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## PEOPLE OF THE STATE OF ILLINOIS VS. JOHN GACY: THE FUNCTIONING OF THE INSANITY DEFENSE AT THE LIMITS OF THE CRIMINAL LAW

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### I. INTRODUCTION

The conviction of John Gacy in 1980 of 33 counts of murder demonstrates the limits of the criminal law in a number of significant ways. As one of the state's prosecuting attorneys put it: "John Gacy now had the singular notoriety of having been convicted of more murders than anyone in American history."<sup>1</sup> Mass murder itself involves crime at the outermost extreme of prohibited conduct. Homicide, the most serious criminal offense, is multiplied. At the same time, this case demonstrates the limits of the criminal justice system in providing protection for the citizen. For four years boys and young men literally disappeared from the streets of Chicago and its suburbs without any serious efforts by the police to determine their whereabouts.<sup>2</sup> Family members and friends of the missing persons were unable to induce effective investigation, and other victims were unable to persuade authorities to instigate prosecutorial action.<sup>3</sup> Even with the conviction of Gacy, the criminal law has been pushed to the limit in its efforts to fashion a proper disposition for this offender. Given the psychiatric evaluation of Gacy neither a criminal sentence nor a program of treatment for a mentally disordered offender may be adequate or appropriate. The case suggests the need to consider the possibility of permanent isolation and incapacitation of dangerous persons who are not treatable nor rehabilitable, nor properly subject to execution.

A case like John Gacy's is most often not the subject of study in a legal

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<sup>1</sup> T. SULLIVAN & P. MAIKEN, *KILLER CLOWN: THE JOHN WAYNE GACY MURDERS* 340-41 (1983).

<sup>2</sup> See, C. LINEDECKER, *THE MAN WHO KILLED BOYS* 216-17 (1980).

<sup>3</sup> See generally *Behind Growing Worry Over Runaway Youths*, 86 U.S. NEWS AND WORLD REPORT 63 (Jan. 15, 1979).

periodical unless as a result of appeal some significant doctrinal point is established. It long has been recognized that legal scholarship and more generally law study has been focused too narrowly on doctrinal analysis of decisions.<sup>4</sup> This Article, however, details the case of John Gacy, his life history, the facts of his crimes, the public and media response to the case, the operation of police and prosecution, his trial and conviction, and the appeal made to the state supreme court.

Another feature of this Article is that the authors, with backgrounds in law, forensic psychiatry, journalism, and social work have joined together in developing a multi-disciplinary examination of the Gacy case. In addition to a close study of the legal record, including the trial transcript and briefs on appeal, all newspaper and periodical articles dealing with the case have been examined, and an analysis has been made of psychiatric reports and evaluations of Gacy. One of the authors extensively examined Gacy, by conducting hours of interviews, and testified at his trial. None of the other authors, however, has had any connection with the prosecution or defense of the case.

The case of John Gacy is particularly valuable in that it presents an opportunity to examine the functioning of the insanity defense in a trial where no other legal issues were before the jury. The defendant's confessions to police and their admission at trial<sup>5</sup> along with the location of the remains of victims, some located with the assistance of the defendant,<sup>6</sup> effectively eliminated the alternative plea of not guilty. Thus, the jury had only to decide the issues raised by the insanity defense. Lay testimony about the defendant's behavior suggested that to some persons John Gacy seemed rational, calculating and sane,<sup>7</sup> while to others he appeared delusional, out of control and insane.<sup>8</sup> Both prosecution and defense relied heavily on expert testimony from psychiatrists and psychologists.<sup>9</sup> Defense experts found Gacy to be suffering from a mental disease and to be insane while prosecution experts found him to have no mental disease but rather to exhibit a personality disorder. The case offers an opportunity to examine the basis for diagnoses, the nature of diagnoses, and the manner in which the various medical evaluations were transformed into legal evidence.<sup>10</sup> The case provides fertile ground for which it is appropriate to examine not only the so called "battle of the experts,"<sup>11</sup> but also to

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<sup>4</sup> See U.S. Senate, Hearings before the Subcommittee on Governmental Research of the Committee on Government Operations, National Foundation for Social Sciences, 98th Cong., 1st Sess. 307 (1967), where Professor Geoffrey Hazard, then executive director of the American Bar Foundation, observed: "We are so good at doctrinal analysis that we are resistant to the idea that brilliance of intuition ought in any way to be qualified by going out and finding out what really happens."

<sup>5</sup> See *infra* notes 420-23 and accompanying text.

<sup>6</sup> See *infra* notes 419-23 and accompanying text.

<sup>7</sup> See Part V.B.3.a. of this Article.

<sup>8</sup> See Parts V.B.3.a., b. of this Article.

<sup>9</sup> See *infra* notes 430-65 and accompanying text.

<sup>10</sup> See *infra* notes 430-65 and accompanying text.

<sup>11</sup> See U.S. Senate, Hearings before the Committee on the Judiciary on the Insanity Defense, 97th Cong., 2nd Sess. (1982), where Senator Orrin Hatch observed: "The traditional insanity defense

consider the difficulty faced by expert psychiatric witnesses in presenting the evidence to the jury.<sup>12</sup> Even more, the case allows one to consider the nature of adversarial use of expert psychiatric opinion.<sup>13</sup>

The difficulty faced by the expert witnesses in providing their evaluation of the defendant in this case was not merely caused by the operation of the adversary system. For instance, problems arose in connection with establishing a basis for offering an evaluation of the defendant.<sup>14</sup> There were no eyewitnesses to any of the murders, and the defendant's post-arrest statement to the police did not reveal any distinct psychotic symptoms at the times of the murder other than his reference to another personality named "Jack."<sup>15</sup> The references to "Jack" did not, however, lead any of the expert witnesses to a diagnosis of multiple personality.<sup>16</sup> Furthermore, the reference was denominated by the prosecution as a calculated sham designed to provide a basis for an insanity defense.<sup>17</sup> Experts were forced to rely on various psychological tests and their results which required interpretation.

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is both a legal anachronism and a concept ill-suited to modern psychological theory. It presents issues—important issues—that are not susceptible of intelligent resolution in the courtroom. Trials in which the insanity defense has been raised have often degenerated into swearing contests between opposing teams of expert witnesses.”

<sup>12</sup> See generally Prelinger, *Dilemmas of the Expert Witness: Reflections on the Insanity Defense*, 13 *PSYCHIATRIC ANNALS* 237 (1983).

<sup>13</sup> See American Bar Association, First Tentative Draft, *CRIMINAL JUSTICE MENTAL HEALTH STANDARDS*, Standard 7-3.12 (1983).

<sup>14</sup> It is very important that the expert psychiatric witnesses state with precision the facts upon which their opinions are based. See, e.g., *United States v. Brawner*, 471 F.2d 969 (D.C. Cir. 1972); *People v. Burrell*, 1 Ill. App. 3d 17, 272 N.E.2d 390 (1971). The law in Illinois, where Gacy was tried, is quite developed in terms of what will properly serve as a factual basis for an expert's opinion. The need to establish the facts upon which a psychiatric witness bases his opinion is crucial. Where the facts upon which the opinion is based are not established, the opinion must be disregarded. See *People v. Ford*, 39 Ill. 2d 318, 235 N.E.2d 576 (1968). The expert may testify to a hypothetical question on the basis of proven facts or facts supported by the evidence and presented prior to the question being asked. See, e.g., *People v. Hester*, 39 Ill. 2d 489, 237 N.E.2d 466 (1968). The expert can give an opinion based on his examination of the defendant without relying on a hypothetical question. See, e.g., *People v. Zemola*, 9 Ill. App. 3d 424, 292 N.E.2d 195 (1972). Such an examination may be based on conversations with the accused and observations of physical characteristics. See, e.g., *People v. Munroe*, 15 Ill. 2d 91, 154 N.E.2d 225 (1958). Psychological tests may be used. See, e.g., *People v. Myers*, 35 Ill. 2d 311, 220 N.E.2d 297 (1966). Also the expert may refer to observed thought patterns, the memory of the accused, his ability to speak coherently, to concentrate upon tasks, and to grasp concepts. See, e.g., *People v. Muniz*, 31 Ill. 2d 130, 198 N.E.2d 855 (1964). The history of the accused may also be used by the expert witness so long as those historical facts are properly and independently proved. See, e.g., *People v. Bourlet*, 52 Ill. App. 2d 437, 202 N.E.2d 46 (1964).

<sup>15</sup> During his confessions Gacy spoke of another personality "Jack" whom he suggested committed the murders. Record at 1486-87, 1500, 1657-58, 2199. See *infra* notes 422-23 and accompanying text.

<sup>16</sup> See Brief and Argument for Plaintiff - Appellee at 179, *People v. Gacy*, appeal no. 53212 where it is observed: "no one in this case other than Gacy himself ever suggested that he was suffering from a mental disease characterized by multiple personalities."

<sup>17</sup> *Id.* (where it is suggested that Gacy "had both the time and the motive to fabricate the multiple personalities.").

Witnesses were compelled to apply general psychological principles<sup>18</sup> or to draw on psychoanalytical theory<sup>19</sup> in order to provide a basis for their diagnoses. Ultimately, the concept of mental disease became the focus of dispute between prosecution and defense witnesses.<sup>20</sup> Often relating descriptions of very similar symptoms,<sup>21</sup> defense witnesses found the defendant to be suffering from a psychosis which they classified as a mental disease,<sup>22</sup> while prosecution witnesses found Gacy to have a personality disorder which they maintained was not a mental disease.<sup>23</sup>

Two additional areas of dispute separated witnesses. The issue of the causal relation between the identified mental condition and the actual killings became a subject of examination by counsel.<sup>24</sup> Some witnesses testified that there was a causal relationship between the defendant's mental disorder and the crimes with which he was charged,<sup>25</sup> while others maintained that none was shown.<sup>26</sup> Another area of dispute was whether the defendant suffered from a mental disease continuously and uninterrupted during the period of the killings, or whether the diagnosed mental disease manifested itself only at the time of the killings. Some defense experts testified that the disease was continuously present<sup>27</sup> while others maintained

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<sup>18</sup> For example, Dr. Richard Rappaport testified that Gacy's superior performance in structured psychological tests as compared to more abstract, unstructured tests reflected a thought disorder and was indicative of psychosis. Record at 3317-18. See *infra* notes 444-48 and accompanying text.

<sup>19</sup> For example, Dr. Tobias Brocher testified to his observation of the process of projection of repressed parts of Gacy onto his victims. Record at 4854. See *infra* notes 461-62 and accompanying text.

<sup>20</sup> The statutory test for insanity in Illinois is predicated on the effect of a "mental disease or mental defect." ILL. ANN. STAT. ch. 38 § 6-2(a) (Smith-Hurd Supp. 1983-84). The statute does not provide a definition of "mental disease or mental defect."

<sup>21</sup> Witnesses for both defense and prosecution described Gacy by using such terms as "paranoid," "marked by feelings of sexual inadequacy," "sadistic" and "impulsive." See for example, the testimony of Dr. Robert Traisman, a defense witness, who described Gacy as suffering from "homosexual conflicts, a marked feeling of masculine inadequacy, sexual confusion, a lack of empathy, an alarming lack of emotional control when under stress, and with a strong potential for emotional or ego disintegration and expressions of very hostile, dangerous impulses." Record at 3231-33. Prosecution witnesses described Gacy as suffering from "psychosexual conflict"; as well as being compulsive and paranoid; obsessive-compulsive and sexually sadistic; and narcissistic. Record at 4311, 4383-85, 4572-73, 4679-80.

<sup>22</sup> See for example, testimony of Dr. Richard Rappaport, a defense witness, finding that Gacy suffered from a mental disease, borderline personality disorder with sub-type psychopathic personality, and with episodes of paranoid schizophrenia. Record at 3469, 3480-81. See *infra* notes 444-48 and accompanying text.

<sup>23</sup> See for example, testimony of Dr. Arthur Hartman, concluding that Gacy was a psychopathic or antisocial personality with sexual deviation and minor symptoms or characteristics of paranoid hysterical reactions and that Gacy did not have a mental disease of the type considered a psychotic condition. Record at 4155, 5159. See *infra* notes 451-52 and accompanying text.

<sup>24</sup> See for example, Record at 4697, 4955-56.

<sup>25</sup> See for example, testimony of defense witness Dr. Tobias Brocher who testified that Gacy's unconscious motivations resulting from his mental illness created impulses which were beyond his control. Record at 4851-52. See *infra* notes 461-62 and accompanying text.

<sup>26</sup> See for example, testimony of Dr. Leonard Heston who stated that there existed no causality to support an opinion of lack of substantial capacity to conform to the requirements of the law in Gacy at the time of the crimes. Record at 3895. See *infra* notes 449-51 and accompanying text.

<sup>27</sup> See for example, testimony of defense witness Dr. Helen Morrison who testified that Gacy

that it manifested itself only at periodic intervals including the time of the killings.<sup>28</sup> Those witnesses who viewed the defendant as subject to a psychotic condition which was continuous relied on some triggering mechanism to produce a psychotic episode.<sup>29</sup> The prosecution stressed the defendant's apparent normal mental state in dealing with business associates and friends. Thus, the prosecution maintained that there was no evidence to establish the existence of periodic psychotic episodes occurring at the time of the killings.<sup>30</sup>

The Gacy case illustrates the limited nature of the insanity defense. Illinois law has incorporated the legal test for insanity developed by the American Law Institute.<sup>31</sup> The state penal code provides: "A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law."<sup>32</sup> The statute continues to provide that "mental disease or mental defect" do not include mere "abnormality manifested only by repeated criminal or otherwise antisocial conduct."<sup>33</sup> Thus, the simple fact of a number of murders, as those with which Gacy was charged, does not establish a basis for the insanity defense. Moreover, the Illinois Supreme Court has held that evidence of a sociopathic personality and a personality disorder are insufficient to establish the insanity defense.<sup>34</sup> Nor is the presence of a mental disease

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had been suffering from a mixed psychosis since at least 1958. Record at 4949-53. See *infra* notes 462-64 and accompanying text.

<sup>28</sup> See for example, testimony of defense witness Dr. Thomas Eliseo who testified that Gacy was in a psychotic state during the time that he committed the killings, but not during the entire period when the killings occurred. Record at 2714-15. See *infra* notes 432-35 and accompanying text.

<sup>29</sup> See for example, testimony of Dr. Richard Rappaport who testified that Gacy projected his repressed parts onto others, whom he then raged against. Record at 3463-64. See *infra* notes 444-48 and accompanying text.

<sup>30</sup> See Brief and Argument for Plaintiff-Appellee at 127, *People v. Gacy*, appeal no. 53212 which while citing the Record stated:

[The] massive evidence of Gacy's normal and reasonably successful business, political, social and personal life during the period in question is in opposition to long-standing psychosis or serious mental illness. (Lay opinions of sanity and/or normalcy after drinking at or near the times of many of the offenses by James Vanorous, a business associate and defense witness (R. 2556, 2565, 2566, 2569, 2570); Elaine Shields, a friend and defense witness, (R. 4883); Carole Lofgren, Gacy's second wife and defense witness (R. 2808); Nick DeBlase, friend, business associate and defense witness, (R. 4913); Ron Rohde, friend and business associate, (R. 1375, 1376, 1377, 1414); Lillian Grexa, neighbor, (R. 2443, 2457, 2497); and detailed testimony as to Gacy's condition at or near the dates of several offenses by Cram and Rossi).

<sup>31</sup> See Model Penal Code § 4.01 (Proposed Official Draft 1962).

<sup>32</sup> ILL. ANN. STAT. ch. 38 § 6-2(a) (Smith-Hurd Supp. 1983-84).

<sup>33</sup> ILL. ANN. STAT. ch. 38 § 6-2(b) (Smith-Hurd Supp. 1983-84).

<sup>34</sup> See, e.g., *People v. Smothers*, 2 Ill. App. 3d 513, 276 N.E.2d 427 (1971), *aff'd*, 55 Ill. 2d 172, 302 N.E.2d 324 (1973); *People v. DeSimone*, 67 Ill. App. 2d 249, 214 N.E.2d 305 (1966); *People v. Miller*, 33 Ill. 2d 439, 211 N.E.2d 708 (1965) (holding that psychopathy, sociopathy and personality disorders are legally excluded from the class of mental diseases required to establish an insanity defense). See also *People v. Parisie*, 7 Ill. App. 3d 1009, 287 N.E.2d 310 (1972); *People v. Jones*, 43 Ill. 2d 113, 251 N.E.2d 195 (1969) (holding that sex crimes are punishable even if they are the involuntary result of homosexuality).

or defect sufficient to establish the defense. The insanity defense requires a showing that the defendant was so affected by the presence of mental disease or defect that he did not understand the criminal nature of his behavior or that he was not able to conform his behavior to the demands of the law.

One of the problems faced by some of the defense experts in the Gacy case stemmed from their psychoanalytic orientation. The insanity defense requires a showing that because of mental disease or defect the actor was so affected that he lacked appreciation of the wrongfulness of his conduct or lacked the ability to conform to the law.<sup>35</sup> However, a psychoanalytic approach to understanding an actor's behavior attempts to identify the unconscious processes which determine a person's behavior.<sup>36</sup> The witnesses with a psychoanalytic orientation faced the difficulty, as illustrated repeatedly in the Gacy case, of identifying a specific mental disease or defect which produced an effect required to be established for the defense. An additional problem was created by the manner in which lawyers in examining these expert witnesses attempted to translate the psychiatric explanation into the terms of the legal defense. This problem can perhaps best be described as an effort to establish a direct causal link between the mental disorder and the offense. From a psychoanalytical viewpoint, the whole person must be considered in developing an explanation of the actor's behavior.<sup>37</sup> On the other hand, the lawyer searches for the specification of a particular condition which produced a particular causal result.<sup>38</sup>

The expert witness with a psychoanalytical orientation also relies on a general theoretical framework in which the actor's life and behavior are examined.<sup>39</sup> While

<sup>35</sup> See ILL. ANN. STAT. ch. 38 § 1005-1-11 (Smith-Hurd 1982) providing that: "Insanity" means the lack of a substantial capacity either to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of the law as a result of mental disorder or mental defect.

<sup>36</sup> See C. BRENNER, AN ELEMENTARY TEXTBOOK OF PSYCHOANALYSIS (1974). While identifying the basic tenets of psychoanalytical theory, the author stated:

Two such fundamental hypotheses, which have been abundantly confirmed, are the principle of psychic determinism, or causality, and the proposition that consciousness is an exceptional rather than a regular attribute of psychic processes. To put the latter proposition in somewhat different words, we may say that, according to psychoanalytical theory, unconscious mental processes are of very great frequency and significance in normal as well as in abnormal mental functioning.

*Id.* at 2.

<sup>37</sup> *Id.* at 247, where Brenner observes: "Every psychoanalysis is, among other things, a study of the life history of an individual. It is a search for the chief events of that life, of their connections with one another, and of both their psychological causes and their psychological consequences.

<sup>38</sup> See H.L.A. HART & A.M. HONORE, CAUSATION IN THE LAW (1959), where the general observation is made that: "[C]riminal law courts have often limited responsibility by appealing to the causal distinctions embedded in ordinary thought, with their emphasis on voluntary interventions and abnormal or coincidental events as factors negating responsibility." *Id.* at 292. See also, American Law Institute Model Penal Code comment to § 4.01 (Tentative Draft No. 4 1962) where the drafters' notes state: "[W]e think the legal standard ought to focus on the consequences of disease or defect that have a bearing on the justice of conviction and of punishment."

<sup>39</sup> See generally A. WATSON, PSYCHIATRY FOR LAWYERS (1968).

specific events and experiences are incorporated into such an expert's testimony, there is difficulty in providing the kind of specific empirical facts which the lawyer seeks to identify to establish the insanity defense.

As a result of these difficulties great reliance was placed on the *Diagnostic and Statistical Manual (DSM-III)*<sup>40</sup> adopted by the American Psychiatric Association. The *DSM-III* provides findings of observable symptoms which are classified under mental disorders with defined properties.<sup>41</sup> The categories of disorders have been tested by follow-up studies of the population pools previously classified.<sup>42</sup> The objective has been to provide criteria for greater uniformity of expert opinion.<sup>43</sup> The expert is expected to find observable symptoms of a mental disease manifested at the time of the crime and to use this as a factual basis for an opinion on the diagnosis of a specific mental disorder and ultimately as a basis of an opinion on the question of insanity. The Gacy case, however, reveals significant difficulty on the part of experts to apply the nomenclature and methodology in *DSM-III* in a consistent manner. A broad range of diagnostic terms were applied to the defendant<sup>44</sup> and one of the objectives of the defense was to establish that there was a basic agreement among the experts or that, at a minimum, each of their diagnoses was consistent with that given by the other defense witnesses.<sup>45</sup>

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<sup>40</sup> AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* (3d ed. 1980) [hereinafter cited as *DSM-III*].

<sup>41</sup> *Id.* at 6, where the basic structural premise of the *Manual* is described in the following terms: "[I]n *DSM-III* each of the mental disorders is conceptualized as a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is typically associated with either a painful symptom (distress) or impairment in one or more important areas of functioning (disability)."

<sup>42</sup> *Id.* at 5 where it is reported that: "[A] series of field trials was conducted, beginning in 1977 and culminating in a two year NIMH-sponsored field trial from September 1977 to September 1979. In all, 12,667 patients were evaluated by approximately 550 clinicians, 474 of whom were in 212 different facilities, using successive drafts of *DSM-III*."

<sup>43</sup> *Id.* at 5 where it is noted that: "[P]erhaps the most important part of the study was the evaluation of diagnostic reliability by having pairs of clinicians make independent diagnostic judgments of several hundred patients. The results, which are presented in an appendix, generally indicate far greater reliability than had previously been obtained with *DSM-II*." See generally Fukunaga, Pasewark, Hawkins & Gudeman, *Insanity Plea: Interexaminer Agreement and Concordance of Psychiatric Opinion and Court Verdict*, 5 L. & HUM. BEHAVIOR 325 (1981).

<sup>44</sup> Diagnoses of defense witnesses included: "Pseudoneurotic paranoid schizophrenic" (Dr. Freedman); "Borderline personality with sub-type psychopathic personality with episodes of paranoid schizophrenia" (Dr. Rappaport); "Borderline personality" (Dr. Brocher); "Mixed or atypical psychosis consistent with borderline pseudoneurotic paranoid schizophrenia" (Dr. Morrison); "Surface personality—borderline schizophrenic and inner personality—paranoid schizophrenic" (Dr. Eliseo); and "Paranoid schizophrenic and sociopathic personality" (Dr. Traisman). Diagnoses of prosecution witnesses included: "Antisocial personality" (Dr. Heston); "Personality disorder-narcissistic type" (Dr. Reifman); "Mixed personality with components including pervasive narcissism, an obsessive-compulsive quality, antisocial quality, and hypomanic quality" (Dr. Cavanaugh); "Mixed personality with alcohol and drug abuse" (Dr. Fawcett); "Psychopathic/antisocial personality with sexual deviation and minor symptoms or characteristics of paranoid hysterical reactions" (Dr. Hartman); "Histerical/histrionic character" (Dr. Garron); "Obsessive-compulsive disorder and a hypomaniac disorder, with possible sexual sadism." (Dr. Rogers). See Part V.B.3.a.-d.

<sup>45</sup> See *infra* notes 432-48 and accompanying text.



Apart from the application of the problem of consistent diagnostic classification raised by testimony in the Gacy case, an issue arose concerning the meaning of mental disease itself. The legal principles in the case implicitly accepted, it seems, that in order to qualify for the insanity defense it was necessary that Gacy be shown to be suffering from a psychosis. All participants in the trial seemed to agree that if Gacy were a psychopath or a sociopath rather than a psychotic it would not be possible to claim the defense of insanity. There is an assumption that conditions classified as psychosis have some causal relationship in the manner in which such a disorder impairs the individual's functioning that makes it proper for him not to be held responsible.<sup>46</sup> Such a causal relationship is assumed to be absent in the case of a personality disorder or in the case of psychopathology.<sup>47</sup> What seems to be at stake is whether the insanity defense is limited to cases of delusions and loss of a sense of reality as is the case with psychosis, and whether responsibility should be charged against those who claim a volitional impairment or lack of control as the impairment present in the case of psychopathology.<sup>48</sup> A related matter is raised by the claim of lack of responsibility by one designated to be psychopathological. Most experts agree that no effective treatment program can be identified for psychopaths which will assure elimination of possible future criminal conduct.<sup>49</sup> This issue could not have been far from the jury's mind in the Gacy case after they heard testimony from one of the medical experts, that in his opinion not only did Gacy not suffer from a mental disease, but that in all probability he could not be involuntarily committed if he were acquitted.<sup>50</sup> The medical expert went so far as to say that if Gacy were committed and if the witness were serving in the capacity as an examining physician, he would feel obliged to recommend Gacy's release on the ground that Gacy was not suffering from an identifiable or treatable mental disorder.<sup>51</sup> Although efforts are being made to develop effective treatment programs for persons diagnosed as having an antisocial personality, most commentators concede that the research into the treatment of antisocial personality is not scientifically adequate to provide the basis for any firm conclusion about the possibilities for treatment of the psychopath or sociopath.<sup>52</sup>

Perhaps the most significant aspect of the Gacy case is one that is not part

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<sup>46</sup> See Abrams, *Definitions of Mental Illness and the Insanity Defense*, 7 J. PSYCHIATRY & LAW 441, 449 (1979) where it is observed that "implicit in all of the insanity tests . . . is the assumption that the definition of mental illness should be a causal one, i.e., each test implies that mental illness serves as an excuse because, in some way, it 'causes' or 'produces' the criminal act."

<sup>47</sup> See generally Blair, *The Medicolegal Implications of the Terms "Psychopath," "Psychopathic Personality" and "Psychopathic Disorder,"* 15 MED. SCI. & LAW 51 (1975).

<sup>48</sup> See Bleachmore, *Towards a Rational Theory of Criminal Responsibility: The Psychopathic Offender* (pt. I), 10 METH. U.L. REV. 19, 22-24 (1975).

<sup>49</sup> See H. CLECKLEY, *THE MASKS OF SANITY* 275-85 (1982).

<sup>50</sup> Testimony of Dr. James Cavanaugh. Record at 4693-08. See *infra* notes 457-61 and accompanying text.

<sup>51</sup> Record at 4708. See *infra* note 460.

<sup>52</sup> See LeVine and Bornstein, *Is the Sociopath Treatable? The Contribution of Psychiatry to a Legal Dilemma*, 1972 WASH. U. L. Q. 693, 710.

of the official record, that is the manner in which the jury considered and resolved the issues raised by the defense of insanity. Apparently little or no consideration was given by the jury to the defense itself.<sup>53</sup> One juror reported that upon returning to the jury room, with little discussion, a vote was taken which resulted in a unanimous verdict of "guilty" and only during the time in which the verdict forms were being signed did the jury actually discuss the question of insanity.<sup>54</sup> While an examination of the jury's deliberations is beyond the scope of this article, it is obvious that there is a need for further study of the jury process in cases involving the insanity defense, especially where the case is notorious or where the defendant is charged with crimes of great magnitude as was John Gacy.<sup>55</sup>

The discussion here will deal with the public record in the trial of John Gacy. This Article will first examine the life and crimes of John Gacy as they were reported to the public.<sup>56</sup> The Article will provide a detailed psychiatric profile of Gacy based not only on the public record, but also on psychiatric interviews of Gacy, members of his family, and one of his surviving victims, as well as on reports of medical examinations, and psychological test results.<sup>57</sup> Additionally, the Article will provide a psychiatric assessment of John Wayne Gacy.<sup>58</sup> An account of the findings, diagnoses, and opinions on the question of insanity with reference to Gacy and his criminal acts by each of the expert witnesses is provided within the discussion of the trial itself. In addition to such an account, the Article will examine the legal proceedings in the Gacy case and the expert testimony given in the case to provide an opportunity to observe the manner in which it was related to other evidence and testimony, as well as the way in which the defense of insanity was related to the other legal issues presented by the case.<sup>59</sup> The final part of the Article will

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<sup>53</sup> *Jury's Speedy Verdict Raises Some Doubts, Chicago Daily Law Bulletin*, March 13, 1980, at 1, col. 1, where it was reported:

A prominent criminal lawyer here says the John Wayne Gacy verdict raises doubts about the jury. "I'm not saying the verdict's wrong," Sam Adam told the Law Bulletin today. "I'm saying there's no way the jury could have followed Judge (Louis B.) Garippo's instructions and returned a verdict in less than two hours."

. . . .

"I know they (the jury) could not have considered the defense's testimony and given it the proper consideration it deserved," Adam said. "In most cases it takes the jury that long /less than two hours to choose a foreman."

Adam said that the Gacy case involved very serious, complex psychological problems. It seemed the jury had a closed mind he said.

"The jury was under tremendous pressure in the community's eyes," Adam said. "There's an old saying that 'hard cases make bad laws.' It was true here."

<sup>54</sup> See *infra* note 469.

