “in the same or a separate case” if the judge and opposing counsel are provided with the material).

And at any rate the foundation was far from sound. The authorities relied upon by counsel pertain to *automatic* disqualifications. *See id.* & sources cited therein. Counsel’s motion invoked both the automatic disqualification provision and, in the alternative, the provision governing disqualifications for cause. *See* Mot. to Disqualify, filed Aug. 4, 2003, at 1. But the rules leave no doubt that one cannot use an automatic disqualification “in a post-conviction proceeding, when that proceeding has been assigned to the judge who entered the judgment of conviction or sentence being challenged by the post-conviction proceeding.” *Pizzuto*, 146 Idaho at 724 (quoting I.R.C.P. 40(d)(1)(l)(ii)). Although counsel had arguments against that provision’s application in Mr. Pizzuto’s case, it was surely foreseeable that the Idaho Supreme Court might reject them in favor of the plain language of the rule, since the same judge who imposed the sentence was presiding over the post-conviction action. *See id.* at 724–25. The bottom line is that counsel could not realistically assume that she would be able to claim the benefit of the automatic-disqualification rule.

That left only the pursuit of a for-cause disqualification. And prior counsel had no authority for the proposition that a judge lacks jurisdiction to manage a case after *that* type of disqualification motion. The distinction stands to reason. It makes sense that a judge would have no authority to supervise a case after the submission of a timely motion to automatically disqualify. For then, the judge is removed instantly by operation of law. Unlike a motion without cause, one with cause has to advance an argument. The courts may well be unpersuaded by the argument, in which case it would be senseless to deprive the judge of any power to move the matter forward in the interim. Indeed, that is precisely what happened in Mr. Pizzuto’s own proceeding. Both the district judge and the Idaho Supreme Court were unconvinced by the for-cause disqualification motion. *See id.* at 725–26. Simply put, counsel had no cause to expect

any court to agree with her notion that the trial judge was powerless to render rulings while the disqualification motion remained pending.

In essence, prior counsel placed a critical motion in jeopardy in the hopes that the Idaho Supreme Court would later accept her tenuous and novel legal theory. Such a gamble was ill-advised, and its consequences were, unsurprisingly, dire.

When the Ninth Circuit issued its opinion, the futility of prior counsel's poorly conceived strategy was confirmed. For the Ninth Circuit relied upon counsel's mishandling of the testing issue to find that Mr. Pizzuto had insufficiently pushed for factual development, and thereby to deny habeas relief. *See Pizzuto*, 933 F.3d at 1189–90. In that sense, the Ninth Circuit opinion crystalized the ramifications of counsel's unforced error. As a result, it is proper for the error to be the subject of the present motion, which was triggered by that opinion.

When a lawyer is representing a capital defendant, her client's life hangs in the balance, making her duties weightier and judicial review of her performance more searching. *See Frierson v. Woodford*, 463 F.3d 982, 993 (9th Cir. 2006). By staking a key request for evidentiary development entirely on the success of a far-fetched legal gambit, prior counsel did not discharge those duties, and her performance does not survive that judicial scrutiny.

### **C. The Consequences of Reopening the Case**

In the preceding sections, Mr. Pizzuto justifies the restarting of this post-conviction action. Once it comes back to life, the question is what the Court should do next. The answer is that it ought to take into account the substantial evidence that Mr. Pizzuto is intellectually disabled and hold a hearing to fully assess such evidence. That evidence encompasses both the submissions made earlier in the post-conviction matter, as well as significant material that has not yet been reviewed in state court. Keeping in mind the fact that the blunders by prior counsel described in the previous section relate to evidentiary development, it is especially fitting that the

remedy under Rule 60(b) would be a hearing with the elicitation of expert testimony, as laid out in the next section.

As for the evidence offered earlier in these proceedings, Mr. Pizzuto continues to rely on the previous pleadings and simply refers the Court to them. In particular, Mr. Pizzuto points to the factual presentation on pages 16 to 33 of his supplemental reply brief in opposition to summary judgment, filed on September 23, 2005, and the attachments cited therein. Those documents include extensive evidence of all three prongs of intellectual disability.

Turning to the new material, Mr. Pizzuto primarily directs the Court to three expert reports that have not yet been analyzed by the Idaho judiciary: one by Ricardo Weinstein, Ph.D., one by James R. Patton, Ed.D., and one by James Merikangas, M.D. *See* Exs. 2–4.

Dr. Weinstein is a neuropsychologist. *See* Ex. 2 at 1. He was awarded a Ph.D. in clinical psychology in 1981. *See id.* at 20. In 1998, he completed a post-doctoral certificate program in neuropsychology. *See id.* Since then, he has had a far-ranging career in the field, both practicing and serving as an adjunct professor at San Diego State University. *See id.* at 20–21. Dr. Weinstein has published and presented on brain science, neurological development, and neuropsychological testing, especially as those themes relate to childhood experiences and family dynamics. *See id.* at 21–23.

As part of his work on this case, Dr. Weinstein reviewed an extensive amount of documentary materials regarding Mr. Pizzuto, interviewed him personally, and tested his IQ. *See id.* at 1–3. Having conducted that inquiry, Dr. Weinstein took up the question of whether Mr. Pizzuto was intellectually disabled within the meaning of three sources: 1) § 19-2515A; 2) the DSM-IV; and 3) the American Association of Mental Retardation (“AAMR”), which later

became the AAIDD. The DSM, the AAMR, and the AAIDD have all been accepted as authorities in this area of law by the U.S. Supreme Court. *See Hall*, 572 U.S. at 707–23.

Dr. Weinstein gave Mr. Pizzuto the WAIS-IV. *See Ex. 2* at 12. In *Atkins* itself, the U.S. Supreme Court pronounced the WAIS “the standard instrument in the United States for assessing intellectual functioning.” 536 U.S. at 309 n.5. Mr. Pizzuto’s full-scale score on the test was 60, *see Ex. 2* at 12, which satisfies the first prong of intellectual disability within the meaning of any of the authorities discussed here.

Dr. Weinstein next ventured into the second prong, that of adaptive functioning. *See id.* at 13–17. To gauge Mr. Pizzuto’s adaptive functioning, Dr. Weinstein read his social history and declarations from individuals who knew him, as well as interviewing two sisters of Mr. Pizzuto’s. *See id.* at 15. Surveying the information he gleaned from those sources, Dr. Weinstein delved into the extent of Mr. Pizzuto’s limitations in three general categories: conceptual adaptive behavior skills, social adaptive behavior skills, and instrumental activities of daily living. *See id.* at 16–17. The U.S. Supreme Court has likewise characterized these three areas as comprising adaptive functioning. *See Moore v. Texas (Moore II)*, 139 S. Ct. 666, 668 (2019) (per curiam); *Moore I*, 137 S. Ct. at 1050.

Within these three broad classes, Dr. Weinstein went through a series of more specific items. Many of those items tracked the language of § 19-2515A. Both include self-direction, academic abilities, interpersonal skills, and safety. *Compare Ex. 2* at 16–17, with § 19-2515A(1)(a). Other areas appear substantively in both, even if slightly different nomenclature is used. For instance, the report looks at Mr. Pizzuto’s ability to use “expressive language,” *Ex. 2* at 16, whereas the statute enumerates “communication” as a skill area, § 19-2515A(1)(a). Similarly, the report refers to “occupational skills,” *Ex. 2* at 17, while the statute prefers the term

“work,” § 19-2515A(1)(a). In any event, it is apparent that Dr. Weinstein’s report and the statute are in accord on the essential questions that define adaptive functioning.

And in answering those questions Dr. Weinstein found numerous instances of serious limitations in Mr. Pizzuto’s skills from an early age. To name just a few, he determined that Mr. Pizzuto “was unable to understand and follow instructions,” that he “could not express himself,” that he “was not able to learn in school,” that he “is quite gullible,” that he “has limited logic,” that he “is easily taken advantage of,” and that he “has shown complete disregard for his safety and the safety of others.” Ex. 2 at 16–17.

On the third prong, Dr. Weinstein indicated that judging from the materials he considered Mr. Pizzuto’s “limitations in intellectual functioning and adaptive behaviors” surfaced “prior to the age of eighteen.” *Id.* at 17.

His review of the three prongs completed, Dr. Weinstein articulated his opinion “within a reasonable degree of psychological certainty that Mr. Pizzuto suffers from mental retardation” as defined by § 19-2515A, the DSM-IV, and the AAIDD. *Id.* at 18. Dr. Weinstein identified a number of “risk factors” that might have contributed to the intellectual disability, including a premature birth, “tremendous amounts of stress, poverty and malnutrition all through his developmental years,” “extreme physical, sexual and psychological abuse,” epilepsy, head injuries, and brain damage. *Id.* It was Dr. Weinstein’s view that that “Mr. Pizzuto’s mental retardation is the result of genetic, developmental and environmental causes.” *Id.*

Moving to the next expert, Dr. Patton has a doctoral degree in the area of special education from the University of Virginia. *See* Ex. 3 at 1. Since 1977, he has worked in higher education and has occupied faculty positions at the University of Virginia and the University of Texas, where he has taught courses about the characteristics of the intellectual disabled. *See id.*

at 1. Dr. Patton has been in the intellectual disability field for more than forty-four years. *See id.* During that time, he has co-authored and co-edited books on the topic and written a variety of chapters and articles as well. *See id.* Dr. Patton served as the president of the Division on Mental Retardation and Developmental Disabilities of the Council for Exceptional Children, an international organization devoted to intellectual disability issues. *See id.* at 2. Complementing his scholarly experience, Dr. Patton has worked directly with the intellectually disabled as a special education teacher and diagnostician in the Charlottesville, Virginia, public school system, as the coordinator of a continuing education program, and as a participant in vocational training settings. *Id.* at 2–3.

Dr. Patton was supplied with a number of social history records, and he interviewed Mr. Pizzuto and various people who knew him as a child. *See id.* at 4. In evaluating Mr. Pizzuto’s adaptive functioning, Dr. Patton referred primarily to the AAIDD and the AAMR. *See id.* at 4–5. He broke his observations down into a series of categories, many of which correspond to the areas addressed by Dr. Weinstein and listed in § 19-2515A, such as self-direction, academic performance, social skills, safety, communication, and work. *Compare id.* at 6–13, *with supra* at 14–15.

Within those areas, Dr. Patton discerned numerous significant deficits. *See Ex. 3* at 6–13. Separating out just a few for representative purposes, Dr. Patton remarked that the young Mr. Pizzuto was seen as “mentally very slow,” that “he could not talk very well,” that he “demonstrated a consistent pattern of academic difficulty,” that he got held back in school and received unusually low grades, that “[r]eading was a major problem” for him, that he “could easily be taken advantage of,” that he wore clothes backwards without realizing it, and that he “had problems with everyday hygiene.” *Id.* at 6–12. Opining on these qualities, and the detailed

first-hand accounts underlying them, Dr. Patton maintained that Mr. Pizzuto “meets the adaptive deficit prong of mental retardation.” *Id.* at 13.

Lastly, Dr. Merikangas is “a medical doctor trained and board certified in both Psychiatry and Neurology.” Ex. 4 at 1. In 1969, he received his medical degree from Johns Hopkins University. *See id.* at 5. He has been on the faculty of the George Washington University School of Medicine and has had various roles at Yale University School of Medicine, including Chief Resident in Neurology and Assistant Clinical Professor. *See id.* at 1, 6. Numerous professional societies have recognized Dr. Merikangas’s accomplishments, including the American College of Physicians, which made him an Elected Fellow, the American Neuropsychiatric Association, which made him Director, and the American Academy of Clinical Psychiatrists, which made him President. *See id.* at 6, 7. He is a Diplomate of the American Board of Psychiatry and Neurology, certified in both subjects. *See id.* at 7. A number of hospitals have employed Dr. Merikangas in staff appointments, including Yale-New Haven Hospital, Yale Psychiatric Institute, Georgetown University Hospital, the George Washington University Hospital, and the Veteran’s Administration Hospital. *See id.* at 7–8. Other health facilities have placed him in leadership positions, such as Director of the Neuropsychiatry Program at Georgetown University Hospital and Director of the Behavioral Neurology Program at Western Psychiatric Institute and Clinic. *See id.* at 8–9. Dr. Merikangas has published and lectured widely in his field of expertise, including pieces on intellectual disability. *See id.* at 16–32.

In 2003, Dr. Merikangas administered to Mr. Pizzuto a neuropsychiatric examination. *See id.* at 1. Several years later, at Dr. Merikangas’s request, several types of brain testing were performed, such as an Electroencephalogram, a Whole Brain Perfusion PET Scan, a CT scan,



and an MRI. *See id.* From those tests, Dr. Merikangas ascertained that Mr. Pizzuto has frontal lobe dysfunction, an atypically small brain, and more atrophy than the ordinary person. *See id.* In addition, Dr. Merikangas reviewed a collection of medical and social history documents concerning Mr. Pizzuto. *See id.* at 2–3. The brain testing and the document review led Dr. Merikangas to the conclusion “to a reasonable degree of medical certainty” that Mr. Pizzuto “suffers from mental retardation” under § 19-2515A and the DSM-IV. *Id.* at 3. Explaining that view, Dr. Merikangas stated that Mr. Pizzuto possessed an IQ “below 70, and he exhibited significant deficiencies in many areas [in] relation to his adaptive behaviors and these conditions were present before the age of 18.” *Id.* at 3–4.

In post-conviction cases, “[w]hen a genuine issue of material fact is shown to exist, an evidentiary hearing must be conducted.” *State v. Dunlap*, 155 Idaho 345, 361 (2013). In resolving whether such an issue exists, the Court must “liberally construe the facts and reasonable inferences in favor” of the petitioner. *Hauschulz v. State*, 144 Idaho 834, 838 (2007). So construed, the alleged facts clearly entitle Mr. Pizzuto to a hearing. He has proffered three qualified, experienced experts, all of whom have expounded at length and in detail on why he is intellectually disabled under the prevailing medical standards. At a bare minimum, Mr. Pizzuto has certainly established that there is a genuine issue of material fact as to his intellectual disability.

Aside from qualifying for an evidentiary hearing under Idaho law, Mr. Pizzuto has a right to one pursuant to the U.S. Constitution. As referenced earlier, the Ninth Circuit held that the Idaho Supreme Court’s ruling on Mr. Pizzuto’s *Atkins* claim could not be reconciled with several more recent decisions from the U.S. Supreme Court on intellectual disability. *See supra* at 7. The Ninth Circuit further intimated that it would be appropriate to give the Idaho Supreme Court

a chance to apply those authorities. *See supra* at 7. One of the authorities at issue is *Brumfield*. *See Pizzuto*, 933 F.3d at 1185 (“[T]he state court’s requirement of an IQ of 70 or below is contrary to . . . *Brumfield* . . . .”); *id.* at 1190 (“Although the Idaho courts rejected Pizzuto’s *Atkins* claim in 2008, they did so . . . without the benefit of the Supreme Court’s decision[] in . . . *Brumfield* . . . .”).

In *Brumfield*, a death row inmate asserted an *Atkins* claim in a state post-conviction case. *See* 135 S. Ct. at 2274. Relying upon documentary evidence of intellectual disability, the prisoner pursued an evidentiary hearing on the matter. *See id.* The state courts rejected the claim without a hearing and without authorizing funds for more investigation, fixating on one 75 IQ score in the record. *See id.* at 2275. That was unreasonable, the U.S. Supreme Court said, because “it is unconstitutional to foreclose all further exploration of intellectual disability simply because a capital defendant is deemed to have an IQ above 70.” *Id.* at 2278.

For all intents and purposes, Mr. Pizzuto is identically situated to Mr. Brumfield. Like Mr. Brumfield, Mr. Pizzuto has brought forward substantial documentary evidence of intellectual disability. Like Mr. Brumfield, Idaho’s threshold for evidentiary hearings is relatively low: a “reasonable doubt” in Louisiana, *see id.* at 2281, and the presence of a genuine issue of material fact here, *see supra* at 18. Like Mr. Brumfield, then, there is a constitutional obligation to afford Mr. Pizzuto an evidentiary hearing on his claim.

Finally, if the Court grants the motion at hand and reopens the case, Mr. Pizzuto will then seek leave to amend his petition and append to it whatever attachments are necessary for it to sufficiently capture the evidence now available to support his *Atkins* claim. The motion to amend will be strengthened by many of the factors recited here. *See Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 866, 871 (1999) (listing the factors germane to an amendment

analysis, including “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment”).

#### **IV. Conclusion**

In summary, the Ninth Circuit has recently expressed concern that the “Idaho courts rejected Pizzuto’s *Atkins* claim . . . without the benefit of an evidentiary hearing, without the benefit of the Supreme Court’s decisions in *Hall*, *Brumfield* and *Moore I*, and without the benefit of the most recent iterations of the AAIDD and American Psychiatric Association clinical standards.” *Pizzuto*, 933 F.3d at 1190. For a federal appellate court to articulate such misgivings is a “unique and compelling circumstance[] justifying relief.” *Miller*, 129 Idaho at 349. Vacatur of the judgment is in order so that the Idaho courts can take those crucial measures and ensure that it is legal to execute Mr. Pizzuto.

Based on the foregoing, Mr. Pizzuto respectfully asks the Court to reopen the case, vacate the order denying relief on December 16, 2005, allow him an opportunity to request leave to amend his petition, and set an evidentiary hearing to take testimony on whether he is constitutionally insulated from execution under the Eighth Amendment by virtue of his intellectual disability.

DATED this 25th day of September 2019.

/s/ Jonah J. Horwitz  
Jonah J. Horwitz  
Attorney for Gerald Ross Pizzuto, Jr.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of September 2019, I served the foregoing document on all interested parties, who are set forth below, via iCourt file and serve:

L. LaMont Anderson  
Deputy Attorney General  
Chief, Capital Litigation Unit  
Statehouse Mail, Room 10  
PO Box 83720  
Boise, ID 83720-0010

/s/ L. Hollis Ruggieri  
\_\_\_\_\_  
L. Hollis Ruggieri

# **Exhibit 1**

**(Motions for Permission to File Appeal of Interlocutory Order,  
Idaho Sup. Ct. No. 99534, dated April 27, 2005 and May 6,  
2005; Order Denying Motions, dated June 23, 2005)**

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**JOAN M. FISHER**  
**Idaho State Bar No. 2854**  
**Capital Habeas Unit**  
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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>GERALD ROSS PIZZUTO, JR.</b>	)	<b>CASE NO</b> <u>99534</u>
	)	
<b>Petitioner,</b>	)	<b>(Idaho County Case No. CV-03-34748)</b>
	)	
<b>v.</b>	)	<b>MOTION FOR PERMISSION</b>
	)	<b>TO FILE APPEAL OF</b>
<b>STATE OF IDAHO,</b>	)	<b>INTERLOCUTORY ORDER</b>
	)	
<b>Respondent.</b>	)	
	)	

**I. MOTION FOR INTERLOCUTORY APPEAL OF DENIAL OF PETITIONER'S MOTION FOR AUTOMATIC DISQUALIFICATION**

Petitioner, Gerald Ross Pizzuto, Jr., by and through his attorney of record, and pursuant to Idaho Appellate Rule 12(c) and the Equal Protection and Due Process Clauses of the United States and Idaho Constitutions, moves for an Order granting Petitioner permission to file an interlocutory appeal of the District Court's Order denying Petitioner's Motion to Automatically Disqualify the Hon. George R. Reinhardt, District Judge, retired, in the above entitled and numbered matter. The Order sought to be appealed is attached hereto and marked Exhibit 1.

Pursuant to Idaho Appellate Rule 12 (b), Petitioner timely moved in the district court for

**MOTION FOR PERMISSION TO FILE  
APPEAL OF AN INTERLOCUTORY ORDER - 1**

**FILED - ORIGINAL**

APR 29 2005

Supreme Court Clerk of Courts  
Entered on -TS by

permission to file an appeal of an interlocutory, which motion was denied on April 22, 2005.

Exhibit 2.

The grounds of said Motion are as follows:

1. The District Court's Order of January 18, 2004 denying the Motion to Disqualify is an interlocutory order not otherwise appealable, but which involves a controlling question of law to which there is substantial grounds for difference of opinion and an immediate appeal from the order will materially advance the orderly resolution of the litigation.

2. An interlocutory appeal is the appropriate means by which a defendant may avoid compulsion of submitting critical issues of fact and law to a judge who is biased and prejudiced and otherwise unconstitutionally prohibited from presiding. *See State v. Blume*, 112 Idaho, 224, 226, 743 P.2d 92, 97 (Ct. App. 1987).

3. Denial of Petitioner's Right to Disqualify Judge Reinhardt by automatic disqualification or for cause, as set forth in Petitioner's Motion, Brief and Supplemental Briefing, will result in irreparable harm to Petitioner, and to the interests of justice and result in unnecessary delay in consideration of Petitioner's constitutional claim that he cannot be executed under the dictates of the United States Supreme Court's opinion in *Atkins v. Virginia*, 536 U.S. 304 (2002).

4. The arguments raised in Petitioner's Motion for Automatic Disqualification raise important and undecided issues of law relating to the equal protection and due process clauses of the United States and Idaho Constitutions.

5. The questions raised in Petitioner's Motion to Disqualify are issues of first impression

**MOTION FOR PERMISSION TO FILE  
APPEAL OF AN INTERLOCUTORY ORDER - 2**

in Idaho and are appropriately answered by the Idaho Supreme Court prior to the adjudication of the *Atkins* proceedings.

6. To proceed with the *Atkins* claim before a judge who is acting without constitutional authority deprives the defendant of a fair and impartial sentencing, wastes judicial resources, is contrary to the interests of justice and is an exercise in futility.

Wherefore, premises considered, the Petitioner respectfully requests permission to appeal the Order denying the Motion to Automatically Disqualify Judge Reinhardt.

This Motion is supported in law and fact by the Brief filed in Support hereof.

DATED this 27<sup>th</sup> day of April, 2005.

  
\_\_\_\_\_  
Joan M. Fisher

Attorney for Petitioner

**MOTION FOR PERMISSION TO FILE  
APPEAL OF AN INTERLOCUTORY ORDER - 3**



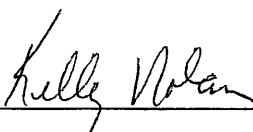
**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of April, 2005, I caused to be served a true and correct copy of the foregoing document by the method indicated below, postage prepaid where applicable, addressed to:

Lawrence Wasden  
Attorney General

L. LaMont Anderson  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

- U.S. Mail
- Hand Delivered
- Facsimile Transmission
- Federal Express

  
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**MOTION FOR PERMISSION TO FILE  
APPEAL OF AN INTERLOCUTORY ORDER - 4**

**JOAN M. FISHER**  
**Idaho State Bar No. 2854**  
**Capital Habeas Unit**  
**Federal Defenders of Eastern Washington & Idaho**  
**317 West Sixth St. Suite 201**  
**Moscow ID 83843**  
**Telephone: 208-883-0180**  
**Facsimile: 208-883-1472**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<p><b>GERALD ROSS PIZZUTO, JR.</b></p> <p style="padding-left: 100px;"><b>Petitioner,</b></p> <p><b>v.</b></p> <p><b>STATE OF IDAHO,</b></p> <p style="padding-left: 100px;"><b>Respondent.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>CASE NO</b> <u>99534</u></p> <p><b>(Idaho County Case No. CV-03-34748)</b></p> <p><b>SECOND MOTION FOR</b>  <b>PERMISSION TO FILE APPEAL</b>  <b>OF INTERLOCUTORY ORDER</b></p>
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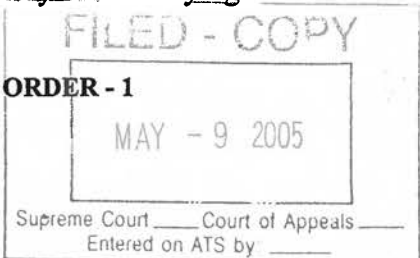
**I. MOTION FOR INTERLOCUTORY APPEAL OF DENIAL OF PETITIONER'S MOTION FOR DISQUALIFICATION FOR CAUSE**

Petitioner, Gerald Ross Pizzuto, Jr., by and through his attorney of record, and pursuant to Idaho Appellate Rule 12( c) and the Due Process Clauses of the United States and Idaho Constitutions, moves for an Order granting Petitioner permission to file an interlocutory appeal of the District Court's Order denying Petitioner's Motion to Disqualify for Cause the Hon. George R. Reinhardt, District Judge, retired, in the above entitled and numbered matter. The Order sought to be appealed is attached hereto and marked Exhibit 1. <sup>1</sup>

---

<sup>1</sup> The Order denies two Motions to Disqualify, one for automatic disqualification and one for cause. Petitioner has previously sought permission to appeal the interlocutory order denying

**SECOND MOTION FOR PERMISSION TO FILE APPEAL OF INTERLOCUTORY ORDER - 1**



Pursuant to Idaho Appellate Rule 12 (b), Petitioner timely moved in the district court for permission to file an appeal of an interlocutory, which motion was denied on April 22, 2005.

Exhibit 2.

The grounds of said Motion are as follows:

1. The District Court's Order of January 18, 2004 denying the Motion to Disqualify is an interlocutory order not otherwise appealable, but which involves a controlling question of law to which there is substantial grounds for difference of opinion and an immediate appeal from the order will materially advance the orderly resolution of the litigation.

2. An interlocutory appeal is the appropriate means by which a defendant may avoid compulsion of submitting critical issues of fact and law to a judge who is biased and prejudiced and otherwise unconstitutionally prohibited from presiding. *See State v. Blume*, 112 Idaho 224, 226, 743 P.2d 92, 97 (Ct. App. 1987).

3. Denial of Petitioner's Right to Disqualify Judge Reinhardt for cause, as set forth in Petitioner's Motion, Brief and Supplemental Briefing filed below, will result in irreparable harm to Petitioner, and to the interests of justice and result in unnecessary delay in consideration of Petitioner's constitutional claim that he cannot be executed under the dictates of the United States Supreme Court's opinion in *Atkins v. Virginia*, 536 U.S. 304 (2002).

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Petitioner's Motion for Automatic Disqualification. Petitioner has no objection to the consolidation of this request to appeal the Order denying Petitioner's Motion to Disqualify for Cause (Bias and Prejudice) with the previously filed Motion.

**SECOND MOTION FOR PERMISSION TO FILE APPEAL OF INTERLOCUTORY ORDER - 2**

4. The arguments raised in Petitioner's Motion for Disqualification for Cause raise important and undecided issues of law relating to the due process clauses of the United States and Idaho Constitutions.

5. The questions raised in Petitioner's Motion to Disqualify are issues of first impression in Idaho as they relate to application of *Atkins v. Virginia* and *Ring v. Arizona* as applied under Idaho's postconviction statutes and are appropriately answered by the Idaho Supreme Court prior to the adjudication of the *Atkins* proceedings.

6. To proceed with the *Atkins* claim before a judge who is acting without constitutional authority deprives the defendant of a fair and impartial sentencing, wastes judicial resources, is contrary to the interests of justice and is an exercise in futility.

Wherefore, premises considered, the Petitioner respectfully requests permission to appeal the Order denying the Motion to Disqualify Judge Reinhardt for Cause.

This Motion is supported in law and fact by the record below and the Brief filed in Support hereof.

DATED this 6<sup>th</sup> day of May, 2005.

  
Joan M. Fisher

Attorney for Petitioner

**SECOND MOTION FOR PERMISSION TO FILE APPEAL OF INTERLOCUTORY ORDER - 3**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of May, 2005, I caused to be served a true and correct copy of the foregoing document by the method indicated below, postage prepaid where applicable, addressed to:

Lawrence Wasden  
Attorney General

L. LaMont Anderson  
Deputy Attorney General  
P.O. Box 83720  
Boise ID 83720-0010

- U.S. Mail
- Hand Delivered
- Facsimile Transmission
- Federal Express

  
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**SECOND MOTION FOR PERMISSION TO FILE APPEAL OF INTERLOCUTORY ORDER - 4**

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# In the Supreme Court of the State of Idaho

IN THE MATTER OF THE MOTION FOR )  
PERMISSION TO FILE APPEAL OF )  
INTERLOCUTORY ORDER. )

----- )  
GERALD ROSS PIZZUTO, JR., )

Petitioner, )

v. )

STATE OF IDAHO, )

Respondent. )

ORDER DENYING MOTIONS )  
FOR PERMISSION TO FILE )  
APPEAL OF INTERLOCUTORY )  
ORDER )

NO. 99534 )  
Ref. No. 05S-139 )

RECEIVED

JUN 23 2005

OFFICE OF THE ATTORNEY )  
CRIMINAL DIVISION )

A MOTION FOR PERMISSION TO FILE APPEAL OF INTERLOCUTORY ORDER with supporting BRIEF was filed by Petitioner April 29, 2005. A RESPONSE TO PETITIONER'S MOTION FOR PERMISSION TO FILE APPEAL OF INTERLOCUTORY ORDER was filed by Respondent May 12, 2005. A SECOND MOTION FOR PERMISSION TO FILE APPEAL OF INTERLOCUTORY ORDER with supporting BRIEF was filed by Petitioner May 9, 2005. A RESPONSE TO PETITIONER'S SECOND MOTION FOR PERMISSION TO FILE APPEAL OF INTERLOCUTORY ORDER was filed by Respondent May 19, 2005. The Court is fully advised; therefore, after due consideration,

IT IS HEREBY ORDERED that Petitioner's MOTION FOR PERMISSION TO FILE APPEAL OF INTERLOCUTORY ORDER be, and hereby is, DENIED.

IT IS FURTHER ORDERED that Petitioner's SECOND MOTION FOR PERMISSION TO FILE APPEAL OF INTERLOCUTORY ORDER be, and hereby is, DENIED and this case is CLOSED.

DATED this 27<sup>th</sup> day of June 2005.

By Order of the Supreme Court

*Stephen Kenyon*

Stephen W. Kenyon, Clerk

cc: Counsel of Record

FILED

# **Exhibit 2**

**(Report of Neurocognitive Evaluation by Ricardo  
Weinstein, Ph.D., dated February 16, 2009)**

# **RICARDO WEINSTEIN, PH.D.**

## **NEUROPSYCHOLOGY**

1202 QUAIL GARDENS COURT  
ENCINITAS, CA 92024  
TEL: (760) 753-1890  
FAX: (760) 942-4004  
E-MAIL: [RWEINS@PACBELL.NET](mailto:RWEINS@PACBELL.NET)  
CAL. LIC.: [REDACTED]

### REPORT OF NEUROCOGNITIVE EVALUATION

Re: Gerald Ross Pizzuto, Jr. V. John Hardison  
D.O.B. [REDACTED]  
Case No: USDC # CV-05-516-S-BLW  
Report Date: 02/16/09

At the request of his attorneys I performed an evaluation of Mr. Pizzuto for the purpose of determining his present neuropsychological functioning. Of particular relevance is the issue of Mr. Pizzuto's cognitive abilities and whether he suffers from mental retardation.

For the purpose of this evaluation I reviewed the extensive materials provided that include:

*State of Idaho v. Gerald Ross Pizzuto, Jr.*, Idaho County Case No. 22075,  
Transcript of Sentencing Proceedings

Successive Habeas Petition filed in USDC Case No. 05-516-BLW with the following attachments:

Exhibit 1 - Opinion and Order, filed in Idaho County Case No.03-34748  
(12-16-05)

Exhibit 2 - Notice of Appeal, Idaho County Case No.03-34748  
(12/18/05)

Exhibit 3 - Ninth Circuit Court of Appeals Application for Permission to  
File Second Petition for Writ of Habeas Corpus in the District Court  
(12/18/05)

Appendix A - Article: Psychiatric Assessment of the Person With Mental  
Retardation

Appendix B - Affidavit of Pam Pizzuto filed in Idaho County Case No.  
23001

Appendix C - Birth Certificate of Gerald Pizzuto

Appendix D - Article: Causes and Prevention of Mental Retardation

Appendix E - Records from Deaconess Medical Center, Spokane

Appendix F - Report of James R. Merikangas (4/1/88)

Appendix G - Washington Juvenile Court Records

Appendix H - Affidavit of Craig Beaver, Ph.D.

Appendix I - Michigan Department of Corrections Presentence Report

Appendix J - Michigan State Prison Records



Appendix K - Article: Epilepsy in Children With Mental Retardation  
 Appendix L - Article: Somnambulism  
 NO Appendix M  
 Appendix N - Michael Emery Ph.D. Letter (1/23/86)  
 Appendix O - Michael Emery Ph.D. Letter (4/24/86)  
 Appendix P - Affidavit of Gaye Momerak  
 Appendix Q - Report Card - St. Ann's  
 Appendix R - Affidavit of Margaret Herzog  
 Appendix S - Affidavit of Paul Ircink (NOTE: Missing page 4 - but page 4  
 is attached to the Proof of Service filed in Idaho County with the  
 8/19/05 Proof of Service)  
 Appendix T - Report Card - Hamblen Elementary  
 Appendix U - Affidavit of William Matson  
 Appendix V - Affidavit of Kismet Winslow  
 Appendix W - Affidavit of Ron Dias  
 Appendix X - Military Records of Gerald Pizzuto, Jr.  
 Appendix Y - Findings of Court in Consideration of Death Penalty, filed in  
 Idaho County Case No. 22075 (5/23/86)

Motion for Additional Testing filed in Idaho County Case No. 34748 (10/25/04)

Affidavit in Support of Motion for Additional Testing filed in Idaho County Case  
 No. 34748 (10/25/04)

Affidavit of Craig Beaver filed in Idaho County Case No. 34748

Draft Social History of Gerald Ross Pizzuto, Jr. with the following attachments:

- A Pizzuto Genogram
- B Relative List
- C Skagit Washington Census, 1920
- D Washington Death Index, Elsie M. Pizzuto
- E San Francisco California Census, 1920
- F Indian Rolls including Travers family
- G Marriage Certificate, Margaret Travers and Albert E. Simmonds
- H Seattle Washington Census, 1930
- I Article: Assimilation through Education: Indian Boarding Schools in  
 the Pacific Northwest
- J Registration Card - Albert Leroy Simmonds
- K Marriage Certificate - Albert Simmonds and Ruth Mikkelson
- L Birth Certificate - Jerry Pizzuto
- M Affidavits of Pam Pizzuto, 1987 and 2008
- N Risk Factors for Mental Retardation
- O Interview Memo - Mike Pizzuto
- P Interview Memo - Del Pizzuto
- Q Birth Certificates of Angelinna and Toni Pizzuto

R Affidavit of Renee Rodewald  
 S Affidavit of Kismet Winslow  
 T Deaconess Medical Center Records  
 U Affidavit of Gaye Momerak  
 V Records, Stead Elementary School  
 W Records, St Ann=s Elementary School  
 X Affidavit of Margaret Herzog  
 Y Records, Hamblin Elementary School  
 Z Affidavit of Paul Ircink  
 AA Juvenile Court Records  
 BB Article on Washington Boys= Ranches  
 CC Records, Zoe Barnum High School  
 DD Affidavit of William Matson  
 EE Army Enlistment Form - Jerry Pizzuto  
 FF Army Discharge Forms - Jerry Pizzuto  
 GG Marriage certificate - Jerry Pizzuto and Pamela Merckley  
 HH Interview Memo - Patricia Gail Styles  
 II Records, Michigan Department of Corrections  
 JJ Medical Records - St. Alphonsus Medical Center

In addition the following techniques were utilized:

Clinical Interview  
 Mental Status Examination  
 Computerized Assessment of Response Bias  
 Word Memory Test  
 Rey Fifteen Item Test  
 Dot Counting Test (Attempted)  
 Wechsler Adult Intelligence Scales - Fourth Edition (WAIS IV)  
 Comprehensive Test of Non Verbal Intelligence (C-TONI)  
 Wide Range Achievement Test 4 (WRAT 4)  
 Rey Complex Figure Drawing  
 Facial Recognition Test  
 Neuropsychological Assessment Battery (NAB)  
     Attention Module  
     Language Module  
     Memory Module  
     Spatial Module  
     Executive Functions Module  
 Delis Kaplan Executive Function System  
     Trail Making Test  
     Verbal Fluency Test  
     Color-Word Interference Test  
     Proverb Test

Mr. Pizzuto was interviewed and tested on January 27 and 28, 2009 at the maximum security prison in Boise, Idaho. Approximately 15 hours of face to face contact were spent in the two days of interviewing and testing.

Mr. Pizzuto was brought to the interview room in a wheel chair. He suffers from diabetes, edema and other medical conditions. He has had two heart attacks necessitating resuscitation. He has been diagnosed with epilepsy. He receives medical attention and medication for his ailments.

Mr. Pizzuto presented for interview and testing as a Caucasian individual. He looks older than his stated chronological age. He was appropriately dressed and groomed in prison garb. His front teeth were missing the first day and had his dentures on the second day. He has a mustache, goatee and long hair that he wears in a long braid. He was open, disclosing and cooperative. He was explained the limits of confidentiality stating that when the information obtained is used for legal purposes on his behalf, the doctor patient privilege does not apply. He understood the limits and acquiesced to participate in the evaluation.

Mr. Pizzuto needed glasses to see adequately. He has problems with scanning and vision. A simple test for visual ability and discrimination allowed determining that he was able to see with the necessary acuity to perform the tasks requested. He has the need to limit his visual fields in order to focus on a specific area of the printed information.

Mr. Pizzuto was verbally articulate and verbose. He was able to answer the simple questions contained in the standard mental status examination for mental acuity. He was oriented to time, place and person. It was difficult for him to stay on one issue of conversation. He related self-aggrandizing stories and information. He denied visual or auditory hallucinations. There were no signs of psychosis or schizophrenia. He admitted to suicidal ideation because of the constant nightmares and flashbacks he experiences related to his life history. He reported symptoms consistent with severe posttraumatic stress disorder (PTSD). He denied physiological symptoms of depression or homicidal ideation.

Mr. Pizzuto's capacity for psychological insight is very limited.