<sup>55</sup> Studies have been made of jury deliberations in cases involving insanity pleas. See, e.g., R. SIMON, *THE JURY AND THE DEFENSE OF INSANITY* (1967). However, these studies have not focused on cases involving the notoriety or the criminal magnitude of the case of John Wayne Gacy.

<sup>56</sup> See *infra* notes 61-255 and accompanying text.

<sup>57</sup> See *infra* notes 256-92 and accompanying text.

<sup>58</sup> See *infra* notes 293-399 and accompanying text.

<sup>59</sup> See *infra* notes 430-66 and accompanying text.

examine some of the arguments on appeal in order to observe the manner in which the factual issues presented by the case and the problem of accomodating expert testimony in a trial are transformed into technical issues of evidence, procedure, and legal standards.<sup>60</sup>

## II. JOHN GACY — THE PUBLIC RECORD

### A. *The Defendant — His Life*

To neighbors and friends, John Wayne Gacy hardly seemed the type of person capable of committing crimes that were so numerous and horrifying that hundreds of persons would offer to act as his executioner.<sup>61</sup> Nor could his parents have imagined when he was born<sup>62</sup> that their son eventually would be sitting on death row at Menard Correctional Center in Chester, Illinois, convicted of more murders than any person in United States history.<sup>63</sup> In attempting to understand what led this man to commit thirty-three<sup>64</sup> sex-related murders it is important to evaluate Gacy's entire life. Additionally, it is necessary to determine whether the law has developed a satisfactory approach to dealing with and responding to a person like Gacy.

Gacy's troubled life began with a difficult birth and fear that he would not survive.<sup>65</sup> Gacy was bothered throughout his childhood by agonizing headaches and blackout spells that occasionally resulted in hospitalization.<sup>66</sup> As a child, Gacy developed a fondness for feeling his mother's silk undergarments, which he hid in a brown paper bag underneath the family's porch.<sup>67</sup> Throughout his years growing up in Chicago, Gacy had a very strained relationship with his father, John S. Gacy, who has been described by his wife as having a "Jekyll and Hyde" personality apparently precipitated by daily drinking binges in the family basement.<sup>68</sup> Although Gacy had great affection for his father, according to Gacy's mother, Marion Gacy, this love was not reciprocated and the son never seemed to please his perfection-minded father.<sup>69</sup> Both Gacy's mother and sister, Karen Gacy Kuzma, testified at trial that the senior Gacy would yell and challenge his son to strike him but that the son never would.<sup>70</sup>

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<sup>60</sup> See *infra* notes 474-565 and accompanying text.

<sup>61</sup> *Hundreds Offer to Help Illinois As Executioner*, N.Y. Times, May 4, 1980, at A69, col. 1.

<sup>62</sup> Kneeland, *Suspect in Mass Deaths Is Puzzle to All*, N.Y. Times, Jan. 10, 1979, at A14, col. 1.

<sup>63</sup> Snyder, *Question on Death Row: Who'll go first?*, Chicago Sun-Times, Oct. 27, 1980, at 8, col. 1.

<sup>64</sup> Sheppard, *Gacy Is Found Guilty In the Murders of 33, Most in History of U.S.*, N.Y. Times, Mar. 13, 1980, at A1, col. 3.

<sup>65</sup> Galloway, "Still Can't Believe It," *Gacy's Mother Weeps*, Chicago Sun-Times, Feb. 26, 1980, at 1, col. 1.

<sup>66</sup> Fritsch, "I'd Like to Erase it All:" *Gacy's Mom*, Chicago Tribune, Feb. 26, 1980, at 1, col. 3.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

After an argument with his father the 19-year-old Gacy ran away to Las Vegas where he worked for three months as an ambulance driver and as a watchman at a mortuary. While working there he would sometimes sleep at night in the same room with the stored bodies.<sup>71</sup> Gacy returned to Chicago where he obtained work as a salesman for the Nunn-Bush Shoe Company, which transferred him to Springfield in 1964 where he assumed the position of manager of one of the company's retail clothing stores.<sup>72</sup> Gacy soon became an enthusiastic member of the Jaycees service organization in Springfield and was elected first vice-president and named the chapter's outstanding man of the year in 1965.<sup>73</sup> During this time, Gacy began to manifest certain bizarre behavior. For example, one day on his way to work he was issued a traffic citation for cutting into a funeral procession and joining the mourners.<sup>74</sup> After a nine month courtship, Gacy married Marlynn Myers a co-worker at the clothing store. In 1966 the newlyweds moved to Waterloo, Iowa, where Gacy worked for his father-in-law, who ran a number of Kentucky Fried Chicken franchises.<sup>75</sup> Gacy and his wife led an apparently conventional life in America's heartland as she tended after their young son and daughter and he worked long hours cooking chicken and cleaning counters. Gacy also thrust himself into the activities of the local Jaycees chapter, where he became chaplain.<sup>76</sup> Despite his seeming success, Gacy developed a strong dislike for his father-in-law, whom he felt overworked him.

Outside of work, Gacy engaged in the Jaycees' public service activities and indulged in private wild evenings of watching explicit sex films and exotic dancers with his friends.<sup>77</sup> Gacy associated with members of the Jaycees, some of whom disliked Gacy because of his boastfulness. Others found Gacy to be affable and energetic. In 1968 Gacy ran for the presidency of the chapter.<sup>78</sup> However, later that year Gacy's life was shattered when a Black Hawk County grand jury indicted him for forcing two teenage boys into committing sexual acts with him.<sup>79</sup>

Edward H. Lynch, Jr., an employee at one of the fried chicken outlets, testified to a grand jury that Gacy attacked him with a knife, and later chained his hands and choked him.<sup>80</sup> Donald E. Voorhees, the other person who had been subject

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<sup>71</sup> See *infra* note 77.

<sup>72</sup> Kneeland, *supra* note 62.

<sup>73</sup> *Id.*

<sup>74</sup> Mathews & Maier, *Double Life of a Clown*, 93 NEWSWEEK 24 (Jan. 8, 1979).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Dr. Helen Morrison, "Psychiatric Analysis of John Wayne Gacy," Jan. 25, 1980 (psychiatric report submitted to the court).

<sup>78</sup> Kneeland, *supra* note 62.

<sup>79</sup> Fritsch, *Gacy Attacked Me in '67: Witness*, Chicago Tribune, Mar. 1, 1980, at 2, col. 5.

<sup>80</sup> *Id.* Lynch told the jury that Gacy tried to attack him with a carving knife but that he was able to disarm Gacy. However, Lynch stayed at Gacy's house that night after the attack because "he was my boss . . . I was 16 and gullible."

to sexual attack, testified that Gacy told him that he was the head of a sex committee from Illinois studying sexual behavior.<sup>81</sup> Both youths stated that they engaged in sex acts with Gacy.<sup>82</sup> Gacy pleaded guilty to the charge of sodomy<sup>83</sup> and was given the maximum sentence allowable at the time; ten years at the state reformatory in Anamosa.<sup>84</sup> On the day that Gacy was sentenced, his wife filed for divorce, citing cruel and inhumane treatment that endangered her life and health in violation of the couple's marriage vows.<sup>85</sup>

Gacy adjusted to prison life extremely well.<sup>86</sup> According to fellow inmates, he proved to be a shrewd manipulator who avoided trouble with other inmates while garnering power and influence by dispensing favors to his friends as a result of his position as one of the prison's chief cooks.<sup>87</sup> Gacy even found time in prison to organize a chapter of the Jaycees, recondition toys for poor children at Christmas, build a miniature golf course on prison grounds,<sup>88</sup> and run a loan sharking operation.<sup>89</sup> Gacy developed a reputation as a model prisoner.<sup>90</sup> Gacy fell into a severe depression, however, when he learned that his father had died on December 19, 1969, and that he would be unable to leave the prison grounds to attend the funeral.<sup>91</sup> Gacy's sister later testified that she thought her brother felt that he had caused his father's death because of the shame of the sodomy conviction.<sup>92</sup> Nevertheless, Gacy survived the dangers of prison life and was paroled after serving eighteen months of his ten year sentence.<sup>93</sup> Among the reports received by the Iowa parole committee was one from Correctional Counselor Lyle Eugene Murray, who wrote that Gacy needed further counseling but, if returned to live with his family, "would very likely not be involved in the same type of offense as he is presently incarcerated for."<sup>94</sup> Another report submitted by psychiatrist Dr. Richard Lee, recommended paroling Gacy since "[t]he likelihood of his again being charged with and convicted of antisocial conduct appears to be small."<sup>95</sup>

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<sup>81</sup> See H. Morrison, *supra* note 77. Besides assaulting Voorhees, Gacy hired a young man to beat up Voorhees in order to intimidate him into dropping the charges.

<sup>82</sup> Galloway, *Gacy Implicated in Iowa Attack*, Chicago Sun-Times, Mar. 1, 1980, at 6, col. 3.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> C. Linedecker, *THE MAN WHO KILLED BOYS* 40 (1980).

<sup>86</sup> Fritsch, *supra* note 79.

<sup>87</sup> *Id.*

<sup>88</sup> Mathews & Maier, *supra* note 74.

<sup>89</sup> Fritsch, *supra* note 79.

<sup>90</sup> Kneeland, *supra* note 62.

<sup>91</sup> Fritsch, *Ex-Wife Testifies, Gacy Breaks Down*, Chicago Tribune, Feb. 24, 1980, at 3, col. 1. Carole Lofgren testified that she had seen her ex-husband cry, usually around Christmas, the time of year his father had died.

<sup>92</sup> See H. Morrison, *supra* note 77.

<sup>93</sup> Kneeland, *supra* note 62. Warden Calvin Auger later said, "He [Gacy] had no particular problem during his stay. His adjustment was exceptionally good. He was a good worker, a willing worker with only one minor disciplinary thing on his record, just a hassle with another resident with nobody injured."

<sup>94</sup> T. SULLIVAN & P. MAIKEN, *KILLER CLOWN* 252 (1983).

<sup>95</sup> *Id.* at 253.

After his parole, Gacy returned to Chicago where he lived with his mother<sup>96</sup> and worked as a cook at a downtown restaurant.<sup>97</sup> With the financial help of his mother, he purchased a small bungalow near O'Hare Airport.<sup>98</sup> Gacy started his own contracting firm called PDM (for painting, decorating and maintenance) Contractors.<sup>99</sup> In June of 1972, Gacy married Carole Huff, his sister's former schoolmate. Carole had previously been divorced and had two young daughters.<sup>100</sup> According to Carole, Gacy was a very good father to her daughters.<sup>101</sup> Although Gacy did have a temper and sometimes would throw furniture during arguments, he never struck Carole or her children.<sup>102</sup>

The couple's sexual relations had slowly dwindled after their first year of marriage until on Mother's Day, 1975, Gacy told his wife that it would be the last time that they would engage in sexual intercourse.<sup>103</sup> Gacy had told Carole before their marriage that he was bisexual, but she said at the time she had not believed him.<sup>104</sup> However, after their marriage she began to suspect that Gacy had homosexual interests when she found books in their home containing pictures of nude men and several wallets that apparently belonged to teenage boys.<sup>105</sup> The couple was divorced on March 2, 1976, but continued to see each other socially.<sup>106</sup>

Many of Gacy's neighbors knew the stocky contractor as a hard-working man who kept late hours and gave lavish annual parties.<sup>107</sup> Gacy took great pride in the five theme parties he hosted in his backyard at which Gacy and others were costumed. These parties were attended by as many as 400 friends and acquaintances.<sup>108</sup> "John loved to entertain. He loved people around him," according to Jim Van Vorous, a business associate who co-hosted three of these summer parties.<sup>109</sup> Next-door neighbor Lillian Grexa called Gacy "better than a neighbor, he was a good friend. . . . Our house was his house; his house was our house."<sup>110</sup> Mr. and Mrs. Grexa and their six children met Gacy a few months after he moved

<sup>96</sup> Kneeland, *supra* note 62.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Fritsch, *supra* note 91.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* Gacy also told his ex-wife that he would die a violent death before he would reach 40 years of age. See Linedecker, *supra* note 85, at 161.

<sup>105</sup> Included among the numerous books were such titles as BIKE BOY, PEDERASTY, SEX BETWEEN MEN AND BOYS, TWENTY-ONE ABNORMAL SEX CASES, TIGHT TEENAGERS, THE AMERICAN BICENTENNIAL GAY GUIDE, AND THE RIGHTS OF GAY PEOPLE.

<sup>106</sup> Galloway, *Gacy and Ex-Wife Break Down in Tears*, Chicago Sun-Times, Feb. 24, 1980, at 3, col. 1.

<sup>107</sup> "I Do Rotten, Horrible Things," 113 TIME 23 (Jan. 8, 1979).

<sup>108</sup> Ogintz & Axelrod, *John Gacy's Neighborhood "It Will Never Be the Same,"* Chicago Tribune, Jan. 7, 1979, at 1, col. 4.

<sup>109</sup> *Id.*

<sup>110</sup> Fritsch, *Neighbor Calls Gacy "Very Brilliant,"* Chicago Tribune, Feb. 22, 1980, at 3, col. 3.

in. Gacy visited the Grexa home on Christmas Eve with a basket of fruit and invited them to spend some of their Christmas Day with him, his mother and his sister.<sup>111</sup> Mrs. Grexa helped prepare Polish sausage for Gacy's 150 wedding guests in 1972.<sup>112</sup> Mrs. Grexa did, however, notice some strange things about her neighbor. Gacy sometimes left the house as late as 2:00 a.m., and he rarely trimmed the eight-foot hedge that separated their houses and prevented the Grexas from seeing into Gacy's backyard.<sup>113</sup>

Although Gacy hardly ever found time to trim the hedges, he had boundless energy for other activities. He loved to entertain children as Pogo the Clown, dressed in a self-made clown outfit.<sup>114</sup> Gacy increasingly became involved in civic and political activities. He served as a trustee of the Norwood Park Township Street Lighting District,<sup>115</sup> and performed many tasks for the Norwood Park Democratic organization.<sup>116</sup> "He was always available for any chore, washing windows, setting up chairs for meetings—even fixing someone's leaky faucet," according to a Democratic Party Committeeman, Robert Martwick.<sup>117</sup> Gacy was continually remodeling and expanding his home.<sup>118</sup> As part of his home improvement activity, ostensibly to provide for drainage and sewer lines, Gacy employed several young men who worked for his contracting firm to dig trenches in the crawl space beneath his house.<sup>119</sup>

As Gacy's contracting business grew, he developed a specialty for remodeling drug stores, which apparently gave him ready access to a large quantity of drugs, some of which he apparently pilfered, then shared with his young employees while they all drank beer and played pool.<sup>120</sup> A large part of Gacy's work force consisted of high school boys in search of extra spending money.<sup>121</sup> Gacy's penchant for hiring young workers concerned a number of people close to him. His wife Carole urged him to start hiring older men: "I used to always tell John that he should hire older, bigger men."<sup>122</sup> One of Gacy's closest friends, contractor Ronald Rohde, once remarked to Gacy: "John, I can't understand why in hell you hire all these kids. . . . They don't have experience. They don't know what they're doing."<sup>123</sup> It has been suggested that Gacy recognized that the boys worked for low wages.

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<sup>111</sup> *Id.*

<sup>112</sup> Linedecker, *supra* note 85, at 58.

<sup>113</sup> Fritsch, *supra* note 110.

<sup>114</sup> 113 *TIME* 23 (Jan. 8, 1979).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> Linedecker, *supra* note 85, at 83.

<sup>119</sup> Fritsch, *A Portrait of John Gacy, as Drawn From His Life*, Chicago Tribune, Feb. 17, 1980 at 16, col. 3.

<sup>120</sup> Mustain, "Lucky" Gacy Victim Tells of Drugs, Assault, Chicago Sun-Times, Jan. 7, 1979, at 7, col. 1.

<sup>121</sup> Linedecker, *supra* note 85, at 79.

<sup>122</sup> See Dr. Helen Morrison, *supra* note 77.

<sup>123</sup> Linedecker, *supra* note 85, at 76.

Additionally, given Gacy's sexual preference there were clear reasons "for maintaining close personal contact with a steady stream of firm-bodied adolescent boys."<sup>124</sup>

### B. *The Crimes*

The darker side of John Wayne Gacy's personality revolved around the young men and boys whom he brought to his modest home. Soon after he moved into his house, Gacy began to cruise the streets of Chicago during the late night hours, looking for boys with whom he might engage in sexual activity.<sup>125</sup> Gacy claimed that the first murder he committed occurred one such night,<sup>126</sup> when the young man he picked up at the Greyhound bus station in downtown Chicago and took to his home for sexual activity attacked him with a knife the following morning.<sup>127</sup> Gacy said he disarmed his attacker and stabbed him to death.<sup>128</sup> In a confession to the police following his arrest, Gacy maintained that he did not kill again until two years later because his mother-in-law was living with him and his wife.<sup>129</sup> Beginning in 1974, Gacy typically would cruise through Bughouse Square (a Chicago area frequented by male prostitutes) in a black Oldsmobile outfitted with police-type spotlights and a radio scanner.<sup>130</sup> Word quickly spread among the street hustlers in the area that the man who drove the big black Oldsmobile enjoyed particularly rough sado-masochistic activities and that he should be avoided.<sup>131</sup>

Yet, Gacy continued to find willing participants who bartered their bodies for money. According to Gacy, many of these transactions occurred without any physical attack or threat of killing.<sup>132</sup> However, if the person Gacy picked up raised the price originally agreed upon for sex, Gacy claimed he would murder him.<sup>133</sup> Gacy first would incapacitate his victim by handcuffing him, usually telling the victim that he was a clown and would show him a trick.<sup>134</sup> Then Gacy would tell his captive that he had just one trick to show him—the rope trick,<sup>135</sup> whereupon Gacy

<sup>124</sup> *Id.* at 77.

<sup>125</sup> Mount, *Gacy Car to be Auctioned to Pay Legal Bills*, Chicago Tribune, May 10, 1979, at 1, col. 3.

<sup>126</sup> Galloway, *Gacy Had Planned Concrete Graveyard, Prosecutor Says*, Chicago Sun-Times, Feb. 21, 1980, at 8, col. 2. Gacy's statements to police contained many contradictions, including the fact that he first said his initial killing took place on January 3, 1972, and later said this killing occurred in 1974.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Fritsch, *Gacy Said "Jack" Did Killing, Witness Says*, Chicago Tribune, Feb. 21, 1980, at 2, col. 1.

<sup>130</sup> *Id.*

<sup>131</sup> Linedecker, *supra* note 85, at 109.

<sup>132</sup> Fritsch, *supra* note 129. Gacy told one police investigator that he had 1,500 bisexual relationships within a five-year period.

<sup>133</sup> *Id.*

<sup>134</sup> 113 *TIME* 23 (Jan. 8, 1979). After Gacy had his victim securely handcuffed, he would tell him that the trick to getting the handcuffs off was to have the key to the handcuffs.

<sup>135</sup> Galloway, *Officer Relates How Gacy Read Victim a Psalm*, Chicago Sun-Times, Feb. 16, 1980,



would create a garrote by placing a rope around the victim's neck, tying a series of knots, and inserting a stick between the knots.<sup>136</sup> As the victim would convulse, the rope would tighten around his neck.<sup>137</sup>

Twenty-nine victims were buried under Gacy's property, twenty-six in the crawl space, where Gacy would pour lime to cut the odor and to create a powerful acid to hasten decomposition of the bodies.<sup>138</sup> The shallow graves in the crawl space, arranged in the formation of spokes on a wheel, were dug by Gacy and a number of his employees.<sup>139</sup> Although Gacy told his employees that he needed the holes dug so that he could put in drain tiles, he said in his confession to police that he had his employees dig holes so that he "would have graves available."<sup>140</sup> A number of bodies were found with wads of cloth, paper, or underwear stuffed in their mouths<sup>141</sup> and some had plastic bags wrapped around their heads to stop the victims' bleeding from their mouths and noses, according to Gacy.<sup>142</sup> When discovered, a number of the corpses had ropes still tied around their necks.<sup>143</sup> Cook County Medical Examiner Dr. Robert Stein raised the possibility that some of the victims may actually have been buried alive, after they had been choked to unconsciousness and appeared dead to Gacy.<sup>144</sup>

In his confession, Gacy said he killed his victims, not only if they raised the agreed upon price for sex, but also if they posed a threat to him, either by exposing his activities to friends and neighbors or by showing remorse after the completion of a homosexual act.<sup>145</sup> It was into this category that 15-year-old Robert Piest, Gacy's final victim fell.<sup>146</sup> Piest was an employee of a suburban drug store in Des Plaines, Illinois. Gacy apparently went into the store and mentioned to Piest that he was looking for workers, and would pay about twice what Piest was then making.<sup>147</sup> Piest left the drug store on that mid-December night in 1978 after telling his mother, who had come to drive him home, that he was going to talk to a contractor about a job and would be right back.<sup>148</sup> When Piest did not return,

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at 4, col. 1. Gacy used a rosary and a pen to demonstrate the rope trick to assistant state's attorney Lawrence Finder, pretending that Finder's wrist was a victim's neck.

<sup>136</sup> Fritsch, *Hint to Gacy Jury: Some Buried Alive*, Chicago Tribune, Feb. 20, 1980, at 4, col. 3.

<sup>137</sup> Galloway, *supra* note 126. Gacy said that the rope trick created an affect whereby the victims killed themselves because the rope would grow tighter as the victims would move their necks.

<sup>138</sup> Galloway, *Gacy Called "Rational, Evil Man" Who Slew 33 Like "Swatting Flies,"* Chicago Sun-Times, Feb. 7, 1980, at 1, col. 3.

<sup>139</sup> Fritsch, *Personality Traits Detailed at Trial*, Chicago Tribune, Feb. 7, 1980, at 1, col. 1. According to Gacy, one of his employees, Gregory Godzik, "Dug his own grave."

<sup>140</sup> Fritsch, *supra* note 129.

<sup>141</sup> Sullivan & Maiken *supra* note 94, at 206.

<sup>142</sup> *Id.*

<sup>143</sup> Fritsch, *supra* note 136. The fact that Gacy buried the bodies in his crawl space caused investigators to undertake a painstaking recovery effort to identify the skeletons properly.

<sup>144</sup> *Id.*

<sup>145</sup> Sullivan & Maiken *supra* note 94, at 206.

<sup>146</sup> *Id.* at 208.

<sup>147</sup> Galloway, *supra* note 138.

<sup>148</sup> *Id.*

his family searched for him and finally called the Des Plaines police, who, after checking with the manager and other employees of the pharmacy, identified Gacy as the contractor with whom Piest supposedly went to talk.<sup>149</sup> Upon learning of Gacy's sodomy conviction, the police began a surveillance of Gacy which continued until his arrest.<sup>150</sup> With information about the Piest boy's apparel and personal possessions, the police secured a search warrant.<sup>151</sup> On the basis of items obtained from the search, police were able to establish that Piest had been in Gacy's house.<sup>152</sup> After obtaining a second search warrant, police discovered the graveyard that was Gacy's crawl space.<sup>153</sup> Upon being taken into custody, and in the presence of counsel, Gacy made a rambling statement and confessed to more than thirty killings, including that of Robert Piest, whose body was discovered sometime later in a river, where Gacy had disposed of at least four bodies.<sup>154</sup> Investigators soon determined that Gacy's victims looked strikingly similar; all in the mid-teens to mid-twenties with blond or light brown hair and slender build. All were white males.<sup>155</sup>

Although most of what police and prosecutors know about John Gacy and his killings came from Gacy's own statements,<sup>156</sup> further information about Gacy's violent behavior has been revealed by those who survived the attacks and avoided what Gacy called his "burial grounds."<sup>157</sup> One victim, Jeffrey Rignall, wrote *29 Below*,<sup>158</sup> a book about his brush with death. Rignall tells of a night of sexual mistreatment and torture suffered at the hands of John Gacy,<sup>159</sup> and of the insensitivity of police and prosecutors to his ordeal.<sup>160</sup> According to Rignall, his nightmarish plight began while walking on Chicago's near north side about 1:30 a.m. on March 22, 1978. Gacy drove up in his Oldsmobile, offered him a marijuana cigarette and a ride to a nearby bar.<sup>161</sup>

Soon after Rignall willingly entered Gacy's car, he felt a chloroform-soaked

<sup>149</sup> *Id.*

<sup>150</sup> Crimmins, *The Cops Who Closed in on John Wayne Gacy*, Chicago Tribune Magazine, Aug. 24, 1980, at 20, col. 1.

<sup>151</sup> *Id.* at 26, col. 2. Judge Marvin Peters later said that the major reason why he signed the search warrant was the fact that Robert Piest had told his waiting mother "I'll be right back."

<sup>152</sup> *Id.* at 27, col. 1. The key piece of evidence proving that Robert Piest was in Gacy's house was a receipt for a roll of film that was found in Gacy's wastebasket during the first search by police and which police soon learned had been in Piest's jacket pocket the night of his disappearance.

<sup>153</sup> *Id.* at 28, col. 1. Gacy, while sitting on Death Row, remarked: "The only thing I should have been convicted of was operating a funeral parlor without a license." Petacque & Hough, *Feds Zero in on AFL-CIO "Envoy"*, Chicago Sun-Times, Mar. 15, 1981, at 9, col. 2.

<sup>154</sup> Fritsch, *Gacy Sentenced to Death*, Chicago Tribune, Mar. 14, 1980, at 1, col. 1.

<sup>155</sup> Gacy told police that all of his victims were willing sex partners; however, this assertion was not seriously believed since a number of them were known to be heterosexual. Petacque & Hough, *Gacy Says Fear Motivated 32 Slayings*, Chicago Sun-Times, Jan. 5, 1979, at 4, col. 3.

<sup>156</sup> Galloway, *supra* note 138.

<sup>157</sup> Sullivan & Maiken, *supra* note 94, at 207.

<sup>158</sup> J. RIGNALL & R. WILDER, *29 BELOW* (1979).

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* The handling of Rignall's case by police and prosecutors will be fully discussed in Part II.B. of this Article.

<sup>161</sup> *Id.* at 65-67.

rag being pushed against his face and he lost consciousness.<sup>162</sup> The 27-year-old Rignall was driven to Gacy's suburban house, where he was brutally sexually attacked<sup>163</sup> by Gacy, who apparently was aided at one point by an accomplice.<sup>164</sup> After the attack, during which Rignall claimed to have suffered agonizing pain and repeatedly was knocked unconscious by chloroform, he was driven by Gacy to the Lincoln Park area of Chicago and dumped at the base of a statue.<sup>165</sup> Doctors determined that Rignall had sustained serious injuries in the attack, including permanent liver damage from the chloroform, facial burns from the chloroform, and rectal bleeding.<sup>166</sup> Through his own investigative efforts,<sup>167</sup> Rignall found out that his attacker was Gacy. Rignall accepted an out-of-court settlement of \$3,000 that covered roughly one-half of his medical expense at that time.<sup>168</sup>

Nineteen-year-old Robert Donnelly underwent a similar night of sexual abuse and torture at the hands of Gacy.<sup>169</sup> Gacy was cruising the northwest side of Chicago on December 30, 1977, when he noticed Donnelly, a college student, walking to a bus stop.<sup>170</sup> Gacy turned his Oldsmobile's spotlight on Donnelly and told him that he was a policeman and that he'd better get into the car. Gacy handcuffed Donnelly and drove him to his house.<sup>171</sup> At his house, Gacy tortured Donnelly sexually, held a gun to his head and continually spun the cylinder and fired (unknown to Donnelly, it was filled with blank cartridges), and attempted to drown Donnelly in the bathtub.<sup>172</sup> After the attack Gacy drove Donnelly back into Chicago and dropped him off at a department store, warning him not to go to police because they would not believe him.<sup>173</sup> Donnelly did go to the police, but they refused to process a complaint against Gacy.<sup>174</sup>

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<sup>162</sup> *Id.* at 69.

<sup>163</sup> When asked at Gacy's trial to recount the attack, Rignall vomited and began sobbing loudly. Galloway, *Man Claiming Rape by Gacy Collapses*, Chicago Sun-Times, Feb. 22, 1980, at 8, col. 3.

<sup>164</sup> No one aside from Gacy was arrested in connection with the attack on Rignall.

<sup>165</sup> Rignall & Wilder, *supra* note 158, at 81-82.

<sup>166</sup> *Id.* at 110-11.

<sup>167</sup> *Id.* at 119-35. Rignall had remembered that after he was chloroformed in Gacy's car, that Gacy had driven on the Kennedy Expressway and exited at Cumberland Avenue. Rignall, sometimes accompanied by friends, sat at the Cumberland Avenue exit waiting to see the black Oldsmobile that Gacy had driven. After spotting Gacy's car one day, Rignall followed the car to the house at 8213 West Summerdale Avenue and later checked public records for the name of the owner of the house—John Gacy.

<sup>168</sup> Galloway, *supra* note 163.

<sup>169</sup> Fritsch, *Gacy Witness Tells of a Night of Terror*, Chicago Tribune, Mar. 4, 1980, at 5, col. 1.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* Donnelly also recounted that Gacy "reached around my neck, and he pulled something around my neck, and he started twisting it," while saying "My, aren't we having fun tonight."

<sup>173</sup> Galloway, *Victim Quotes Gacy: "Having Fun"*, Chicago Sun-Times, Mar. 4, 1980, at 10, col. 1.

<sup>174</sup> *Id.* Gacy phoned Donnelly several times after the attack to taunt him because the police did not believe he had been brutalized by Gacy against his will. Royko, *A Word for Justice*, Chicago Sun-Times, Nov. 2, 1980, at 2, col. 1. The handling of Donnelly's case by police and prosecutors will be fully discussed in Section III *infra*.

Following Gacy's arrest the police identified a number of other victims who survived Gacy's attacks. Undoubtedly there are others who have not been identified. In fact, soon after Gacy was released from prison in Iowa and placed on one year probation until June 18, 1971, he was accused of forcing men on two separate occasions to perform homosexual acts with him in violation of his probation.<sup>175</sup> However, the Iowa Parole Board was never informed of these allegations and Gacy was released from probation after a year.<sup>176</sup> It was not long after these two incidents that Gacy again was brought to the attention of police. Twenty-four-year-old Jackie Dee accused Gacy of forcing him to perform fellatio.<sup>177</sup> These charges were dismissed, however, after investigators determined that Dee was trying to extort money from his alleged attacker.<sup>178</sup>

There were two other incidents involving Gacy that could have provided grounds for criminal charges. However, police did not learn about these incidents until after Gacy was arrested. Michael Reid testified that he had lived with Gacy for a short time in 1971, but had moved out after Gacy hit him on the head with a hammer during an argument.<sup>179</sup> Jack Pyssler worked for Gacy's contracting firm and accompanied Gacy on a business trip to Florida. Pyssler later accused Gacy of having raped him in Florida. Rather than report the incident to police Pyssler took his own revenge by physically attacking Gacy.<sup>180</sup> As a result, Pyssler was found guilty of battery and sentenced to one year probation.<sup>181</sup> Anthony Antonucci was apparently the victim of an attempted sexual attack in 1975, when Gacy showed him the handcuff trick. Antonucci was able to free himself from one of the handcuffs so that when Gacy began to undress him, Antonucci was able to tackle the contractor and place the handcuffs on him.<sup>182</sup> Within a few minutes Antonucci freed Gacy after Gacy laughed off the incident as a joke.<sup>183</sup> Robert Sipsuich met Gacy at a northwest side Chicago bar frequented by working-class people and went to Gacy's house after being offered some drugs. Sipsuich was chloroformed and sexually molested.<sup>184</sup> Jamie, a 19-year-old prostitute, met Gacy in Bughouse Square and was driven to Gacy's house where he was beaten.<sup>185</sup> Jamie told his hustler friends, but not the police, about this incident.<sup>186</sup>

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<sup>175</sup> Sullivan & Maiken, *supra* note 94, at 254.

<sup>176</sup> Linedecker, *supra* note 85, at 53.

<sup>177</sup> Sullivan & Maiken, *supra* note 94, at 15.

<sup>178</sup> *Id.*

<sup>179</sup> Galloway, *supra* note 163.

<sup>180</sup> Sullivan & Maiken, *supra* note 94, at 68.

<sup>181</sup> Despite this incident, Gacy included Pyssler's name on a list of possible witnesses the defense might want to call to testify as to Gacy's character.

<sup>182</sup> Fritsch, *Youth Tells of Grappling With Gacy*, Chicago Tribune.

<sup>183</sup> *Id.*

<sup>184</sup> Mustain, *supra* note 120. Sipsuich later learned that Gacy had taken photographs of him sprawled nude while he was unconscious in Gacy's family room.

<sup>185</sup> *Id.*

<sup>186</sup> Linedecker, *supra* note 85, at 53.

In 1976, the Chicago police were alerted to the disappearance of a nine-year-old male prostitute. Other boys told police that the missing boy might have gone with the man in the big black Oldsmobile.<sup>187</sup> Police quickly identified Gacy as the man, placed him under surveillance for two weeks and questioned the endless stream of young boys that seemed to go in and out of the Gacy house.<sup>188</sup> The surveillance was ended when police could not link Gacy to the disappearance of the youth.<sup>189</sup> At the opening of Gacy's trial for the 33 murders, one of the policemen assigned to trail Gacy during those two weeks reflected on the tragic turn of events. "It makes me sick to think about it," he told a newspaper reporter. "Maybe if we could have gotten something on the guy, we could have saved an awful lot of lives."<sup>190</sup>

### C. *Victims' Complaints, Missing Person Reports and Police Investigation*

After the capture of John Wayne Gacy, the Chicago Police Department came under criticism for not linking the disappearance of the youths to Gacy sooner than it did.<sup>191</sup> Likewise, the police and the state's attorney's office were criticized for their handling of the cases involving the complaints of Jeffrey Rignall and Robert Donnelly.<sup>192</sup> Rignall claimed that the police were so uncooperative that he had to spend weeks tracing the identity of his attacker.<sup>193</sup> Even after he determined that Gacy was the man who had attacked him, Rignall said police were hesitant to serve an arrest warrant. Rignall was told that he would have to wait until Gacy was stopped for some other minor offense such as a traffic violation.<sup>194</sup> Rignall believed police treated his case as routine after he told officers that he was homosexual and after they found out that he previously had been arrested for possession of marijuana.<sup>195</sup> Rignall claimed that when he complained about the sexual assault, the police treated him as if he were on drugs, even though the police knew that Gacy previously had served a prison sentence for sodomy.<sup>196</sup> After Gacy was arrested for the assault on Rignall, the prosecutor allegedly told Rignall and his attorney that the state's attorney's office would not pursue a criminal conviction. This prosecutorial decision was made despite the fact that Gacy had been convicted of sodomy and had twice been accused of sex offenses in 1972.<sup>197</sup>

Robert Donnelly also found the state's attorney's office unwilling to pursue

<sup>187</sup> *Id.* at 110.

<sup>188</sup> Kneeland, *supra* note 62.

<sup>189</sup> *Id.* The nine-year-old later turned up alive in California. See Linedecker, *supra* note 85, at 187.

<sup>190</sup> Keegan, *They Lined Up to Hear of the Killings*, Chicago Tribune, Feb. 7, 1980, at 1, col. 1.

<sup>191</sup> See Sullivan & Maiken *supra* note 94, at 213-14; Linedecker, *supra* note 85, at 92-97.

<sup>192</sup> See generally 29 BELOW, *supra* note 158; Royko, *supra* note 174.

<sup>193</sup> Rignall & Wilder, *supra* note 158, at 119-37.

<sup>194</sup> *Id.* at 176.

<sup>195</sup> Galloway, *supra* note 163.

<sup>196</sup> Gorman, *Gacy Seized Year Ago but Freed, Records Show*, Chicago Tribune, Jan. 7, 1979, at 22, col. 1.

<sup>197</sup> Rignall & Wilder, *supra* note 158, at 218-20.

a criminal prosecution against Gacy.<sup>198</sup> The prosecutor apparently accepted Gacy's story that the sexual encounter was consensual, despite Gacy's prison sentence and Donnelly's injuries.<sup>199</sup> In both cases, the state's attorney's office exercised prosecutorial discretion in determining whether to pursue a conviction and whether to pursue a misdemeanor rather than a felony conviction.<sup>200</sup> Recognizing that prosecutorial discretion is necessary to keep the prosecutor's caseload at a manageable level,<sup>201</sup> the failure to press charges in rape cases and sexual attack cases often appears to result from prejudice against the victim, rather than from a principled judgment about the merits of the case against the accused.<sup>202</sup>

The Chicago Police Department also came under attack from the parents of a number of victims for the seemingly routine fashion in which the sudden disappearance of their sons were treated.<sup>203</sup> Unlike the Des Plaines police officers, who doggedly pursued Gacy after determining that Robert Piest's disappearance did not fit the pattern of a typical runaway case,<sup>204</sup> Chicago police officers frequently told family members making missing persons reports that their sons probably had run away.<sup>205</sup> This was true of the police action in the case of Gregory Godzik. Despite the fact that Godzik's parents told police that their son led a pleasant home life, that he had a girlfriend, a good job and that the car he was so protective of was found abandoned and unlocked,<sup>206</sup> police treated the report routinely. John Szyc's parents also were told their son probably was a runaway, even though there was apparently no basis for making such an inference.<sup>207</sup> Szyc had never worked for Gacy's contracting firm, but police discovered that Gacy was in possession of Szyc's car and questioned him about it.<sup>208</sup> Gacy's name also was tied to the disappearance of John Butkovich, who had been an employee of Gacy.<sup>209</sup> Butkovich's father Marko had told the police that his son was owed back pay from Gacy and that the con-

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<sup>198</sup> Galloway, *supra* note 173.

<sup>199</sup> Royko, *supra* note 174.

<sup>200</sup> See generally Cox, *Discretion—A Twentieth-Century Mutation*, 28 OKLA. L. REV. 311 (1975).

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> The mother of one missing youth, John Szyc, said that she and her husband "were deeply distressed by what they thought was the lack of either interest or competence on the part of the police and the fact that, after a dozen follow-up calls, they still had not found her son." Sullivan & Maiken, *supra* note 94, at 50.

<sup>204</sup> Crimmins, *supra* note 150.

<sup>205</sup> Linedecker, *supra* note 85, at 92-97.

<sup>206</sup> *Id.* at 92-93.

<sup>207</sup> *Id.* at 96-97. The Chicago Police Department halted their investigation into the disappearance of John Szyc after a number of his friends (apparently erroneously) reported seeing him. Sullivan & Maiken, *supra* note 94, at 213.

<sup>208</sup> *Id.* The author states: "A few days after investigators talked with Gacy, police sent a letter to Szyc's parents advising them that although they had been unable to locate the boy, they had learned that he had sold his car and told the buyer he needed the money to leave town. The police made no effort to explain why, if Szyc needed money, he had left behind two paychecks, all of his personal belongings, and had purchased new license plates for the car on January 20, the day he vanished."

<sup>209</sup> Mathews & Maier, *supra* note 74, at 24.

tractor might have been responsible for his son's disappearance.<sup>210</sup> The police's failure to connect Gacy to his son's mysterious disappearance caused the elder Butkovich to remark after Gacy's arrest: "If the police had only paid attention to us they might have save many lives . . . they can't put two and two together."<sup>211</sup>

Another disturbing aspect of the police investigations is that although the name of John Gacy almost immediately was connected to the disappearance of Godzik and Butkovich, this common denominator was not discovered by the police because the disappearances occurred in different Chicago police districts and information of this type was not listed on the police missing persons computer.<sup>212</sup> Furthermore, the police officers investigating these disappearances did not bother to check whether Gacy had a prior arrest record.<sup>213</sup>

The police department responded to criticism that its officers did not adequately follow up on the missing persons investigations of Gacy's victims by pointing to the high volume of persons reported missing each year.<sup>214</sup> In 1977, for example, 19,455 men, women and children were reported missing to Chicago police, of which at least 6,700 were under the age of seventeen.<sup>215</sup> In 1982, 11,958 youths under the age of seventeen were reported missing to Chicago police and an estimated one million children were reported missing nationwide.<sup>216</sup> In response to critics, Chicago police scanned through their missing persons files from 1972, the year in which Gacy claimed to have first killed, through the date of Gacy's arrest in 1978, and determined that there were 45,000 case reports on file that contained descriptions of possible victims of Gacy.<sup>217</sup>

There is a need to improve police processing of missing person complaints. Better information systems relating such reports and other information about persons possibly responsible for foul play in connection with missing persons need to be developed. In response to the Gacy case, the Chicago Police Department announced plans to include more pertinent information in its computer files of missing persons so that common denominators among cases can be ascertained.<sup>218</sup> Independent of a developed information system on missing persons, as one commentator has suggested, the routine nature in which many of the disappearances

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<sup>210</sup> *Id.*

<sup>211</sup> *Id.* Marko Butkovich sued Gacy for \$6 million for causing his son's death. *Dead Youth's Dad Sues Gacy for \$6 Million*, Chicago Tribune, Feb. 14, 1979, at 1, col. 5.

<sup>212</sup> Linedecker, *supra* note 85, at 93.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 129-32.

<sup>215</sup> *Id.* at 129.

<sup>216</sup> Henry, *More Kids Leave Home—But Most Regret It*, Chicago Sun-Times, July 24, 1983, at 19, col. 1.

<sup>217</sup> Sullivan & Maiken, *supra* note 94, at 213.

<sup>218</sup> Petacque and Hough, *Jury Indicts Gacy in 7 Murders*, Chicago Sun-Times, Jan. 9, 1979, at 3, col. 1.

were treated, including the failure of police to check into Gacy's criminal background, showed "incredible incompetence."<sup>219</sup>

Some responsibility must, however, be placed on those parents who did not report their sons missing,<sup>220</sup> and on those young men and boys who were molested by John Gacy, but never reported the incidents to police for one reason or another.<sup>221</sup> According to one commentator, there are three factors that a victim will consider in determining whether to report a criminal incident to police: (1) his relationship to his assailant; (2) the seriousness of the attack; and (3) whether the victim as well as the assailant could be implicated in the attack.<sup>222</sup> The balancing of these factors by Gacy's victims who survived attacks or attempted attacks may help explain how society can effectively respond to the victim's plight and encourage reports of victimization to the police.

Gacy allegedly made homosexual advances to many of his employees.<sup>223</sup> The fact that the employees had a personal relationship with Gacy (employer/employee), that many of the employees would joke about Gacy's sexual preferences, and that most of the sexual overtures were not serious physical threats perhaps explains why none of the advances were reported to police. Additionally, the relationships may explain why none of the employees would say anything derogatory about Gacy when police questioned them about the disappearance of a few youths.<sup>224</sup> Likewise, the balancing of the relationship of the victim to the assailant and the seriousness of the attack may have influenced Michael Reid, who had lived with Gacy, and Jack Pyssler and Anthony Antonucci, who both had worked for Gacy, not to report the criminal incidents to which they were subjected to the police.<sup>225</sup>

A number of Gacy's victims may have been persuaded not to contact the police after attacks because they believed that they could be implicated in the crime.<sup>226</sup> Robert Sipsuich, for instance, willingly went with Gacy to his house in order to take narcotics.<sup>227</sup> Another victim, Jamie, was a prostitute, who had willingly gone

<sup>219</sup> Bill Treanor of the National Youth Work Alliance in Washington, D.C. also said: "Ten minutes spent looking at the pattern of sudden disappearance in some routine reports could prevent a lot of these crimes." *Behind Growing Worry Over Runaway Youths*, 86 U.S. NEWS & WORLD REPORT 63 (Jan. 15, 1979).

<sup>220</sup> For instance, two victims that Gacy threw in rivers after murdering them, James Mazzarra and Timothy O'Rourke, never were reported missing to police.

<sup>221</sup> For reasons why victims of crimes are hesitant to report the crime to police, see generally Block, *Why Notify The Police*, 11 CRIMINOLOGY 555 (1974).

<sup>222</sup> *Id.* at 560.

<sup>223</sup> Elson, *Suspect's Former Employees Tell of Sexual Advances*, Chicago Tribune, Dec. 23, 1979, at 4, col. 5.

<sup>224</sup> Kneeland, *supra* note 2. Anthony Antonucci, reflecting on the time Gacy tried to remove his clothes after attempting to handcuff him, said he thought the incident was a "joke." Fritsch, *supra* note 182.

<sup>225</sup> Block, *supra* note 221, at 561.

<sup>226</sup> *Id.* at 556.

<sup>227</sup> Mustain, *supra* note 120.



to Gacy's house to engage in sexual acts for money.<sup>228</sup> Another victim, also a male prostitute, had an additional reason not to report to police Gacy's sexual attack and attempt to kill him—he had heard through the homosexual grapevine that Gacy was a policeman.<sup>229</sup> “A victim who believes either that his testimony will be discounted by police (a cost) or that he is nearly as likely to be arrested as his assailant (a cost) is not likely to notify police of an attack.”<sup>230</sup> Thus, street hustlers, admitted homosexuals, and persons with arrest records are less likely to report attackers such as Gacy to police. With fewer persons reporting attacks to police, law enforcement authorities are less able to discern a pattern of criminal behavior that will lead to the arrest of the perpetrator. Furthermore, the negative tone of police reaction to complaints of victims, serves to make other victims of serious assaults less likely to report criminal attacks to the police.<sup>231</sup> Thus, the reporting of crimes by victims could be enhanced by a greater sensitivity to victims of crime and by overcoming police and prosecutor prejudice toward minorities and persons with nonconventional life styles.

#### D. *Media Coverage*

The horrors that occurred inside John Gacy's house initially were made public as the first bodies were being unearthed by evidence technicians.<sup>232</sup> Soon afterward, the treatment by the media, particularly the print media, of Gacy's crimes and his legal defense became an issue in itself. Chicago's two major daily newspapers, the *Chicago Tribune* and the *Sun-Times*, tried to “scoop” each other with little regard for Gacy's right to a fair trial.<sup>233</sup> Although media coverage did not create a circus-like atmosphere, like the ones which arguably developed in the trials of Sam Sheppard<sup>234</sup> and Billy Sol Estes,<sup>235</sup> daily media coverage, nevertheless, posed serious legal and administrative problems. For instance, Cook County Medical Examiner Dr. Robert Stein, who directed the unearthing of the bodies from Gacy's

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<sup>228</sup> *Id.*

<sup>229</sup> Sullivan & Maiken, *supra* note 94, at 221.

<sup>230</sup> Block, *supra* note 221, at 562.

<sup>231</sup> *Id.*

<sup>232</sup> Mount & Koziol, *4 Slaying Victims Found; 28 More are Feared Dead*, *Chicago Tribune*, Dec. 23, 1978, at 1, col. 5.

<sup>233</sup> Simon, *Should You Know all that about Gacy*, *Chicago Sun-Times*, Jan. 2, 1979, at 4, col. 1.

<sup>234</sup> Sheppard v. Maxwell, 384 U.S. 333 (1966). In *Sheppard*, the Supreme Court overturned defendant's conviction for murder because of numerous abuses of power by the presiding trial judge and the prosecutor. Among the trial judge's action included his allowing one television station to stage an interview with him as he entered the courthouse; his allowing the jury to pose for newspaper photographers one day before rendering a verdict; his allowing two jurors to remain on the jury despite their having stated in open court that they had heard a broadcast accusing the defendant of fathering an illegitimate child; his allowing a radio station to broadcast next to the jury room; and his allowing the press to cram inside the bar during the trial and repeatedly interrupt the proceedings. The media further contributed to the defendant being denied a fair trial by disseminating unsubstantiated rumors as fact and by inflaming the public mood with venomous editorials decrying the defendant's legal rights.

<sup>235</sup> Estes v. Texas, 381 U.S. 532 (1965). The Supreme Court overturned the defendant's swindling conviction based on prejudicial media coverage, including the televising of the trial.

crawl space, in a taped interview on a Chicago radio station, stated that the crimes could have been committed by a sane person who could be sent to the electric chair.<sup>236</sup> Although a circuit court judge rejected a petition by Gacy's lawyers for an injunction against the broadcast of the interview,<sup>237</sup> the possible taint on prospective jurors by such a broadcast could have been great in view of Dr. Stein's official position, particularly since the question of the defendant's sanity was to be a crucial issue at trial.

Similar concerns were expressed by Gacy's lawyers and by commentators who were concerned that Gacy receive a fair trial when the media repeatedly reported privileged information allegedly gained from Dr. Stein and from the Cook County Sheriff, Richard Elrod.<sup>238</sup> The handling of the Gacy case by police and prosecutors was even raised during a political campaign involving Cook County State's Attorney Bernard Carey.<sup>239</sup> Friction developed among various police authorities, as the local city police and the county sheriff's office jockeyed to capture the media spotlight.<sup>240</sup> Perhaps the most vocal criticism of the media for its handling of the Gacy case was uttered by the Chicago homosexual community, which was outraged by the continued reference to Gacy as "an avowed homosexual" in early press reports of the crimes.<sup>241</sup> The newspapers eventually discontinued this reference, but the Chicago-based *Gay Life* newspaper expressed concern that "the taint is already there, the damage already done."<sup>242</sup> *Gay Life*, one of the largest circulated and most respected newspapers which reports to the midwest gay community, itself can be faulted for underreporting the issues raised by the Gacy case, particularly those that affected homosexuals, including the fact that many of Gacy's victims were

<sup>236</sup> Simon, *Gacy Case Becomes Legal Nightmare*, Chicago Sun-Times, Jan. 5, 1979, at 4, col. 1.

<sup>237</sup> Linedecker, *supra* note 85, at 203.

<sup>238</sup> Simon, *supra* note 236; Sneed, *Gacy Attorney Threatens to Sue Elrod in "Leaks,"* Chicago Tribune, Jan. 10, 1979, at 1, col. 1.

<sup>239</sup> Royko, *supra* note 174; Koshner, *Royko Column "11th-hour Smear:" Carey*, Chicago Sun-Times, Nov. 2, 1980, at 44, col. 1.

<sup>240</sup> "Since the sheriff's police had taken command of the scene at Summerdale, their vehicles were prominently displayed in the glare of television floodlights, and their activities were getting the major share of the (news) coverage. The Des Plaines police simply didn't know how to react" as their officers became resentful of being pushed outside media coverage. Sullivan & Maiken, *supra* note 94, at 182. "Resentment in the (Des Plaines) community had been simmering. Residents of Des Plaines were rightfully proud of their police department and of the fine investigative work that had broken open a case that its much larger and presumably more sophisticated and better trained brother organization in Chicago had bungled, despite several encounters with the suspect. . . . Now, suddenly, it seemed to some residents of the suburb that after all their hard work, the investigators responsible for breaking the case were being crowded out by larger agencies anxious for positive publicity." Linedecker, *supra* note 85, at 202.

<sup>241</sup> Commentary, *Gacy Trial Accuses all Gay People*, GAY LIFE, Feb. 1, 1980, at 4, col. 1.

<sup>242</sup> *Id.* One letter to the editor in the Chicago Sun-Times summed up the feelings of many in the Chicago gay community by stating that; "the gay community does not share guilt for these slayings any more than other members of Gacy's profession, remodeling contractors, do. Despite the fact that the suspect once told police he is a homosexual, the slayings should not be looked upon as 'homosexual murders,' but simply 'murders.'" *Letters: Homosexuals Fear Being Brunt of More Repression*, Chicago Sun-Times, Jan. 12, 1979, at 46, col. 1.

homosexual, and that a number of bodies had not been identified. *Gay Life* made no effort to aid in the identification process or to encourage any of its readers who were victimized by Gacy to come forward.<sup>243</sup> Similarly, the arrest and conviction of John Gacy received scant reporting in the nation's news magazines, despite the fact that Gacy was convicted of more murders than any person in the country's history and that his case raised compelling legal issues.<sup>244</sup>

The Chicago media's massive coverage of the crimes and emphasis on grisly details caused an additional problem—this one for Gacy's neighbors.<sup>245</sup> Not only did the stories of the crimes bring hordes of reporters to the 8200 block of West Summerdale, but also hundreds of curious onlookers who braved cold weather and heavy snow to watch the removal of the bodies.<sup>246</sup> Even two weeks after the first bodies were removed, one reporter wrote: "The diehards still come, many with children, just to stand watching the house. Some have lined up their families in front of Gacy's house to take photographs, as if they were at Disney World, neighbors say incredulously. Some gawkers even have shown up in wheel chairs."<sup>247</sup> Likewise, hundreds of persons flocked to the courthouse to witness Gacy's trial.<sup>248</sup> One journalist wrote: "It has been years since the old high-ceilinged, marble Criminal Courts Building . . . had held such a crowd. Not since the days of the pretrial hearing for Richard Speck and the sensational trial of cigar-chomping Mafiosi."<sup>249</sup>

The public interest in Gacy and his crimes, spurred by media accounts, extended beyond the gawkers at Gacy's house and trial. When defense attorneys proposed to raise money to defray the costs of Gacy's defense by auctioning Gacy's "prowl" car which had been used to transport at least one corpse, that of Robert Piest, Gacy's attorneys said: "We have people offering far more than the (car and van) are worth, presumably because [the items] are Gacy's."<sup>250</sup> Even with all of the publicity surrounding Gacy's crimes and the number of unidentified victims,

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<sup>243</sup> The authors of this Article could find only two articles based on Gacy's trial and crimes in *Gay Life* from December 1978 to July 1980. However, there were approximately one dozen articles concerning the shooting deaths of San Francisco Mayor George Moscone and city council member Harvey Milk, an avowed homosexual.

<sup>244</sup> The *Reader's Guide to Periodical Literature* from 1978 through 1982 showed only four articles in national periodicals about Gacy.

<sup>245</sup> Gacy's crimes and his neighborhood on West Summerdale Avenue even prompted the performance of a play in a New York city warehouse theater. The play, called "The House Across the Street", deals with the reaction of neighbors to the raping and murdering of young boys by resident "John Wayne Cooper." One reviewer wrote that the playwright was prompted to write about the crimes after "she was amazed by the throng of curious spectators that paraded past the roped-off house, the long lines of cars circling slowly around the block." Doyle, "Sick, Funny" Play About Fictional Gacy *Neighbors*, The (Arlington Heights) Daily Herald, Feb. 17, 1982.

<sup>246</sup> *Id.*

<sup>247</sup> Ogintz and Axelrod, *supra* note 108. Gacy's next-door neighbor, Lillian Grexa, remarked, "Can you imagine, some lady wanted to take MY picture the other day. I just couldn't believe it."

<sup>248</sup> Keegan, *supra* note 190.

<sup>249</sup> *Id.*

<sup>250</sup> Mount, *supra* note 125. Defense attorney Robert Motta said that he had been offered as much as \$50,000 for Gacy's car. Paintings done by John Gacy in prison also proved to be popular. The

the Cook County Medical Examiner's Office received fewer than three hundred dental records and X-rays from around the country.<sup>251</sup> One police official suggested that many parents did not send in dental and medical charts on their missing sons because they did not want to find out that their children had been involved in a case with homosexual overtones.<sup>252</sup>

Although authorities received relatively few responses to their request for dental and medical charts of missing youths, they were overwhelmed by offers from persons who volunteered to act as John Gacy's executioner.<sup>253</sup> Illinois Department of Corrections officials received hundreds of offers after Gacy was sentenced to death and after the Department of Corrections stated that it did not want any member of its staff to perform the execution.<sup>254</sup> Persons ranging from a minister to a prisoner volunteered to pull the switch on this country's most prolific convicted murderer. As one volunteer wrote, expressing the sentiments of many others, "Nothing would give me greater pleasure than pulling the switch on John W. Gacy."<sup>255</sup> The expressed desire for "vengeance," of course, runs counter to the objective of the criminal law, which is to inflict deserved punishment on responsible persons. The only issue raised by Gacy's trial was whether he was a criminally responsible person or insane. To make that determination, the law necessarily turned to psychiatrists.

The next section of this Article is an effort to draw on the insights of psychiatry for an understanding of Gacy, and consider the relevance of those insights for making the legal determination of his guilt. This discussion will be followed by an account of the criminal trial of John Gacy and of the various expert opinions offered at trial about Gacy and the nature of his mental disorder. Attention is given to the manner in which these psychiatric insights were transformed into legal evidence at Gacy's trial.

### III. JOHN GACY—A PSYCHIATRIC PROFILE

#### A. *Family History*<sup>256</sup>

In an interview, Marion Gacy, John's mother, described the childhood of herself and John's father, John S. Gacy, as happy and carefree. John S. Gacy was 38

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paintings, 33 in all, were sold for \$35 each at the Illinois State Fair in August 1982. *Thompson's Ban too Late: Gacy Paintings are Sellout*, Chicago Sun-Times, Aug. 12, 1982, at 24, col. 1.

<sup>251</sup> Sullivan & Maiken, *supra* note 94, at 212.

<sup>252</sup> Linedecker, *supra* note 85, at 187. *See also*, Sullivan & Maiken, *supra* note 94, at 210.

<sup>253</sup> N.Y. Times, *supra* note 61.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.* One volunteer, a prison inmate, wrote: "I will soon be appearing before the board of parole and I do need a job, plus a new start in life."

<sup>256</sup> The information contained in this section of the Article is derived from three sources: (1) Interviews and psychiatric evaluations of Mrs. Marion Gacy, January 1980 and July 1983; (2) Interview and psychiatric evaluation of Karen Gacy Kuzma, January 1980; and (3) Interview and psychiatric evaluation of John Wayne Gacy, January 1980. Each person studied was aware of the collection of this data and its use for scientific exploration and study. All information was audiotaped and transcribed. It

and Marion was 30 years of age when they married. John Gacy Sr. had been wounded in World War II. The injuries he received were to contribute to his history of hospitalizations. The marriage of Gacy's parents was described by his mother as good, despite several instances of physical abuse by her husband. The Gacy's had three children, two daughters, one older and one younger than their son John.