#### **MENTAL RETARDATION:**

Three sources were considered for the purpose of adopting a definition and criteria for diagnosing mental retardation on which to base the rationale for the conclusions in this report: 1) Idaho Code 19-2515A (1)(a), Diagnostic and Statistical Manual Of Mental Disorders, Fourth Edition, Text Revised (DSM-IV-TR) and American Association on Mental Retardation (AAMR) presently known as Association of Intellectual and Developmental Disabilities (AAIDD).

Idaho Code 19-2515A(1)(a) defines mental retardation as:

- (a) "Mentally retarded" means significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two (2) of the following skills areas: communication, self-care, home living, social or interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety. The onset of significant subaverage general intelligence functioning and significant limitations in adaptive functioning must occur before age eighteen (18) years.
- (b) "Significantly subaverage general intellectual functioning" means an intelligence quotient of 70 or below.

The DSM-IV-TR contains the following criteria for diagnosis of mental retardation:

- A. Significant subaverage intellectual functioning: an IQ of approximately 70 or below on an individually administered IQ test.
- B. Concurrent deficits or impairments in present adaptive functioning (i.e., the person's effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.
- C. The onset is before age 18 years.

The AAIDD (formerly AAMR) defines mental retardation as:

"Mental retardation is a disability characterized by significant limitations both in intellectual functioning and adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

This disability originates before age 18." (AAMR, 2002)

In addition, the AAIDD's definition includes the following assumptions essential to the application of the definition.

- 1. Limitations in present functioning must be considered within the context of community environments typical of the individual's age, peers and culture.
- 2. Valid assessment considers cultural and linguistic diversity as well as differences in communication, sensory, motor, and behavioral factors.

3. Within an individual, limitations often coexist with strengths.
4. An important purpose of describing limitations is to develop a profile of needed supports.
5. With appropriate personalized supports over a sustained period, the life functioning of the person with mental retardation generally will improve.

AAIDD defines a disability as:

A disability refers to personal limitations that represent a substantial disadvantage when attempting to function in society. A disability should be considered within the context of the environment, personal factors, and the need for individualized supports.

AAIDD defines intelligence as:

Intelligence refers to a general mental capability. It involves the ability to reason, plan, solve problems, think abstractly, comprehend complex ideas, learn quickly, and learn from experience. Although not perfect, intelligence is represented by Intelligent Quotient (IQ) scores obtained from standardized tests given by a trained professional. In regard to the intellectual criterion for the diagnosis of mental retardation, mental retardation is generally thought to be present if an individual has an IQ test score of approximately 70 or below. An obtained IQ score must always be considered in light of its standard error of measurement, appropriateness, and consistency with administration guidelines. Since the standard error of measurement for most IQ tests is approximately 5, the ceiling may go up to 75. This represents a score approximately 2 standard deviations below the mean, considering the standard error of measurement. It is important to remember, however, that an IQ score is only one aspect in determining if a person has mental retardation. Significant limitations in adaptive behavior skills and evidence that the disability was present before age 18 are two additional elements that are critical in determining if a person has mental retardation.

AAIDD defines adaptive behavior as:

Adaptive behavior is the collection of conceptual, social, and practical skills that people have learned so they can function in their everyday lives. Significant limitations in adaptive behavior impact a person's daily life and affect the ability to respond to a particular situation or to the environment.

Limitations in adaptive behavior can be determined by using standardized tests that are normed on the general population including people with

disabilities and people without disabilities. On these standardized measures, significant limitations in adaptive behavior are operationally defined as performance that is at least 2 standard deviations below the mean of either (a) one of the following three types of adaptive behavior: conceptual, social, or practical, or (b) an overall score on a standardized measure of conceptual, social, and practical skills.

Specific examples of adaptive behavior skills according to AAIDD include:

**Conceptual Skills-**

- Receptive and expressive language
- Reading and writing
- Money concepts
- Self-directions

**Social Skills-**

- Interpersonal
- Responsibility
- Self-esteem
- Gullibility (likelihood of being tricked or manipulated)
- Naiveté
- Follows Rules
- Obeys laws
- Avoids victimizations

**Practical Skills-**

- Personal activities of daily living such as eating, dressing, mobility and toileting.
- Instrumental activities of daily living such as preparing meals, taking medication, using the telephone, managing money, using transportation and doing housekeeping activities.
- Occupational skills
- Maintaining a safe environment

**Causes of Mental Retardation:**

The etiology of mental retardation is variable and complex. In fact, there are more than 350 known disorders and conditions; both genetic and acquired that can result in mental retardation at different developmental stages.

**A. Prenatal Etiology**

One of the most common causes of mental retardation are genetic factors. In addition during the pregnancy numerous

events can contribute to mental retardation: "Numerous agents can have significant deleterious effects on the fragile central nervous system of a child *in utero*. Such teratogens are nongenetic, nonchromosomal agents that are major causes of mental subnormality. These include poor nutrition, toxic substances, maternal disease or infection, blood incompatibility, drugs and alcohol exposure, and cigarettes."

Maternal alcohol abuse during pregnancy can result in fetal alcohol syndrome (FAS) or fetal alcohol effects (FAE). The dangers of consuming alcohol during pregnancy are well known. The teratogenic effects that alcohol and other illicit substances produce impact on the developing, vulnerable brain and cause a disruption in the developmental stages of the body organs, most often the central nervous system.

### **B. Perinatal Etiology**

The perinatal stage is the time period surrounding the birth (e.g. +/- 7 days). During this time, several obstetric complications may arise that place a child at increased risk of having mental retardation. Included in these are prematurity and low birth weight. Prematurity may be the result of many other risk factors that contribute to the manifestation of mental retardation. Further, a premature infant is born with more biological and environmental risk factors and will likely have additional risks throughout their lifetime. 6-7

### **C. Postnatal Etiology**

"[M]any conditions in these early years can lead to mental retardation. In fact, it has been estimated that between 5% and 20% of cases of mental retardation are a result of trauma or neglect." Causes of postnatal mental retardation include traumatic brain injury, cerebral infections (e.g., meningitis and encephalitis), child abuse (e.g., shaken baby syndrome), lead poisoning, and nutritional deficiencies.

Sandra C. Redden, Stephen R. Hooper, & Martha Pope (2002). *Mental Retardation*. San Diego, CA: Academic Press.

## Potential Risk Factors for Mental Retardation

### *Prenatal*

- Hereditary Disorders (present before conception)
- Chromosomal abnormalities (e.g., translocations, Down's Syndrome, fragile-X syndrome)
- Inborn errors of metabolism (e.g., Tay-Sachs disease, Hurler syndrome, phenylketonuria)
- Other single-gene abnormalities (e.g., neurofibromatosis, tuberous sclerosis)
- Polygenic familial syndromes
  
- Early embryonic alteration (often associated with physical findings)
- Chromosomal disorders (e.g., trisomies)
- Infections (e.g., cytomegalovirus, rubella, toxoplasmosis, syphilis, human immunodeficiency virus)
- Teratogens (e.g., alcohol, radiation)
- Toxins (e.g., cocaine, lead, maternal phenylketonuria)
- Placental dysfunction

### *Perinatal*

- Central nervous system insults (increased risk with extreme prematurity)
- Hypoxic-ischemic injury
- Intracranial hemorrhage
- Metabolic disorders (e.g., hypoglycemia, severe hyperbilirubinemia)
- Infections (e.g., meningitis, encephalitis)

### *Postnatal*

- Central nervous system insults
- Infections (e.g., meningitis, encephalitis)
- Trauma (e.g., severe head injury)
- Asphyxia (e.g., near-drowning, prolonged apnea)
- Metabolic disorders (e.g., hypoglycemia, hypernatremia)
- Toxins (e.g., lead)
- Malnutrition
- Environmental disruptions
- Poverty and family disorganization
- Dysfunctional caregiver-infant interaction
- Parental psychopathology
- Parental substance abuse

### *Unknown*

Charles H. Zeanah Guilford Press (1993). Handbook of Infant Mental Health. 253



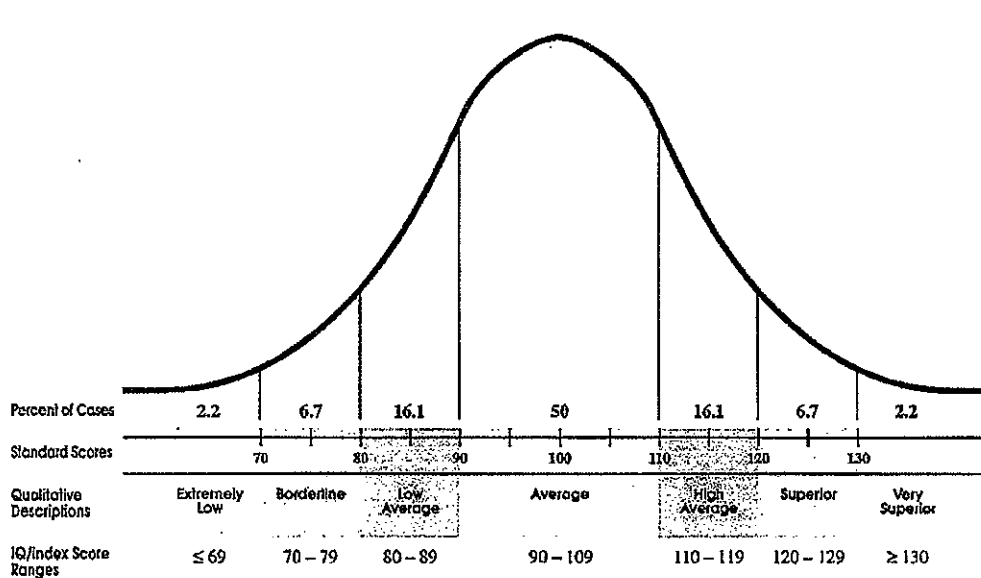
**Table of Potential Risk Factors for Mental Retardation (AAIDD)**

TABLE 8.1  
Risk Factors for Mental Retardation

Timing	Biomedical	Social	Behavioral	Educational
Prenatal	<ol style="list-style-type: none"> <li>1. Chromosomal disorders</li> <li>2. Single-gene disorders</li> <li>3. Syndromes</li> <li>4. Metabolic disorders</li> <li>5. Cerebral dysgenesis</li> <li>6. Maternal illnesses</li> <li>7. Parental age</li> </ol>	<ol style="list-style-type: none"> <li>1. Poverty</li> <li>2. Maternal malnutrition</li> <li>3. Domestic violence</li> <li>4. Lack of access to prenatal care</li> </ol>	<ol style="list-style-type: none"> <li>1. Parental drug use</li> <li>2. Parental alcohol use</li> <li>3. Parental smoking</li> <li>4. Parental immaturity</li> </ol>	<ol style="list-style-type: none"> <li>1. Parental cognitive disability without supports</li> <li>2. Lack of preparation for parenthood</li> </ol>
Perinatal	<ol style="list-style-type: none"> <li>1. Prematurity</li> <li>2. Birth injury</li> <li>3. Neonatal disorders</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of access to birth care</li> </ol>	<ol style="list-style-type: none"> <li>1. Parental rejection of caretaking</li> <li>2. Parental abandonment of child</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of medical referral for intervention services at discharge</li> </ol>
Postnatal	<ol style="list-style-type: none"> <li>1. Traumatic brain injury</li> <li>2. Malnutrition</li> <li>3. Meningoencephalitis</li> <li>4. Seizure disorders</li> <li>5. Degenerative disorders</li> </ol>	<ol style="list-style-type: none"> <li>1. Impaired child-caregiver</li> <li>2. Lack of adequate stimulation</li> <li>3. Family poverty</li> <li>4. Chronic illness in the family</li> <li>5. Institutionalization</li> </ol>	<ol style="list-style-type: none"> <li>1. Child abuse and neglect</li> <li>2. Domestic violence</li> <li>3. Inadequate safety measures</li> <li>4. Social deprivation</li> <li>5. Difficult child behaviors</li> </ol>	<ol style="list-style-type: none"> <li>1. Impaired parenting</li> <li>2. Delayed diagnosis</li> <li>3. Inadequate early intervention services</li> <li>4. Inadequate special-educational services</li> <li>5. Inadequate family support</li> </ol>

## IQ SCORES AND THE NORMAL CURVE:

Although originally the IQ (Intelligence Quotient) was developed and obtained by dividing the individual's mental age by the chronological age, presently, generally IQ scores are calculated in relationship to a normative sample that follows a normal distribution. Most of the intelligence tests used today have a value mean of 100 and a standard deviation of 15. The figure below depicts the normal curve with the percent of cases that fall within standard deviations, standard scores, the equivalent IQ/Index scores ranges and descriptive categories.



From: WAIS III Record Form. Psychological Corporation (1997)

## FLYNN EFFECT:

The "Flynn Effect" is a well-known phenomenon that resulted from the study of IQ scores across populations. Dr. Flynn demonstrated that the population's mean IQ scores tend to increase over time. This phenomenon is present in all of the 14 countries in which Dr. Flynn conducted his investigation. In the United States the increase is approximately 0.33 points per year or 3 points per decade.

The AAIDD recognizes the need to consider the Flynn Effect in determining an IQ score for the purpose of diagnosing mental retardation.

**TEST RESULTS:**

The WAIS IV is the latest version of the Wechsler Adult Intelligence Scales iterations. It was published in 2008. Significant changes were made to this test that allows for more detailed interpretation of the results obtained. It departed from the original Verbal, Performance and Full Scale IQ scores in order to provide a wider range of information regarding an individual's abilities.

Mr. Pizzuto obtained the following scores:

<b>SCALE</b>	<b>SUM OF SCALED SCORES</b>	<b>COMPOSITE SCORE</b>	<b>PERCENTILE RANK</b>	<b>95% CONFIDENCE INTERVAL</b>
Verbal Comprehension	10	61	0.5	57-68
Perceptual Reasoning	13	67	1	62-75
Working Memory	13	80	9	74-88
Processing Speed	4	56	0.2	52-69
Full Scale	40	60	0.4	57-65
General Ability	23	60	0.4	56-66

A complete analysis of the scores obtained are contained in the attached Computer Generated Report.

Because the WAIS IV was very recently published the application of the Flynn Effect would only yield a negligible correction.

The C-TONI is a test designed to provide information regarding individuals' cognitive abilities without the interference of their verbal skills. It provides information regarding the subject's capacity for reasoning by presenting problems related to analogies, categories and sequences. These skills are tested with pictorial and geometric paradigms. The test provides an overall measure of nonverbal intelligence and pictorial and geometric quotients. The sample is distributed in a normal curve with a mean of 100 and a standard deviation of 15. Mr. Pizzuto obtained the following scores:

<b>SCALE</b>	<b>IQ SCORE</b>	<b>95% CONF. INTERVAL</b>
Nonverbal IQ	68	(63-73)
Pictorial Nonverbal IQ	59	(54-64)
Geometric IQ	51	(46-56)

The C-TONI was published in 1995/1996. When the Flynn Effect is applied a correction of approximately 4 points is warranted, therefore the Full Scale IQ score would be approximately 64 at a 95% level of confidence the score would range between 59 and 69.

The scores obtained in the WAIS IV and the C-TONI are well below the 2<sup>nd</sup> percentile rank and confirm Mr. Pizzuto's low intellectual abilities placing him in the mentally retarded range.

#### **ADAPTIVE BEHAVIORS:**

Adaptive Behaviors: The 1961 AAMR Manual adopted a "dual criteria" approach to the definition of mental retardation because of the imprecise and misuse of IQ scores. An IQ score below a specific point (85 in 1961, 70-75 after 1973) would also have to be accompanied by a significant deficiency "adaptive behavior." This construct was imprecisely defined (as relative impairment in independent living skills and in the ability to engage in appropriate social behaviors) and this, along with the absence of adequate measures, contributed to widespread ignoring of the construct and continued sole reliance on a single IQ score.

The 1992 and 2002 AAMR Manuals both emphasized the importance of assessing adaptive behavior, criticizing the tendency of clinicians to diagnose mental retardation based upon rigid reliance on IQ tests alone. The 1992 Manual recognized that while "previous definitions have indicated that intelligence and adaptive behavior should have equal weight in diagnosis, in practice, IQ has typically dominated and, thus, has been overemphasized both in terms of professional decision making and classification and research." (1992 AAIDD Manual.) The 1992 Manual was specifically designed "to encourage a balanced consideration of IQ and adaptive skill measures."

The AAMR has emphasized the adaptive behavior criterion to avoid the inclusion of individuals who are not significantly impaired and to avoid the exclusion of people who should be classified as mentally retarded even though they obtained relatively high scores in IQ tests. The 1992 AAMR Manual states that "[b]y shifting to greater reliance on adaptive skills in the diagnosis of mental retardation, embedded within an orientation toward observation and clinical judgment, all persons who have significant limitations associated with the defined concept of mental retardation will be included in the definition". The 2002 Manual expressed significant concern about the possibility that the continued over-reliance on IQ scores would produce "false negatives," mentally impaired individuals who deserved the protections afforded to mentally retarded people but had no access to them:

There are those who would argue that the considerable correlation

between IQ scores and adaptive behavior among people who have mental retardation, in effect, creates a redundant process to assure better diagnosis. No such safeguards exist, however, for a false negative, a serious problem that demands the field's attention. The problems faced by people who have mental retardation but do not receive the diagnosis can be severe. These individuals are vulnerable to the denial of essential supports and exclusion from eligibility for important protections.

#### 2002 AAMR Manual

There has been, and continues to be, efforts to develop and standardize tests that measure adaptive behaviors. By definition, one must rely on descriptions of behaviors observed in the individual assessed. These observations are by necessity performed by people that have knowledge of the assessed individual either because of personal contact or reliable references. Primary sources of information regarding developmental history are parents, siblings, other relatives, teachers, physicians, peers and other individuals that had intimate contact with the subject of the evaluation during his or her developmental years.

Measures of adaptive behavior have tended to rely on rating instruments. These instruments contain multiple items referring to specific competencies; the informant is asked to rate the relative degree to which the rated individual can perform such tasks. The rating can be performed by the clinician performing the evaluation during or after interviewing appropriate sources, the clinician then scores the instruments according to tables provided in the test manuals. Or the informing sources can directly score the assessed individual in the scoring forms. Originally adaptive behavior scales were not normed; they simply provided descriptions of behaviors. More recently, efforts have been made to design questionnaires of adaptive behaviors that can be scored and compared to a normative sample. Consistent with IQ scores these instruments tend to have a mean of 100 and a standard deviation of 15.

Evaluations of adaptive deficits should not rely exclusively on the results obtained on adaptive deficit rating scales. Clinicians must rely on their clinical judgment to provide a diagnosis of mental retardation. Review of relevant records and the interviews with significant sources provide invaluable information regarding the subject's adaptive behaviors. Rating scales are useful tools, but they are not a substitute for the knowledge, training and experience of a qualified clinician.

When the subject to be evaluated is a member of a minority and developed in an environment significantly different than that of the dominant culture, the rating scales are possibly not useful and should only be used with extreme caution. Growing in up in a rural environment in a third world country demands adaptive

behaviors very different from the ones existing in most areas of the United States.

In order to conduct an assessment of Mr. Pizzuto's adaptive functioning, I reviewed the extensive information provided that contained a Social History as well as declarations from teachers and family members describing Mr. Pizzuto's limitations. In addition, I conducted an interview of his sister Elsie. She is 11 months younger than he is, nevertheless she became the de facto parent of the Pizzuto children due to the extremely dysfunctional family dynamics and the absence of their mother as a parent even when she was physically present. I also interviewed his sister Angelina who verified and ratified the information obtained from other sources.

As the Social History attest and was reported by Mr. Pizzuto and his sisters, he grew up in one of the most dysfunctional families that this evaluator has come in contact with, in the course of over 20 years of experience dealing with child abuse and neglect. Mr. Pizzuto and his siblings were the victims of the most horrendous physical, sexual and psychological abuse perpetrated by a sadistic psychopathic stepfather and condoned by a mother that was both physically and emotionally absent likely due to her own mental illness.

It is within this context that the assessment of adaptive behaviors must be done. It presents several challenges. The school records are incomplete and do not reflect the limitations that Mr. Pizzuto experienced in the academic realm. Because the family was constantly moving, running away from the authorities, the children attended numerous schools using aliases and false information. In addition to making it difficult to obtain records it would have been almost impossible for Mr. Pizzuto's limitations to be documented in order to provide supportive services. In addition at the time he was in his early developmental years, services for children with special needs were very limited, particularly in the relatively small towns in which Mr. Pizzuto's family lived. Obviously the parents would not have been aware or even interested in Mr. Pizzuto's limitations in order to seek the services that he required.

As a result of his circumstances there is no record of any psychometric testing conducted on Mr. Pizzuto prior to the age of 18.

Mr. Pizzuto's sister responded to the Adaptive Behavior Assessment System, Second Edition (ABAS II) questionnaire providing retrospective information regarding Mr. Pizzuto's functioning when he was approximately [REDACTED] years old. She was only slightly younger than he was ([REDACTED]) but as was previously mentioned she was the de facto parent. The following scores were obtained:

<b>Composite</b>	<b>Sum of Scaled Scores</b>	<b>Composite Score</b>	<b>Percentile Rank</b>	<b>Confidence Interval (95%)</b>
General Adaptive Composite (GAC)	17	48	<0.1	45-51
Conceptual	6	55	0.1	50-60
Social	2	55	0.1	49-61
Practical	9	50	<0.1	45-55

The scores obtained fall in the very low range. Because of the unique circumstances in which Mr. Pizzuto lived during his developmental years the scores are extremely depressed when compared to the normative population, who is for the most part representative of the dominant culture. Considering these factors, Mr. Pizzuto's scores are reflective of his limitations because in spite of living in the same environment, his younger sisters were able to attain a much higher level of functioning. His older half sister, who is also very low functioning, also presented adaptive behavior deficits as reported by Elsie and Angelina Pizzuto.

**Conceptual Adaptive Behavior Skills**

Receptive language — Mr. Pizzuto was unable to understand and follow instructions resulting in severe consequences and abuse.

Expressive language — Mr. Pizzuto could not express himself, stuttered and had poor enunciation.

Academic -- Mr. Pizzuto was not able to learn in school. He required of the support of his younger sister to do school work. He apparently was retained in some grades. The standard scores available reflect achievement scores below grade level.

Self-direction — Mr. Pizzuto required to be repeatedly told what to do. He was frequently being physically punished for not following instructions.

**Social Adaptive Behavior Skills**

Interpersonal — Mr. Pizzuto was reported as being a loner without the ability to interact with peers.

Responsibility --- Mr. Pizzuto was unpredictable. He started running away early in adolescence.

Gullibility — Mr. Pizzuto is quite gullible; appears that others took advantage of him regularly.

Naiveté — Mr. Pizzuto has limited logic, very limited understanding of cause and effect, foresight or strategic planning.

Follows rules — Mr. Pizzuto can recognize and follow many rules, but does not understand a high number of rules.

Avoids victimization — Mr. Pizzuto is easily taken advantage of. He received the most beatings and abuse in the family.

### **Instrumental Activities of Daily Living**

Occupational skills — Mr. Pizzuto enlisted in the army in January of 1973, he was not able to adjust to the structure and life as a soldier. He left the army later that year. In his discharge statement he wrote "...My reason for getting out of the army Because I think is fucked up if I was sean back to Duty I will awol in tell I get out and I thing that is all you army people to know about my feeling because if fucked. I will take an undisrabil discharge I know that and undisrabil discharge." Mr Pizzuto has had very limited work experience. He has never been able to hold gainful employment for and extended period of time. Though he reports limited employment, only one job has been verified at this time: a job at McDonald's in 1974, which he retained for less than a month. A request for additional employment verification has been made to the Social Security Administration.

Maintain safe environment — Mr. Pizzuto has shown complete disregard for his safety and the safety of others.

### **AGE OF ONSET**

From the reports of Mr. Pizzuto's family and schoolteachers it is evident that he has exhibited limitations in intellectual functioning and adaptive behaviors prior to the age of eighteen.

### **RISK FACTORS SUPPORTING THE DIAGNOSIS OF MENTAL RETARDATION:**



## **BRAIN DYSFUNCTION:**

Many risk factors were identified as potential contributors to his cognitive limitations. There is an extensive history of mental illness and low functioning in the maternal family. He was born prematurely. There was extreme maternal neglect and no bonding. There was lack of stimulation and affection. He was exposed to tremendous amounts of stress, poverty and malnutrition all through his developmental years. He was the victim of extreme physical, sexual and psychological abuse. He suffered from epilepsy. He experienced at least two major brain insults prior to the age of eighteen. He was constantly hit in the head and face, often until he lost consciousness. He lacked parental support and direction.

Mr. Pizzuto's test results indicate the presence of significant brain dysfunction, particularly in frontal lobe function.

Mr. Pizzuto exhibited significant impairment on all measures of reasoning, planning, and cognitive flexibility. These aspects of cognitive function are believed to be primarily mediated by the frontal lobes of the brain.

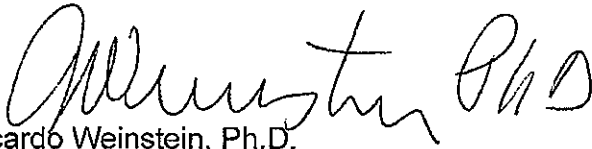
I evaluated Mr. Pizzuto in a quiet test surrounding, free from distractions. Mr. Pizzuto exhibited good rapport with me and expended good effort. I tested Mr. Pizzuto with multiple measures of the same domain and obtained the same or similar results. These consistent results confirm that Mr. Pizzuto expended his best effort and did not malingering. Objective evidence of his good cooperation was provided by the Computerized Assessment of Response Bias, the Word Memory Test and the Rey 15 Item Test.

## **CONCLUSION:**

It is my opinion within a reasonable degree of psychological certainty that Mr. Pizzuto suffers from mental retardation and that this diagnosis is based on the definitions of the Idaho Code 19-2515A (1)(a), AAIDD and the DSM-IV-TR. He has an IQ below 70, he exhibited significant deficiencies in many areas relating to his adaptive behaviors and these conditions were present before the age of 18.

Mr. Pizzuto's mental retardation is the result of genetic, developmental and environmental causes. ***Mr. Pizzuto has mental retardation.***

If you have any questions please do not hesitate to contact me.

  
Ricardo Weinstein, Ph.D.

# **RICARDO WEINSTEIN, PH.D.**

Neuropsychology

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## **CURRICULUM VITAE**

### **PRESENT PROFESSIONAL ACTIVITIES:**

- Licensed Psychologist in Private Practice:  
Clinical, Forensic and Neuropsychology; assessment and treatment.
- Forensic Neuropsychological, Psychological and Cultural Expertise  
evaluations and consultation to attorneys and their clients in death  
penalty cases.
- Member of the San Diego County Superior Court Panel of Approved  
Psychologists for Criminal Court referrals. (Inactive.)
- Qualified Expert Witness for Federal Court, Superior Court, Family Court,  
Juvenile Court.
- Qualified Medical Evaluator of the State of California Industrial Medical  
Council. (Inactive)
- Consultant and educator in Psychological and Neuropsychological  
Assessment, Cultural Competency, Quantitative Electroencephalography,  
Child Abuse, Drug Abuse and Suicide Prevention.

**EDUCATION:**

- Quantitative Electroencephalography (QEEG), trained under the supervision of M. Barry Serman, Ph.D.; Professor, School of Medicine, University of California Los Angeles 1999-2002
- Post-Doctoral Certificate Program in Neuropsychology. Fielding Institute, Santa Barbara, California – 1998
- Ph.D. Clinical Psychology, International College, Los Angeles, California – 1981
- M.A. Clinical and Humanistic Psychology, Merrill Palmer Institute, Detroit, Michigan – 1979
- Licenciado en Administracion de Empresas, Universidad Nacional Autonoma de Mexico, Mexico City, Mexico – 1968

**PAST WORK EXPERIENCE:**

- |             |   |
|-------------|---|
| 1992-2000   | Baker Elementary School. Psychologist for the Comer Program.  |
| 1994 – 1996 | Adjunct Professor; San Diego State University   |
| 1988 – 1989 | Children's Therapeutic Communities.<br>Consulting Psychologist. <ul style="list-style-type: none"><li>• Treatment of adolescent sex offenders.</li></ul>  |
| 1986 – 1988 | Home Start Inc.; SOS Program Director <ul style="list-style-type: none"><li>• Assessment and in-home treatment of abused children and their families.</li></ul>   |
| 1979-1983   | Suicide Prevention Center, Los Angeles, California.<br>Director of the Hispanic Outreach Program <ul style="list-style-type: none"><li>• Planned and implemented a demonstration program for the treatment of PCP abuse.</li><li>• Individual and group psychotherapy.</li><li>• Crisis intervention trainer.</li></ul> |

- 1978 – 1979 Henry Ford Hospital, Department of Substance Abuse.  
Detroit, Michigan.
- Intern and research assistant.
- 1977 – 1978 Camelback Hospital, Phoenix, Arizona.
- Psychodramatist.
- 1972 – 1976 Management Consultant. Mexico, Central America,  
Ecuador, and Dominican Republic

**PROFESSIONAL AFFILIATIONS:**

- National Academy of Neuropsychology
- American Neuropsychiatric Association
- International Neuropsychological Society
- A Division 41, American Psychological Association,
- California Psychological Association
- San Diego Psychological Association
- American Association on Mental Retardation
- The Reitan Society
- Coalition of Clinical Practitioners in Neuropsychology

**PUBLICATIONS:**

Weinstein, J. & Weinstein, R., *I Know Better Than That: The Role of Emotions and the Brain in Family Law Disputes* "I Know Better Than That":The Role of Emotions and the Brain in Family Law Disputes, 7 J. OF L. & FAM. STUDIES 351 (2005).

Neuro-Jurisprudence: The Brain and the Law. Abstract. XXIXth International Congress on Law and Mental Health, Abstracts (2005)

Before It's Too Late: Neuropsychological Consequences of Child Neglect And Their Implications For Law and Social Policy. J. Weinstein, J.D. and R. Weinstein, Ph.D. University of Michigan Journal of Law Reform. Volume 33. Summer 2000

Consequences of Child Neglect on Brain Development: A Case Study. Abstract. Journal of the International Neuropsychological Society. Volume 8, Number 4

QEEG in Death Penalty Evaluations. Abstract. Journal of Neurotherapy. Volume 7, Number 1 2003

The Neuropsychology of Child Neglect: Developmental Consequences, Case Examples and Legal and Societal Implications. Janet Weinstein, J.D. and Ricardo Weinstein, Ph.D. Journal of Neurotherapy. Volume 7, Number 1 2003

Comparison of Skil QEEG and Neuropsychological Evaluation of Death Row Inmates. Abstract. Ricardo Weinstein, Ph.D. and M.B. Sterman, Ph.D. Journal of Neurotherapy Volume 7, Number 1 2003

#### **RECENT PRESENTATIONS:**

Neuro-Jurisprudence: The Brain and the Law, XXIXth International Congress on Law and Mental Health, Paris, France (2005)

Symposium, Association of Family and Conciliation Courts 42<sup>nd</sup> Annual Conference, Neuro-Jurisprudence: The Brain, Emotions and Their Role in Family Custody Disputes Seattle, Washington (2005)

Symposium, "Neuro Jurisprudence: A New Look at the Law through the Lens of the Current Brain Research", American Psychology & Law Society Annual Conference, La Jolla, CA (2005)

Comprehensive Evaluations of Brain Function in Forensic Cases. Australia Society for Neuronal Regulation. Sydney, Australia (September 2004)

The Mind Personality, and Brain Development: Its Relevance to Disorder Behavior and the Death Penalty. NASA Conference. Albuquerque, NM (2003)

QEEG in Death Penalty Evaluations. Society for Neuronal Regulation, 10<sup>th</sup> Annual Conference, Scottsdale, AZ (2002)

Neuropsychological Consequences of Child Neglect and Implications for Social and Legal Policy: A Case Study, International Neuropsychological Society Meeting, Stockholm (2002)

Neuropsychological Consequences of Child Neglect: Implications for Social and Legal Policy, International Congress on Law and Mental Health, Amsterdam (2002)

Neuropsychological Consequences of Child Neglect and Implications for Social and Legal Policy, 13<sup>th</sup> Annual APSAC Colloquium, New Orleans (2002)

Cultural Competent Evaluations in Death Penalty Cases. Secretaria de Relaciones Exteriores, Mexico City, Mexico (2002)

Neuropsychological Consequences of Child Neglect and Implications for Social and Legal Policy: A Case Study, SABA Society Retreat (organization of professionals engaged in brain research and neurofeedback treatment), Saba, Netherlands, Antilles (2002)

Comparison of SKIL QEEG and Neuropsychological Evaluations of Death Row Inmates. SABA Society Retreat. Saba, Netherlands, Antilles (2002)

Cultural Competent Evaluations in Death Penalty Cases. Consulado General de Mexico. San Francisco, CA (2002)

Neuropsychological Consequences of Child Neglect and Implications for Social and Legal Policy, Thirteenth National Conference on Child Abuse and Neglect, Albuquerque (2001).

Cultural Competent Evaluations in Death Penalty Cases. Consulado General de Mexico. Houston, TX (2001)

Quantitative Electroencephalogram (QEEG) in Death Penalty Evaluations, Society for Neuronal Regulation, Monterey, CA (2001)

Comprehensive, Cultural Competent Neuropsychological Evaluations. San Francisco, CA (2001)

Neuropsychological Consequences of Child Neglect and Social Policy Implications, International Conference of Psychology and Law, Dublin, Republic of Ireland (1999).

January 2007

# **Exhibit 3**

**(Adaptive Behavior Report by James R. Patton, Ed.D.,  
dated December 28, 2009)**

**James R. Patton, Ed.D.**  
**1406 Thaddeus Cove**  
**Austin, Texas 78746**  
**(512) 740.4082**  
**jpattton@austin.rr.com**

**Report – Adaptive Behavior**

**RE: Gerald Ross Pizzuto, Jr.**  
**28 December 2009**

1. My name is James R. Patton. I am over the age of eighteen, and have first hand knowledge of the facts and opinions presented in this report.

### **Professional Background**

2. I have worked in the field of disabilities since 1974 and hold Master's and Doctoral degrees from the University of Virginia in the area of Special Education/Disabilities. I have taught in higher education since 1977 and have had faculty appointments at the University of Virginia, the University of Hawaii at Manoa, and the University of Texas at Austin. I have 34 years of experience working in the field of mental retardation. During my professional career, I have served as a special education teacher, consultant, and professor in the field of mental retardation/intellectual disability.
3. As a professional in the field of mental retardation, I have coauthored/co-edited two professional books specifically focused on the topic of mental retardation: Mental Retardation – 7<sup>th</sup> Edition (Beirne-Smith, Patton, & Kim, 2006) and Mental Retardation in the 21<sup>st</sup> Century (Wehmeyer & Patton, 2000). The former book, which is currently being revised in an eighth edition, is used widely throughout the country in courses on mental retardation/intellectual disabilities. The other book, which was sponsored by the Arc (formerly known as the Association for Retarded Citizens) in conjunction with the 50<sup>th</sup> anniversary of this organization, represents a compilation of a range of issues in the field of mental retardation/intellectual disabilities.
4. I have written extensively on the topic of mental retardation and other disability-related topics in my career. I have authored, coauthored, or edited 59 books (including revisions) since my first book was published in 1979. I have also authored or coauthored 37 chapters in professional books, 53 articles in professional journals, and 3 computer-based programs. I have served as the editor or co-editor on 5 special series in professional journals and as the co-editor on a 15-book series on adult-related issues associated with disabilities. I have also coauthored two published standardized assessment instruments: Scholastic Abilities for Adults (Bryant, Patton, & Dunn, 1991) and the Transition Planning



Inventory (Clark & Patton, 1997). In addition, I was one of the co-developers of the Word Identification and Spelling Test (WIST) (Wilson & Felton, 2004). I am one of the authors of the Comprehensive Adaptive Behavior Scales that is currently being normed and will be published by PRO-ED (Austin, Texas).

5. I have served on boards and committees of national, state, and local organizations that serve and represent persons with mental retardation. For six years, I served on the national board of the Division on Mental Retardation and Developmental Disabilities of the Council for Exceptional Children, serving as president of the organization for one of these years. This is an international organization dedicated to issues related to persons with mental retardation. I also served for seven years on the Programs and Services Committee of the Arc of Texas. I have also served on the editorial boards of two international journals in the field of mental retardation, Education and Training in Mental Retardation and Developmental Disabilities and Focus on Autism and Developmental Disabilities.
6. I have taught courses that were specifically about the characteristics of individuals with mental retardation at a number of different universities in the U.S. (University of Virginia and University of Hawaii at Manoa) and internationally (Universidad Catolica de Santa María – Arequipa, Perú). I have taught a number of other courses that have included content related to the topic of mental retardation.
7. I am a member of the following organizations – all of which have bearing on my credentials to comment on issues related to mental retardation: American Association on Intellectual and other Developmental Disabilities (AAIDD) – formerly called the American Association on Mental Retardation (AAMR); American College of Forensic Examiners International (ACFEI); Council for Exceptional Children (CEC).
8. As James Ellis<sup>1</sup> has suggested, a need exists for trained professionals whose expertise is the field of mental retardation. “The expertise of skilled mental disability professionals is crucial to implementing *Atkins*’ protections and achieving the goals of the criminal justice system in these cases.” I have worked in the field of mental retardation for the last 34 years and over this time have gained the expertise to which Ellis refers. I offer the following points to substantiate my credentials. I have worked with hundreds of individuals who had mental retardation. As a result, I am very aware of the characteristics of this population from an *in situ* perspective. I have first-hand knowledge of how these characteristics manifest in the course of everyday situations.
9. In my capacity as a special education teacher/diagnostician in the Charlottesville Public Schools, I assessed and taught many students with mild mental retardation. Included in my duties were those of diagnostic assessment. I administered standardized and nonstandardized assessments, interpreted their results, presented these results to other professional staff, and served on the multidisciplinary team

(MDT) that made eligibility decisions for special education. Many of the MDT decisions involved the issue of whether a student had mental retardation. Although I am not licensed to administer tests of intelligence, I was trained and am able to administer a variety of assessment measures, including adaptive behavior measures and educational achievement measures.