Marion Gacy indicated that her husband was just like her own father, "a great fisherman, a man, not a mollycoddle." She stated that her husband was a "strict guy, perfection personified." Marion Gacy described her son as being just like his father. Gacy's father had multiple physical problems related to his war injuries and various additional illnesses. Some hospitalizations were related to his daily drinking bouts in the family's basement. The family did not admit to these bouts. Mrs. Gacy referred to her husband's suspiciousness and jealousy in their marital relationship. She attributed this behavior to an alleged inoperable brain tumor. According to Mrs. Gacy the alleged tumor contributed to her husband's changeable "Jekyll-Hyde" behavior. Believing that he could not help himself, Mrs. Gacy and her children accepted all aspects of John Gacy Sr's. behavior. They tried to avoid upsetting Mr. Gacy by avoiding loud noise and unruly behavior. Mrs. Gacy said she had been told by the physicians that her husband could "go out of his head," and "be verbally or physically abusive," but that she "would have to live with it." During the early years of the marriage, Mr. Gacy was hospitalized for complaints ranging from total paralysis to headaches. John S. Gacy died on December 19, 1969 at age 69 of cancer (according to his wife) or cirrhosis of the liver (according to his daughter). At the time of his father's death John Wayne Gacy was 28 and an inmate in an Iowa state prison. According to his sister, John Gacy felt that his father died because of the "shame" of the crime for which he was incarcerated.

The disciplinary methods used by John S. Gacy included extensive inquiries into the whereabouts of his children. The father required that the children, before leaving home, write not only the name of the place where they were going, but also the address and telephone number as well. Gacy's mother felt that her husband imposed this requirement because he did not trust anyone.

Marion Gacy disclosed many confrontations between her husband and son. John's sister noted that on one occasion, her brother wished to take a bath, but her father complained it would cost too much for the pilot light to heat the water. She reported that her father regularly shouted at her brother, taunting him to hit him, but that her brother never would strike the father. She explained that John did not have a temper.

Marion Gacy perceived that her son was just like his father in his ability to work with his hands, to be organized, to be a good worker, and to be dependable.

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was agreed that any publication or presentation of information would be made available to the subject if so desired. Dr. Helen Morrison, one of the authors, conducted the interviews.

However, she believed her son was most like herself. Like herself, Mrs. Gacy reported that her son could not sleep longer than four hours, was overweight, had great concern for others and did not like to be alone. Illustrations of Mrs. Gacy's "so close" relationship with her son merit mention. According to her, one night she put her young son to bed and the next morning observed that he had acquired a birthmark. The mark had disappeared from the same location on her arm. Another time, Mrs. Gacy discovered one of her teeth in the same location in her son's mouth. The tooth had disappeared from her mouth.

#### B. *Developmental History*<sup>257</sup>

Mrs. Gacy, age 75 at the time of her son's trial for murder, stated that her son had problems prior to his birth. He supposedly had defecated before birth, causing respiratory problems. His birth had been rapid and Mrs. Gacy perceived that her son was blue in color at the time of delivery. Several days after birth, Mrs. Gacy observed that her son developed increasing breathing difficulties and an apparent allergy to milk. She applied rectal suppositories to her son to decrease what she believed to be the possibility of additional respiratory problems. Medications were prescribed by Mrs. Gacy herself, since she had trained and worked as a pharmacist. The medications were used "all the time" through the first three months of her son's life.

John Gacy's development is noteworthy because of his physical complaints and his mother's observation that he was slower to develop an ability to walk than was his sister. At age two, John began to exhibit sleepwalking behavior, and was apparently unaware of his actions or surroundings during these episodes. When John was age three or four Mrs. Gacy was searching for certain missing items of her silk underwear. She located the items in a paper bag under a sandbox where John had hidden them. At age six John developed a fear of sirens.

John's sister, Karen Gacy Kuzma, described her relationship with her brother by stating that they were always together. Although there was sibling rivalry, she felt that they were close. John Gacy visited his father's grave on his father's birthday, on Memorial Day, and during the winter.

Regarding his health, Karen reported that John had appendicitis, that "he got hit in the head with a swing lots of times, had lots of blackout spells, he had some at school." On one occasion, during a party in 1971 or 1972, he passed out and could not remember anything. In 1970, he passed out at the top of the stairs, did not remember where he was and acted like "someone who was drunk." Karen had felt at the time that John was "faking" because his "talking was not real,

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<sup>257</sup> The information contained in this section of the Article is derived from two sources: (1) Interviews and psychiatric evaluations of Mrs. Marion Gacy, January 1980 and July 1983; and (2) Interview and psychiatric evaluation of Karen Gacy Kuzma, January 1980.

something in his voice was different. It was not his voice." On another occasion, when John passed out, doctors at the hospital wanted to place him in restraints. According to Karen, John was having a "fit," ripping the straps "like he had the strength of ten men." The doctor recommended that John should be "in psychiatry." After medication, "he begged and cried like a baby" to avoid consultation or psychiatric hospitalization, but later acted as if nothing had happened. Gacy's sister recalled a similar incident when their mother said John "snapped," starting hitting, then jumped out of the car and started hitting the car. When he walked into the house later, he was completely different.

When she saw John in later years, Karen said: "he was extremely tired, far away, like gazing" and he appeared depressed. John also expressed the opinion that he had leukemia. There was no medical basis for this fear. As to the crimes with which her brother was charged, Karen stated that it was not her brother "who did those things."

John's mother said that her son had never fought with anyone, even when severely provoked by his father or others. She stated that until the summer of 1978, he had never verbally abused her. At that time he began verbally abusing her, swearing at her, misidentifying the persons around him, and generally being quite "unlike himself."

Fellow workers reported a frankness on John's part about his sexual orientation, and an apparent ability to function well both socially and as a worker. One co-worker stated that he met John in 1974 or 1975 at a Christmas party but that he "didn't get social until we did a job together." John had admitted that he was bisexual, stating: "I can have just as much fun with a man as with a woman." According to this fellow worker, John was always "helpful, an achiever" and there was "nothing I saw bad about him."

### C. *Educational History*<sup>258</sup>

John Gacy's educational records indicate that he attended Chicago Public Schools from 1947 through 1952. His academic functioning included failure in behavior and scholarship from grade three. Achievement tests performed in 1951 note that John at age 10 displayed a mental age of 9.9, and an intelligence quotient of 98. Specific subject scores included the following: reading 3.0, arithmetic 3.6, spelling 2.1. All of these results were below grade level 5.0. John Gacy transferred to a Catholic school in 1952. From 1957 through 1959 John attended four different vocational schools. John dropped out of school in February of 1960. According to his records Gacy left school because he was "over age." According to a letter from his parents, John left because "to continue [vocational school] is a waste

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<sup>258</sup> The information contained in this section of the Article was drawn from the following sources: (1) Chicago Public School Records, 1947-1952; (2) Saint Francis Borgia School Records, Chicago, Illinois, 1952; (3) Orr Vocational, Washburne, Cooley Vocational and Prosser Vocational, Chicago, Illinois, 1959.

of time, not only for him but for you also seeing as nothing can come of it." Gacy's academic record during the vocational school period indicates excellent grades in science, failing grades in mathematics, and inconsistent grades in other subjects.

#### D. *Medical History*<sup>259</sup>

Past medical records for John Gacy are available from 1958. Family members reported that John had a tonsillectomy and an appendectomy in 1957. In 1958, at age 16 he was admitted to a hospital with complaints of shortness of breath after fainting at a friend's home. The diagnosis was coronary insufficiency. A psychiatric consultation noted that he was "upset easily, describes father as paranoid, iatrogenic cardiac neurosis fostered by hyperventilation, dependency, aggressive personality features with somatization."

Three months later, he was admitted to the same hospital following a physical collapse caused by a temperature change. Again the diagnosis was coronary insufficiency. During this hospitalization, an "Accident in Hospital Report" was filed stating that: "[The] Patient [was] found on floor, complained of headache, patient appears disoriented and confused about what happened and why he did it. He is laughing to himself and will not answer any questions relating to accident." Eleven days later, the records note that he was "having a shaking spell." Records for the next day state that "he wants other patient out of his room, unable to sleep, patient wants doctor and parents called to come and take him home, father very angry and won't wait for the doctor." He was discharged against medical advice and signed out by his father.

One day later he was admitted to another hospital because of recurrent syncope [loss of consciousness], dizziness, difficulty in breathing, a sensation of being choked, pain below the xiphoid process and pain in the left arm. Hospital records reported as a part of his history that John, in 1953, had been hit by a friend in the epigastric region, after which he passed out because of pain. Gacy was discharged from this hospital eight days later.

Six weeks later, he was readmitted with symptoms of sudden loss of consciousness again related to temperature changes. This time the hospital diagnosis was a convulsive disorder. John was placed on antiseizure medications and released the following day. Six weeks later, John was examined after he apparently passed out in school; he was diagnosed vasomotor syncope.<sup>260</sup>

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<sup>259</sup> The information contained in this section of the Article was drawn from the following sources: (1) Northwest Hospital Medical Records, Chicago, Illinois, 1958; (2) Norwegian American Hospital Medical Records, Chicago, Illinois, February 23, 1959, February 6, 1960 and January 23, 1962; (3) St. John's Hospital Medical Records, Springfield, Illinois, December 1964; (4) Edgewater Hospital Medical Records, Chicago, Illinois, June 23, 1973, August 27, 1974, November 4, 1976, and August 12, 1978; (5) Loretto Hospital Medical Records, Chicago, Illinois, August 12, 1978; (6) Interview and psychiatric evaluation of Mrs. Marion Gacy, January 1980 and July 1983; (7) Interview and psychiatric evaluation of Karen Gacy Kuzma, January 1980.

<sup>260</sup> Vasomotor syncope is commonly known as a fainting spell.



The following year, August 1959, John was again examined after fainting while sitting in a chair, but was discharged against medical advice that same day. In February 1960, John was examined after a fall in which he sustained multiple muscle and ligament injuries. Two years later, at age 20, Gacy was admitted to a hospital with a diagnosis of psychomotor epilepsy following complaints of sharp back pain and generalized headaches. Records from this hospitalization reflect a history of "hysterical" blackouts during which John "remembers nothing but others said he began to shake intermittently and it took 3 to 4 people to hold him down." The hospital records indicate that large doses of sedative-hypnotic drugs caused him to "snap out of it, [that he] became conscious and coherent, had been placed in four-way restraints." Additional notes show an "[a]ccute convulsive episode last night with loss of consciousness and violent thrashing about." Later that same day, it is reported that Gacy was "[t]alking normally and acting normally and suddenly developed extreme restlessness after complaining of chest pain, then patient impossible to handle." Six days later, a notation was made that the patient had "no knowledge of attack, 14 short episodes of convulsive seizures within 10-15 minutes." He was discharged two days later. Six days after this discharge John Gacy was seen in the same hospital emergency room for alcoholic intoxication followed by an "acute combative stage of excitement with loss of consciousness."

One year later, at age 21, Gacy again was hospitalized due to a "seizure of unconsciousness with consecutive epileptiform movement."<sup>261</sup> Records show Gacy had a seizure, shouted, struggled, demonstrated strong resistance to ambulance personnel, and had "no memory of events until after admission here." During this hospitalization, Gacy was given major psychotropic medication. On the day of admission, he was noted as being "combative, restless, crying, not attending to anyone, trying to get up, medication needed." The following day he was noted as having suffered from "acute behavior disorder initiated by severe cramps in legs, especially the left, followed by uncontrollable thrashing about in a purposeful fashion, ripping wires, hitting those nearby." Nevertheless, he was discharged the same day with antiseizure medication. A year later Gacy was seen in the emergency room of another hospital after he "became numb all over, hyperventilated and passed out."

No further hospital records are available until 1973 when Gacy was 31 years old. At that time his wife reported that he complained of pain, and "[a] half hour later he was gagging, then unconscious, then cold, did not answer." Seven days later he was discharged. In 1976, Gacy was admitted to a hospital with complaints of frontal headache. At this time, Gacy was diagnosed as suffering from smoke inhalation, acute bronchitis, and obesity. He was discharged six days after admission. In 1978, Gacy was transported to a hospital by police as a battery victim. Gacy was admitted with a diagnosis of acute myocardial infarction. However, Gacy left the hospital against medical advice on the same day he was admitted. One

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<sup>261</sup> An epileptiform movement is a seizure-like or jerking movement.

day later he entered another hospital stating that he had a "cardiac arrest of sorts" at the previous hospital. Following a complete medical examination Gacy was diagnosed as having venereal disease. He was discharged four days after examination.

#### E. *Sexual History*<sup>262</sup>

##### 1. Childhood

The record of John Gacy's sexual history and development begins with his report that at approximately age four or five he began to take items of clothing from his mother. He stated that he liked the feeling of her silk underwear. His practice was to hide these garments under the porch until his mother discovered the missing items.

At age 5 or 6, Gacy reportedly experienced a sexual incident with a girl, aged 12 to 15 years, whom he described as mentally retarded. She took him into a bedroom and explored his genitals until his mother came into the room. The girl was punished but he was not. Until the age of 10, when the family moved to another home, Gacy shared a bed with his sister. Gacy stated that he had no sexual interest in his sister. At age 6 to 8, Gacy engaged in sexual exploration consisting of visual examination of a female friend. This behavior was interrupted by the girl's father, and resulted in John being spanked by his father. The behavior expanded to include mock marriage ceremonies although no sexual activities accompanied these ceremonies.

At age 9, Gacy had some "bad" experiences with a male contractor. According to Gacy, this contractor would come and take him for a ride in his truck. The contractor would tell Gacy that he would show him a new wrestling hold which resulted in Gacy's head being caught between the man's legs. Gacy reported no sexual feelings or excitement about this activity and he avoided the contractor after these activities had occurred.

##### 2. Adolescence

At age 12, Gacy again began taking items of underclothes (pants) from his mother and also neighboring clotheslines. He used these items for self-stimulation throughout his adolescent and early adult years. He preferred certain types of material, and would avoid other fabrics. He remembered his mother threatening to make him wear the underwear if he did not stop taking the clothing.

At age 11, John's best friend was a male who was described by John's sister as "odd." According to her, the friend was gay and "liked antiques and old things,

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<sup>262</sup> Unless otherwise noted the information contained in this section of the Article is derived from: (1) Interviews and psychiatric evaluations of Mrs. Marion Gacy, January 1980 and July 1983; (2) Interview and psychiatric evaluation of Karen Gacy Kuzma, January 1980; (3) Interview and psychiatric evaluation of John Wayne Gacy, January 1980.

didn't like girls." This relationship reportedly lasted until sometime in the early 1970's.

One of Gacy's duties during his early adolescent years was to go to the drugstore to buy sanitary napkins for his sister. He reported that this was uncomfortable for him. He did not want to do it, but it was expected of him. According to his mother, he would carry the items home without wrapping them.

Gacy apparently began to date girls when he was between the ages of sixteen and eighteen. He reported increased sexual activity ranging from kissing through petting. His first experience with intercourse occurred at age 18. Gacy claimed this was a nervous time because he "didn't want her to think it was my first time." He reported that the experience was pleasurable. Although Gacy reported sex was never discussed with his parents, he did remember his mother stating that "sex is very beautiful and it shouldn't be forced." Gacy also reported that he engaged in sexual exploration with two cousins.

### 3. Adult

At age 19, Gacy began to take items of women's underwear from the inventory of the store where he worked. He stated that he took many pairs and would use them for self-stimulation.

When Gacy was 22 he became engaged to his first wife, and reportedly had his first sexual activity with another male. The man was an acquaintance with whom Gacy had gone out for the evening. The two consumed a great deal of alcohol and returned to the man's apartment where Gacy fell asleep. He awoke to what he described as a pleasurable experience of the man performing a sexual act to which Gacy did not protest. Gacy stated that he never mentioned being aware of this behavior to his friend after the incident.

In 1964, Gacy married. In 1965 his first child, a son was born and in 1967 his daughter was born. Gacy reported that the sexual frequency initially was quite great in his marriage. By 1967, this situation had expanded to wife swapping usually following the watching of explicit sex films with acquaintances. He spoke of this activity with anger, however, referring to his wife's filing for divorce following his sodomy conviction. He stated that "I could have had her on eleven counts of adultery." According to Gacy, the change in the couple's sexual activity could have been related to his increased hours of working.

John Gacy had moved from Illinois to Iowa in 1966.<sup>263</sup> He was indicted in April 1968 for sexual acts with two males of minor age.<sup>264</sup> The sexual acts occurred in the latter half of 1967 after Gacy had reportedly notified each boy that he was

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<sup>263</sup> Deposition of John Wayne Gacy taken September 1968.

<sup>264</sup> Anamosa Reformatory Records, 1968-1970.

the head of a sex committee in Illinois and, as such, knew all aspects of male-male sex. One minor reported that the initial sexual interaction at the home of Gacy followed the viewing of stag films, the type allegedly used at private meetings of fellow members of the Jaycees. Gacy pulled a knife and backed the victim into a bedroom. Gacy struggled with the victim and cut him on the left arm, at which point the minor agreed to be chained.<sup>265</sup> Then Gacy reportedly began choking the victim who, after going limp, was later unchained and released.<sup>266</sup>

Gacy's deposition story was very similar to the one he told after his arrest in Chicago regarding two of the persons he reportedly killed.<sup>267</sup> He discussed an alleged homosexual relationship he had with a male couple he called Rick and Rack.<sup>268</sup> Gacy was convicted of sodomy and sentenced to the state reformatory in Anamosa, Iowa.<sup>269</sup> Reportedly, Gacy was released from Anamosa after his mother filed a petition alleging hardship.<sup>270</sup>

Upon his return to Chicago, Gacy began to see a woman who had known his family for many years. They married in 1972. Reportedly, Gacy told his new wife, Carole Hoff Gacy, of his arrest and conviction and of his bisexuality prior to the marriage.<sup>271</sup> Initially, the couple's sexual relations were satisfactory to both partners, but deteriorated in frequency until Mother's Day in May 1975, when Gacy told his wife there would be no further sexual relations between them. They were divorced in February of 1976 after approximately four years of marriage.

Following this second divorce, Gacy increasing engaged in sex with male partners. He also began dating another woman. One evening he took this woman home and began to engage in foreplay. As he reached into her slacks he found what he described as "something I'd never felt." In the bedroom, as she removed her clothes, he saw a "plastic bag, a, a what, anyway, she'd had an operation." He stated that his initial reaction was a lessening of his sexual arousal, but that he was able to complete the act. This sexual relationship deteriorated because Gacy "was always afraid the bag would come off."

Gacy continued to engage in homosexual acts. He also continued to take feminine underclothes. In addition, male partners who wore "feminine" underthings would have their underclothes taken. According to Gacy, the activities with male sexual partners were becoming less pleasurable and appeared to involve more of a drive than a genuine sexual satisfaction or pleasure.

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<sup>265</sup> Deposition of Donald E. Voorhees, May 24, 1968.

<sup>266</sup> *Id.*

<sup>267</sup> Deposition of John Wayne Gacy taken September 1968.

<sup>268</sup> *Id.*

<sup>269</sup> Anamosa Reformatory Records, 1968-1970.

<sup>270</sup> *Id.*

<sup>271</sup> Interview with Carole Hoff Gacy, February 1980.

#### F. *Employment History*<sup>272</sup>

At age 14, Gacy began working as a helper at a grocery store. At age 19, he worked in Las Vegas, Nevada for approximately three months as an ambulance driver. He was also a night watchman in a mortuary where he would sleep. Returning to Chicago at age 20, Gacy worked as a delivery boy, then as a salesman for a shoe company which subsequently transferred him to Springfield, Illinois. One year later, in 1966, he moved to Iowa and began working at a fast food store as manager. Following his incarceration at Anamosa reformatory, Gacy returned to Chicago and worked at a restaurant until he started his own contracting firm. Gacy operated the firm until his arrest.

#### G. *Criminal History Prior to Arrest for Murder*

During the time of Gacy's incarceration at Anamosa, prison records note an evaluation by Dr. Leonard Heston, a psychiatrist, who stated in an evaluation that "persons similar to Mr. Gacy seem to do best when there are firm, consistent, external controls on their behavior . . . [he is] in fact, bisexual."<sup>273</sup> During his imprisonment, medical reports on Gacy indicate coronary occlusion, mild cardiac enlargement and hypertension.<sup>274</sup> In 1969, Gacy's records report "emotional instability" and involvement in individual therapy for five weeks followed by group therapy for seventeen weeks.<sup>275</sup>

Following Gacy's release from prison, police records show that in 1972, Gacy displayed a police badge and picked up a boy to whom he made sexual advances. The boy reportedly resisted the advances,<sup>276</sup> but eventually consented to sexual activity. The youth later ran away from Gacy and fifteen days later signed a complaint against Gacy for aggravated battery and reckless conduct.<sup>277</sup> One month later, after allegedly threatening phone calls by the boy to Gacy, authorities observed an extortion attempt by the boy and all charges were dropped.<sup>278</sup>

In 1977, another boy reported to the police that Gacy had attempted to hit him on the head with a hammer.<sup>279</sup> The boy reportedly asked Gacy what he was doing. According to the youth, Gacy answered that: "He didn't know what came over him but he wanted to kill him."<sup>280</sup> The boy noted that no argument preceded

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<sup>272</sup> The information contained in this section of the Article is derived from an interview and psychiatric evaluation of John Wayne Gacy, January 1980.

<sup>273</sup> Anamosa Reformatory Records, 1968-1970.

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> Chicago Police Department investigative reports of alleged assault on Jackie Dee in 1972.

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> Chicago Police Department investigative reports of alleged assault on Michael Reid in 1977.

<sup>280</sup> *Id.*

the attack. Rather, Gacy “just snapped.”<sup>281</sup> However, the boy stated that Gacy never forced him to engage in sexual acts.<sup>282</sup>

Again in 1977, another boy reported that he was picked up by Gacy and taken to Gacy’s home.<sup>283</sup> The boy told the police that he was handcuffed and had leg chains placed on him. Sodomy was performed on the boy followed by the insertion of objects by Gacy.<sup>284</sup> An Assistant State’s Attorney’s investigation, preceding the decision not to prosecute, noted that the victim had a history of mental illness, that he had stayed with Gacy for more than seven hours, that John Gacy “was too nice, gave the person his name” and that Gacy drove the boy back to his apartment the next day.<sup>285</sup>

After Gacy’s arrest for murder, an interview was conducted with another victim of an alleged attack by Gacy which occurred in 1978.<sup>286</sup> The victim stated that he was approached by Gacy and was offered a ride. His impression of Gacy was that he was a “super, very nice person, very friendly, very likeable.”<sup>287</sup> His next memory is of being on an expressway, turning off at an exit and arriving at Gacy’s home. He awoke from what he described as “being chloroformed,” to find John Gacy behind a bar.<sup>288</sup> Gacy reportedly handed him a drink, and appeared “so nice,” but then “suddenly turned into an animal.” The victim had no idea what caused the change. Following what he described as multiple sexual assaults by Gacy, the victim awoke at the base of a statue in a park, suffering from rectal bleeding and facial burns.<sup>289</sup> The victim reported the incident to the police and after learning the identity of Gacy filed a complaint.<sup>290</sup> There was a delay before arrest. Subsequently, a court date was set for January, 1979.<sup>291</sup>

#### H. *Report of Psychiatric Interview of John Gacy*<sup>292</sup>

In describing his own life, John Gacy reported his earliest memory to be at age 4 when “a neighborhood girl took off my clothes.” He also reported awareness of his first train ride to Springfield and getting a whipping from his father for having “messed up his car parts.” He reported his memory of beginning school and of a fear of sirens beginning when he was five. At age 6, he reported, he received

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<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> Chicago Police Department investigative reports of alleged assault on Robert Donnelly in 1977.

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> Chicago Police Department investigative reports of alleged assault on Jeffrey Rignall in 1978.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> The information contained in this section of the Article is derived from an interview and psychiatric evaluation of John Wayne Gacy conducted by Dr. Helen Morrison in January 1980.

stitches in his right hand for an injury at play, and remembered "being afraid of a kid's game, the blackhand." He remembered sexual activity with a neighborhood girl and a contractor who took him for rides and "messed with" him. Gacy remembered changing from public to parochial school at the age of 8. Gacy recalled that his father had a back operation, and that his mother "scared us kids that she was leaving." He described a medical diagnosis in 1951, stating that he had a "bottled heart." At age 10, he described as a "happy adventure" the move by his family to a new home. He remembered that on a fishing trip with his father in 1953, he felt blamed for everything that went wrong. He reported no memories from age 12. He described being absent from and failing school at age 13, and changing to the vocational school and beginning to work at the age of 14. During this period of early adolescence, he remembered being put down repeatedly by his father. Gacy recalled a series of operations and accidents at age 15. At age 16, Gacy reported being first in his class, receiving the American Legion Scholarship Award, starting high school and being ill. He remembered being hospitalized in 1959. In 1960, he said that he received his first car and suffered a fall from a second story building from which he received a spinal injury. He stated that he was requested to leave school at age 19 because of health risks and illnesses. He reported that he left home at age 20 and felt depressed and lost. He returned home after three months. One year later, he reported, he was working as a store manager. He remembered 1964 as the year in which his sister married, his parents celebrated their 25th wedding anniversary, his girlfriend died, he married, and he had his first sexual experience with another male. After he moved from Chicago to Springfield, he remembered running a large Christmas parade. The following year, he felt that he was having "a great married life," that he was pleased to have been honored as an outstanding local Jaycee, receiving third place in a statewide competition. He also was pleased to have been honored as Jaycee's man of the year in Springfield. He moved to Iowa in 1967, and again was honored as man of the year. In Iowa, however, he stated he developed a hatred for his father-in-law, for whom he was working.

Gacy reported that the following year, at age 26, he was imprisoned for sodomy and was divorced. In 1969, his father died. Gacy incorrectly reported the date of his father's death as December 25, 1969. During 1969, according to Gacy, he suffered a heart attack and completed a high school equivalency examination. In 1970, he stated, he again was honored as Jaycees man of the year at the Anamosa reformatory, where he had developed a Jaycees Chapter. Upon a first application, Gacy was denied parole. Subsequently, he was paroled and permitted to return to Chicago. The following year, he moved to his home at 8213 West Summerdale in Norridge, and at age 30 married for the second time. By 1973, he had problems with his mother-in-law and reported that he suffered multiple sicknesses. Gacy expressed pride in having hosted yard parties in 1974 and 1975. In his private life, Gacy reported marital problems arose. However, in his public life he was meeting with success. Gacy was appointed to the lighting district board, became Pogo the Clown entertaining children at various events, and met with good business success. Gacy

reported that he nonetheless was "confused, not happy." His divorce became final in 1976, which depressed him. He reported that he had another lavish yard party, yet continued being unhappy despite a "booming business." By 1977, business was skyrocketing and he had his fourth successful yard party. He said he was lonely, confused, unhappy, and he broke off an engagement to marry. In 1978, while business was good, he still felt lonely and depressed. He learned that his ex-wife was pregnant and that she married in November. During 1978, he managed the Polish parade and had his photograph taken with Rosalynn Carter, the President's wife.

Gacy was arrested in December 1978; he reported that at that time he felt confused. In 1979, prior to his trial, he reported being lonely, lost, confused, with no will to live and that, "on December 25, [he] died."

Gacy described his victims and his attitude toward them in various terms including: "lonely, sorry, lost, wanting to help, younger, son treatment, dumb, stupid, niece (sic), trusting, teach, greed, curious, innocent, punishment and weak." Gacy was consistent in the application of these terms to his victims during the interview. The inconsistencies noted throughout this self-defined history will be elaborated upon in a later section.

#### IV. PSYCHIATRIC ASSESSMENT

##### A. *Personality*

What and who is John Gacy? Based on examinations and case-studies of nonspecific mass murderers, the most general observation to be made is that John Gacy appears similar to previously studied mass murderers.<sup>293</sup> The information concerning John Gacy, matches the profile of the mass murderer first published in 1979 by one of the authors of this article.<sup>294</sup> This profile was elaborated upon at the trial of John Gacy in 1980.<sup>295</sup>

During the interviews conducted with Gacy, he appeared essentially alert and cooperative.<sup>296</sup> Prior to beginning the interviews, John Gacy was notified of the nonconfidential nature of the interviews and of the evaluations being made. He consented to these conditions and rules governing the interviews and evaluations. His intellect was judged to be above average. Throughout the evaluation there were

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<sup>293</sup> See H.L. Morrison, *Psychiatric Evaluation and Correlations: Panel on the Richard Macek Homicide Cases*, Presentation to the American Academy of Forensic Sciences (St. Louis, Missouri, 1978); H.L. Morrison, *Application of Previous Research in Mass Murders to the Atlanta Child Murder Cases*, Reuters News Services (Washington, D.C. 1981); Morrison, *It Couldn't Happen to You, Could It . . . ?*, SHE MAGAZINE (London, England 1980); H.L. Morrison, *Attempts at Understanding of Atlanta Mass Murder Cases*, Jeffrey St. John, WRC Radio Station (Washington, D.C. 1981).

<sup>294</sup> Morrison, *Psychiatric Observations and Interpretations of Bite Mark Evidence in Multiple Murders*, 24 J. FORENSIC SCIENCES 492 (1979).

<sup>295</sup> Record at 4917-75 (testimony of Dr. H.L. Morrison).