10. During my doctoral program, I co-coordinated a continuing education program for adults with mental retardation called "Night College" in Charlottesville, Virginia. This program provided "life skills" classes for 60+ adults who lived in the city of Charlottesville and surrounding county (Albemarle County). The classes were offered one night per week and were located in Ruffner Hall on the campus of the University of Virginia. In addition to co-coordinating this program, I also co-taught classes in this program. This experience added to my knowledge and understanding of the characteristics and needs of individuals with mental retardation.
11. My interactions with adults who have mental retardation is further substantiated in two additional settings. I had regular interactions with adults with mental retardation who worked in a vocational training program in Honolulu, Hawaii. I was able to see how this group of individuals dealt with the demands of daily living. I had contact with this group in classroom and community-based settings over the course of three years. I am currently the faculty advisor for the "Best Buddies" chapter at the University of Texas at Austin. This program matches UT students with adults with mental retardation who live in the Austin community. I attend the scheduled events and interact with these adults on a regular basis.
12. As a professional with a doctoral degree in special education, I have remained very active in the area of mental retardation/intellectual disabilities through my writings, service, and research. As the coauthor of a widely used textbook on mental retardation in special education, I am very aware of literature on and issues associated with the definition and assessment of mental retardation. Serving on the editorial boards of two well-recognized professional journals associated with the area of mental retardation adds to my ongoing awareness of important topics in this field.
13. As the co-author of two published standardized assessment instruments, I am acutely aware of the concepts of test development and the technical features (norms, reliability, and validity) related to these types of instruments. This knowledge provides me with a keen insight into the various issues associated with assessment. The fact that I am currently working on the Comprehensive Adaptive Behavior Scales instrument provides a unique perspective of the issues related to the measurement of adaptive skills.

### Activities Performed To Date

14. I was asked by Mr. Pizzuto's counsel to examine his adaptive functioning during the developmental period. This is a report of findings related to adaptive functioning. The current report is based on a review of the following documents that were provided to me by Mr. Pizzuto's counsel.

Affidavit of Ron Dias (former school counselor)  
Affidavit of Margaret Herzog (former principal)  
Affidavit of Paul Ircink (former teacher)  
Affidavit of William Matson (former school counselor)  
Affidavit of Gaye Momerak (former teacher)  
Affidavit of Elsie Pizzuto Rado (younger sister)  
Affidavit of Kismet Winslow (aunt)  
School records  
Military records

I was able to conduct face-to-face interviews with the following individuals:

Elsie Pizzuto Rado (younger sister) [20 November 2009] (described events in Gerald Pizzuto, Jr.'s life from ages 10, 11 and 12).  
Gerald Pizzuto, Jr. [20 November 2009]

I conducted phone interviews with the following individuals who knew Mr. Pizzuto at various time prior to age [REDACTED]

Ruth Roath (aunt) [22 December 2009] ([REDACTED])

Paul Ircink (former teacher) [23 December 2009] ([REDACTED])  
Monique Winslow Eska (cousin) [28 December 2009] ([REDACTED])  
Margaret Herzog (former principal) [29 December 2009] ([REDACTED])  
Gaye Momerak (former teacher) [29 December 2009] ([REDACTED])

### Concept of Adaptive Behavior/Functioning

15. Adaptive behavior/functioning refers to a person's ability to deal with the everyday demands of life. The AAIDD<sup>2</sup> (2010) defines adaptive behavior as "the collection of conceptual, social, and practical skills that have been learned and performed by people in order to function in their everyday lives."<sup>3</sup> The American Psychiatric Association (2000) describes adaptive functioning as "how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting."<sup>4</sup>

16. It is essential to point out that the AAIDD stresses that “within an individual, limitations coexist with strengths.”<sup>5</sup> What this means is that an individual does not have to show extreme deficits across all adaptive skill areas. It is important to note that, even with relative strengths, a person can still qualify as having deficits in adaptive behavior and meet this criterion of the definition.
17. Another aspect of adaptive behavior that warrants attention is the emphasis that the AAMR 2002 manual gives to the performance rather than acquisition of adaptive skills. “Thus it is expected that reasons for limitations in adaptive skills may include (a) not knowing how to perform the skill (acquisition deficit), (b) not knowing when to use learned skills (performance deficit), or (c) other motivational factors that can affect the expression of skills (performance deficit).”<sup>6</sup>
18. As supported in the professional definitions of mental retardation, a person ONLY has to show deficits in SOME of the many adaptive behavior areas, as indicated below.
  - a. AAMR (2002): significant limitation in ONE of the following three types of adaptive behavior: conceptual, social, or practical
  - b. American Psychiatric Association (2000) -- Criterion B: significant limitations in AT LEAST TWO of following eleven areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.
19. Deficits in adaptive functioning exist when a “consistency of information” obtained from a variety of sources and different settings indicates that “typical” adaptive functioning differs clearly and appreciably from the standards of personal independence expected of a person of the same age, sociocultural background, and community setting.
20. The determination of adaptive behavior must be accomplished by the collection of data from a variety of sources. Sources can include records, previous test results, interviews with key individuals who knew the person on whom adaptive information is needed, and formal testing. When obtaining information through interviews, the following conditions must be met to ensure valid results:
  - reliable, credible respondents are available
  - respondents had regular contact with the individual
  - respondents had contacts of reasonably long duration
  - respondents had an opportunity to observe behaviors associated with the specific skill areas of adaptive functioning
  - respondents were in close contact, as indicated above, with the individual prior to age 18, if retrospective assessment is used

- at least one of the respondents should be from the individual's cultural background
21. Significant limitations in adaptive functioning are defined differently, depending on the assessment technique employed. According to the AAIDD (2010), when a formal, standardized, norm-referenced instrument is used, "significant limitations in adaptive behavior are operationally defined as performance that is approximately two standard deviations below the mean."<sup>7</sup>
22. When clinical assessment techniques (informal data collected through collateral interviews) are utilized, "significant limitations" can be identified when nature of the adaptive deficits has a major impact on the person's functioning that clearly deviates from the standards of personal independence and social responsibility expected of the person's age and cultural group. Furthermore, "significance" is underscored when the information obtained from different sources corroborates these deficits (i.e., convergent validity). The determination that deficits exist/existed should be based on professional judgment that results from training and an extensive experiential background in working with individuals with mental retardation.

#### **Adaptive Functioning: Findings From a Review of Documents and Individual Interviews**

23. For the purposes of this report, various documents were reviewed and certain individuals were interviewed (as listed in paragraph 14) to obtain an assessment of Mr. Pizzuto's adaptive functioning.
24. General Functioning: A number of those persons who were interviewed expressed a concern that Mr. Pizzuto learned at a much slower rate than others of his age.
- His sister, Elsie Pizzuto Rado, noted that he was born with limited capacity. Others (Kismet Winslow, Monique Winslow Eska) thought he was slow. Kismet observed that he and his sister, Renee, were mentally very slow and that "their slowness made them stand out among their siblings."
  - According to Ruth Roath, Mr. Pizzuto was late in developing and "did not learn the basics of living."
  - Mr. Pizzuto was found to be immature by numerous people (Monique Winslow Eska, Gaye Momerak, Ron Dias).
  - A number of individuals (Elsie Pizzuto Rado, Ruth Roath, Kismet Winslow) noted that he needed supports in his life – in his early years, these were provided by his siblings.

25. Conceptual Adaptive Skills (includes areas such as language, reading, writing, money concepts, and self-direction):

- Communication [expressive, receptive, and pragmatic language]
  - Expressive Language:
    - Elsie Pizzuto Rado indicated that Mr. Pizzuto had a difficult time expressing his feelings and possessed a vocabulary that was limited to his experiences.
    - Ruth Roath noted that Mr. Pizzuto used baby language and did not have much of a vocabulary.
    - Monique Winslow Eska remembered that he told nonsensical stories – parts of which made some sense but other parts that did not.
    - Kismet Winslow remembered that he could not talk very well – taking a long time to get out his words - and preferred to point or gesture rather than voice his needs. She also noted that he had problems expressing himself when he was in stressful situations.
  - Receptive Language:
    - Elsie Pizzuto Rado remarked that you “had to talk down” to Mr. Pizzuto in order for him to understand what you were saying. She also indicated that he had trouble understanding humor at times.
    - Ruth Roath noted that you had to be very concrete when you spoke to him. She also thought that he had difficulty listening and was not able to follow directions.
    - Monique Winslow Eska stated that at times he had trouble understanding what was being said.
  - Pragmatic Language:
    - Ruth Roath noted that Mr. Pizzuto could not conduct a conversation of any substance with other people. She also remembered that he would smile at inappropriate times.
    - Monique Winslow Eska indicated that he couldn’t carry on a conversation of any length and that he never started a conversation.
- School Performance [ability to meet the content and performance standards of school]
  - The school records for Mr. Pizzuto were incomplete. A review of the available school documents provided indicates that Mr. Pizzuto demonstrated a consistent pattern of academic difficulty when he was in school.

- The affidavit of Elsie Pizzuto Rado, along with the interview information provided by Ruth Roath, clearly indicate that Mr. Pizzuto struggled in school.
- Ron Dias, a high school counselor, when referring to Mr. Pizzuto's school performance, remarked that he was "outgunned by his class peers."
- Mr. Pizzuto repeated a number of grade levels. The records clearly indicate that he repeated the 6<sup>th</sup> grade. The records also indicate that Mr. Pizzuto was ■ years old when he began the fifth grade at Stead Elementary—the typical student in fifth grade is ■ years old, thus suggesting that he had repeated an earlier grade as well. Elsie Pizzuto Rado corroborated this fact – indicating that she and Mr. Pizzuto, who was a year older than she was, were in the same 3<sup>rd</sup> grade class.
- The final report card at St. Ann's School - a school that served a large number of students who were at risk - suggested that Mr. Pizzuto be retained in 6<sup>th</sup> grade. Paul Ircink (Mr. Pizzuto's 6<sup>th</sup> grade teacher at Hamblen Elementary) remarked that "his [Mr. Pizzuto's] physical maturity caused him to stand out from his peers."
- The grade reports that were reviewed show low levels of performance – most of the grades he received were C's and D's (records from Stead Elementary, St. Ann Primary, Sacajawea Junior High, Glover Junior High, Zoe Barnum High School). According to Margaret Herzog, St. Ann's School rarely failed students and a grade of "C" at St. Ann's indicated a student was "really in the danger zone."
- Mr. Pizzuto received a "D" in English when he attended Zoe Barnum High School - according to William Matson, a school counselor at this school, "this is a significant mark because it was my experience while at Zoe Barnum that the school rarely gave a D grade to any student."
- His overall grade equivalent of 4.2 on the Stanford Achievement Test (SAT) [10/67] is below not only the national norm (5.1) but also the median for his class (4.7). His score is notable because, at the time, he was a year older than his classmates and those at the fifth grade level nationally.
- It is important to recognize what Paul Ircink opined in his affidavit: "Despite the fact that he was a couple of years older than the average 6<sup>th</sup> grade student, Jerry performed at the bottom of his class." He also remarked that "at ■ years of age Jerry was performing *average* and *below average* in a group of ■ year olds who were considered to be of lower intellectual ability."
- No school records indicate that Mr. Pizzuto was officially in special education. However, Ruth Roath (his aunt) and Paul Ircink (a former teacher) both thought that Mr. Pizzuto should have been in this type of educational setting. It is important to recognize that Mr. Pizzuto attended elementary school prior to the enactment and full implementation of the *Education of All Handicapped Children Act* (enacted in 1975 and now referred to as the *Individuals with*

*Disabilities Education Act*) that mandated a free, public education for all children who qualified for special education. Prior to this law, special education may not have been provided in some schools – as was the case in many of the schools (e.g., St. Ann and Hamblen) that Mr. Pizzuto attended. Furthermore, when special education was provided, services were typically limited in scope to those students with the most serious needs and few procedural safeguards were in place to ensure that appropriate identification and placement occurred. For example, Gaye Momerak stated she did not have the training to recognize students with special education needs.

- Elsie Pizzuto Rado noted that Mr. Pizzuto had great difficulty in completing his homework. Most of the time they were in the same class. Elsie would do her homework first and then do his. An example that she shared involved Mr. Pizzuto's inability to use a dictionary to look up the meaning of words that were assigned – either she or his other younger sister, Angie, would have to do the work.
- Reading/Writing/Math Skills [ability to comprehend written text, write various types of documents, and perform everyday math activities]
  - Reading was a major problem for Mr. Pizzuto. Paul Ircink taught reading to students and indicated that Mr. Pizzuto was in the “low” group. Mr. Ircink also stated that he used a variety of techniques to help Mr. Pizzuto with his reading challenges such as oral discussion of the topics read, pairing struggling readers with students who were better readers, and differentiating assignments.
  - According to William Matson, Mr. Pizzuto did not pass the *Reading Equivalency Test* when he attended Zoe Barnum High School.
  - Elsie Pizzuto Rado remarked that Mr. Pizzuto never learned the concept of money. When going to the store, one of the younger sisters would have to handle the money transactions.
- Self-Direction
  - According to Paul Ircink, Mr. Pizzuto did not volunteer in his class when opportunities arose.
  - Mr. Pizzuto was assigned chores at home – e.g., taking out the garbage. According to Elsie Pizzuto Rado and Ruth Roath, he had trouble doing this chore – he could not tie the bag properly and had to be monitored by one of his younger sisters.
  - Elsie Pizzuto Rado believed that he would not have been able to identify his own strengths and weaknesses.
  - Ruth Roath noted that he did not have any drive or direction and always needed incentives.



26. Social Adaptive Skills (includes competence in the areas of social and leisure skills):

- Social Skills

- According to a number of individuals who knew Mr. Pizzuto (Paul Ircink, Monique Winslow Eska, Kismet Winslow), he was a quiet kid and kept to himself. Paul Ircink indicated that he did not bond with others. Monique remembered that he played by himself – always “outside” from others.
- Mr. Pizzuto was somewhat of a loner and more of a follower – he went along with what others wanted most of the time, according to Elsie Pizzuto Rado.
- Kismet Winslow noted that he was a “baby” among his siblings – even though he was older than most of them.
- As a youth, Mr. Pizzuto did not have friends. His teachers indicated that he did not have friends (Paul Ircink) and was not able to interact with his peers (Gaye Momerak). According to Ruth Roath, he did not have friends nor did he know how to maintain friendships. Elsie Pizzuto Rado did indicate that he had one friend who lived across the street from him when they lived in Spokane.
- Mr. Pizzuto could easily be taken advantage of, according to three of his relatives (Elsie Pizzuto Rado, Ruth Roath, and Monique Winslow Eska):
  - Elsie reported an incident when Mr. Pizzuto broke into a church and he got caught – the enticement was a bag of candy
  - His siblings could get Mr. Pizzuto into fights with others (Elsie)
  - His sister, Angie, could trick him into doing her work (Elsie)
  - Kids would talk him into letting them use his bike – they would then say he could get it back if he gave them cookies – it would happen repeatedly (Ruth)
  - He was considered a push over (Monique)
- Ruth Roath indicated that he was naïve – he would not understand what was going on around him.
- Mr. Pizzuto was not a youngster with a behavior problem – he did not get angry and did not fight in school. However, with his relatives, when he got angry, he would sometimes get physical (Ruth Roath).
- Elsie Pizzuto Rado mentioned that Mr. Pizzuto always thought he was stupid.

- Leisure Skills
  - Elsie Pizzuto Rado recalled an instance where Mr. Pizzuto was trying to play the game “battleship” on paper – but, he could not learn how to plot the moves.
  - Elsie Pizzuto Rado also noted that he was interested in painting; however, he could not learn how to paint-by-numbers – something that other kids his age were able to do.
  - Elsie Pizzuto Rado also pointed out that he would play checkers but never had any strategy for winning – she noted he was never “kinged.”
  - Mr. Pizzuto was interested in being a cub scout – however, as noted by Elsie Pizzuto Rado, he could not learn the cub scout oath.
  - Ruth Roath indicated that he took a long time to learn how to do some activities when kids were playing.
  - Monique Winslow Eska observed that he was not able to play group games appropriately – if he tried to play, he would play “rough” – not the way it was suppose to be played.
  - Mr. Pizzuto was not allowed to ride his bike beyond a restricted area and was not allowed to go to the pool – his other siblings were allowed to ride their bikes in a more extended area and were able to go to the pool (Monique Winslow Eska).
  - Kismet Winslow remarked that his “level of play was much lower than that of his age group” and that her children, who were younger than Mr. Pizzuto, were not able to relate to him – furthermore, he was not able to keep up with them.

27. Practical Adaptive Skills (includes areas such as self-care, home living, use of the community, health, safety, and work):

- Self-Care [includes competence in areas such as eating, bathing, grooming]
  - According to Elsie Pizzuto Rado, Mr. Pizzuto would wear his clothes inside out. Ruth Roath noted that he wore his underwear backwards and did not know it.
  - He put his shoes on the wrong feet (Ruth Roath).
  - Mr. Pizzuto had problems with everyday hygiene. According to Elsie Pizzuto Rado, he would not bathe. Ruth Roath stated that he didn’t look clean. Kismet Winslow noted that he had poor hygiene and needed help with grooming.
  - Ruth Roath observed that he didn’t care about the way that he looked – yet, his other siblings did.

- Ruth Roath also indicated other atypical behaviors such as wetting his pants at school and eating dog biscuits. She also noted that he ate so fast that he would get sick.
- Home Living
  - Ruth Roath noted that he was not allowed to cook or prepare meals.
  - Mr. Pizzuto had difficulty understanding how to clean, as evidenced when he and others were trying to wash a car. He took a hose and sprayed water inside the car (Ruth Roath).
  - According to Elsie Pizzuto Rado, when the family lived on a farm, the siblings were allowed to drive a tractor but Mr. Pizzuto was not allowed to do so.
  - Mr. Pizzuto was able to use tools, but someone had to be there with him (Elsie Pizzuto Rado).
- Health/Safety
  - Elsie Pizzuto Rado provided a number of examples when Mr. Pizzuto displayed risky behavior that threatened his safety.
    - He put a knife into an electrical socket.
    - He put a finger into a light socket.
    - He jumped out of a tree onto a structure.
    - He would not test food to determine if it was too hot to eat.
  - Both Elsie Pizzuto Rado and Ruth Roath noted that he would walk in the road without thinking – thereby putting himself in danger.
- Work: [includes paid/nonpaid work experiences and experiences that are work-related]
  - When the family lived on a dairy farm, Elsie Pizzuto Rado recalled that he was not able to accurately throw the switches on the suction devices – even though others could do this.
  - According to Elsie Pizzuto Rado, the siblings had a work group and would do odd-jobs in the neighborhood. However, specific directions always had to be given to Mr. Pizzuto and he had to be supervised with the tasks he was assigned.
  - Ruth Roath noted that he had a temporary paper route. However, problems arose. He had trouble getting up on time and could not manage the money that he was given for subscriptions – he would spend it.