<sup>296</sup> Interview and psychiatric evaluation of John Wayne Gacy by Dr. H.L. Morrison, January 1980.



brief and transitory periods of lack of contact with the examiner and the work at hand. These episodes occurred without any precipitating event. However, these episodes seemed to relate to requests by the examiner for the defendant to do nonstructured or unexpected tasks. These episodes also were accompanied by increased, rapid verbalization having little connection with the tasks. Paranoia<sup>297</sup> was evident throughout the evaluation.

What also appeared in the context of the evaluation was Gacy's inability to identify himself with the external reality in the evaluation. Such inability was coupled with an unusual paucity of affect<sup>298</sup> in regards to emotionally meaningful subject matter. There is a subtle, bizarre quality present in John Gacy's interpersonal interactions. This includes a lack of consistent perception of the examiner.

Gacy has a handwriting and printing style that is similar to other mass murderers.<sup>299</sup> In the way he presents himself, Gacy has a colorless type of appearance and is well dressed and groomed. He is extremely organized and enters every detail of his life in a log book.

Gacy's personality and psychological structure is complex. He appears to be superficially cooperative and pleasant and seems to relate in an appropriate and adequate manner. He also seems to show a good deal of control, both over his internal thoughts and his impulses. This impression is maintained by every person who sees him only for a limited amount and intensity of time. However, this impression is misleading and incorrect and results from too limited an exposure to the subject.<sup>300</sup> Gacy's easy-going and accommodating style tends to increase the discomfort of being with him. He primarily shows a surface picture of persuasiveness and smoothness.

Gacy attempted to relate to the examiner in an overcontrolled, pendantic manner. However, a great deal of underlying tension and some hostility and agitation were noted. He is wary and sensitive to the responses of others. There is a good deal of ambivalence toward the significant persons in his life, and he shifts from one appraisal of them to another with little awareness of his inconsistencies. Gacy's personality structure manifests itself dynamically as a diffuse obsessive,<sup>301</sup> phobic<sup>302</sup>

<sup>297</sup> *Id.*

<sup>298</sup> Affect involves a person's emotional tone and its outward manifestations. See AMERICAN PSYCHIATRIC ASSOCIATION, A PSYCHIATRIC GLOSSARY: THE MEANING OF TERMS FREQUENTLY USED IN PSYCHIATRY 11 (4th ed. 1975) [hereinafter cited as PSYCHIATRIC GLOSSARY].

<sup>299</sup> Interview and psychiatric evaluation of John Wayne Gacy by Dr. H.L. Morrison, January 1980. See H.L. Morrison, *The Application of Developmental Theory to the Study of Homicidal Behavior*, "As it Happens" (News Program of the Canadian Broadcasting Corporation, Toronto, Canada 1979).

<sup>300</sup> Record at 4917-75 (testimony of Dr. H.L. Morrison).

<sup>301</sup> Obsessive compulsive personality is a disorder characterized by excessive concern with conformity and adherence to standards of conscience. Individuals with this disorder may be excessively organized and exhibit repeated acts. Such individuals may be rigid, overinhibited, overconscientious, overdutiful, indecisive, perfectionists and unable to relax easily. PSYCHIATRIC GLOSSARY, *supra* note 298, at 119.

<sup>302</sup> Phobia involves an obsessive, persistent, unrealistic, intense fear of an object or situation. The

and hypochondriacal<sup>303</sup> picture which underlies his show of toughness and defiance on occasion. He displays anxiety along with chaotic antisocial and sexual behavior. His anxiety is not absorbed by his acting out. He is obsessed with fearful fantasies of death and disintegration. When Gacy admits to committing criminal acts, he expresses superficial guilt based on a faulty concern. This affable facade covers a type of attitude which is disquieting in its very simplicity and blandness. Emotional instability has been present throughout his life and is exaggerated markedly by the underlying thought process disturbances. His affect<sup>304</sup> is shallow and non-existent. There are periods of apparent euphoria alternating with periods of depression. Both at times are severe and agitated. He is suspicious and has ideas of reference with outbursts of unsystemized paranoid delusions. These delusions are usually grandiose and are linked with ideas of persecution.

Gacy's hypochondriacal fears often are connected with the paranoid ideation<sup>305</sup> and usually are inappropriate to his physical status. They indicate great underlying anxiety concerning disintegration and annihilation. Gacy shows a mixed clinical picture. Depending on environmental circumstances, he shifts from one pattern to another of antisocial behavior. His early behavior included repeated truancy, aggression, and destructive behavior, more bizarre than that of the sociopath. Gacy's work record is one of extreme instability with irregular, unreliable and sporadic work. There were frequent job changes. This pattern is observed in the attempts of other mass murderers to support themselves through gambling, robbery, dealing in drugs and other illegal activities.<sup>306</sup> Many of these type of activities were part of Gacy's past history. Socially his behavior is erratic, impulsive and irresponsible. He relates to others on a superficial and exploitative level. His marital adjustment was poor. Gacy has a poorly integrated concept of sexuality. Varieties of perversions were practiced in keeping with bizarre, aggressive, and sado-masochistic fantasies which he did not differentiate from his own actions.<sup>307</sup> Gacy has experienced full-blown psychotic episodes.<sup>308</sup> These psychotic episodes differ from dissociative behavior<sup>309</sup> in that they do not occur as a reaction to environmental situation, but

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fear is believed to arise through a process of displacing an unconscious or internal conflict to an external object symbolically related to the conflict. *PSYCHIATRIC GLOSSARY, supra* note 298, at 120.

<sup>303</sup> Hypochondriacal involves a neurosis characterized by a preoccupation with the body and with fear of presumed diseases of various organs. *PSYCHIATRIC GLOSSARY, supra* note 298, at 108.

<sup>304</sup> See *supra* note 298.

<sup>305</sup> Paranoid is characterized by an intense suspicion of others. *PSYCHIATRIC GLOSSARY, supra* note 298, at 115.

<sup>306</sup> H.L. Morrison, *Mass Murderers: Patterns of Behavior and Developmental Deviations*, Presentation to the American Academy of Psychiatry and the Law (1980); Interview and psychiatric evaluation of Richard Macek by Dr. H.L. Morrison, April 1977.

<sup>307</sup> For example, Gacy was unable to act on female, male concepts of sexuality. See interview and psychiatric evaluation of John Wayne Gacy by Dr. H.L. Morrison, January 1980.

<sup>308</sup> A psychotic episode is characterized by a loss of touch with reality.

<sup>309</sup> Dissociation is a defense mechanism, operating unconsciously, through which emotional significance and affect are separated and detached from an idea, situation or object. *PSYCHIATRIC GLOSSARY, supra* note 298, at 44.

rather seem to develop spontaneously from internal stimuli. Close examination reveals that the reactive elements<sup>310</sup> stem from stimuli within the individual which exacerbate the continuous disordered thought process. The psychotic episodes vary in symptomatology. There is an aggravation of underlying clinical symptoms—namely, marked emotional dysregulation,<sup>311</sup> regression,<sup>312</sup> and stereotyped behavior.<sup>313</sup> If the psychotic break is not sufficiently apparent to require medical intervention, the underlying disorder is evidenced in the basically dereistic<sup>314</sup> and autistic<sup>315</sup> life approach, in the varying degrees of disturbance of affect and interpersonal relationships, and in the profusion of other symptomatology. Gacy returns quickly to a relatively compensated psychotic level.<sup>316</sup> These episodes frequently were evident in the evaluation process.

Several features of Gacy's thinking processes are noteworthy. His language is an odd mixture of formal, somewhat awkward constructions interspersed with gross syntactical errors and crude slang. Along with his rather pretentious language, Gacy's use of slang is jarring and betrays deep feelings of contempt. In addition, he has a way of reeling off strings of adjectives, all with essentially similar meanings, or responding with a chain of concrete associations. This is demonstrated by Gacy's answers to one series of research questions which asked him to explain what is happening in these situations: "Arthur threw the ball into the woods. Barbara was very angry."<sup>317</sup> Gacy responds:

It seemed to me that Arthur and Barbara were playing ball and that Arthur threw the ball into the woods. She may have thought that he did it on purpose (sic). The (sic) again it may be that she was his mother, and thought that he was being disobedient (sic). She may have told him not to throw it in the woods and he was showing that he was going to do what he wanted. There is alot (sic) of things a person could take from the two sentences. Maybe if Arthur was too young to understand, that it was an accident, I can't see why she became very angry, unless she was drinking or not feeling well. Everyone is not perfect (sic) and can make mistakes. Barbara was very angry, maybe she missed the ball herself, and thats (sic) why she was mad. The question doesn't tell if Barbara was angry at Arthur, it just

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<sup>310</sup> Reactive elements are unconscious defense mechanisms wherein attitudes and behavior are adopted that are the opposites of conscious impulses.

<sup>311</sup> Emotional dysregulation is characterized by an inability to regulate one's emotional state.

<sup>312</sup> Regression involves the partial or symbolic return to primitive or the earliest states of emotional functioning and psychological structure. *PSYCHIATRIC GLOSSARY*, *supra* note 298, at 134.

<sup>313</sup> Stereotyped behavior is characterized by persistent mechanical repetitive behavior. *PSYCHIATRIC GLOSSARY*, *supra* note 298, at 144.

<sup>314</sup> Dereistic describes mental activity that is not in accordance with reality, logic or experience. *PSYCHIATRIC GLOSSARY*, *supra* note 298, at 43.

<sup>315</sup> An autistic life approach involves a form of thinking marked by extreme self-absorption and egocentricity. Such an individual is withdrawn and removed from interpersonal relatedness. *PSYCHIATRIC GLOSSARY*, *supra* note 298, at 17.

<sup>316</sup> Compensated psychotic level means one has the ability to function in a superficial, behavioral way but remains out of contact with reality.

<sup>317</sup> Interview and psychiatric evaluation of John Wayne Gacy by Dr. H.L. Morrison, January 1980.

assumption (sic). Maybe they are both older and the ball came into there (sic) back yard and instead of throwing it back he through (sic) it into the woods out of spite, and his wife got angry at his action, because he took such action.<sup>318</sup>

For Gacy it is only a slight step from the pretentious to very primitive and concrete modes of thought and expression.<sup>319</sup> Sentence structure breaks down into concrete chunks of thought which have a driven, impulsive quality.<sup>320</sup> This type of impulse-driven cognition may be best described as deriving from an early cognitive defect in which concrete, action-based modes have a fragile overlay of more superficial delay-oriented cognitive structures.<sup>321</sup> This is associated with a vulnerability to affective and impulsive storms and “blasts.”<sup>322</sup> Gacy has an action-dominated style with few cognitive restraints. Impulses and wishes fail to achieve stable internal meanings, and are probably experienced as powerful forces, stimulated and felt as coming from outside himself. This makes Gacy extremely vulnerable to external stimulation. He is overwhelmed by complexity and by too many people. The crudeness of his language and syntax suggests both chronicity<sup>323</sup> and accommodation<sup>324</sup> to such a style. Reflective critical capacities are minimal with disruptive consequences. When mistakes go unnoticed by Gacy, the plan with which he starts falls apart and ends in aimless thrashing about. Even though this does not reach a point of blanking out, his experience is of being overwhelmed and debilitated as well as somehow charged up. The major aspects of his cognitive style—the impulse-ridden and concrete orientation,<sup>325</sup> the unreflectiveness, and the superficial adroitness with words—speak to the character with explosive potential.

Coupled with this crude language and thinking style is a paranoid-like sharpness and vigilance which appears to be at a much higher developmental level. Gacy reads and draws conclusions from minor, concrete details. While he attempts to substantiate his conclusions thoroughly, the net effect is one of being captured by his inferences. Data are bent to fit conclusions to which he firmly and idiosyncratically is committed.

Gacy's potential for violence requires more comment. Underlying his apparently pleasant and cooperative way of relating to persons is a chilling lack of regard for human form. While he may be able to relate along a conventional, stereotyped social line in some situations, humans seem not to be fully human to him. Even his obvious capacity for contempt and callousness may be superficial. Gacy seems not to have developed a sense that human objects are different from inanimate

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<sup>318</sup> See *supra* note 299.

<sup>319</sup> See *supra* note 306.

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> Chronicity means a long-term pattern.

<sup>324</sup> Accommodation means that one sees no abnormality in one's patterns and use of language.

<sup>325</sup> Impulse-ridden and concrete orientation mean that one is unable to control one's acting on wishes and has a lack of thought preceding action, not using abstract theory.

matter. Evaluation responses reflect this deep fault in his development. While he debates whether someone is alive or dead, this differentiation is not a firm one. It is in this context that Gacy is chilling. Impulses take over. There is no strong evidence for his being dissociated during such rages, but it would fit with his cognitive style, however, for his memories are basically kinesthetic<sup>326</sup> and concrete.<sup>327</sup> The concrete memories might have to do with an internal sense of storm, with little sense of the setting, circumstances or object.

The content of his rage is difficult to specify, in part because it has not developed into a structural, cognitive framework, i.e., it has a diffuse, chaotic quality. He mentions revenge, not to whom or for what. There are obvious signs of mixed sexual, masculine and feminine identification. One wonders if Gacy is so disturbed by such stirrings that he focuses negatively on people who arouse in him or demonstrate to him passive feminine aspects. There is a high incidence of oral or oral-sadistic imagery in the testing which also is seen in clinical contact with him. There also was the presence of rapid changes between these contradictory states and other behavior. This behavior was noted to parallel the inconsistent and fluctuating perceptions. There superficially appeared to be a manipulative quality. However, further evaluation noted a lack of awareness of contradiction from state to state. Gacy was unable to relate realistically, and his relatedness appeared to be based on primitive defenses.<sup>328</sup> When faced with internal danger, he characteristically showed a pathologic omnipotence. There also was noted in Gacy an inability to develop a separate and distinct identity from his mother and an identification with primitive superego forerunners.<sup>329</sup> This was on an oral aggressive-sadistic level.<sup>330</sup> From early infancy, he has been characterized as a child who experienced traumatic overstimulation.<sup>331</sup> His bisexuality relates to a developmental arrest.<sup>332</sup> Characteristics of this include the continuation of primitive mental mechanisms,<sup>333</sup> concomitant fears of all boundaries of the ego with the sexual act<sup>334</sup> transiently stabilizing his sense of self.<sup>335</sup> The need to defend against this loss of self led to repetitions of the act. The necessity of doing the act overrode reason and judgment, and did not permit him to choose between right and wrong, nor did it permit him to control his conduct. He was impaired in cognition and voli-

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<sup>326</sup> Kinesthetic means that something is based in motion and movement.

<sup>327</sup> Concrete memories are those based in the earliest modes of thinking.

<sup>328</sup> Primitive defense means not organized beyond the earliest forms of psychological structure.

<sup>329</sup> Identification with primitive superego forerunners is characterized by the taking in and identifying with parent psychological structure.

<sup>330</sup> Oral aggressive-sadistic level means the earliest phases of psychological functioning of an infant.

<sup>331</sup> Traumatic overstimulation is the inability to modify one's reception of stimuli from the outside world and one becomes overwhelmed by the stimulation.

<sup>332</sup> Developmental arrest means that one does not proceed to a more appropriate sexual identity because of an inability to reach psychological maturity.

<sup>333</sup> Primitive mental mechanisms are the unorganized and earliest forms of psychological function.

<sup>334</sup> Fears of all boundaries of the ego means that one fears the loss of identity of self.

<sup>335</sup> Transiently stabilizing his sense of self means one uses the sexual act to bolster one's psychological organization.

tion, incapable of choice. His sexual acts were frequent yet without known provocation. He was incapable of controlling his sexual activity, continuing aspects of the alleged crimes, or the unlawful acts of murder.

Although superficial evaluation<sup>336</sup> would not permit the development of anything other than an almost simplistic view of the mental disease of the defendant, a continuing evaluation shows a complexity of profound psychopathology not limited to one diagnostic category. Indeed, there is an incomplete recognition in the psychiatric diagnostic literature of the complexity and exact nature of the psychopathology.<sup>337</sup> Gacy may be said to be suffering from a psychosis with paranoid, intermittent delusional thought processes,<sup>338</sup> that is layered by a borderline syndrome<sup>339</sup> of extremely low level functioning. One could reasonably conclude that his results in a profound impairment that severely affected his ability to appreciate the criminality of his conduct and to conform his conduct to the requirement of law.

#### B. *Standard Profile of Nonspecific Mass Murderer*

Nonspecific mass murderer includes persons responsible for a series of murders committed on one individual at a time.<sup>340</sup> The victims are generally not well known to the murderer and are chosen preconsciously; although there is an uncanny resemblance to a previous victim.<sup>341</sup> The murders are violent, sadistic, sexual, brutal and recognizable in their similarity across time and situation.<sup>342</sup> Multiple methods and injuries are often noted in each victim. Most frequently seen are strangulation, mutilation, and stabbing or ritualistic cutting.<sup>343</sup> The period of occurrence of the crimes is limited only to the number of years before the murderer finally is identified.<sup>344</sup> It can be postulated that many of the murders remain undetected. Reviews of the histories of these murderers often show them to be identified by others as quiet, nonassuming persons not usually considered to be a lethal neighbor.<sup>345</sup> The act of homicide is not externally precipitated. Rather, some internal stimulus precedes the act.<sup>346</sup>

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<sup>336</sup> R. AULT & J. REESE, *A Psychological Assessment of Crime Profiling*, 49:3 F.B.I. Law Enforcement Bulletin 22-25 (March 1980).

<sup>337</sup> See *DSM I, II, and III*.

<sup>338</sup> Psychosis with paranoid, intermittent delusional thought processes means one is out of contact with reality as evidenced by Gacy's fixed but false belief that he was suffering from leukemia.

<sup>339</sup> Borderline syndrome is a primitive relatedness and psychological functioning.

<sup>340</sup> See *supra* notes 293, 294, 306; H.L. MORRISON & R.N. ROSS, *Language Structure Analysis of Psychiatric Interviews: Correlations with Violent Crimes Against Self and Others*, Presentation to the American Academy of Psychiatry and the Law (San Diego, California 1981).

<sup>341</sup> See Chicago police investigative reports of alleged assault on Jackie Dee (1972); Chicago police investigative reports of alleged assault on Michael Reid (1977); Chicago police investigative reports of alleged assault on Robert Donnelly (1977); Chicago police investigative reports of alleged attack on Jeffrey Rignall (1978).

<sup>342</sup> See *supra* notes 293, 294, 299, 306 and 340.

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

The focus in this discussion will be on twelve major subcategories of physical characteristics and psychological structure demonstrated by these mass murderers, including psychological,<sup>347</sup> neuropsychological,<sup>348</sup> neurological,<sup>349</sup> genetic,<sup>350</sup> medical<sup>351</sup> and psychiatric.<sup>352</sup> Theoretical psychological formulations have been developed by one of the authors on the basis of the process of reconstruction, transference and experience in the one-on-one interview which averaged 400 hours per case, six to twelve hours at a time, facilitating regression<sup>353</sup> and the emergence of primitive functions.<sup>354</sup> No one else was present during these evaluations and interruptions were kept at a minimum. The goal was the elucidation of the nature, timing, emergence or interruption of stages of development.<sup>355</sup> In addition to interviews, data was obtained from multiple sources, including, but not limited to, family, educational, vocational and medical sources.

Attempting to answer the question, "Why?," demands connections between the internal and external worlds of mass murderers. The probability that a specific individual can be one of these mass murderers is based on the total personality, involving a degree of conflict unlike that seen in other classes of murderers, and an inability of the personality to manage or modify these conflicts. In considering an overall, superficial and symptomatic description of these murders, one can note curious contradictions. On a purely descriptive basis, these individuals sometimes strike one as having odd components of traditionally male and female attributes. Cooperative, helpful, confident, accommodating, easygoing and nearly jovial interactions are often characteristic behaviors. These behaviors are balanced by a notable facility with words and organization directed toward superficial, facile manipulation of the external world. These external observations contrast with the known activity of repetitive murder. They generally describe themselves as being good providers, good fathers and good workers who primarily consider the welfare of others and the achievement of success. Overall diagnostic impressions made by a number of examiners consider primary diagnosis of schizophrenic or psychopathic character disorders.<sup>356</sup>

Careful behavioral investigation often notes suspicion and depressive features in these subjects. Deficits in psychological structure result in extreme impulsive outbursts. Hypervigilance characterizes thinking to a paranoid degree. Noteworthy features generally include disturbances in language ranging from pretentious use

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<sup>347</sup> *Id.*

<sup>348</sup> *Id.*

<sup>349</sup> *Id.*

<sup>350</sup> *Id.*

<sup>351</sup> *Id.*

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> Interview and psychiatric evaluation of John Wayne Gacy by Dr. H.L. Morrison, January 1980.

<sup>356</sup> Psychiatric report submitted to the Iowa courts by Dr. L. Heston, November 4, 1968.

of words in formal, awkward constructions interspersed with gross errors in syntax and the use of slang. Sentences disintegrate into concrete chunks of impulsive, driven qualities of thought. For example, in response to the question, "How many senators in the United States Senate?" one subject replied, "nineteen." The response was given immediately, with confidence, because "[t]he thought just flashed through my mind."<sup>357</sup> Action generally dominates their style and few restraints are seen. Impulse driven thoughts are associated with vulnerability to impulsive and emotional "storms." Capabilities for self-reflection are minimal. Sexual identity, often miscategorized as homosexuality or bisexuality is a reflection of the primitive lack of definite character.

The paranoid-like sharpness and vigilance speak of a somewhat higher development level. The content of their rage is nonspecific. Beneath the pleasant, cooperative relatedness is a chilling lack of regard for human form. This is the primary quality which the interviewer found to provide occasions of uneasiness and discomfort. Stereotyped, conventional social behavior is evident, yet to those subjects, humans are not human. This is illustrated in dreams and projective stories where a mass murderer debates whether someone is dead or alive. Memories are kinesthetic and concrete. Although they state they cannot remember, this is not dissociative or "blacking out," but rather overwhelming external stimulation. Sadistic images related to the earliest development states appear in evaluations frequently as hooks, jagged edges and claws.

The attempt to focus on more specific structured defects in areas of function should guide continued study in areas including organic function,<sup>358</sup> self-object differentiation,<sup>359</sup> development of core identity,<sup>360</sup> object constancy,<sup>361</sup> ego functions,<sup>362</sup> defense mechanisms,<sup>363</sup> control,<sup>364</sup> modulation of affective and impulse expression<sup>365</sup> and capacity for relatedness.<sup>366</sup>

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<sup>357</sup> See *supra* note 293.

<sup>358</sup> Organic function is the function of the physical aspects of a person.

<sup>359</sup> Self-object differentiation is the ability to psychologically separate the identity of oneself from others.

<sup>360</sup> Core identity is the viewing of oneself in cohesive, internal structural manner.

<sup>361</sup> Object constancy is the maintenance of a dependency relationship to others based on one's earliest experiences of parenting.

<sup>362</sup> Ego functions refer to the ability to observe, control the responses of, and adopt to behavioral demands of the world. In psychoanalytic theory the ego represents the sum of certain mental mechanisms, such as perception and memory, and specific defense mechanisms. The ego serves to mediate between the demands of primitive instinctual drives (the id) of internalized parental and social prohibitions (the superego) and of reality. The compromises between these forces achieved by the ego tend to resolve intrapsychic conflict and serve an adaptive and executive function. *PSYCHIATRIC GLOSSARY*, *supra* note 298, at 48-49.

<sup>363</sup> Defense mechanisms are unconscious intrapsychic processes serving to provide relief from emotional conflict and anxiety. *PSYCHIATRIC GLOSSARY*, *supra* note 298, at 40.

<sup>364</sup> Control refers to the ability to adapt oneself to the external world.

<sup>365</sup> Modulation of affective and impulse expression refers to one's ability to manage and control emotional behavior.

<sup>366</sup> Capacity for relatedness refers to one's ability to relate to others in an interpersonal way.



### 1. Organic Function

The study of the relationship between brain and behavior defines the basis of study of the nonspecific mass murderer as proceeding from the thesis that the brain and behavior are inseparable. The nervous system of the human, like other systems, has an inborn potential for development. Although genetic factors largely determine this potential; change occurs depending on environmental conditions. There is evidence in neurological and psychological testing that mass murderers exhibit a sufficient number of "soft" signs of nervous system difficulties to make it impossible to rule out a physical involvement. The consideration of these results, reflecting some type of brain system discharge, is a continuing focus of investigation.

### 2. Psychological Structure

The contribution of disruptions in development which may play a role in the definition of the character of the mass murderer provides another area for study. Understanding the initial developmental periods of these persons as children requires the empathic observation and evaluation of behavior.

Current psychiatric theories, whether primarily psychoanalytic, learning or biologic in orientation, may not accommodate the data gathered during the study of character development and behavioral expression in the mass murderer type character. The goal set for the study of the characters or psychologic makeup of these persons should be to clarify what makes it possible for this specific individual to have the potential for mass murder. The impression is that no single factor in development will be found to account for the subsequent development outcome. Neither purely biologic nor purely psychologic factors will be identified. More likely, a combination of these elements will be found to be contributory. While the use of language in the field of psychiatry to attempt to explain a process or a characteristic often is made complex beyond need or desire, various descriptive words or phrases have some commonality in our current psychiatric practice and can be used advisedly.

In the psychological sphere, one seemingly basic characteristic of the mass murderer type is the inability to differentiate early life with later world organization. The inner world of the mass murderer type is reflective of the earliest typical danger for the infant—traumatic overstimulation. In John Gacy, this is illustrated by the daily enemas and suppositories given by his mother from three days of age throughout the first three months of life. Such an experience results in an inner world experienced as dark, shadowy, and persecutory. These fears are later expressed as death, fragmentation and total helplessness. Early trauma interferes with the ability to proceed in the development of appropriate identification processes with a resultant lack of reality testing. Lack of representational cognitive ability in the infant partially accounts for the lack of form in the "memories" or "blackouts" experienced by the mass murderer type. Differentiation between family and environment is not possible as a consequence of depriving or violent experiences.

Objects become an extension of self.<sup>367</sup> Traumatic, by definition, is an event or situation occurring in an individual's life which is intense, incapable of being responded to adequately by the subject and/or assimilated into the psychic organization, having long-lasting, devastating effects.<sup>368</sup>

A second general characteristic of the mass murderer type is object relations based on projection of parts of the self. Objects are defined in three ways: (1) It is the thing by which an instinct is satisfied; (2) It is a relation between the whole person and the totality of another person where love or hate exists; or (3) It is simply whatever is a source of attraction. Behaviorally, this relationship can involve an incapacity to relate to others. For example, the inability to develop a separate identity from the caretaker. Relatedness to an object is based, in the mass murderer only by use of the defense projection, which then must be controlled either by possessing or by destroying the object. The victim becomes the persecutor, the persecutor becomes the victim. All boundaries cease to exist while disintegration of ego differentiation<sup>369</sup> between earliest aggressive and libidinal drives<sup>370</sup> occurs. Chaotic and fragmentary projective distortions characteristically are present. Such a condition is illustrated by John Gacy's mother, who talks of her son as if he and she were the same person.

In the theoretical stage of development, the "good enough" mothering of the infant provides an experience of being satisfied. Satisfaction becomes a prototype of the wish for a specific object. Object constancy is maintained only in partial, unstable ways. No consistent inner psychological cohesiveness exists. Identification is only with highly sadistic and primitive superego forerunners. The basic need is to seek out objects that reflect power. This characteristic is connected with the characteristic of grandiose omnipotence to be discussed later in this section.

Inconsistent perception of others is reflected in inconsistent functioning and relatedness in all aspects of the mass murderer's life. Nearly instantaneous fluctuations are exhibited between defenses of projection and introjection.<sup>371</sup> This, in turn, creates shifts in the organization of the self and representation of objects. Others are perceived in variable and grossly inconsistent ways. The murderer is unaware of the contradictions which exist from state to state. Paralleling these rapid fluctuations is volatility of behavior and unpredictability.

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<sup>367</sup> S.I. GREENSPAN, *PSYCHOPATHOLOGY AND ADAPTATION IN INFANCY AND EARLY CHILDHOOD: PRINCIPLES OF CLINICAL DIAGNOSIS AND PREVENTIVE INTERVENTION* (1982).

<sup>368</sup> S. FREUD, *18 INHIBITIONS, SYMPTOMS AND ANXIETY* (1926).

<sup>369</sup> Disintegration of ego differentiation refers to the inability to maintain contact with reality.

<sup>370</sup> Earliest aggressive and libidinal drives refers to one's inability to separate impulses or actions related to sex and aggression.

<sup>371</sup> Projection is a defense mechanism, operating unconsciously, whereby that which is emotionally unacceptable in the self is unconsciously rejected and attributed to others. Introjection is a defense mechanism, operating unconsciously, whereby loved or hated external objects are taken within oneself symbolically. Both may serve as defenses against conscious recognition of intolerable hostile impulses. *PSYCHIATRIC GLOSSARY*, *supra* note 298, at 125-26.

Self objects<sup>372</sup> become substitutes for missing superego<sup>373</sup> and ego functions.<sup>374</sup> This is illustrated by the excellent assimilation in correctional settings where the mass murderer often functions in what appears to be self-defined commanding "roles" such as trustee, "jailhouse lawyer," counselor or teacher. For example, prison authorities in Iowa reported that John Gacy operated in a cooperative manner, and did not engage in any known sexual activity while in prison. The self objects do for the mass murderer what he is unable to do for himself. Loss of the self object is a loss of part of the self.<sup>375</sup> Potential disruption of this perceived nucleus of the self is a continual threat outside the total institutional setting. The threat is of inner fragmentation and the risk of a dissolution. Attempts are made to stabilize these perceptions and to regain the sense of definition of the self. Sadism is often a maladaptive response to these threats, helping to organize the personality.

Pathologic omnipotence<sup>376</sup> has been noted to be developmentally promoted by factors in child and caretaker. This is illustrated by over-, under-, or inappropriate responsiveness. Omnipotence may be defensive and, like perceptual inconsistencies, alternates between omnipotent control or withdrawal and devaluation. Magical fantasies of omnipotence are implied by self-idealization. The mass murderer eventually will receive all that he is entitled to without discomfort, the passage of time or frustration. Perfection, often mistaken for obsessive symptomatology and organization, is a behavioral expression of this omnipotence. The keeping of meticulous diaries by John Gacy, for example, and the ability to continue to commit crimes without detection reflect this omnipotence. He must be omnipotent; he is unable to depend on others.

Primitive psychotic defense mechanisms are most evident during extended periods of evaluation. These mechanisms include projective identification,<sup>377</sup> cold paranoid rage,<sup>378</sup> splitting,<sup>379</sup> intermittent-delusional thought processes,<sup>380</sup> denial and reliance on action in dealing with conflicts.

Projective identification and ingratiation are modes of projection. Projection is an archaic mental mechanism which is needed to control, use and tame aggressive impulses. Projection is a painful idea expelled from the self to the external world. It is present in paranoia.<sup>381</sup> Projective identification can be defined as a mechanism by which the subject inserts himself into the object in order to harm, possess or

<sup>372</sup> Self objects are related to the relationship of the self with other identities.

<sup>373</sup> Superego is that part of the personality structure associated with ethics, standards, and self-criticism. *PSYCHIATRIC GLOSSARY*, *supra* note 298, at 145.

<sup>374</sup> *See supra* note 362.

<sup>375</sup> M. BALINT, *PRIMARY LOVE AND PSYCHOANALYTIC TECHNIQUE* (1952).

<sup>376</sup> Pathological omnipotence refers to seeing oneself as the most powerful in the world.

<sup>377</sup> Projective identification occurs when one uses primitive psychological structure to possess, control or harm another person.

<sup>378</sup> Cold paranoid rage is a disorder wherein disturbances in mood, behavior, and thinking result from generally persecutory or grandiose delusions.

<sup>379</sup> Splitting occurs when one sees others as "all good" or "all bad."

<sup>380</sup> Intermittent delusional thought processes occur when one has periods of fixed and false beliefs.

<sup>381</sup> *See supra* note 305.

control it.<sup>382</sup> This mechanism is an early prototype of an aggressive object relation.<sup>383</sup>

Cold paranoid rage is an expression of the emotional disintegration threatened by the external world. Rage accompanies the maladaptive response of sadism. Rage occurs when the victim becomes a personification of irrationally perceived threats of disintegration. The emotion is a complex one and consists not only of rage, but of vengeance, anxiety and relief.

Denial of psychic reality, an unconscious denial, is associated with the mechanism of splitting. Splitting was a term used by Freud to denote a very specific mechanism characteristic of psychoses.<sup>384</sup> Freud noted that two mental attitudes are to be found: one which takes account of reality, the other, under instinctual influence, detaches the ego from reality.<sup>385</sup> This leads to a reality based on delusion; however, this is not an ego defense.<sup>386</sup> The mechanism is operative in certain types of nonremembering states.<sup>387</sup> Splitting could help account for nonrecognition of the responsibility for the act of murder. Mass murderers often do not believe they are the murderers.<sup>388</sup> Intermittent delusional thought processes exist and are illustrated by the belief held by John Gacy that contrary to medical evidence, he had leukemia.<sup>389</sup>

Defenses against anxiety become very evident in these persons. The mass murderer is safe from the persecutory images if he can control his world. The murderer may exhibit control by overactivity. Frantic activity may provide the only sense that he is alive. Tension overwhelms already fragile control mechanisms and impulsive, explosive behavior results. Somatic concerns and obsessive behavior rise to the fore. If the active behavior is prevented, the murderer panics. The external restraints on behavior which can defend against anxiety further weaken reality ties and psychotic mechanisms emerge. Sexual acts are needed, in part, to transiently stabilize the self and ensure survival of the ego. The acts also ward off primitive paranoid fears of incorporation.<sup>390</sup> The act of murder too has as its aim the maintenance of the equilibrium of the mass murderer. The murders must be repeated with increasing frequency to ward off the paranoid and incorporative fears. Defenses against inappropriate caretaking are related to pathological omnipotence which helps to avoid conflicts related to early needs. Fears of being engulfed and further loss of boundaries between self and others, contribute to the use of the act of murder as a way of avoiding these deeper anxieties. Sporadic destructiveness becomes an

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<sup>382</sup> See *supra* note 377.

<sup>383</sup> Aggressive object relation is a primitive relationship based on aggressive impulses.

<sup>384</sup> S. FREUD, 23 SPLITTING OF THE EGO IN THE PROCESS OF DEFENSE 273 (1940).

<sup>385</sup> *Id.*

<sup>386</sup> *Id.*

<sup>387</sup> *Id.*

<sup>388</sup> See *supra* note 342.

<sup>389</sup> See interview and psychiatric evaluation of Karen Gacy Kuzma, January 1980 and John Wayne Gacy, January 1980 by Dr. H.L. Morrison.

<sup>390</sup> Primitive paranoid fears of incorporation are fears of being swallowed or losing one's identity and bounds in another.

indispensable requirement for maintaining contact with reality and sense of self. The action masters the tension and anxiety.

Paranoid fears are equated with destruction and persecution.<sup>391</sup> Overcoming the paranoid position depends on the strength of infantile libidinal instincts.<sup>392</sup> Incorporation characterizes earliest development stages and becomes a mode of relationship to the object. Passivity, ambivalence and bisexuality demonstrate other early conflicts. Aggression, the final category in this discussion, is expressed by the mass murderer in terms of polar opposites. One intended victim of Gacy who survived, graphically described this characteristic of rapid and dramatic shift in behavior of hateful, evil, powerful destructiveness alternating with impotent, weak and helpless vulnerability.<sup>393</sup> Predispositions to unhampered release of aggression are related to interference with appropriate identification processes,<sup>394</sup> and failure of the ego to differentiate early drives with resolved elements of aggressiveness from early sadistic stages of development where a single object receives destructive, ambivalent impulses.<sup>395</sup> Aggression remains unresolved because of aggressively contaminated internalized objects which cannot be distinguished from external objects.<sup>396</sup>

### 3. Application of Mass Murderer Profile to John Gacy

The examinations of John Gacy by various psychiatrists and the psychological testing reported by the psychologists may appear to differ in the diagnostic conclusions.<sup>397</sup> The psychiatrists and psychologists who examined Gacy, however, do not differ in their reports on the essential behavioral demonstrations of his functioning.<sup>398</sup> All noted their perceptions of Gacy as being in an unsafe world, being highly intelligent and suspicious, with confused sexual identity, self-centeredness, severely obsessive-compulsive behavior, over-talkative, with episodes of confusion, lack of human feeling and disorder and unformed psychological structure. However, the uniformity of the behavioral characteristics was not focused upon at the trial by the lawyers.

Utilizing the psychiatric profile of the mass murderer and based on the evaluation of John Gacy, it becomes obvious that he is not treatable or potentially rehabilitatable. Treatment of any type requires, at the least, a motivation for change based on self-awareness, the capability of using knowledge acquired in the treatment process to change behavior and the ability to perceive the internal and exter-

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<sup>391</sup> Destruction and persecution refers to the fear of being destroyed.

<sup>392</sup> Infantile libidinal instincts occur when one is parented in such a way that as an infant he is protected from trauma.

<sup>393</sup> Impotent, weak and helpless vulnerability refers to helplessness in the behavior of mass murderers.

<sup>394</sup> Appropriate identification processes refers to the ability to relate to internal psychological status of one's parents.

<sup>395</sup> For example, Gacy was unable to separate himself from his aggressive acts, thus, acting in a nonpersonalized way to the world.

<sup>396</sup> All persons are viewed as aggressive.

<sup>397</sup> See Parts V.B.2. and 3.

<sup>398</sup> *Id.*

nal world in relation to each other.<sup>399</sup> The inability to relate later adult life to infant life is based in the multiple character defects. No research has been conducted into potential therapeutic interventions in such cases. No individual or group appears capable of accepting responsibility for the release of this type of mass murderer. No psychiatrist can be the sole determinant in these cases. There is a need for the development of a complex of legal, psychiatric and criminological expertise to devise a proper response to the mass murderer himself and the danger he presents to society.

#### V. PROCEDURES, EVIDENCE, TESTIMONY AND EXPERT WITNESSES: THE INSANITY DEFENSE IN THE TRIAL CONTEXT

##### A. *Pretrial Activity*

The pretrial investigation had an extraordinary quality and all but eliminated any issue as to Gacy's causal responsibility for thirty-three deaths.<sup>400</sup> Gacy was charged with thirty-three counts of murder,<sup>401</sup> one count of deviate sexual assault,<sup>402</sup> one count of taking indecent liberties with a child,<sup>403</sup> and one count of aggravated kidnapping.<sup>404</sup> Prior to the trial, the defense offered to stipulate as to the fact of the killings by Gacy and to restrict the proceeding to the issue of insanity, but the prosecution refused.<sup>405</sup>

<sup>399</sup> See *supra* notes 293 and 294.

<sup>400</sup> See R. Simon, *Should You Know all that About Gacy?*, Chicago Sun-Times, January 2, 1979, where a newspaper commentator wrote two weeks after Gacy's arrest: "Let's get it out into the open. Is there anyone out there who really doesn't believe that John Gacy brutally murdered all those young boys?" Nevertheless, less than two weeks later the same columnist in a column entitled *Beating the Raps—Gacy's Options*, Chicago Sun-Times, January 12, 1979, suggested the possibility of the use of the defense of insanity. In a companion article entitled, *Proving Gacy Is Guilty Will Be No Cinch*, Chicago Sun-Times, January 14, 1979, the writer suggested a number of defenses that Gacy might raise:

How good were the search warrants that allowed police to go into Gacy's home? . . . Did the police have probable cause to believe that a crime had been committed? And did they have probable cause to believe that John Gacy committed the crime? . . . If the Gacy warrants were not proper, those bodies become 'the fruit of a poisoned tree' and cannot be used against him. Without the bodies, the state has virtually no evidence against Gacy.

But what about the confession?

The admissibility of those confessions will rest on a couple of things: Was Gacy coerced into making them? Was he advised of his rights? Was he told he could have a lawyer before confessing? And most importantly, was John Gacy sane enough to understand these rights?

If it is found that Gacy is not sane enough to have understood what he was doing by talking to police, his confession could be thrown out.

There are further difficulties that the state must overcome. It is not sufficient to drag skeletons into a courtroom to convict a man with murder. Gacy is charged with specific acts of murder against specific persons. If the defense can show that the skeletons have not been identified properly, or that there is reasonable doubt to the actual identity of the particular skeleton, Gacy cannot be convicted of that murder.

<sup>401</sup> ILL. ANN. STAT. Ch. 38 § 9-1 (Smith-Hurd Supp. 1983-84).

<sup>402</sup> ILL. ANN. STAT. Ch. 38 § 11-3 (Smith-Hurd Supp. 1983-84).

<sup>403</sup> ILL. ANN. STAT. Ch. 38 § 11-4 (Smith-Hurd Supp. 1983-84).

<sup>404</sup> ILL. ANN. STAT. Ch. 38 § 10-2 (Smith-Hurd Supp. 1983-84).

<sup>405</sup> Editor's note: In the interests of brevity and the practical recognition that the reader will, in most instances, not have access to the voluminous record, most citations to the record have been omitted.

## 1. Surveillance

Police activities which connected Gacy with the murders included a week-long period of surveillance, the execution of two searches of his home, and a series of interrogations which produced incriminating statements and confessions. The surveillance was unusual because Gacy was quickly made aware of it and, in fact, developed a friendly relationship with the police,<sup>406</sup> who followed him. Gacy not only engaged in conversations with police, but also drank and dined with them at restaurants, and even invited them into his home for a meal.<sup>407</sup> Before leaving his home, Gacy would inform officers of his destination,<sup>408</sup> and at other times would tell bystanders that the officers were his paid bodyguards.<sup>409</sup> On one occasion, Gacy talked about posing as a clown to entertain children and remarked: "People don't really look at a clown as a person . . . clowns can get away with murder."<sup>410</sup> At another point during the surveillance, Gacy remarked sarcastically to an officer that he had to remove "two bottles of booze and three bodies" from the trunk of his car.<sup>411</sup>

The very circumstances of Gacy's initial arrest manifested in very peculiar and erratic behavior on his part. While officers observed him, Gacy passed a clear plastic bag of marijuana cigarettes to a gas station attendant.<sup>412</sup> Later, at trial the defense

<sup>406</sup> See T. SULLIVAN & P. MAIKEN, *KILLER CLOWN: THE JOHN WAYNE GACY MURDERS* 70, 101-02 (1983) [hereinafter cited as *KILLER CLOWN*] which gives examples of Gacy's friendly exchanges with police. Sullivan, one of the prosecuting attorneys in the case, and Maiken, a journalist, report that Gacy was in the process of filing a suit to enjoin further surveillance.

In his suit, Gacy named the City of Des Plaines and several police officers, including Chief Lee Alfano, Kozenczak, Vande Vusse, and Albrecht, as well as others whose identities Gacy didn't know. Gacy complained that the police had deprived him of his rights by holding him captive in the police station the previous Wednesday and not allowing him to talk to his attorney for five hours. He also complained about the search of his house, the seizure of his vehicles, and the presence of the surveillance units, which were harassing him, detaining his friends, and ruining his business dealings. As a result of all this, the complaint said, Gacy had suffered severe mental anguish, loss of use of his personal property, loss of reputation, expenditures of money, and deprivation of his liberty, his right to be free from unreasonable searches and seizures, and his right to privacy. The suit asked for a temporary restraining order, putting an end to police harassment.

*Id.* at 125-26.

<sup>407</sup> See C. LINEDECKER, *THE MAN WHO KILLED BOYS* 165 (1980) [hereinafter cited as *THE MAN WHO KILLED BOYS*] where it is reported that:

Gacy's attitude toward the policemen who were trailing him blew hot and cold. He alternatively shot photographs of them, led them on rambling car chases in apparent efforts to lose them, and invited them into his house. In the early evening of the day the [harrassment] suit was filed, Gacy approached two officers parked in a police car near his driveway and invited them into his home.

<sup>408</sup> See *KILLER CLOWN*, *supra* note 406, at 59.

<sup>409</sup> *Id.* at 72.

<sup>410</sup> See generally Galloway, *Cop as Gacy Guest "Found Odor of Dead,"* *Chicago Sun-Times*, February 14, 1980 at sec. 1, p. 8, col. 1.

<sup>411</sup> *Id.*

<sup>412</sup> See also *KILLER CLOWN* at 138-145.

attempted to show that such bizarre behavior during the surveillance was evidence of a delusional mind and an erratic personality affected by mental disease.<sup>413</sup> But the prosecution maintained that Gacy's actions were those of a rational but arrogant man who tried to ingratiate himself with police in apparent displays of innocence and bravado.<sup>414</sup>

## 2. Searches

Five search warrants were executed and produced most of the tangible evidence that formed the basis for the prosecution's case.<sup>415</sup> The first warrant was part of the investigation of the disappearance of Robert Piest.<sup>416</sup> It authorized the search

<sup>413</sup> See generally Galloway, *Cop as Gacy Guest "Found Odor of Dead,"* Chicago Sun-Times, February 14, 1980, at sec. 1, p. 8, col. 1.

<sup>414</sup> *Id.*

<sup>415</sup> One warrant was issued on December 13, 1978 (R.C. 5535-5536); one on December 21, 1978 (R.C. 5547); two on December 22, 1978 (R.C. 5552, 5658, 5664); and one on December 29, 1978 (R.C. 5670).

<sup>416</sup> The affidavit in support of the search warrant included in part the following statement of the investigating officer:

[T]he following information was received, that Piest was last seen at 1920 Touhy Ave. in Des Plaines in Nisson Drugs where he works by Kim Beyers a fellow employee. Beyers stated that Piest approached her and said, "Come watch the register, that contractor guy wants to talk to me, I'll be right back." At which time Piest went outside of the store to meet with John Gacy. Mrs. Elizabeth Piest, the missing boy's mother, was also in the store at this time and was waiting to pick up her son from work. Prior to leaving the store her son requested that she wait a few minutes while he spoke to a subject about a summer construction job. Mrs. Piest waited over twenty minutes in the store and then began looking for her son. Robert Piest left the store at approximately 2100 hours and has not been seen or heard from since.

On the date in question John W. Gacy was observed in the store at 1920 Touhy Ave. on two different occasions. Once at 6 P.M. and a second time at 8 P.M. at which time he stayed in the store until 8:50 P.M. which was the approximate time that the missing person Robert J. Piest disappeared from the store location. During the course of my investigation it was found that John W. Gacy is in fact a contractor and owner of same, which is under the name PDM Construction Company located at 8213 W. Summerdale, Norridge, Ill. which is his residence.

During the course of my investigation I learned that John W. Gacy was arrested and convicted in Waterloo, Iowa in 1968 for Sodomy and sentenced to 10 yrs. in prison. The Sodomy arrest involved 15 and 16 year old youths. In 1968 John W. Gacy was arrested for Conspiracy-Assault with attempt to commit Felony of 15 and 16 year old youths . . . also arrested on June 22, 1972 by the Northbrook Illinois police [for] Aggravated Battery and Reckless Conduct, which was a sex related offense.

On appeal Gacy has argued that the trial court erred in refusing to suppress the evidence seized as a result of the December 13, 1978, warrant on five grounds including that:

1. The information contained in [the officer's] complaint for [the] search warrant failed to satisfy the "basis of knowledge" test established in *Aguilar v. Texas*, 378 U.S. 108 (1964).
2. The complaint underlying the search warrant . . . failed to disclose sufficient facts to establish probable cause.
3. The complaint's failure to specify the date of the alleged unlawful restraint rendered the search warrant invalid.



of Gacy's home and three vehicles identified by markings or by make and license number. The warrant authorized seizure of the three vehicles, and miscellaneous items of clothing. Three vehicles and fifty-seven other items were ultimately seized. Among these items were a receipt for film from Nisson Drugs, a high school ring and a photograph of a room in Gacy's house which showed a television set. The defense argued that the seizure exceeded the scope of the search warrant,<sup>417</sup> while the prosecution maintained that the items were in plain view.<sup>418</sup> In any event, the film receipt tied Gacy to the missing Piest boy since it had been placed in the boy's jacket by a fellow worker. The ring and photograph of the television set linked Gacy to another missing person, John Szyk.

Gacy's unusual conduct during the surveillance provided police additional grounds for the warrant. One of the officers Gacy invited into his home used a washroom in the house where he detected "the unmistakable odor of decaying human flesh" in the air blowing through a heating vent. Based on the discovery of the film receipt in Gacy's house, and the officer's detection of the odor of decaying flesh, a second warrant was issued authorizing the search of the Gacy house and the seizure of "the body of Robert Piest and/or the remains thereof."<sup>419</sup> This led to the discovery of human remains in the crawl space below Gacy's house which indicated that more than one body was buried there.

As a result of the discovery of the decomposed remains, and incriminating statements made to police by Gacy three other search warrants were issued authorizing the search of Gacy's house. The affidavit for one of the warrants included a statement by Gacy that he had buried one of his victims under the concrete floor of his brick garage. Twenty-nine bodies were recovered from the crawl space and other places on Gacy's property. Four other bodies were recovered from Des Plaines River following Gacy's statements to police that he had thrown a number of his victims into the river from a particular bridge.

### 3. Interrogations

The third area of police investigation involved a series of interrogations which produced incriminating admissions, and ultimately two confessions. Gacy was first questioned by police on December 12, 1978, when two Des Plaines police officers

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4. The search warrant is invalid because it failed to describe with particularity the items to be seized.

5. The evidence seized must be suppressed since the police officers exceeded the scope of the search warrant.

Brief and Argument of Defendant-Appellant at 21-41.

<sup>417</sup> Brief and Argument of Defendant-Appellant at 37-38.

<sup>418</sup> Brief and Argument of Plaintiff-Appellee at 36-43.

<sup>419</sup> On appeal the defense challenged the validity of the December 21, 1978, warrant on the basis that it rested upon the illegal search and seizure of the film receipt, that the affidavit was otherwise insufficient to constitute probable cause and failed to describe with particularity the items seized. Brief and Argument for Defendant-Appellant at 42-50.

visited his home to investigate the disappearance of Robert Piest. Gacy admitted that he had been at the pharmacy where the boy worked the previous day, but stated that he could not remember talking to any boys. Gacy also told the officers that he had gone to a hospital the previous night upon learning of his uncle's death. Gacy refused to accompany the officers to the police station immediately, but promised to go later. Two days later, Gacy went to the station and gave a statement denying any involvement in the disappearance of Robert Piest. During the time that Gacy was making his formal statement to the police at the Des Plaines police station, officers were executing the first warrant at his house.

Gacy was arrested on December 21, 1978, after giving marijuana cigarettes to a gas station attendant in full view of officers. Gacy was then taken to the Des Plaines police station, where he complained of chest pains. He was transported to a nearby hospital, and when medical authorities found no evidence of a heart attack he was returned to the station. Gacy learned that the police were searching his home and digging in the crawl space. He was thereafter informed that he was under arrest for murder.

Gacy's first interrogation followed a standard *Miranda* waiver; two officers questioned him for thirty to forty-five minutes, outside the presence of counsel, and obtained incriminating statements.<sup>420</sup> Gacy informed the officers that he had told everything to his attorneys the night before and stated that there had been bodies in the crawl space for a long time.<sup>421</sup> He did not know exactly how many bodies were there, but stated that Piest was not among them. The officers urged Gacy to tell them where he had placed the boy's body so that he could be given

<sup>420</sup> On appeal, the defense maintained that this interrogation was conducted in violation of Gacy's Fifth and Fourteenth Amendment right to have counsel present at the interrogation. This argument is based on trial testimony by one of the interrogating officers that on December 19, 1979, two days before his arrest, Gacy told the officer that if and when he was arrested, the police should contact his attorneys. The defense argued on appeal that this statement sufficiently invoked the right to counsel, and that a standard *Miranda* waiver was not sufficient to permit interrogation. Brief and Argument for Defendant-Appellant at 52.

<sup>421</sup> Prior to his arrest and during the day of December 21, 1978, Gacy had visited a number of his friends and informed them that he had told his lawyers that he had killed about thirty people. Three of these friends, Ronald Rohde, David Cram, and Michael Rossi testified at trial that Gacy had confessed to them on December 21 that he had committed about thirty murders. See also J. Fritsch, *Told Story of "Blackmail,"* Chicago Tribune, February 15, 1980 at sec. 1, p. 2, col. 1, reporting that Ronald Rohde, a cement contractor, testified that:

[H]e last saw [Gacy] on Dec. 21, 1978, when Gacy "cried on my shoulder like he was trying to get the guilt off his shoulders for a change." Gacy was arrested later that day and charged with murder after police discovered the first of 26 bodies buried in the crawl space under his home. Gacy, looking "kind of ragged," had stopped by Rohde's Norridge home that morning.

"I really came to say goodbye to my best friend for the last time," Rohde quoted Gacy as saying.

. . . .

Then he walked up and put his hands on my shoulders and he started crying. He said "Ron, I've been a bad boy. I killed 30 people, give or take a few," Rohde said.

a decent funeral, but Gacy refused. Gacy admitted that he had killed Piest by placing a rope around his neck and twisting it tight. He further stated that all of his victims had been strangled, but none had been tortured; he said that all of his victims in fact had killed themselves because they sold their bodies for twenty dollars. Gacy said that there were more bodies other than those on his property. He stated that he was bisexual, not homosexual, and that he had never used force to compel sexual relations.

Gacy terminated the first interrogation indicating that he would continue his statement when his lawyers were present. Gacy's lawyers arrived and talked to him in private. The lawyers told the officers that Gacy had been advised of his constitutional rights, understood those rights, and wished to make a further statement.

At the second interrogation in the presence of his attorneys, Gacy admitted that he had killed twenty-five to thirty young men and had either buried the bodies in the crawl space beneath his home or had thrown them in the Des Plaines River. He said he had sex with all of the victims before killing them, but that he had not hurt them during sex. Gacy had picked up his victims in an area frequented by homosexuals while posing as a police officer named Jack Hanley.<sup>422</sup>

Gacy stated that he stabbed his first victim to death but all subsequent victims were killed by what he called his "rope trick." He observed that some of his victims convulsed for an hour or more before dying. Gacy stated that most of them were buried in the crawl space but because of space limitations there, the last four victims were thrown into the Des Plaines River. Gacy described the killing of Robert Piest in some detail.

The same day Gacy initiated a conversation with an assistant state's attorney present at the police station. Gacy again described how he had killed Robert Piest; he stated that fellatio had been performed on Piest before he died and that perhaps "Jack" had sodomized Piest. Gacy drew a detailed diagram of the crawl space showing the location of the bodies.

Several days later, Gacy again requested to talk to the same state's attorney. The state's attorney administered the *Miranda* warning in the presence of one of Gacy's lawyers, who stated that Gacy knew his rights and wanted to talk. The subsequent discussion was the last of Gacy's confessions. Gacy began by explain-

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<sup>422</sup> During his first interrogation, Gacy had volunteered that there were four different "Johns," but that he did not know all of his personalities. Gacy also spoke of "Jack" in the third person, saying, for example, "Jack does not like homosexuality." After drawing a diagram of the crawl space he remarked, "What's going on. Jack drew a diagram of the crawl space." During his second interrogation, Gacy said that during the day he was John Gacy, but at night when he went cruising he was Jack Hanley. An officer named Hanley, who resembled Gacy, testified at trial. Gacy had met the real officer Hanley. The prosecution argued throughout the trial that this suggestion of multiple personalities was a fabrication and was developed to serve as a basis for his insanity defense, but had no support in any of the expert psychiatric testimony. See Brief and Argument for Plaintiff-Appellee at 178-81.

ing that he did not want to be blamed for every body turned up by police. Gacy said that he was John by day and Jack by night. He again mentioned that all his victims were persons who sold their bodies for money. Gacy told of stabbing his first victim in 1972, and of killing his other victims with the "rope trick," often after placing handcuffs on them. He denied having stuffed clothing down the throats of any of his victims.<sup>423</sup> Gacy explained that he usually killed either because the victim demanded more money than originally agreed upon, or because the victim threatened to report Gacy's sexual activity. Gacy told of two killings in one night, identified other victims by name, and identified a photograph as one of his victims. He said that he planned to pour concrete over the crawl space.

### B. *The Trial*

Gacy's case went to trial about a year after his arrest.<sup>424</sup> In order to counter pretrial publicity, the jury was selected from Winnebago County, some ninety miles from Chicago.<sup>425</sup> The trial lasted twenty-eight days and involved the testimony of 101 witnesses.<sup>426</sup> The only real issue presented at trial was that of Gacy's sanity. The defense offered to stipulate to Gacy's causal responsibility for the deaths but the State refused. The refusal allowed the prosecution to establish the brutality of Gacy's crimes; the fact that they were related to sexual activity and that Gacy otherwise engaged in apparently normal rational daily activity. Throughout the trial the prosecution sought to develop sympathy for Gacy's victims and their surviving families and relatives. In general, the State sought to produce an identification of the jury with the family and relatives of the victims. The general character of the prosecution's presentation was to produce a picture of Gacy as an evil and dangerous man. The defense sought to establish that Gacy was a victim of mental disease, that his daily life was riddled with delusions and bizarre behavior, that he lost control of his own humanity during his sexual activity, that he was a strange mixture of good and evil impulses, and that most fundamentally, his crimes were the consequence of his insanity.

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<sup>423</sup> Cook County Medical Examiner Dr. Robert Stein testified that one victim was stabbed, several were killed by strangulation by rope, and others were suffocated from cloth stuck in their throats. See, P. Galloway, *Gacy Discovery Recounted*, Chicago Sun-Times, February 19, 1980, at sec. 1, p. 4, col. 2, reporting Dr. Stein's testimony:

Stein said that 30 remains of bodies he examined were young males and all were victims of homicide. . . . Stein said six remains were found with ropes around the neck and were killed by strangulation. He said pieces of cloth or clothlike materials were found in the mouth and throat regions of 13 victims. These, Stein said, died by suffocation, although they could have been strangled first. One victim died from stab wounds, Stein said, and 10 died from undetermined causes because no rope or cloth were found with the remains.