### **Summary of Mr. Pizzuto's Adaptive Functioning Based on Available Information**

28. This section provides a discussion of the information/data that were available in regard to Mr. Pizzuto's levels of adaptive functioning.
29. School History: Mr. Pizzuto's school history and records provide a number of facts that contribute to an understanding of Mr. Pizzuto's levels of adaptive functioning.
- According to a number of sources, he encountered major struggles related to the academic demands of school throughout his time in school.
  - He was retained from moving on to the next grade level on a number of occasions and the 9<sup>th</sup> grade was his highest completed grade level.
  - Mr. Pizzuto's poor school performance is reflected in the grades that he received and in the test scores that are in his records.
30. Informal Assessment of Adaptive Functioning: Qualitative data that were generated from the interviews, provided by affidavits of individuals who knew Mr. Pizzuto when he was growing up, or obtained from school records substantiate the fact that Mr. Pizzuto had significant problems across the key adaptive skill areas: conceptual (especially in the areas of communication and functional academics); social; and practical. The information that was obtained indicates that Mr. Pizzuto's adaptive functioning deviates from what is expected of individuals of a similar age and background in a number of key areas. Ultimately, Mr. Pizzuto's deficits seem to have had a major impact on everyday functioning during the developmental period.
31. Need for Support: The need for external support in one's life is a major characteristic of individuals with limited ability to function successfully with everyday activities. Mr. Pizzuto needed substantial support in school (e.g., alternative assignments, homework assistance from his sister) and with everyday life activities (self-care needs).

### **Professional Opinion**

32. Based on a review of the materials provided to me and on the interviews I was able to conduct with key individuals in his life, it is my professional opinion that Mr. Pizzuto demonstrated "significant" deficits in adaptive functioning. The information provided and reviewed shows that Mr. Pizzuto displayed problems in or limited ability to perform typical adaptive behaviors across the major areas of adaptive functioning. While I was not asked to proffer an opinion on whether Mr. Pizzuto meets all of the criteria required for a diagnosis of mental retardation, it is my opinion that Mr. Pizzuto meets the adaptive deficit prong of mental retardation.

Respectfully submitted,

*/s/*

James R. Patton, Ed.D.

# **Exhibit 4**

**(Declaration of James Merikangas, M.D.,  
dated March 3, 2009)**

I, James K. Merikangas, M.D., a person over eighteen years of age and competent to testify, and mindful of the penalties of perjury say and declare as follows:

1. I am a medical doctor trained and board certified in both Psychiatry and Neurology. I am on the faculty of the George Washington University School of Medicine where my position is Clinical Professor of Psychiatry and Behavioral Neuroscience. I have been engaged in the practice and teaching of Psychiatry and Neurology for more than thirty five years. I have evaluated more than two hundred persons accused or convicted of murder and other crimes including rape, assault, arson and kidnapping. A copy of my CV is attached hereto
2. I was retained by counsel for Gerald Ross Pizzuto, Jr. ("Jerry Pizzuto") to determine whether or not he is mentally retarded.
3. I met with and administered a neuropsychiatric examination to Mr. Pizzuto on April 3, 2003.
4. I requested that the following tests be performed:  
An Electroencephalogram was done on 01/19/2009. A Whole Brain Perfusion PET Scan and a CT Scan was done on 01/20/09, demonstrating a reduced level of activity in the frontal temporal regions (or an increased level in the occipital) which suggests frontal lobe dysfunction. An MRI scan of the brain was done on 01/20/2009 revealing that his brain is smaller than usual, he has more atrophy than normal, there is white matter hyperintensity around his ventricles, and he has a cavum septum pellucidum (a congenital abnormality). A battery of blood tests including a metabolic profile, complete blood count, ANA screen, thyroid functions, ceruloplasmin, rheumatoid factor, liver and

DECLARATION OF JAMES MERIKANGAS - 2

kidney function were performed on 01/10/2009 including a urinalysis, which test results I have now received and reviewed to be within normal limits.

5. I have reviewed the following documents and exhibits:
1. Birth Certificate for Gerald Pizzuto;
  2. Washoe County School District School Records;
  3. St. Ann School Records;
  4. Hambleton School Records;
  5. Sacajawea School Records;
  6. Mitigation Specialist, Rosanne Dapsauski's interview notes:
    - a. Kibby Winslow - Jerry's aunt - two interviews;
    - b. Gaye W. Momerak - Jerry's Fifth grade teacher at Stead Elementary School;
    - c. Margaret Herzog - former teacher of Jerry's - Spokane, WA;
    - d. Paul Irsnik - Jerry's Sixth grade teacher - Spokane, WA;
    - e. Romilda Renee Parris Sutton Rodewald - Jerry's half-sister;
    - f. Angelinna Rawson - Jerry's sister;
    - g. Toni Lacasella - Jerry's sister.
  7. Military records;
  8. Dr. Michael Emery - January 23, 1986 letter to Hon. George Reinhardt;
  9. Dr. Michael Emery - April 24, 1986 letter to Hon. George Reinhardt;
  10. Dr. Michael Emery - Sentencing transcript testimony;
  11. Craig Beaver - Affidavit of August 1996(?);
  12. Craig Beaver - Affidavit of June 18, 2003;
  13. Dr. James Merikangas of April 1, 1988;

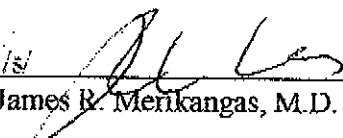


14. Epilepsy - Reports and Affidavits:
    - a. Dr. Michael Koerner - Letter to Scott Wayman dated September 10, 1987;
    - b. Dr. Michael Koerner - Letter to Scott Wayman dated November 9, 1987;
    - c. Dr. Michael Koerner - Affidavit of April 5, 1988
    - d. Sarah S. Werner - Report of October 18, 1985;
    - e. Sarah S. Werner - Affidavit of March 8, 1987;
  15. Hospital records from age 14 head injury;
  16. Michigan DOC records;
  17. Medical Records - Idaho Maximum Security Institute on Jerry;
  18. St. Luke's PET Scan;
  19. St. Luke's MRI Scan;
  20. St. Luke's EEG;
  21. St. Luke's Laboratory Results;
  22. Report of Neurocognitive Evaluation by Dr. Ricardo Weinstein, Ph.D. of February 16, 2009;
  23. WAIS-IV Score Report;
  24. Social History of Gerald Ross Pizzuto, Jr. prepared by Kelly Noian;
  25. Declaration of Toni Pizzuto;
  26. Declaration of Angelina Pizzuto; and
  27. Declaration of Elsie-Pizzuto-Rado.
6. Based on my examination and review of relevant documents, it is my opinion to a reasonable degree of medical certainty that Gerald R. Pizzuto suffers from mental retardation according to the Idaho Code 19-2515A(1)(a), and the DSM-IV-TR. He has

and IQ below 70, and he exhibited significant deficiencies in many areas relation to his adaptive behaviors and these conditions were present before the age of 18.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 3 day of March, 2009.

  
James R. Merikangas, M.D.

DECLARATION OF JAMES MERIKANGAS - 5

# *Curriculum Vitae*

*James R. Merikangas, M.D.*

**Address:** J.R. Merikangas, M.D., L.L.C.  
4938 Hampden Lane, # 428  
Bethesda, MD. 20814

**Phone:** 301-654-1934  
**Fax:** 301-654-1834  
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**NPI#:** 1588728620  
**Tax Id:** 05-0524316  
**Citizenship:** USA

**Education:** B.S., Physics, Villanova University, 1960  
M.D., Johns Hopkins University, School of Medicine, 1969

**Licenses:**

1969	Diplomate, National Board of Medical Examiners	#107478
1974-1976	California M.D. License	#23318
1969-2002	Connecticut M.D. License	#14074
1974-1981	Pennsylvania M.D. License	#014082
2001- 2006	Washington, D.C. M.D. License	#MD-33036
2001-	Maryland M.D. License	#D57622

**Military:**

1960-1963	United States Navy, LT(J.G.)
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**Career:**

2009-2015	Clinical Professor of Psychiatry, Virginia Commonwealth University School of Medicine Inova Campus, Falls Church, VA
2008	Neuropsychiatrist, War Related Injuries and Illness Study Center, Washington Veteran's Hospital, Washington, District of Columbia
2002--	Clinical Professor of Psychiatry and Behavioral Sciences, George Washington University School of Medicine and Health Sciences, Washington, D.C.
2002-2016	Clinical Associate Professor of Psychiatry Georgetown University School of Medicine, Washington, D.C. Georgetown University Hospital, Washington, D.C.

- 2002-2003 Director, Neuropsychiatry Program, Department of Psychiatry, Georgetown University School of Medicine, Washington, D.C.
- 1980-2002 Practice of Neuropsychiatry, Neurology and Psychiatry  
Temple Medical Center, New Haven and Woodbridge, CT.
- 1980-2000 Yale University School of Medicine, New Haven, CT:  
Lecturer (1994-2002); Assistant Clinical Professor (1980-1994)
- 1973-1979 University of Pittsburgh School of Medicine, Pittsburgh, PA.:  
Associate Professor of Psychiatry and Assistant Professor of  
Neurology (1977-1979); Assistant Professor of Psychiatry and  
Neurology (1973-1977)
- 1969-1973 Yale University School of Medicine, New Haven, CT; Chief  
Resident in Neurology (1972-1973); Assistant Resident in  
Neurology (1971-1972); Assistant Resident in Psychiatry  
(1969-1971)
- 1968-1969 Medical and Pediatric Internship, Washington Hospital Center,  
110 Irving Street, NW, Washington, D.C.

### **Professional Honors or Recognition:**

- 1979 Elected Fellow, American College of Physicians
- 1987- Elected Counselor, Connecticut Psychiatric Society  
New Haven – Middlesex Chapter
- 1988-1990 Director, American Neuropsychiatric Association
- 1990-2001 Advisory Board, American Neuropsychiatric Association
- 1991 Elected Fellow, The Royal Society of Medicine
- 1993 Elected Fellow, American Psychiatric Association
- 1996 Elected to the Board of Directors, American Academy of  
Clinical Psychiatrists
- 1996 Exemplary Psychiatrist Award, National Alliance for the  
Mentally Ill
- 1998 Elected President, New Haven-Middlesex Chapter,  
Connecticut Psychiatric Society

- 1998 Elected President, American Academy of Clinical Psychiatrists
- 1999 Elected Treasurer, American Academy of Clinical Psychiatrists
- 2000 Elected Fellow, American Neuropsychiatric Association
- 2004 Elected Distinguished Life Fellow, American Psychiatric Association
- 2005 Elected Consultant of the Scientific Program Committee, American Psychiatric Association
- 2008 Elected Representative of District Branch in Assembly, American Psychiatric Association

**Boards and Specialty Certification:**

- 1974 American Board of Psychiatry and Neurology # 13424  
Diplomate, Certified in Psychiatry
- 1978 American Board of Psychiatry and Neurology # 17744  
Diplomate, Certified in Neurology
- 1991 Diplomate, American Academy of Pain Management # 2431

**Hospital Staff Appointments:**

- 1973-1979 Western Psychiatric Institute & Clinic, Pittsburgh, PA.
- 1973-1979 Presbyterian University Hospital, Pittsburgh, PA.
- 1979-1988 Waterbury Hospital, Waterbury, CT.
- 1979-2001 Hospital of St. Raphael, New Haven, CT.
- 1980-2001 Yale-New Haven Hospital, New Haven, CT.
- 1983-1993 Veteran's Memorial Medical Center, Meriden, CT.
- 1995-1997 Yale Psychiatric Institute, New Haven, CT.
- 1995-2001 Masonic Geriatric Healthcare Center, Wallingford, CT.
- 2001-2003 Georgetown University Hospital, Washington, DC.
- 2001- 2005 The George Washington University Hospital, Washington, DC.

2004-2008 Suburban Hospital, Bethesda, MD.  
2008- Veteran's Administration Hospital, Washington, D.C.

**Consultation:**

1974-1977 Forbes Hospital System, Pittsburgh, PA.  
1974-1977 Mayview State Hospital, Bridgeville, PA.  
1974-1977 Veterans Administration Hospital, Pittsburgh, PA.  
1978-1979 Monogahela Valley Hospital, Pittsburgh, PA.  
1980-1982 Yale Psychiatric Institute, New Haven, CT.  
1981-1982 Shirley Frank Foundation, Bridgeport, CT.  
1983-2001 Connecticut Mental Health Center, New Haven, CT.  
1985-1986 Veterans Administration Health Center, New Haven, CT.  
1985-2001 Connecticut Peer Review Organization  
1987- 1988 Whiting Forensic Institute, Middletown, CT.  
1987-1990 Altobello State Hospital for Adolescents, Middletown, CT.  
1987-2001 Saint Francis Care Behavioral Health, Portland, CT.  
1996-2000 Professional Advisory Board of the Diagnostic and Assessment Center, Landmark College, Putney, VT.  
2006-2007 Consultant of the Scientific Program Committee, American Psychiatric Association, Arlington, VA

**Administrative Appointments:**

1973-1975 Western Psychiatric Institute and Clinic, Pittsburgh, PA.  
Senior Physician, Neurodiagnostic Clinic  
1973-1975 Western Psychiatric Institute and Clinic, Pittsburgh, PA.  
Director, Emergency Services and Brief Treatment  
1973-1976 Western Psychiatric Institute and Clinic, Pittsburgh, PA.

Senior Physician, Mental Retardation Service

- 1973-1978 Western Psychiatric Institute and Clinic, Pittsburgh, PA.  
Director, Electroencephalographic Laboratory
- 1976-1977 Western Psychiatric Institute and Clinic, Pittsburgh, PA.  
Director, Office of Diagnostic Services
- 1977-1979 Western Psychiatric Institute and Clinic, Pittsburgh, PA.  
Director, Behavioral Neurology Program
- 2002-2003 Georgetown University Hospital, Washington, DC.  
Director, Neuropsychiatry Program

**Memberships:**

- 1969- The Johns Hopkins Medical and Surgical Society
- 1973- American Academy of Neurology
- 1973- American Psychiatric Association
- 1973-2010 American College of Physicians
- 1979-2001 Connecticut Psychiatric Society
- 1982-2002 The New York Academy of Science
- 1982-2001 New Haven County Medical Association
- 1984-2001 Connecticut State Medical Society
- 1986- American Academy of Psychiatry & the Law
- 1988- American Academy of Clinical Psychiatrists
- 1988- American Neuropsychiatric Association
- 1990- World Federation of Neurology
- 1991-2009 Royal Society of Medicine
- 1994-2002 American Academy of Child and Adolescent Psychiatry
- 1996-2002 American Society of Clinical Psychopharmacology

- 1997-2002 International Society of Transcranial Magnetic Stimulation
- 2000-2002 American Academy of Immunotherapy

**Consultation to State and Federal Courts and Agencies:**

- 1977-1978 Consultant, Neuropsychiatric Evaluation of Juvenile Offenders, Allegheny County Juvenile Court, Pittsburgh, PA.
- 1977-1979 Member, Acute Psychiatric Task Force Emergency Health Services Council, Commonwealth of PA.
- 1977-1985 Chairman, Committee on Psychotropic Medication for the Retarded, Department of Public Welfare, Commonwealth of PA.
- 1985-1990 State of Connecticut, Governor's Task Force on Aging
- 1986-1987 Superior Court of Waterbury, CT., Court Appointed Expert
- 1990-2001 State of Connecticut Department of Mental Health and Addiction Services, Evaluation Psychiatrist, Probate Court for Commitment Hearings
- 1997-1998 Human Rights Committee, Department of Mental Retardation, South Central Region, Connecticut
- 2011- US Department of Justice, Aviation and Admiralty Division, Tort Defense, Washington, DC

**Committees, Boards and Consulting:**

- 1977-1985 Research Committee on Neuroepidemiology, World Federation of Neurology, Geneva, Switzerland
- 1982-1999 Medical Advisory Board, Easter Seal Goodwill Industries Rehabilitation Center, New Haven, CT.
- 1984-1988 Board of Directors, Alzheimer's and Related Diseases Association of Southern Connecticut
- 1985-1988 Board of Directors, Parkinson's Disease Association of Southern Connecticut
- 1985-1997 Board of Advisors, Burch House, Littleton, New Hampshire



- 1985 American Psychiatric Association's Task force on Treatment of Psychiatric Disorders
- 1986-1987 Chairman, Program Committee, New Haven-Middlesex Chapter, Connecticut Psychiatric Society
- 1987-1990 Membership Chair, New Haven-Middlesex Chapter, Connecticut Psychiatric Society
- 1987-2001 Counselor, New Haven-Middlesex Chapter, Connecticut Psychiatric Society
- 1988-1990 Alternative Care Committee, Connecticut Psychiatry Society
- 1988-1992 Convening Member, National Task Force for Children's Constitutional Rights, Philadelphia, PA.
- 1992-1997 National Task Force for Children's Constitutional Rights, Director and Treasurer
- 1992-2000 National Board of Medical Examiners, American Board of Psychiatry and Neurology, Part I Psychiatry Written Examination Sub Committee III
- 1992-2001 Physician Advisory Committee of Medicare, Connecticut Neurological Society
- 1992- Examiner, National Board of Medical Examiners, American Board of Psychiatry and Neurology Part II Psychiatry, Oral Examination
- 1994-1996 Scientific Advisory Board, Neurobiological Disorders Society
- 1994-1998 Treasurer, New Haven/ Middlesex Chapter, Connecticut Psychiatric Society
- 1996- Examiner, National Board of Medical Examiners, American Board of Psychiatry and Neurology, Part II Neurology Oral Examination
- 1996-2003 Board of Directors, American Academy of Clinical Psychiatrists
- 1997-2001 Private Practice Committee, Connecticut Psychiatric Society
- 1998-1999 Committee Member, New Haven Jewish Federation Housing Corp., Tower One/ Tower East

- 1999-2001 Board of Directors, Albert Schweitzer Institute for the Humanities
- 2013- Washington Psychiatric Society, Work Group on Risk Assessment and Violence Prevention for American Psychiatric Association

**Editorial Consultant:**

- 1979- American Journal of Psychiatry
- 1983- Psychosomatics
- 1983- American Psychiatric Association Press
- 1987- International Journal of Psychiatry in Medicine
- 1987- Toxic Emergency Medical Information Sheet, Jonathan Borak and Company, Inc.
- 1990-2003 Annals of Clinical Psychiatry
- 1994- Neurology
- 1996- Clinical Child Psychology and Psychiatry
- 1998- Harvard Review of Psychiatry
- 2002- Journal of the American Academy of Psychiatry and the Law

**Editorial Boards:**

- 1990-1997 Annals of Clinical Psychiatry, Editor, Special Treatment Section
- 1997-2003 Annals of Clinical Psychiatry, Editorial Board
- 1999-2003 Psychiatric Update, Editorial Advisory Board