<sup>424</sup> Gacy was arrested on December 21, 1978; the jury was selected on January 28-31, 1980; and the trial took place in Chicago February 6 through March 13, 1980.

<sup>425</sup> See J. Fritsch, *What's Rockford Like? Gacy Lawyers Need to Know*, Chicago Tribune, January 20, 1980, at sec. 3, p. 4, col. 1.

<sup>426</sup> See N. Sheppard, *Gacy is Found Guilty in the Murders of 33, Most in History of U.S.*, N.Y. Times, March 13, 1980.

### 1. Prosecution Case-in-Chief

The prosecution presented the testimony of twenty-six "life and death" witnesses, relatives or friends<sup>427</sup> of the known victims who provided identifications and accounts of the activity of victims prior to their disappearance. Testimony established that about half of the known victims were married, engaged or had girlfriends,<sup>428</sup> while others were shown to be homosexuals living with male lovers. Three persons who were in the Nisson Pharmacy with Robert Piest testified about the circumstances of his disappearance. In addition, five Des Plaines police officers and two private individuals testified about the investigation and apprehension of Gacy and the search of his home following the disappearance of Piest.

No individuals were called who actually witnessed any of the killings, but five surviving victims of sexual assault by Gacy were called in an effort by the prosecution to establish the manner of the killings.<sup>429</sup> The first witness testified that Gacy had offered him employment, entertained him with drugs and alcohol, made a wager over a pool game by which the loser would perform fellatio on the winner. Two former employees of Gacy reported sexual advances and subsequent efforts by Gacy to rape them after he placed handcuffs on them. One of the victims testified of the forceful sodomy which led to Gacy's Iowa conviction but was unable to continue his testimony after becoming emotionally upset on the witness stand.

Two of the victims provided detailed accounts of attacks by Gacy. Both of these victims had complained to police. While Gacy had been arrested because of their complaints to police, in each instance he convinced police that no felony charges should be filed. One of these witnesses testified for the prosecution that while he was waiting for a bus on the north side of Chicago, Gacy pulled up in what looked like a police car, and demanded identification. Gacy then pulled a gun and forced him into the car, drove him to a house where he was handcuffed, threatened with death and forcibly sodomized. The witness further testified that Gacy put something around his neck and twisted it, forced his head under water in a bathtub nearly drowning him, urinated on him, and played Russian roulette by pointing a revolver at the victim's head, spinning the cylinder, pulling the trigger until a blank cartridge was discharged. The witness stated that during this torture, Gacy said to him: "How does it feel knowing you're going to die." Gacy released his victim alive.

One of Gacy's former employees testified that Gacy had ordered him to dig trenches in the crawl space beneath his home with the explanation that they were

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<sup>427</sup> See P. Galloway, *A Mother Collapses While Testifying at Trial*, Chicago Sun-Times, February 8, 1980, and Galloway, *Gallery of Grief: The Parents Testify*, Chicago Sun-Times, February 10, 1980. The prosecution apparently sought to show that the employment and student status of a number of the victims precluded their being male prostitutes.

<sup>428</sup> The prosecution apparently made an effort to show that not all of Gacy's victims were homosexual, and thus that his stated reason for killing them because they were homosexuals and sold their bodies for money was false.

<sup>429</sup> The prosecution, of course, had Gacy's own statements describing the manner of the killings. The defense did not object to admission of these confessions and incriminating statements.

needed for drainage pipes. Another former employee linked Gacy to one of the victims. He testified that Gacy gave him title to a car formerly registered to the deceased person, and that on the day of Gacy's arrest, Gacy confessed to him that he had killed about thirty people. Another witness, a friend of Gacy for more than five years, testified as to Gacy's apparent normality, and about Gacy's kindness to his family, but stated that on the day of his arrest, Gacy confessed to him that he had killed about thirty people.

The prosecution then called police officers from Des Plaines and Cook County to recount the investigation, surveillance and activities surrounding the arrest of Gacy. The state's attorney testified about the detailed account of the killings provided by Gacy on December 22, 1978 and January 3, 1979. The final prosecution witnesses were police officials and medical experts who testified about the recovery, examination and identification of bodies recovered from the Des Plaines River.

In all, the prosecution's case-in-chief involved thirteen days of testimony from sixty witnesses. After the State rested, the defense moved for directed verdicts. The trial judge granted a defense motion for a directed verdict on a count charging aggravated kidnapping of Robert Piest, but denied the motion as to all other counts.

## 2. Defense Case-in-Chief

Gacy relied exclusively on the insanity defense. The first witness was Jeffrey Rignall, who testified that he was attacked by Gacy on March 21, 1978. Rignall provided a detailed account of his experience with Gacy, its subsequent effects on his life, and his general assessment of the case. Rignall was the first in a series of witnesses called by the defense in an effort to show that Gacy often times lost control of himself and did not know what he was doing. Rignall said that he had been walking down a street in Chicago when Gacy drove up, offered him a ride, and a marijuana cigarette. Once Rignall got into the car, Gacy placed a rag covered with chloroform over his face, and drove him to Gacy's house where Rignall was restrained. Then Gacy and an unknown third person forcibly engaged in oral and anal sex acts with him. He recalled that he later found himself abandoned at the foot of a statue on Chicago's north side, "half-dressed . . . in total pain." Rignall stated that, in his opinion, Gacy was not capable of controlling himself or understanding the criminal nature of his acts. Rignall said he based this on "the beastly, animalistic way he attacked me." On cross-examination, Rignall was read a portion of his book, *29 Below*, where he described Gacy as being "methodical" and a man who "seemed to plan" his actions. Rignall agreed that he had written the passages but maintained that they were being read out of context. Rignall said that he had written that he believed Gacy was crazy "in so many words."

In contrast to Rignall's testimony, Gacy's next-door neighbor Lillian Grexa testified that Gacy was a very nice person, very warm, generous and considerate. She said he was "better than just a neighbor, he was a good friend;" and observed that "He isn't smiling now, but I have never seen John without a smile on his face before today." On cross-examination, the neighbor gave her opinion as to

Gacy's sanity stating: "There is no way I'm going to say John is crazy. I think he is a very brilliant man." Mrs. Grexa's general view of Gacy was that he was a hard worker, affectionate stepfather, generous host, and unfailingly cheerful person. The effect of such widely varying perceptions of and experiences with Gacy suggested a personality and pattern of behavior associated with the "Jekyll-Hyde" metaphor to which other defense witnesses and defense counsel in argument referred.

In its attempt to establish there were periods when Gacy lost control and showed little awareness of what he was doing, another defense witness, who worked with Gacy, lived in his home and performed sexual acts for money, testified about an episode when Gacy struck him with a hammer. He stated that when he asked Gacy what he was doing, Gacy looked at him, put the hammer down, and said that he didn't know what had come over him. When asked by defense counsel whether in his opinion Gacy could control himself or understand the criminality of his acts, the witness stated: "I don't think he knew what he was doing."

Other witnesses were called to show that while there were times when Gacy lost control and seemed delusional, at other times he lead an apparently normal life. An officer of the Cook County Department of Corrections testified that Gacy was restrained at the prison hospital after being found under his bed with one part of a towel around his neck and the other tied to his bed. Another employee at the hospital testified that on one occasion, while EKG needles and leads were being applied to him, Gacy tore out the EKG monitor. The owner of a gas station which Gacy patronized testified that, on one occasion, Gacy told him that he was working with the FBI to protect the wife of the president of the United States, and on another occasion that a local gangland leader served on the board of directors of Gacy's company. In sharp contrast, two of Gacy's business associates testified that he was a hardworking, conscientious, and reliable businessman. One of them also offered that Gacy was a good father to his children, and capable of genuine emotion; that he was active in the community, in politics and charity work. This witness further reported that Gacy had admitted that he was bisexual, and that in his opinion, the John Gacy he knew was sane.

Gacy's second wife testified that Gacy was good to her and her children. She said generally he appeared sane to her, but did recall that he had an apparent stroke or seizure in bed one night and appeared dead. She described his declining interest in marital sex which culminated in his announcement on Mother's Day, 1975, that he was having sex with her for the last time. Further, she testified that one night after their divorce, Gacy initiated sexual activity but broke down and cried, stating that he was afraid that he was going more "the other way."

Gacy's mother, Marion Gacy, testified about his childhood, including his medical and physical problems, and his relationship with his father. This laid the foundation for later testimony by expert medical witnesses called by the defense. Marion Gacy told of John's sickly childhood, and the history of physical and psychological abuse of both herself and her son by John's father. Mrs. Gacy testified that her

husband never showed love or affection to her son, and according to her: "You had to be perfect for him." Nevertheless, she said John loved his father.

Gacy's younger sister testified that in her opinion the brother she knew was not evil, but sweet, loving, understanding and generous. She corroborated the mother's testimony about extensive psychological and physical abuse of John by his father, and recounted an incident the night before her wedding, when her father attacked her brother for no apparent reason, daring John to hit him. She also testified that he criticized John's friends, called one "a fairy" and predicted John would soon be like that. Testimony by one of Gacy's childhood friends reemphasized the abuse by his father and his history of seizures.

The sister also recalled one incident when her brother lost complete control of himself. Shortly prior to her marriage, she and John were in a car with her fiance, when John became enraged at something the fiance said and lunged at him. Gacy could not be calmed down. He got out of the car, pounded on the roof, and then walked a short distance to their home. After a few moments, he acted "fine, as if nothing had happened."

### 3. Translating Psychiatric Evaluation into Legal Evidence

The trial of John Wayne Gacy included the psychiatric testimony of thirteen expert witnesses including eight psychiatrists and five psychologists. The testimony was lengthy and involved. There was agreement on the basic nature of John Gacy's personality. However, there was fundamental disagreement about the nature of his mental disorder.

Generally, the prosecution expert witnesses offered a diagnosis of a personality disorder<sup>430</sup> which had components of a narcissistic obsessive-compulsive, and anti-social personality. The defense expert witnesses generally viewed the defendant as suffering from a psychosis, all agreeing on some form of schizophrenia.<sup>431</sup>

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<sup>430</sup> *DSM III* differentiates between personality traits and personality disorders. "Personality *traits* are enduring patterns of perceiving, relating to, and thinking about the environment and oneself. [These are] exhibited in a wide range of important social and personal contexts." Personality disorders, on the other hand, are traits which "are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. . . ." The personality disorders may be seen during an episode of another mental disorder. The diagnosis of personality disorder should be made only when the features are typical of an individual's long-term functioning and are not limited to discrete episodes of illness.

*DSM III* contains a caution in the introductory section as to its purpose which is "to provide clear descriptions of diagnostic categories to enable clinicians and investigators to diagnose, communicate about, study, and treat various mental disorders." *DSM III* warns that "the use of this manual for nonclinical purposes, such as determination of legal responsibility, competency or insanity . . . must be critically examined. . . ." *DSM III* at 305, 12.

<sup>431</sup> *DSM III* lists the essential features of the schizophrenic disorders as "the presence of certain psychotic features during the active phase of the illness, characteristic symptoms involving multiple psychological processes, deterioration from a previous level of functioning, onset before age of 45,



This section of the Article will consider in detail the psychiatric examination, diagnosis and testimony of the expert witnesses. All the expert witnesses offered diagnostic evidence which was provided by reference to the American Psychiatric Association's current *Diagnostic and Statistical Manual of Mental Disorders (DSM III)*.

a. *Defense Psychiatric Witnesses.* The first defense expert called to testify was Dr. Thomas Eliseo, a clinical psychologist.<sup>432</sup> His examination of Gacy included administering a number of tests.<sup>433</sup> His resultant diagnosis was that Gacy suffered from a surface personality of borderline schizophrenia. According to Dr. Eliseo, a borderline personality is "a person [who] on the surface looks normal but has all kinds of neurotic, anti-social, psychotic illnesses."

There was a great debate (at sidebar) during Dr. Eliseo's testimony on the question of whether a borderline personality constitutes a mental disease. *DSM III* does not list borderline personality as a mental disease. Thus, the prosecution argued that in Illinois the diagnosis did not meet the insanity standard.

Dr. Eliseo further concluded that Gacy has an inner personality of paranoid schizophrenia. He described such a personality as one "who basically sees the world

and a duration of at least six months." According to the *DSM III*, the limits of schizophrenia are unclear. *DSM III* at 181:

Schizophrenia always involves deterioration from a previous level of functioning during some phase of the illness in such areas as work, social relations and self-care. . . . The major disturbance in the content of thought involves delusions that are often multiple, fragmented, or bizarre. . . . The major disturbances in perception are various forms of hallucination. . . . [T]he most common of which is auditory frequently involving voices the individual perceives as coming from outside the head. . . . [Schizophrenia] involves blunting, flattening, or inappropriateness of affect. . . . Although these affective disturbances are almost invariably present, [in schizophrenia] their usefulness in making the diagnosis is limited because their presence is often difficult to judge except when present in extreme form. . . . The sense of self that gives the normal person a feeling of individuality, uniqueness, and self-direction is frequently disturbed.

Violent acts performed by individuals with this disorder often attract public attention. However, whether the frequency of such acts is greater than in the general population is unknown. Further, schizophrenia is equally common in males and females. *DSM III* at 181-83.

<sup>432</sup> Dr. Eliseo is in private practice in Illinois and examined Gacy at the request of the defense attorneys. His first examination lasted 5½ hours, and a second, shorter interview was conducted 4 days later.

<sup>433</sup> Tests administered included the Wechsler Adult Intelligence Test (measures intellectual functioning, thought processes, and ego functioning through evaluation of performance on ten sub-tests which measure various dimensions of intellectual functioning), Rohrschach Test (a projective test that assesses personality conflicts, ego function and structure, defensive structures, thought processes and affective integration through the patient's associations to inkblots), Draw-A-Person test (a projective test evaluating personality conflicts, self image, family perception, ego functions, intellectual functioning and visual-motor coordination through the use of the patient's drawings on blank paper), Thematic Apperception Test (measures personality conflicts and defensive structure through the use of the patient's stories made up after viewing stimulus pictures), Minnesota Multiphasic Personality Inventory (a paper and pencil personality inventory that assesses personality structure and diagnostic classification).

as a place where you have to be constantly careful . . . and feeling that at times people are out to hurt you, and also feeling you are better than other people.” Dr. Eliseo testified that Gacy’s inappropriate feelings and thoughts, his grandiose thinking, his wanting to build a business and to be responsible and reliable and strong were indicators that he was not an anti-social personality. Instead, he maintained that these characteristics and others support his diagnosis of paranoid schizophrenia. Dr. Eliseo concluded that at the times of the alleged offenses, Gacy was suffering from a mental disease as a result of which he lacked the capacity to conform his conduct to the requirements of law and to appreciate the criminality of his conduct.<sup>434</sup> The effectiveness of Dr. Eliseo’s testimony was undercut by his admissions that he never reviewed any of the psychological test results or psychiatric reports of Gacy, any background materials, any written memoranda of confessions by Gacy or any of the police reports. Dr. Eliseo did not interview family members or other lay witnesses. He also did not attempt to verify Gacy’s statements. Finally, Dr. Eliseo admitted that his diagnosis of psychosis was a guess.

A psychiatrist, Dr. Lawrence Z. Freedman was the second defense expert.<sup>435</sup> The diagnosis<sup>436</sup> reached by Dr. Freedman was that Gacy was a “pseudoneurotic paranoid schizophrenic.”<sup>437</sup> He explained that this meant that Gacy’s personality

<sup>434</sup> The prosecution in cross-examination underscored Dr. Eliseo’s judgment that between 1972 and 1980, Gacy lacked appreciation of the criminality of his conduct only at the time he killed his victims. This cross-examination was as follows:

A: I was referring to when he committed the act, he did not know that it was wrong.

Q: Could you answer the question Doctor? So that an indication that a person who does not understand that he has committed a crime?

A: Afterwards, he would understand.

Q: So, after the first one, in other words, he has now got a body and he has put it in his basement and he sure didn’t understand during the first one you say, but now he has buried the body to hide it from the police and the public, and now he is going to kill again. Do you think that is an indication that he didn’t understand the criminality of his conduct when he is killing the second time?

A: At the moment that he did it, he was not aware of the criminality.

Q: Or the third?

A: Yes, I think all of them, he did not.

Q: Right through to 33?

A: Yes, sir, that he was in a state where he was psychotic for that period and all he thought was to kill this person.

Q: He was psychotic for the whole period and all he could do was kill people?

A: No, not for the whole period, but during the time he actually went around and committed the act, not for the whole eight years, or whatever it was, six years.

<sup>435</sup> Dr. Freedman is the Foundation’s Fund Research Professor in psychiatry & chairman of the Institution of Social & Behavioral Pathology at the University of Chicago. He is on the Advisory Board of the Center for the Study of Criminal Justice at the University of Chicago Law School and has done extensive work in the area of criminology.

<sup>436</sup> Dr. Freedman’s interviews with John Gacy were conducted from Nov. 29, 1979 through Jan. 23, 1980 for 3-4 hours daily for an estimated total of approximately 50 hours. Additionally, he interviewed Gacy’s mother and younger sister.

<sup>437</sup> On cross-examination Dr. Freedman conceded that “pseudoneurotic paranoid schizophrenia” was not listed as a diagnosis in *DSM III* but was “subsumed” by other terms. Dr. Freedman did testify

had a "psychotic core . . . whose defense mechanisms . . . resemble neurosis (and . . . in a sense serve to disguise the psychosis . . . ." Dr. Freedman defined a "neurotic" as a person with some kind of incapacity or compulsion which disturbs him or makes him unhappy or offends others, but which is not serious enough to incapacitate the individual totally.

Dr. Freedman believed that Gacy was transformed from being neurotic to psychotic in December, 1969, when his father died, and Gacy could not attend the funeral because he was in jail. Dr. Freedman noted that at this time Gacy felt that he was the failure his father had always predicted he would be. Dr. Freedman testified that his diagnosis was, in part, premised upon reports of psychological tests administered by Dr. Hartman, Dr. Traisman, Dr. Rappaport, and Dr. Eliseo who also testified at the trial. He analogized his utilization of these reports to the use of lab reports by an internist, in that these tests contributed to the general information from which he derived his clinical impression, diagnosis, and plan of treatment. The four series of tests considered by Dr. Freedman included Rohrschach tests,<sup>438</sup> Thematic Apperception Test,<sup>439</sup> Genetic Factors Test,<sup>440</sup> and the Multi-phasic Personality Test.<sup>441</sup> The Rohrschach test, as analyzed by Dr. Freedman, indicated abnormality. The Thematic Apperception Test revealed both sexual identity ambiguity and an aggressive personality on the part of Gacy. While the Genetic Factor Test failed to reveal any abnormality in his chromosomal make-up, the Multi-phasic Personality Test revealed various personality defects and deficiencies.

Additionally, Dr. Freedman examined Gacy's previous medical and psychological history. During a psychiatric examination he extracted from Gacy a life history consisting of his relationships with his parents, siblings and playmates through his adolescence and young childhood. Throughout the interviews Dr. Freedman was able to observe Gacy's posture, facial expression and emotions while talking.

Gacy reported a history of repeated health problems throughout his life. Dr. Freedman believed that these problems were "taught" to him "probably by his mother." When he was a pre-teen, Gacy had suffered syncope, or fainting spells, and test results from an electroencephalogram administered at that time indicated an abnormality in his brain wave record. His physician's diagnosis was psychomotor epilepsy, and Gacy was placed on dilanton and phenobarbital. The treat-

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that his diagnosis was consistent with a diagnosis of borderline personality which he said was simply another way of conveying the same type of diagnosis. He said that similar diagnostic terms were latent schizophrenia and ambulatory schizophrenia.

<sup>438</sup> The subject describes what is observed in a series of cards containing ink blots, providing a basis for diagnosing personality disorders.

<sup>439</sup> The subject is asked to examine a series of ambiguous pictures and to respond to questions relating to each picture. The test reflects conscious attitudes and feelings.

<sup>440</sup> A test to determine whether the subject has a normal chromosome/karyotype pattern.

<sup>441</sup> A standardized personality test.

ment prescribed by the physician did not relieve the symptoms, and the physician then suggested to Gacy's mother that the cause of the fainting could be psychological and recommended that Gacy be examined by a psychiatrist. Gacy's mother, however, did not follow this advice. Dr. Freedman also discovered that around the same time Gacy experienced the onset of his fainting spells, he had probably been sexually molested by a friend of the family who was a contractor.

Dr. Freedman described Gacy's childhood as "tortured." His father was a violent man, and his mother was a victim of the father's violence. Gacy's interests followed those of family members who treated him kindly and he apparently developed feminine instincts. He began collecting his mother's underpants at the age of four or five and hiding them under the front porch. When he was caught doing this, he was forced to wear the underpants around the house. In later childhood, he collected neighbor women's underpants and hid them.

In Gacy's early childhood, when he and a girl cousin were playing "show me" games an adult member of the family saw them, and Gacy was severely punished. Dr. Freedman found it significant that Gacy's relationships with females were punished.

The description of Gacy's father developed by Dr. Freedman was that the man was a compulsive, hardworking, intelligent outdoorsman. Every night when Gacy's father returned from work, he entered the basement, which he kept locked, and drank alcohol. When he emerged he often beat his wife or his son. Although he sometimes hit the younger sister as well, he was most "brutal" to Gacy.

Dr. Freedman formed the opinion that as a result of this brutality, Gacy developed projective denial. This "is a way of surviving otherwise unbearable circumstances by putting it out of your awareness." Projection involves "ascribing to another a feeling you yourself have." An example of Gacy's denial projection, according to Dr. Freedman, was his insistence that he was "bisexual;" he projected his own homosexual feelings onto his partners and came to regard regular homosexual activity as a form of masturbation.

In a final discussion on Gacy's childhood, Dr. Freedman cited studies of violent defendants which indicated that the two most difficult kinds of fathers for a boy were a very harsh, punishing father, and a father whose behavior was erratic (sometimes harsh, and sometimes not); Gacy's father was *both*.

His early medical problems restricted Gacy from many activities. Both Gacy's health problems and his negative self-image were significant in his choice of victims. Dr. Freedman believed that the resemblance among his victims indicated that "a certain type of target was psychologically very important to him." Muscular teens, represented a contrast to Gacy, who as a teen, was flabby and felt inadequate. At the same time, Gacy viewed his victims as "trash." After he had sex with them, he experienced a frightening sense of his own homosexuality. In recounting the murders to Dr. Freedman, Gacy showed no affect or empathy with

his victims. Dr. Freedman described Gacy as a "driven man" who "worked harder and harder to relate to his business, to people, to clubs, anything that would keep him from looking into himself. . . ."

Dr. Freedman was of the opinion that Gacy used both alcohol and Valium. These substances block the neo-cortex and interfere with the functioning of the super ego (that part of the personality which keeps one behaving properly in public). As a result of Gacy's use of these drugs, some of his psychological defenses were lowered. At the time he killed Robert Piest, Gacy was under considerable stress. Dr. Freedman stated that this stress coupled with the use of alcohol, ether, chloroform, or Valium had the potential to break down parts of Gacy's personality functions. When Gacy killed Piest, he violated his own sense of self-protection by going to a place where he was well-known and where he was observed by a number of people. These circumstances would suggest to a normal person the great likelihood of being apprehended for criminal acts. The failure to consider self-protective measures was consistent with a diagnosis of pseudo-neurotic paranoid schizophrenia. Dr. Freedman described a "psychosis" as the most severe form of mental illness, involving a distortion of the thinking processes or the behavioral processes; "schizophrenia" is characterized by distortion between ideas and acts, and the feelings which would ordinarily accompany them. According to Dr. Freedman, this distortion was apparent in Gacy. When discussing the murders with which he was charged, Gacy evidenced a kind of pride in being able to overcome his muscular young victims whom he called "stupid."

Dr. Freedman testified that he believed Gacy had suffered from a chronic progressive mental disease from 1969 to the present. It was quite possible for Gacy to engage in daily activity while people were unaware of his deep illness. He further testified that this mental illness developed as a result of a split between feeling and action, and that the origin of this split might lie in his inability as a child to be able to predict the hostility of his father or to resolve his conflicting feelings for his father. Dr. Freedman would not give an opinion on whether Gacy could conform his behavior to the requirements of law or appreciate the criminality of his acts, noting that this is a legal matter, not a psychiatric matter.

The prosecution attempted to discredit Dr. Freedman's testimony by showing that he had testified as to the ultimate question in another trial and that the jury had rejected his judgment. In an offer of proof outside the presence of the jury, Dr. Freedman explained that he considered the ultimate question to be a legal question rather than a psychiatric one, and therefore, outside his area of competence. On cross-examination, Dr. Freedman testified that in a previous case he had given an opinion as to whether or not the defendant could conform his conduct or appreciate the criminality of his acts. On redirect, Dr. Freedman explained that he was able to do this because he had observed the defendant "reenact" the crime under hypnosis, and having viewed this "live reenactment" of the crime, he was certain that the defendant had committed the crime during a dissociative state of psychotic reaction. Dr. Freedman said that he did not have an opportunity to observe such a "live reenactment" by Gacy and therefore lacked a similar basis for an

opinion. When cross-examination resumed, the prosecution established that notwithstanding Dr. Freedman's opinion on the ultimate question in the prior case, the jury nonetheless found the defendant guilty.

The third expert witness for the defense was Dr. Robert Traisman,<sup>442</sup> a clinical psychologist, who on the basis of a battery of psychological tests<sup>443</sup> found Gacy to suffer from homosexual conflicts, a marked feeling of masculine inadequacy, sexual confusion, a lack of empathy, a lack of emotional control when under stress, and a strong potential for emotional or ego disintegration with expressions of hostile, dangerous impulses. Dr. Traisman's formal diagnosis was that Gacy suffered from paranoid schizophrenia and a sociopathic personality.

When asked by the defense whether an individual with the diagnosis given by Dr. Traisman could appear normal in the everyday world, the witness answered that it was possible because certain people are "ambulatory schizophrenics." Dr. Traisman also testified that schizophrenics do well in structured settings (like prison), and that he would not consider it necessary to change his diagnosis if he were told Gacy killed someone and buried the body. Dr. Traisman did not believe that Gacy was narcissistic, although he was self-centered. Dr. Traisman provided this description of John Gacy: "I just simply think that the primary illness in this man is his lack of a conscience, his swiss cheese super ego, his paranoid schizophrenia, his flight into rage of a hostile, violent destructive nature." Dr. Traisman further offered the opinion that although Gacy might know the nature of his antisocial acts, for example that he had killed someone, he might not be able to control his conduct. He concluded his testimony by saying that a psychiatrist using his test results as part of a full psychiatric evaluation, would be able to address the issue of legal responsibility more fully.

The fourth witness, Dr. Richard Rappaport, a psychiatrist, did draw on Dr. Traisman's test results and did testify more fully on the ultimate question.<sup>444</sup> Dr. Rappaport ordered an electroencephalogram and a chromosomal analysis. Addi-

<sup>442</sup> Dr. Traisman is a clinical psychologist in private practice. One of his principal areas of practice involves working with school systems in the administration of tests to ascertain presence or degree of emotional disturbance in children and adolescents. He also administers these psychological tests to adults and administered a battery of tests to John Gacy at the request of one of the defense psychiatrists.

<sup>443</sup> Dr. Traisman spent three and one half hours with Gacy administering these tests; he read no background material, and interviewed no other person. He administered the Wechsler Adult Intelligence Scale, the Rorschach Ink Blot Test, the Draw-a-Person Test and the Thematic Apperception Test. *See supra* note 33. Dr. Traisman also administered the Bender Visual-Motor Gestalt test (a projective visual motor development test that assesses conflicts of ego function and structure and organic brain damage based on the patient's reproduction of geometric figures).