**University Activities:**

**Teaching:**

1983-2000	Connecticut Mental Health Center, New Haven, CT. Neuropsychiatric Consultant
1984-1985	Yale University School of Medicine, Physicians Associate Program Thesis Supervision
1985	Geriatric Psychiatry, Elective for Psychiatric Residency Program, Yale University School of Medicine
1985-1987	Consultation-Liaison Rounds, Yale-New Haven Hospital
1985-1987	Yale University School of Medicine, Supervision of Medical Student Thesis
1985-1988	Yale University Third-Year Medical Students, Supervision of Neurology Clerkship
1986-1987	University of Connecticut School of Social Work, Clinical Internship Supervisor
1987-2001	Yale University School of Public Health, Division of Chronic Disease Epidemiology, Supervision of Clinical Practicum
1989	Institute of Living Residency Program, Neuropsychiatry Elective
1992-2001	Yale University School of Medicine, Department of Psychiatry, Genetic Epidemiology Research Unit, Supervision of PGY III and PGY IV Residents on Neurological Examination
1993	Yale University School of Medicine, Department of Psychiatry, Neuropsychiatry, PGY II Integrated Psychopathology Course
1993-2001	Yale University School of Medicine, Neurology Training Rotation Psychiatry Residents
1994-1996	Connecticut Mental Health Center, Dual Diagnosis Clinic, Training and Supervision of Psychiatry Residents
1996-1998	Connecticut Mental Health Center, Yale Medical Students, Psychiatry Clerkship
1998-2001	Yale University of Medicine, Psychiatric Residency, Neuropsychiatry Elective

- 2000-2001 Yale University School of Medicine, Neuropsychology Fellows, Neuropsychiatry Elective
- 2002 Georgetown University School of Medicine, Neuropsychiatry, Medical Students and Residents
- 2007-Present Inova Fairfax Hospital/George Washington University Psychosomatic Medicine Fellowship, Residents
- 2009 The Fielding Graduate School, Bethesda, MD. Neuropsychology Course
- 2011-Present Department of Psychiatry, George Washington University School of Medicine, Clerkship Supervisor, Forensic Psychiatry

**Research:**

- 1965 Medical Student Training Grant “Sensory Motor Feedback in the Temporal Lobe of the Brain” Neurocommunications Laboratory, Department of Psychiatry, Johns Hopkins Hospital, Principal Investigator – Richard Chase, M.D.
- 1966 Principal Investigator, Grant from the Moses Family Fund for Research On Myasthenia Gravis, “The Electromyographic Effect of Guanidine” Department of Medicine, Johns Hopkins Hospital
- 1977 Co-Investigator, “Involvement of Cholinergic Mechanisms in Mental Disease,” MH26320, National Institute of Mental Health, University of Pittsburgh School of Medicine Principal Investigator: I. Hanin, Ph.D.
- 1977 Consultant. “Mental Health Clinical Research Center for Affective Disorders,” MH30915, National Institute of Mental Health, University of Pittsburgh School of Medicine, Principal Investigator: David Kupfer, M.D.
- 1977 Consultant, “Multi-Institutionalized Controlled Study of Brain Resuscitation,” Resuscitation Research Institute, University of Pittsburgh School of Medicine, Principal Investigator: Peter Safer, M.D.
- 1978 Consultant, “Environmental Personal Treatment Interaction in the Course of Schizophrenia,” MH30750, National Institute of Mental

Health, University of Pittsburgh School of Medicine, Principal Investigator: GE Hogarty, M.S.W.

- 1986 Consultant, "Alcoholism and Anxiety: A Genetic Epidemiologic Approach," AA 07080, January 1, 1987 – December 31, 1991, Yale University School of Medicine, Principal Investigator: Kathleen R. Merikangas, Ph.D.
- 1987 Consultant, "Specificity of Transmission of Substance Abuse," DA0534, October 1, 1987 – September 30, 1992, Yale University School of Medicine, Principal Investigator: Kathleen R. Merikangas, Ph.D.
- 1989 Consultant, "Family Study of Co-Segregation of Affective Disorders and Migraine," MacArthur Foundation Research Network I on the Psychobiology of Affective Disorder, Principal Investigator: Kathleen R. Merikangas, Ph.D.
- 1994 Consultant, "Minority Children at High Risk for Alcohol-Related Problems," Department of Health and Human Services, Principal Investigator: Kathleen R. Merikangas, Ph.D.
- 2002- Collaborator, "Family Study of Affective Spectrum Disorder", National Institute of Mental Health, Principal Investigator: Kathleen R. Merikangas, Ph.D.

## **Publications:**

### ***Original Articles***

Merikangas JR, Johns RJ. The effect of guanidine on the muscle action potential. *Johns Hopkins Med. J.*; 1968; 122:37-41.

Foster G, Coble P, Merikangas JR, McPartland R, Ingenito G, Kupfer D. Disorder of arousal or psychomotor epilepsy; differential diagnosis and treatment of a rare heredofamilial disease. *Sleep Research*. 1975; 4:214.

Glass J, Kennerdell J, Merikangas JR. Frontal and occipital visual evoked potentials in visually deprived humans. *Neurosci Abst*. 1975; 1:93.

Merikangas JR. Common neurologic syndromes in medical practice. *Med Clin North Am*. 1977; 61:723-736.

Glass J, Crowder J, Kennerdell J, Merikangas JR. Visually evoked potentials from occipital and pre-central cortex in visually deprived humans. *Electroencephalog Clin Neurophysiol*. 1977; 43:207-217.

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Merikangas, JR, Merikangas KR, Katz L, Pan S. Chromosome banding analysis in Cornelia deLange syndrome. *Hum Genet*. 1977; 39:217-219.

Merikangas JR, Auchenbach R. Carbamazepine in raynaud's disease. *Lancet*. December. 1977; 3:2:1186.

Neil JF, Merikangas JR, Davies RK, Himmelhoch JM. Validity and clinical utility of neuroleptic-facilitated electroencephalography in psychotic patients. *Clin Electroencephalography*. 1978; 9:38-48.

Merikangas JR. Neurodiagnostic methods for the aged. *Audio-Digest Glendale, Psychiatry*, Vol. 7, Number 12, Side B, June 26, 1978.

Merikangas JR. Skew deviation in pseudotumor cerebri. *Ann Neurol*. 1978; 4:583.

Hanin I., Merikangas JR., Merikangas KR., Kopp U. Red cell choline and Gilles de la Tourette syndrome. *N Engl J Med*, 1979; 1301:661-662.

Merikangas JR, Reynolds CF. Blepharospasm: Successful treatment with clonazepam. *Ann Neurol*, 1979; 15:401-402.

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Neil JF, Merikangas JR, Glew RH. EEG findings in adult neuronopathic Gaucher's disease. *Clinical Electroencephalography*. 1979; 10:198-205.

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Merikangas JR, Stevens D, Merikangas KR, Enalapril prophylaxis of migraine. *Schwizer Archiv for Neurologie and Psychiatry*. 1996; 147:118-123.

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Stevens DE, Merikangas KR, Merikangas JR. Comorbidity of depression and other medical conditions. In Weingarten S. (Ed.) Handbook of Depression, New York: Guilford Publications, 147-199. 1995.

Merikangas KR, Stevens DE, Merikangas JR. Migraine and headache disorders. In Robinson RG and Yates WR (Eds.) Psychiatric Treatment of the Medically Ill. New York, Marcel Dekker, Inc., 425-442. 1999.

Davalos, D.B., Hayes, A. & Merikangas, J. Autism and Hypomelanosis of Ito. In O. Ryanskin, (Ed.), Focus on Autism Research. (pp. 309-338). New York: Nova Science Publishers. 2005.

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Merikangas JR. Forensic Neuropsychiatry. In Guide to Neuropsychiatric Therapeutics. Lippincott, Williams and Wilkins, 388-402. 2006.

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### ***Book Reviews***

Merikangas JR. Gilles de la Tourette Syndrome. Shapiro AK, Shapiro ES, Bruun RD, Sweet RD. *J Clin Psychiatry*, 1981; 42:482-483.

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Merikangas JR. The Butcher Boy, Patrick McCabe. *Am. J. Psychiatry*, December 1994; 151:12.

Merikangas JR. Johnny, I Hardly Knew You, Edna O'Brien in "Edna O'Brien Reader," *Am. J. Psychiatry*, December 1994; 151:12.

Merikangas JR. Molecular and Genetic Basis of Neurological Disease, Rosenberg R, Prusnier S, DiMauro S, Barchi R, Kunkel L. (Eds.) *Am. J. Psychiatry*, January 1995; 152:1.

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Merikangas JR. The Eighties: A Reader, Gilbert T. Sewall (Ed.), *Am. J. Psychiatry*, February 1999; 156:2:329-330

Merikangas JR. The Law & Mental Health Professionals – Connecticut, Sheila Taub. *Connecticut Psychiatrist*, Summer 1999; 41:3:13

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Merikangas JR. Child and Adolescent Neurology, Ronald B. David (Ed.), *Am. J. Psychiatry*, August 2000; 157:8:1356-1357.

Merikangas JR. Neurodevelopmental Approach to Specific Learning Disorder: Clinics in Developmental Medicine 145, Kingsley Whitmore, Hillary Hart and Guy Williams (Eds.), *Amer J Psychiatry*, March 2001; 158:3:510-512.

Merikangas JR. The Brain and Behavior: An Introduction to Behavioral Anatomy, David I. Clark and Nashaat N. Boutros. *J Neuropsychiatry Clin Neurosci*, Fall 2001; 13:4:525-526.

Merikangas JR. Translated Accounts: A Novel, by James Kelman. *Am. J. Psychiatry*, 2002; 159:12:2120.

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Merikangas JR. Neuropsychiatry and Behavioral Neurology Explained. *Psychosomatics*, March-April 2007; 48.2: 181-182.

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### ***Miscellaneous Publications***

Merikangas JR. Neuropsychiatrist – Who qualifies as one? Letter to the Editor. *J Neuropsychiatry*. 1990; 2:3:354.

Merikangas JR. Routine tests of drugs. Letter to the Editor. *Amer J Psychiatry*. 1991; 148:7:974.

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Merikangas JR. “Ethics in Managed Care-A Response to Maria Lenaz’s Article”, Letter to the Editor, *Connecticut Medicine*, 62, 2, p 108. February 1998.

Merikangas JR. “Shortfall of Physicians?” Letter to the Editor, *Connecticut Medicine*, 62, 7. July, 1998.

Merikangas JR. “Das Warten auf den Tod ist Folter”, “Waiting for Death is Torture” Interview, *Der Spiegel*, Vol. 48, pp 176-180, October 18, 1999.

Merikangas JR. “A Review of Stephen Soderbergh’s Movie Traffic”, *J Amer Acad Psychiatry Law*, 29.2, pp 241-242, 2001.

Merikangas JR. “Commentary: Alcoholic Blackout – Does It Remove Mens Rea?”, *J Am Acad Psychiatry Law*, 32:375-7, 2004.

Merikangas JR. “A Lesson of Columbine, 10 Years Later” Letter to the Editor, *New York Times*, 18 April, 2009.

#### **National and International Lectures:**

“Frontal and Occipital Evoked Potentials in Visually Deprived Humans”, Society of Neurosciences, New York, December 5, 1975.

“Diagnosis and Management of Pain”, American Psychosomatic Society, Continuing Education Course, Pittsburgh, P.A. April 1976.

“Psychosis and Movement Disorder: Interrelations”, American Psychiatric Association Annual Meeting, Miami, FL, May 1976.

“Total Care of the Psychiatrically Ill Retarded”, American Psychiatric Association Annual Meeting, Miami, FL, May 1976.

“Medication of the Mentally Retarded in an Outpatient Setting: Rationale and Consistencies”, American Psychiatric Association Annual Meeting, Miami, FL, May 1976.

“Medical Considerations at Intake”, The Association Psychiatric Outpatient Centers of American, Regional Meeting, Pittsburgh, PA, October 1977.

“Seizure Disorder and Headache”, Practical Medicine for the General Psychiatrist. Western Psychiatric Institute and Clinic, University of Pittsburgh, Pittsburgh, PA, November 6, 1977.

“Neurodiagnostic Methods for the Aged”, American Psychiatric Association Annual Meeting, Atlanta, GA, May 8, 1978

Industrial Health Foundation, Inc., Pittsburgh, PA, September 18, 1978.

“Seizure Disorder”, Practical Medicine for the General Psychiatrist, Western Psychiatric Institute and Clinic, University of Pittsburgh, Pittsburgh, PA, November 9, 1978.

“Psychosomatic Illness-Evaluation and Treatment”, Industrial Health Foundation, Inc. Pittsburgh, PA, May 1979.

“Psychological Aspects of Stress and “Overview of Psychosis and Neurosis”, Industrial Health Foundation, Pittsburgh, PA, September 1980.

“Children with Neurological Problems Presenting as Psychiatric Problems”, Continuing Educational Program, Dartmouth Hitchcock Medical Center, Brattleboro Retreat, Brattleboro, VT, October 1980.

“Neurophysiology of Violence”, Psychosomatic Grand Rounds, Yale-New Haven Hospital, New Haven, CT, February 18, 1981.

“Behavioral Emergencies”, Connecticut Emergency Medical Services Annual Educational Seminar, New Britain, CT, March 13, 1981.

“Mental Retardation”, Yale Law School, Yale University, New Haven, CT, April 2, 1981.

“Organic Brain Disorders”, South Central Community College, New Haven, CT, April 29, 1981.

“Behavioral Manifestations and Treatment of Chronic Organic Brain Syndrome”, Chapel Haven Center for Brain Damaged Adults, New Haven, CT, November 10, 1981.

“Neurological and Psychiatric Considerations in Parkinson’s Disease”, East Shore Parkinson’s Support Group, East Haven, CT, November 19, 1981.

“Psychiatric Complications of Medical Treatment”, Neurology and Psychiatry Board Review Course, Department of Psychiatry, Yale University School of Medicine, New Haven, CT, March 15, 1981.

“Psychiatric Complications of Medical Treatment”, Neurology and Psychiatry Board Review Course, Department of Psychiatry, Yale University School of Medicine, New Haven, CT, March 19, 1982.

“Psychiatric Problems of Epileptics” and “Atypical Psychiatric Syndromes and Pharmacological Treatment”, Course on Psychopharmacology in Children and Adolescents. American Psychiatric Association, Toronto, Canada, May 20, 1982.

“Neurological Complications of Alcohol”, Shirley Frank Foundation, New Haven, Ct, June 4, 1982.

“Psychotropic Medication”, Conference on Mental Health and Developmental Disability Consortium of New Haven, Clifford Beers Child Guidance Center, New Haven, CT, October 9, 1982.

“Medical Problems in Arbitration”, National Academy of Arbitrators, Northeast Regional Meeting, Southbury, CT, October 20, 1982.

“Pharmacology of Neuroleptic Induced Movement Disorder, II”, Institute of Living, Hartford, CT, November 8, 1982.

“Headaches”, Healthwise Television Broadcast, Storer Cable TV, Channel U-24, New Haven, CT, November 16, 1982.

“Psychiatric Complications of Medical Drugs”, Board Review Course, Department of Psychiatry, Yale University School of Medicine, New Haven, CT, March 14, 1983.

“Choline and Drug Response in Tourette’s Syndrome”, VII World Congress of Psychiatry, Vienna, Austria, July 15, 1983.

“Psychiatric and Family Aspects of Parkinson’s Disease”, Parkinson Enlightenment Program, Hamden, CT, February 1, 1983.

“Headaches”, Healthwise Television Broadcast, Storer Cable TV, Channel U-24, New Haven, CT, February 16, 18, 1983.

“Violence and Atypical Psychosis”, Connecticut Valley Hospital, Middletown, CT, March 9, 1983.

“Hysteria and Neurological Conditions”, Mental Health Clinic, Hospital of St. Raphael, New Haven, CT, March 11, 1983.

“Neuropsychiatric Assessment in Childhood”, West Haven Division of Connecticut Mental Health Center, West Haven, CT, April 14, 1983.

“Parietal Lobe Disorders, Part I”, Integrated Seminar in Psychiatry and Psychosomatic Medicine, Yale-New Haven Hospital, New Haven, CT, April 18, 1983.

“Parietal Lobe Disorders, Part II”, Integrated Seminar in Psychiatry and Psychosomatic Medicine, Yale-New Haven Hospital, New Haven, CT, April 25, 1983.

“Stress and Headache in Business”, Combined Resources, Stone School of Business, New Haven, CT, May 26, 1983.

“Job Stress”, Hospital of St. Raphael, New Haven, CT, June 3, 1983.

“Neurological Considerations in Psychiatry”, Connecticut Valley Hospital, Middletown, CT, November 17, 1983.

“Psychiatric Complications of Medical Treatment”, Neurology and Psychiatry Board Review Course, Department of Psychiatry, Yale University School of Medicine, New Haven, CT, March 14, 1984.

“Psychopharmacology of Children and Adolescents”, Course Presentation at Annual Meeting of the American Psychiatric Association, Los Angeles, CA, May 10, 1984.

“Temporal Lobe Epilepsy”, Connecticut Mental Health Center, New Haven, CT, January 12, 1984.

“Face Pain”, Grand Rounds in Oral Surgery, Hospital of St. Raphael, New Haven, CT, March 13, 1984.

“Beta Blockers in Psychiatry”, Connecticut Valley Hospital, Middletown, CT, April 11, 1984.

“On the Insanity Defense”, University of Bridgeport School of Law, Bridgeport, CT, April 19, 1984.

“Altered Mental States and the Interface Between Neurology and Psychiatry”, Griffin Hospital, Derby, CT, November 10, 1984.

“Distinguishing Neurologic and Psychiatric disease”, Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, December 18, 1984.

“Association Between Depression and Migraine”, Annual Meeting of The Society for Epidemiologic Research, Chapel Hill, NC, June 20, 1985.

“Altered States”, Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, January 17, 1986.

“Anticonvulsants in Psychiatric Disorders”, Jefferson Medical College, Philadelphia, PA April, 1986.

“Facial Pain”, Residents in Oral and Maxillofacial Surgery, Hospital of St. Raphael, New Haven, CT, July 15, 1986.

“Seizures and Affective Disorder”, Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, July 25, 1986.

“Management of the Difficult Patient”, Memorial Hospital, Meriden, CT, September 18, 1986.

“Psychological Consequences of Multiple Trauma”, International Rehabilitation Associates, Inc., Berlin, CT, November 1986.

“Mental Status Examination”, Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, January 16, 1987.

“Altered States of Consciousness”, Neuropsychiatric Rounds, Yale-New Haven Hospital, January 17, 1987.

“The Neuropsychiatric Work-Up”, Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, January 23, 1987.

“Blepharospasm”, Connecticut Blepharospasm Support Group Annual Meeting, Southbury, CT, April 26, 1987.

“Neuropsychiatry on Death Row”, Rhode Island Hospital, Brown University, Providence, RI, October 27, 1987.

“MRI, Thermography and Evoked Potentials in the Evaluation of Low Back Pain”, International Rehabilitation Associates, November 17, 1987.

“Neuropsychiatric Manifestations of Migraine”, Connecticut Valley Hospital, Middletown, CT, February 3, 1988.

“Advances in the Pharmacologic Treatment of Migraine”, Collegium Internationale Neuro-Psychopharmacologicum, Munich, West Germany, August 16, 1988.

“Calcium Channel Blockers in MAO-I Induced Hypertensive Crisis”, Collegium Internationale Neuro-Psychopharmacologicum, Munich, West Germany, August 17, 1988.

“A Review of Physical Diagnosis for Psychiatrists”, American Psychiatric Association Annual Meeting, San Francisco, CA, May 8, 1989.

“Dangerous Headaches”, Swiss Headache Society, Solothurn, Switzerland, December 2, 1989.

“Neuropsychiatry and the Violent Criminal”, The Institute of Living, Hartford, CT, February 8, 1989.

“Medical Testimony in Malpractice Actions”, Connecticut Trial Lawyers Association, New Haven, CT, April 1989.



“Objective Testing to Determine Rehabilitation Potential for Appropriate Therapy for Traumatic Brain Injury”, Intracorp, Glastonbury, CT, May 24, 1989.

“Neuropsychiatry”, CROSSTALK, Television broadcast, Channel 28, New Haven, CT, May 24, 1989.

“Medical Ethics and the Care of Children”, University of Pennsylvania School of Nursing, Philadelphia, PA, December 5, 1989.

“Thermography”, Trial Strategies Seminar, Travelers Insurance Company, Orlando, FL, February 14, 1990.

“Death Row Criminals”, Breakthrough with Dr. Larkin, Radio broadcast, Pastoral Theological Institute, Hamden, CT, March 21, 1990.

“Alcoholism”, Breakthrough with Dr. Larkin, Radio broadcast, Pastoral Theological Institute, Hamden, CT, March 21, 1990.

“A Review of Physical Diagnosis for Psychiatrists”, American Psychiatric Association Annual Meeting, New York City, New York, May 13, 1990.

“A Practical Clinical Laboratory Guide for Psychiatrists”, American Psychiatric Association Annual Meeting, New York City, NY, May 15, 1990.

“Neuropsychiatric Considerations and the Insanity Defense for Murder”, Georgia Resource Center, Atlanta, GA, July 12, 1990.

“Painful Neuropathies”, Bristol Hospital, Bristol, CT, January 29, 1991.

“Painful Neuropathies”, Charlotte Hungerford Hospital, Torrington, CT, February 1, 1991.

“Behavioral Management for the TBI Client Via Pharmacological Intervention”, New Medico Head Injury Systems, Meriden, CT, March 22, 1991.

“Children as Witnesses in Child Abuse Cases”, Eyewitness News, WFSB Channel 3, April 29, 1991.

“A Review of Physical Diagnosis for Psychiatrists”, American Psychiatric Association Annual Meeting, New Orleans, LA, May 14, 1991.

“Serial Killers”, Eyewitness News, WFSB Channel 3, July 26, 1991.

“The Neuropsychiatric Evaluation of Violent Behavior”, National Alliance for the Mentally Ill Children & Adolescent Network, Woodbridge, CT, November 13, 1991.

“Homicide Task Force”, Eyewitness News, WFSB Channel 3, November 19, 1991.

“A Review of Physical Diagnosis for Psychiatrists”, American Psychiatric Association Annual Meeting, Washington, DC, May 3, 1992.

“Evaluation and Treatment of Violent Youth”, Community Action for the Mentally Ill Offender, Seattle, WA, May 28, 1992.

“Neuropsychiatric Evaluation of Juvenile Offenders”, National Coalition for the Mentally Ill in the Criminal Justice System, Seattle, WA, May 28, 1992.

“The Phoenix Park Murders”, James Joyce Symposium, Dublin, Ireland, June 18, 1992.

“The Neurological Basis for Violent Behavior: Children and Adults”, National Alliance for the Mentally Ill National Meeting, Washington, DC, September 12, 1992.

“Who’s on Death Row? Psychiatric Portraits”, Violence in America Psychological and Sociological Perspectives, Washington, DC, October 16, 1992.

“Radiology and Neurology Consultation”, PGY II Integrated Psychopathology Course, Veterans Administration Hospital, West Haven, CT, February 18, 1993.

“Epilepsy”, PGY II Integrated Psychopathology Course, Veterans Administration Hospital, West Haven, CT, February 22, 1993.

“Diagnostic Imaging”, PGY II Integrated Psychopathology Course, Yale-New Haven Hospital, New Haven, CT, March 15, 1993.

“Epilepsy”, PGY II Integrated Psychopathology Course, Yale-New Haven Hospital, March 22, 1993.

“A Review of Physical Diagnosis for Psychiatrists”, American Psychiatric Association Annual Meeting, San Francisco, CA, May 23, 1993.

“Post Traumatic Headaches”, Swiss Neurological Society, Flims, Switzerland, June 5, 1993.

“Pharmacotherapy of Traumatic Brain Injury in Children”, American Academy of Child Psychiatry National Meeting, San Antonio, TX, October 28, 1993.

“Specialty Clinics in Child Psychiatry”, American Academy of Child Psychiatry National Meeting, San Antonio, TX, October 28, 1993.

“Evaluation of the Violent Offender”, Second International Conference on Treatment and Diversion of Mentally Disordered Offenders, Tempe, AZ, November 8, 1993.

“The Clinton Health Care Package”, with Senator Joseph Crisco, Commissioner Donald Pogue and Professor Theodore Marmor. Public Service Cable Television broadcast, Seymour, CT, November 12, 1993.

“The Neurobiology of the Attention Deficit Disorder and Learning Disabled Brain”, Children and Adults with Attention Deficit Disorders Support Organization, Berlin, CT, November 13, 1993.

“The Clinton Health Care Package – Part II”, with Senator Joseph Crisco, Commissioner Donald Pogue, Professor Robert A. Burt and State Senator Kenneth Przybysz. Public Service Cable Television broadcast, Seymour, CT, January 24, 1994.

“A Review of Physical Diagnosis for Psychiatrists”, American Psychiatric Association Annual Meeting, Philadelphia, PA, May 22, 1994.

“Pharmacotherapy of Traumatic Brain Injury in Children”, American Psychiatric Association Annual Meeting, Philadelphia, PA, May 23, 1994.

“SPECT, CT, MRI & EEG in Psychiatry”, Yale University Psychiatric Residents, March 31, 1994.

“Anticonvulsants in Psychiatry”, Yale University PGY III and PGY IV students, Veterans Administration Hospital, West Haven, CT, May 17, 1994.

“Preparing for a Career in Neuropsychiatry”, American Psychiatric Association Annual Meeting, Miami, FL, May 24, 1995.

“Managed Care: The Psychiatrist and Neurologist in Private Practice”, Department of Psychiatry, University Hospital, Bern, Switzerland, June 20, 1995.

“Mental Health Services to Youth Detained in Juvenile Justice Facilities”, American Academy of Child and Adolescent Psychiatry Annual Meeting, New Orleans, LA, October 19, 1995.

“Vulnerability for Substance Abuse and Anxiety: A Family Study”, American Academy of Child and Adolescent Psychiatry Annual Meeting, New Orleans, LA, October 21, 1995.

“Neuropsychiatric Evaluation of Death Row Criminals”, University of Texas Medical Branch, Galveston, TX, January 31, 1995.

“Chronic Pain”, Masonic Home and Hospital, Wallingford, CT, February 2, 1995.

“Swiss Psychiatry and the Mental Illness of Lucia Joyce”, 15<sup>th</sup> Annual James Joyce Symposium, Zurich, Switzerland, June 21, 1996.

“Update on Headache”, University of Massachusetts Medical Center, Worcester, MA, January 16, 1996.

“Medico-Legal Aspects of Headache Treatment”, Headache Consortium of New England, Stowe, VT, March 2, 1996.

“Traumatic Brain Injuries and Its Consequences”, Child Neurology and Psychiatry Conference, Vilnius, Lithuania, June 27, 1997.

“Behavioral Problems of Epileptics”, Child Neurology and Psychiatry Conference, Vilnius, Lithuania, June 28, 1997.

“Neuromuscular Disorders”, Child Neurology and Psychiatry Conference, Vilnius, Lithuania, June 29, 1997.

“Traumatic Brain Injury and Its Consequences”, Child Neurology and Psychiatry Conference, Tartu, Estonia, July 1, 1997.

“Behavioral Problems in Epileptics”, Child Neurology and Psychiatry Conference, Tartu, Estonia, July 2, 1997.

“Neuromuscular Disorders”, Child Neurology and Psychiatry Conference, Tartu, Estonia, July 3, 1997.

“Serial Killers”, Eye Witness News, WFSB News, Hartford, CT, July 18, 1997.

“Brain Abnormalities in Violent Criminals”, Dateline NBC, July 20, 1997.

“Genetics of Crime”, MSNBC, July 21, 1997.

“Cortical Stimulation and Response-Brain Behavior Relationships”, Transcranial Magnetic Stimulation Conference, Interlaken, Switzerland, August 14, 1997.

“Mental Health Issues in Death Penalty Defense”, National Institute for Trail Advocacy Meeting, Temple University School of Law, Philadelphia, PA, January 31, 1998.

“Mental Health Issues in Habeas Appeals”, National Institute for Trail Advocacy Meeting, University of Texas School of Law, Austin, TX, June 27, 1998.

“James Joyce: Manic Genius and the Family Triangle”, The Program for Humanities and Medicine, Yale University School of Medicine, May 7, 1998.

“Koskoff Inn of Court: Admissibility of Evidence: Porter and Daubert Decisions”, Tyler, Cooper, and Alcorn, 205 Church Street, New Haven, CT, November 17, 1988.

“Introduction to the Multi-Axial System of DSM-IV”, Federal Defender Training Group, Atlanta, GA, August 28, 1999.

“Personality Disorder Diagnosis”, Fourth Annual National Habeas Corpus Seminar, Federal Defender Training Group, Atlanta, GA, August 28, 1999.

“Substance Abuse: A Medical Disease”, Fourth Annual National Habeas Corpus Seminar, Federal Defender Training Group, Atlanta, GA, August 28, 1999.

“The Mental Illness of Lucia Joyce”, Neurosciences and Psychiatry Congress of History, Joint Meeting of European Association for the History of Medicine, International Society for the History of the Neurosciences and European Club for the History of Neurology, Zurich, Switzerland, September 15, 1999.

“The Adolph Meyer Lecture: Crossing, Uncrossing, and Re-crossing of Neuropsychiatry in the USA”, Neurosciences and Psychiatry Congress of History, Joint Meeting of European Association for the History of Medicine, International Society for the History of the Neurosciences and European Club for the History of Neurology, Zurich, Switzerland, September 16, 1999.

“Representing a Death-Sentenced Client in Federal Post-Conviction Proceedings”, National Institute for Trial Advocacy Meeting, University of Houston Law Center, Houston, TX. January 20-23, 2000.

“Representing a Death-Sentenced Client in Federal Post-Conviction Proceedings”, National Institute for Trial Advocacy Meeting, University of North Carolina School of Law, Chapel Hill, NC, January 18-20, 2001.

“Understanding Forensic Mental Health Issues”, National Defender Investigator Association 2001 National Conference, Kansas City, MO, March 28, 2001.

“A New Look at Forensic Mental Health Issues, Missouri State Public Defender 2001 Capital Conference, Kansas City, MO. May 17, 2001.

“Understanding Forensic Mental Health Issues”, National Defender Investigator Association, Northeast Regional Conference, Philadelphia, PA, September 27, 2002.

“How the Brain Works”, Third National Seminar on Mental Health in Criminal Law, Atlanta, GA, November 2, 2002.

“Neuroscience of Music”, Humanities in Medicine Series, Yale University School of Medicine, New Haven, CT, March 20, 2003.

“Mental Health Issues in Criminal Defense”, D.C. Association of Criminal Defense Attorneys, Washington, DC, April 5, 2003.

“Applying Brain Imaging to Clinical Practice: A Master Clinician’s View-Opening the Mind – The Clinical Application of Brain SPECT Imaging in Psychiatry”, University of California Irvine College of Medicine and the Amen Clinics, Irvine, CA, May 3, 2003.

“Familial and Longitudinal Patterns of Comorbidity of Migraine and Mental Disorders”, XXIV CINP Congress, the International Journal of Neuropsychopharmacology, Paris, June 20-24, 2004

“Prosecutorial Misconduct in Capital Cases- Hubris, Arrogance and the Abuse of Power”, XXIXth International Congress on Law and Mental Health, Paris, France, July 8, 2005

“Neurodiagnosis of Child Murderers” and “US Supreme Court Revisits the Juvenile Death Penalty” panel member, 36<sup>th</sup> Annual Meeting of American Academy of Psychiatry and the Law, Montreal, PQ, Canada October 30, 2005.

“Brain Behavior and Cognition”, National Seminar on the Development and Integration of Mitigation Evidence, Washington D.C., April 1, 2006

“Brain Imaging” and “Prosecutorial Misconduct”, National Seminar on the Development and Integration of Mitigation Evidence, Washington D.C., March 30, 2007

“Migraine and Depression”, Annual Meeting for American Academy of Clinical Psychiatrists, Washington D.C., March 31, 2007

"Neuropsychiatry on Death Row" Grand Rounds, Dept of Psychiatry, University of Southern California, Los Angeles, September 15, 2009

“Neuropsychiatric Assessment of Violence”, Lecture, Norwegian Psychiatric Association Annual Meeting, Bergen, Norway, March 11, 2014

“Neuropsychiatric Assessment of Violence”, Washington Psychiatric Association, Washington, DC., February 27, 2016

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

Gerald Ross Pizzuto, JR , Plaintiff  
vs  
State Of Idaho, Defendant

Case No. CV-2003-34748

Voluntary Disqualification

Idaho Rules of Civil Procedure 40(c)

I voluntarily disqualify myself from any further proceedings in this case pursuant to Idaho Rules of Civil Procedure 40(c) and request reassignment of this case.

Signed: 9/30/2019 09:30 AM

Date: 9/30/2019



\_\_\_\_\_  
Judge Gregory FitzMaurice

**CERTIFICATE OF SERVICE**

I certify that on this date, I served a copy of the attached to:

Jonah Joshua Horwitz

jonah\_horwitz@fd.org

E-mail

Roland Gammill

rolandg@co.nezperce.id.us

By Email

Dated 10-1-19

By: Sheri Clark  
Deputy Clerk



IDAHO COUNTY DISTRICT COURT  
AT 2:10 FILED O'CLOCK P .M.

OCT 02 2019

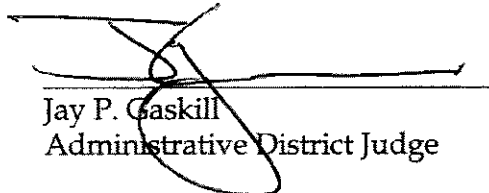
KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy M. Ackerman* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

GERALD ROSS PIZZUTO, JR., Plaintiff,	)	Case No. CV2003-34748
	)	
vs.	)	ORDER ASSIGNING JUDGE
	)	
STATE OF IDAHO, Defendant.	)	
_____	)	

It is **ORDERED** that Judge Jay P. Gaskill, whose chambers are located in Lewiston, Idaho, is assigned to preside over all further proceedings in the above-entitled matter.

DATED this 2<sup>nd</sup> day of October, 2019.

  
Jay P. Gaskill  
Administrative District Judge

CERTIFICATE OF SERVICE

I do hereby certify that a full, true, complete  
and correct copy of the foregoing  
ORDER ASSIGNING JUDGE was emailed to:

Jonah Horwitz  
Jonah\_horwitz@fd.org

Lanny LaMont Anderson  
Lamont.anderson@ag.idaho.gov

Honorable Jay P. Gaskill  
tdammon@co.nezperce.id.us

on this 2<sup>nd</sup> day of October, 2019.

Shen Clark  
Deputy Clerk

OCT 04 2019

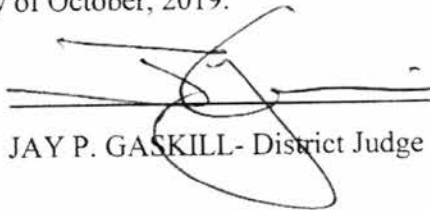
KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy M. Ackerman* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

GERALD ROSS PIZZUTO, JR.,	)	
	)	
Plaintiff,	)	CASE NO. CV2003-34748
	)	
vs.	)	ORDER FOR TELEPHONIC
	)	SCHEDULING CONFERENCE
STATE OF IDAHO,	)	
	)	
Defendant.	)	

IT IS HEREBY ORDERED that Wednesday, the 16<sup>th</sup> day of October, 2019, at the hour of 10:45 A.M. Pacific Time in the District Court Chambers of the Nez Perce County Courthouse, Lewiston, Idaho, is the time and place set for a Telephonic Scheduling Conference in the above-entitled matter with THE COURT initiating the call.

DATED this 14<sup>th</sup> day of October, 2019.

  
\_\_\_\_\_  
JAY P. GASKILL- District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER FOR TELEPHONIC SCHEDULING CONFERENCE was:

X emailed

by the undersigned this 4<sup>th</sup> day of October, 2019, to:

Jonah Horwitz  
Jonah\_horwitz@fd.org

Lanny LaMont Anderson  
Lamont.anderson@ag.idaho.gov

By: Shen Clark  
Deputy

OCT 04 2019

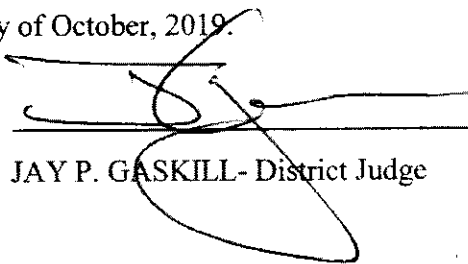
KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

GERALD ROSS PIZZUTO, JR.,	)	
	)	
Plaintiff,	)	CASE NO. CV2003-34748
	)	AMENDED
vs.	)	ORDER FOR TELEPHONIC
	)	SCHEDULING CONFERENCE
STATE OF IDAHO,	)	
	)	
Defendant.	)	

IT IS HEREBY ORDERED that Wednesday, the 16<sup>th</sup> day of October, 2019, at the hour of 1:30 P.M. Pacific Time in the District Court Chambers of the Nez Perce County Courthouse, Lewiston, Idaho, is the time and place set for a Telephonic Scheduling Conference in the above-entitled matter with THE COURT initiating the call.

DATED this 4<sup>th</sup> day of October, 2019.

  
\_\_\_\_\_  
JAY P. GASKILL- District Judge

AMENDED  
ORDER FOR TELEPHONIC  
STATUS CONFERENCE

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing AMENDED ORDER FOR TELEPHONIC SCHEDULING CONFERENCE was:

X emailed

by the undersigned this 4<sup>th</sup> day of October, 2019, to:

Jonah Horwitz  
Jonah\_horwitz@fd.org

Lanny LaMont Anderson  
Lamont.anderson@ag.idaho.gov

By: Sherrin Clark  
Deputy