<sup>444</sup> Dr. Rappaport is in private practice in Chicago, he was previously employed by the Illinois Department of Corrections as a consultant involved in group therapy with inmates at Statesville Prison in Joliet, Illinois. Dr. Rappaport interviewed John Gacy for sixty-five hours over a five month period. Each interview lasted from two to three and one-half hours. In addition to other interviews Dr. Rappaport directly administered sodium amytal (Sodium amytal produces a semi-hypnotic state which lowers the repression barriers so the subject can recall things from the unconscious part of the mind) (truth serum) to Gacy. *See supra* note 443 for a description of tests relied upon by Dr. Rappaport.

tionally, Dr. Rappaport read all past medical reports, police records, psychological examination reports, witness statements, statements by Gacy and examinations by other psychiatrists. Dr. Rappaport testified that Gacy manifested characteristics of thought disorder, that he suffered from a psychological inducement of medical problems, ambivalence, flattened affect and paranoid delusions. The witness stated that Gacy projected repressed parts of himself onto others, and then raged against them. Dr. Rappaport's diagnosis was that at the time of the killings, John Gacy was suffering from a mental disease, borderline personality disorder<sup>445</sup> with a sub-type psychopathic personality, and episodes of paranoid schizophrenia. The witness stated that in his opinion as a result of his mental disease, Gacy was unable to conform his conduct to the requirements of law at the time of the killings.<sup>446</sup>

Dr. Rappaport stated that there were three questions which he sought to answer through his examination of John Gacy. The first was whether a mental disease or defect existed, to which he testified that one did exist. The second was whether Gacy had substantial capacity to appreciate the criminality of his conduct. The third was whether Gacy was able to conform his conduct to requirements of law. Dr. Rappaport testified that, in his opinion, the first and at least one of the latter two must be answered in the affirmative in order to say that a person is insane. This formulation essentially composes the legal test for insanity in Illinois.<sup>447</sup>

In defining "defect," Dr. Rappaport stated that with the use of this term one is "talking about a question of retardation . . . [t]here could be a congenital defect, such as a piece of the brain missing." From the examinations performed, Dr. Rappaport concluded that no defect existed; therefore, he judged that the "major question was whether or not there was a mental disease." Dr. Rappaport testified that "the definition of mental disease is that there's a psychological or behavioral syndrome, which is characterized by symptoms which cause distress or difficulty in

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<sup>445</sup> Borderline Personality Disorder is defined in the *Diagnostic and Statistical Manual III* of the American Psychiatric Association as a personality type in which there is instability in a variety of areas, including interpersonal behavior, mood, and self-image. Interpersonal relations are often intense and unstable, with marked shifts of attitude over time. Behavior is frequently impulsive and unpredictable and is potentially physically damaging. Moods are unstable. There may be problems relating to being alone, and chronic feelings of emptiness and boredom. According to Dr. Rappaport the characteristics of the borderline personality are impulsiveness, ability to adapt to structured situations, seeing only one aspect of oneself or someone else at a time, brief psychotic episodes sometimes caused by stress, fatigue or use of alcohol. In addition, the witness said that a borderline personality such as Gacy's is manifested by illogical responses, difficulty in interpersonal relationships, primitive ego defense mechanisms such as projection, denial and splitting.

<sup>446</sup> The prosecution objected to Dr. Rappaport being permitted to testify as to Gacy's sanity at the time of his offenses on the ground that the witness lacked a factual basis for each separate killing as to the existence of a psychotic state. The prosecution also objected to Dr. Rappaport's testimony to the effect that Gacy had a history of drug and alcohol abuse on the ground that the witness had no personal knowledge of Gacy's use of alcohol or drugs. The prosecution attempted to discredit Dr. Rappaport's testimony by suggesting that he solicited business as an expert witness and was willing to violate the court's order prohibiting interviews by those involved in the case.

<sup>447</sup> ILL. ANN. STAT. Ch. 38 § 1005-1-11 (Smith-Hurd 1982).

relating to people.” This testimony was objected to by the State, the objection sustained, and the testimony stricken. Dr. Rappaport then restated his definition of mental disease as a “[p]sychological or behavioral syndrome, which consists of certain symptoms which produce this conflict or disease in the individual, or disability in an individual.” Dr. Rappaport further stated that in his view mental disease should not be defined in such a way that it would exist just by virtue of the fact that someone continues to commit crimes.

Dr. Rappaport defined his diagnosis of borderline for the court and jury as a serious mental illness falling somewhere between neurotic and psychotic behavior. He explained that a borderline person can conduct a much more normal life than a psychotic person, but that psychosis occurs from time to time. He explained in some detail the characteristics of a borderline personality and how these were manifested in John Gacy. Dr. Rappaport believed that his diagnosis of borderline was not inconsistent with Dr. Freedman’s diagnosis.

Seven characteristics of the borderline personality were identified: (1) intense affect (hostility or depression); (2) impulsive behavior (usually episodic in the form of self-mutilation, drug overdose, chronic alcoholism or promiscuity); (3) social adaptiveness (consists of identity disfusion in which the person cannot put the different parts of himself together and so sees only one part of another person); (4) brief psychotic episodes (micro or mini psychoses which are transient in nature and often occur as a result of rage); (5) bizarre dereistic or illogical findings (the person has no concern for outside reality); (6) difficulty in inter-personal relationships (waiver between gross superficiality and intense dependency) and (7) use of primitive ego defenses.

Dr. Rappaport described these characteristics in greater depth. In terms of the first, intense affect, John Gacy’s depression was characterized by a sense of loneliness. It was during these moments that Dr. Rappaport observed the greatest amount of affect from Gacy; during these periods, in order to protect himself from his feelings of loneliness, he would surround himself with many people (parties with friends or bodies of victims). Dr. Rappaport described this activity as a superficial way to prevent depression.

In regard to the second characteristic, impulsive behavior, there is no time between thought and act. This was manifested in Gacy’s impulses over which he had no control.

The third, social adaptiveness, was the part of John Gacy’s personality, according to Dr. Rappaport, which allowed him to adapt himself well in his work situations. There was a lack of self-image which permitted Gacy at one moment to admit to the murders and at another moment to state he could not have done the murders. In terms of others, he can only see one characteristic and cannot imagine that the same person could feel love and hate or be angry and happy.

The chief difference between the fourth feature, brief psychotic episodes, and full blown psychotic paranoid schizophrenia is that Gacy’s psychotic episodes were



short, lasting only a few hours. In general, Gacy could function in an apparently normal way but the psychotic episodes would re-occur, often triggered by rage. During these episodes, Gacy would build up a scenario as a result of stress, fatigue, or internal stress (feelings demanding expression); and he would begin to think that he was his father and that the victims were himself as a boy. Gacy identified with his father by assuming the role of the aggressor, and acted out his father's role on the victims. When questioned whether this rage could have been self rage or directed against himself, Dr. Rappaport responded: "Definitely."

In explaining the fifth feature, bizarre dereistic or illogical findings, Dr. Rappaport pointed out the inconsistencies in the psychological tests administered by Dr. Traisman. Dr. Rappaport testified that such inconsistent results are typical of the borderline personality. Dr. Rappaport also testified that such inconsistency is consistent with a diagnosis of paranoid schizophrenia.

Difficulty in interpersonal relationships, including marital problems such as those Gacy experienced, is also typical of the borderline individual. The wavering between gross superficial relationships and very dependent ones, according to the witness, leads the borderline individual to a stage where he finds himself becoming dependent; he then tries to manipulate, devalue, and depreciate the object of his dependency and to dispose of the relationship. In these personal relationships, a borderline like Gacy will try to mimic what he thinks would be a normal relationship because he has no sense of himself.

Another characteristic, the use of primitive ego defenses, is "very crucial" in understanding the borderline personality. Primitive ego defenses are those defenses used by a child or someone who is severely retarded. They are primarily projective identification, gross denial, and splitting, which means that two ideas can exist at the same time in the same person, but in two separate areas of the mind. Since a borderline person has difficulty integrating love and hate feelings regarding the same person, he splits them so that at times he feels only one emotion or the other. Projection, on the other hand, is a process of attributing one's own feelings to someone else. Projective identification is a more regressed form of ego defense, seen in the borderline person, so that even though he projects his feelings to another, he also simultaneously maintains the same feelings himself.

Gross denial is the ego defense which allowed Gacy to relate sexual experiences with men and then to maintain that he was not homosexual himself, as though there was no inconsistency between his judgment and his behavior. Dr. Rappaport testified that these three primitive ego defenses are all unconscious processes which permitted Gacy as a borderline to defend his ego against anxiety.

Dr. Rappaport testified on the question of free will as it relates to the conscious and unconscious parts of the mind. According to the witness, there is "repression barrier," which is that part of the mind that keeps some ideas or thoughts from reaching the conscious part of the brain. People repress painful thoughts. In further clarifying his diagnosis, Dr. Rappaport indicated, through use of a drawing board, how a psychiatrist looks at the individual mind as though it was an onion;

the psychiatrist peels back layers to discover the various parts of the personality. An antisocial personality or psychopathic personality was one of the outer layers of John Gacy which, according to Dr. Rappaport, might mislead one into concluding that underneath this layer, there is another layer resulting from the influence of experiences in Gacy's early life, including his experience as middle child in the family, and the harsh punitive and critical treatment by his father. Dr. Rappaport referred to the practice of Gacy's father of going to the locked basement to drink everyday after work, after which any incident could trigger rage, which often was directed at John or his mother. Alcoholism was the source of this behavior, and the general atmosphere in the house was violent and upsetting, including beatings, recriminations, and disapproval. The father's disapproval, accusations, and recriminations, according to Dr. Rappaport, went to the extent that if it rained when father and son planned to go fishing, the rain was John's fault; if they were painting and the paint ran, it was John's fault.

In this deeper layer of Gacy's personality, Dr. Rappaport said that the father's locked basement was very important; no one was ever allowed in it, and there were "locks on top of locks." There was a mystery about it that affected John Gacy.

Also in this inner core were parts of the early life, such as Gacy's hoarding his mother's underpants at age four to five, and his mother punishing him for this behavior by making him wear her underpants around the house. This aspect of his personality was acted out later when at the age of sixteen or seventeen, Gacy began stealing and collecting women's undergarments.

Another of the type of experiences which had a lasting impact was when at the age of eight, John and his sisters were left at home alone while their mother worked and their father was in the hospital. For Gacy this was a frightening experience of being abandoned with the father ill, and the mother absent. On one occasion, Dr. Rappaport said, Gacy's mother became angry with the children and hid in the basement for hours while the children became frantic; John stood at the basement door crying.

According to Dr. Rappaport, the early phase of John Gacy's life produced a castration anxiety which emerged during the Oedipal period.<sup>448</sup> This anxiety was heightened by the abuse of the father.

The defense rested following Dr. Rappaport's testimony. The defense case in chief consisted of seven days of testimony from seventeen witnesses.

b. *Prosecution Rebuttal—Psychiatric Witnesses.* The prosecution called a number of witnesses to establish Gacy's homosexual activity with various victims. All were of the opinion that Gacy was in control of his actions. In addition, witnesses were called to show past efforts by Gacy to deny or conceal this activity.

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<sup>448</sup> The Oedipal period is that period in which the child desires a sexual relationship with his mother and is fearful that the father will castrate him.

The first witness testified about criminal activities with Gacy in Iowa in 1966. The most significant aspect of the testimony was Gacy's promise to pay the witness's outstanding car loan if he would assault one of the complainants in the then pending Iowa sodomy case. Gacy gave the witness a can of chemical disabling spray and identified the intended victim in a high school yearbook. Another former employee testified about an occasion in Iowa in 1967 when Gacy showed him stag films, and approached him with a carving knife, but then became apologetic and dropped the knife. Later Gacy chained and choked him, but subsequently released him.

The prosecution then called a prison counselor from the Iowa penitentiary where Gacy had been incarcerated. The counselor testified that Gacy adapted well to prison life and became a leader with the prison service organization. A fellow inmate also testified that Gacy claimed that he was in prison for showing pornographic films to adolescent girls; but that throughout his prison term he talked about his business plans after release.

The prosecution's first expert witness was Dr. Leonard Heston<sup>449</sup> who had interviewed Gacy for three to four hours in 1968 while Gacy was incarcerated in Iowa for a sodomy conviction.<sup>450</sup> Dr. Heston diagnosed Gacy in 1968 as an anti-social personality and felt he did not suffer from a psychosis. He described the antisocial personality as characteristic of a person who comes into repeated conflict with society and social norms. This condition manifested itself in Gacy through the trouble he experienced in school, his marriage and other aspects of his life. Dr. Heston testified that Gacy was sane under Iowa law.

Dr. Heston disagreed with the diagnosis of Dr. Lawrence Freedman that Gacy was "pseudoneurotic paranoid schizophrenic." According to Dr. Heston this diagnosis was a "fad" some years before, but is no longer included in the classification of *DSM* schizophrenia.

The defense during cross-examination criticized Dr. Heston maintaining that he should have been able to discern the seriousness of Gacy's disturbance at the time of his initial examinations in 1968 and that proper evaluation could have shown Gacy's need for psychiatric treatment and prevented his later crimes. The defense in cross-examination elicited an admission from Dr. Heston that certain characteristics of sociopaths and psychopaths were not found in Gacy's life history. The defense further established that certain findings had been made by a prosecution expert, Dr. Hartman, in 1979 which were not identified by Dr. Heston in 1968, and that those findings might justify a different diagnosis. Finally, Dr. Heston

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<sup>449</sup> Dr. Heston is a Professor of Psychiatry at the University of Minnesota. He ordered an encephelogram and chest and skull x-rays, all of which were negative. He also performed a physical examination and took a family history from Gacy.

<sup>450</sup> Dr. Heston stated that he had not examined Gacy since the time of his Iowa imprisonment although he had reviewed reports of the other experts testifying at trial.

admitted that the medical experts who examined Gacy in 1979 described a more complex personality structure in Gacy than Dr. Heston had in 1968.

Dr. A. Arthur Hartman,<sup>451</sup> a clinical psychologist, then testified that as a result of the tests and interviews he conducted, it was his opinion that John Gacy's affect was within the normal range. He further stated that there were times during the evaluation when Gacy showed emotional variability and even anxiety, but at no time did he present loss of contact with reality or evidence of bizarre or peculiar behavior during the evaluations. Dr. Hartman reached a diagnosis of psychopathic or antisocial personality<sup>452</sup> with sexual deviation and minor symptoms of paranoid hysterical reactions. In Dr. Hartman's opinion, Gacy never had suffered from a mental disease of the psychotic type. He testified that Gacy was sane, able to conform his conduct to law, and able to appreciate the criminality of his actions.

Dr. Hartman testified that although he employed a diagnosis set out in *DSM-III*, he did not feel bound by the classifications in *DSM-III*. He testified that "[t]here are as many classifications as there are people," and that the classifications in *DSM-III* cannot describe a complex personality. He stated that John Gacy was a very complex person and that what was really significant was not a label taken from *DSM-III*, but rather a detailed psychological description of the individual.

Dr. Hartman stated that in expressing more concern and hostility over the destruction of his house and barbeque pit than he did about the bodies found under

<sup>451</sup> Dr. Hartman is a clinical psychologist and an Associate Professor of Clinical Psychology at Boston University Graduate School. He formerly held the positions of Director or Chief Psychologist of the Psychiatric Institute of the Circuit Court of Cook County and Chief Psychologist at the Psychiatric Institute of Cook County in the Juvenile Psychiatric Department.

He interviewed Gacy for twenty-five hours over a two-month period. He administered the Bender Visual-Motor Gestalt test (requiring immediate reproduction from memory), the Rohrschach Ink Blot Test, the Draw-a-Person Test, the Rotter Sentence Completion Test, the Thematic Apperception Technique, the Rosenzweig Picture Frustration Test, a Hand test and an informal word association test. See *supra* notes 433 and 443.

<sup>452</sup> *DSM III* defines antisocial Personality Disorder as having as the essential feature: a history of continuous and chronic antisocial behavior in which the rights of others are violated, persistence into adult life of a pattern of antisocial behavior that began before the age of 15, and failure to sustain good job performance over a period of several years (although this may not be evident in people who are self-employed or . . . students or housewives). . . . Lying, stealing, fighting, truancy, and resisting authority are typical childhood signs [of the Disorder]. In adolescence, unusually early or aggressive sexual behavior, excessive drinking, and use of illicit drugs are frequent. In adulthood these kinds of behavior continue, with the addition of inability to sustain consistent work performance or to function as a responsible parent and failure to accept social norms with respect to lawful behavior. After age 30 the more flagrant aspects may diminish, particularly sexual promiscuity, fighting, criminality, and vagrancy. . . . The Disorder is often extremely incapacitating, resulting in . . . institutionalization, more commonly penal than medical. It is possible, however, for individuals who have some of the features of this disorder to achieve political or economic success; but these people virtually never present the full picture of the disorder. . . . *DSM III* at 317-18.

his house, Gacy evidenced a psychological phenomenon called displacement. Gacy could not express his anxiety or fear about the bodies which were found, but he could express it about the condition of his house and yard.

Dr. Hartman stated he believed that Gacy could have controlled his violent behavior. He pointed out that in exhibitionism and voyeurism there is a compulsion which produces a tension and causes the individual to repeat the deviant acts, but, these are not irresistible impulses. Dr. Hartman said it was more likely that such control would break down in a psychotic person but that he did not believe Gacy was psychotic. However, on cross-examination Dr. Hartman admitted that it was possible that Gacy's psychosexual conflict could be so extreme at times that it could compel him to kill.

The next expert witness for the State was Dr. Robert A. Reifman<sup>43</sup> who diagnosed Gacy as having a narcissistic type personality disorder. He defined narcissism as a condition in which a person loves himself very much, has superficial charm and intelligence, but constantly needs attention and has an exaggerated sense of self-importance. While the narcissistic person does not suffer from delusions and irrational thinking, he lacks remorse or shame for his conduct, is subject to temper tantrums, lacks empathy, and has an inability to feel compassion for others but expects special consideration from them. According to Dr. Reifman, narcissistic personality type is not a mental disease. Dr. Reifman testified that his diagnosis was comparable with a diagnosis of antisocial personality. On cross-examination Dr. Reifman conceded that the symptoms of narcissism are similar to those of a borderline personality.

Dr. Reifman testified that his diagnosis was not consistent with a diagnosis of borderline personality because a borderline does not function well in society and leads a chaotic life. He also testified that his diagnosis was inconsistent with a diagnosis of paranoid schizophrenia because the schizophrenic person loses touch with reality and that such persons are not usually violent.

During his testimony, Dr. Reifman stated that Gacy did not act on an irresistible impulse since there was evidence of planning in his crimes as evidenced by the trenches that Gacy had employees dig under his house to be used as graves. Dr. Reifman also dismissed any possibility of temporary insanity since such a condition could not occur thirty-three separate times. Dr. Reifman testified that the facts of the murders alone provide a basis for judgment that Gacy could not have been psychotic, or in a brief psychotic episode, or a multiple personality, or having an irresistible impulse. He also stated that "There is no doubt in my mind that when he came in for his interview he was trying to fake a multiple personality." According to Dr. Reifman a diagnosis of multiple personality was rejected because of the fact that Gacy was able to provide considerable information about the slayings.

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<sup>43</sup> Dr. Reifman is a psychiatrist and Director of the Psychiatric Institute of the Circuit Court of Cook County. He interviewed Gacy for sixteen hours, ordered an electroencephalogram (which was normal) and read the reports of other expert witnesses.

The fourth expert witness for the state was Dr. David C. Garron,<sup>454</sup> who testified that in his opinion, Gacy was competent in all areas. Although Gacy was subject to mood changes more often than usual, there was little evidence of poorly controlled impulses. He stated that he found no evidence of brain damage. Dr. Garron stated that he found no evidence of impulsive or explosive personality, and no evidence of delusions or hallucinations. On redirect examination, Dr. Garron testified that his formal diagnosis would be hysterical or histrionic character which he stated is a character defect and not a mental disease.<sup>455</sup>

The State then called Dr. Richard Rogers<sup>456</sup> who diagnosed Gacy as having an obsessive-compulsive disorder and a hypomanic disorder, with possible sexual sadism. He described obsessive-compulsive disorder as an anxiety in which the person shows either "obsessions" or "compulsion" (repetitive behaviors that may seem senseless). He defined sexual sadism as a disorder in which a person derives sexual satisfaction from intentionally inflicting physical or psychological pain on another, often accompanied by fantasies about the humiliation and hurt the other is suffering. Dr. Rogers defined hypomania as a nonpsychotic disorder in which the person either has elevated or irritable moods.

Dr. Rogers pointed to Gacy's encounters with two surviving victims and with Robert Piest, as evidence of sexual sadism. Gacy described handcuffing, raping and having accompanying thoughts of hurting or killing one victim but finally allowing him to go free after keeping him handcuffed for two or three hours. The other surviving victim, was put into a board and chain device for the purpose of sexual slavery. Robert Piest was handcuffed, while Gacy attempted fellatio against Piest's will.

Dr. Rogers disputed the reliability of several tests administered by other expert

<sup>454</sup> Dr. Garron is a clinical psychologist and Professor of Psychology at Rush Presbyterian-St. Luke's Medical Center in Chicago. He specializes in neuropsychology, a science that attempts to correlate abnormalities in behavior to disease or injury of the brain.

He performed the following tests in making his evaluation of Gacy: Wechsler Memory Scale, Form i (determines orientation as to time, date, identity, who is president, etc.); Peabody Picture Vocabulary Test (determines extent of vocabulary); Memory test (items are shown, removed and the subject asked to name the items he remembers); Stanford Binet Picture Absurdities Test (a standard I.Q. test which involves seven pictures of people doing something incorrectly); Minnesota Differential Aphasia Sentence Production Test (the subject is asked to put seven certain words into a sentence); Spreen Benton Tact/Left Test (measures brain damage); Reading and Dictation test (involves a sentence in print and then in script); Bender Visual-Motor Gestalt Test (the subject observes several shapes and is then asked to copy them); Frontal Lobe Test (subject asked to imitate rhythmic tapping and to quickly draw loops across a page) and the Rorschach Ink Blot Test.

<sup>455</sup> The defense objected to Dr. Garron's testimony on the question of non-organic disorders since Dr. Garron had examined Gacy in his capacity as a neuropsychologist and that the opinion of Dr. Garron lacked a factual basis. This objection provided a basis for Gacy's subsequent appeal. Brief and Argument for Defendant-Appellant.

<sup>456</sup> Dr. Rogers is a clinical psychologist at Rush Presbyterian-St. Luke's Hospital in Chicago and is affiliated with the Isaac Ray Center. He interviewed Gacy for fifteen and one-half hours and read police reports and statements of witnesses. He administered the Schedule of Affective Disorders in Schizophrenia (SADS) test and took Gacy's psychosexual history.

witnesses. He testified that there is reliable evidence that it is possible to fake the Rorschach test and that it is possible to get thousands of interpretations from the Rorschach. He noted that any score above twelve on the Minnesota Multiphasic Personality Inventory suggests "faking" by the subject. Since Gacy had a score of fourteen, the results of the test were virtually useless. Dr. Rogers also testified that an "empirical study" had concluded that the Draw-a-Person Test had no value. In regard to the Wechsler Adult Intelligence Scale, Dr. Rogers quoted from a work by Wechsler himself which states: "The most outstanding single feature of a sociopath's test profile is systematic high score on the performance as compared to the verbal part of the scale." Dr. Traisman, a defense witness, had labelled this difference "not significant."

Additionally, Dr. Rogers also disputed the diagnostic conclusions of defense witnesses Dr. Eliseo and Dr. Traisman and faulted them on their analysis of various test results. On cross-examination, the defense sought to establish that the diagnostic instrument used by Dr. Rogers covered only twenty-six disorders, and did not include borderline personality; the defense also established that the instrument used did not establish the existence of psychosexual, impulse control or dissociative disorders.

Dr. James Lewis Cavanaugh, Jr.,<sup>457</sup> the State's next expert witness characterized Gacy as a well organized, very intelligent person who was "a little compulsive." He thought it was significant that Gacy had developed a celebrity status in jail, had obtained special privileges from guards and related to other prisoners in a friendly and jovial manner. Dr. Cavanaugh diagnosed Gacy as suffering from a mixed personality disorder, marked by pervasive narcissism, an obsessive compulsive quality, an antisocial quality and a hypomanic quality.<sup>458</sup>

Gacy's personality traits which he deemed to be consistent with his diagnosis of narcissistic personality disorder, included: grandiose sense of self-importance or uniqueness (Gacy's behavior in the jail setting); preoccupation with fantasies of unlimited success, power or brilliance, beauty or ideal love (Gacy demonstrated a preoccupation with success); exhibitionism (Gacy surrounded himself with a large number of young people in a "loose cadre"); an indifference to others or meeting

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<sup>457</sup> Dr. Cavanaugh is a psychiatrist at the medical college of Rush Presbyterian-St. Luke's Medical Center in Chicago. He is the director of the section on the Law in the Department of Psychiatry, which includes the Isaac Ray Center. He interviewed Gacy for eighteen hours and read the police reports and the reports of other experts, including Dr. Heston who had examined Gacy in Iowa.

<sup>458</sup> Dr. Cavanaugh also reported Gacy's history of alcohol and drug abuse, and that there was data consistent with a clinical opinion of sexual sadistic behavioral pattern. The witness indicated that the origin of Gacy's obsessive-compulsive behavior lay in his "pathologic" relationship with his father. Dr. Cavanaugh stated his opinion that Gacy ultimately became convinced that he could not be caught because he believed that "his social and sexual adjustment patterns [were] generally characteristic for society, and therefore, normative." The defense on cross-examination established that Dr. Cavanaugh rejected a diagnosis of borderline personality because he found insufficient symptoms, and further established that he relied on an instrument which measured a limited number of characteristics and did not provide a basis for a diagnosis of borderline personality.

defeat with feelings of either cool indifference or rage, inferiority, shame, humiliation or emptiness, antisocial characteristics such as chronic antisocial behavior in which rights of others are violated (truancy during adolescence, expulsion from school, delinquent behavior, lying, thefts, vandalism, chronic violations of the rules at home); obsessive-compulsive features (an inability to express warm or tender emotions, inappropriate preoccupation with trivial details, rules, schedules, or lists). Dr. Cavanaugh stated that his diagnosis did not constitute a finding of disease or defect.<sup>459</sup> Further, Gacy was able to appreciate the criminality of his conduct and was capable of conforming his conduct to the requirements of law.<sup>460</sup>

During his testimony, Dr. Cavanaugh described what he viewed to be a basic problem between psychoanalytical theory and criminal responsibility. He explained that psychoanalytic theory maintains that behavior is determined by prior life experiences. The proponents of psychoanalytic theory maintain that it is possible to predict or to reconstruct the reasons certain types of behavior patterns, thought, feelings, and fantasies occur by examining the past experiences of the individual. Therefore, it is difficult to assess personal responsibility since responsibility flows not just from the individual, but also from all the other people and events in the person's past. On the other hand, the law is based on the concept of freewill, and "therefore, individuals are responsible for their behavior irrespective of what has gone before" and only those unable to form an intent are able to escape responsibility for their conduct.

In questioning about whether John Gacy was a paranoid schizophrenic, Dr. Cavanaugh stated that the "sum total of his life" negated that diagnosis; he described schizophrenia as a "cancer of the mind" which is a "downhill deteriorative course in which an individual is tremendously impaired in terms of [his] cognitive ability . . . thinking ability . . . emotional ability . . . interpersonal skills . . . frequently unable to function independently in society, frequently requiring hospitalization."

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<sup>459</sup> On cross-examination Dr. Cavanaugh testified that in his opinion, a personality disorder is a mental illness and implies a mental disease, but that a mental illness was not the same as a mental disease.

<sup>460</sup> Dr. Cavanaugh testified that even assuming the existence of the defense experts' findings of schizophrenia or borderline condition, he found no evidence whatever to support a causal relationship between these supposed conditions and the claim of the defense that Gacy lacked the ability to appreciate or conform.

Under questioning by the prosecution, Dr. Cavanaugh stated that in his opinion, John Gacy currently did not present an "imminent danger" to others and therefore could not be committed if he was acquitted by reason of insanity. Dr. Cavanaugh further stated that if Gacy were committed, and he was the examining doctor at the institution to which Gacy was committed, he would recommend Gacy's release. This testimony formed a basis for Gacy's subsequent appeal, where it was argued that this statement denied Gacy a fair trial in violation of the due process clause. See Brief and Argument for Defendant-Appellant at 145-153. The State maintained that this testimony was invited by the defense by its opening argument where it was stated that Gacy belonged in a mental institution, and in any case if there was error it was cured by the trial judge's admonition to the jury to disregard the testimony. See Brief and Argument for Plaintiff-Appellee at 147-152. See also P. Galloway, *Gacy's Fate if Not Guilty by Insanity Aired at Trial*, Chicago Sun-Times, March 7, 1980, at sec. 1, p. 6, col. 1.



Dr. Cavanaugh admitted that his interviews and review of the records revealed that Gacy had at least five of the symptoms which support a diagnosis of schizophrenia.

c. *Defense Surrebuttal—Psychiatric Witnesses.* On surrebuttal the defense first called Dr. Tobias Brocher<sup>461</sup> who diagnosed Gacy's condition as what has been described in recent literature as a borderline condition—a type of paranoid schizophrenia. Gacy's affect; according to Dr. Brocher, is "very flat . . . he didn't have any real feelings for other people, he was very egocentric, kind of autistic." According to Dr. Brocher, when Gacy's view of reality is threatened, he becomes angry immediately; during the interview, his affect toward others was "cold, . . . kind of an emptiness which is filled with words." In addition, Dr. Brocher emphasized Gacy's grandiosity—unreal ideas of personal greatness which are close to delusions. For instance, he felt that he was fulfilling a service to society by disposing of "human trash," namely homosexuals.

Dr. Brocher described John Gacy's "super ego" as being like "a swiss cheese with big holes in it." The "superego," constitutes the basic moral sense or conscience of the person and involves learned notions of right and wrong. Parts of his mind are "very controlled" and in other areas "he has no impulse control." Dr. Brocher stated that the "do's and don'ts" are learned in early childhood but, if there are developmental gaps or defects, then at a later time the individual is unable to control his emotions ("a pre-symptom of a beginning psychosis").

Dr. Brocher explained that the development of schizophrenia is a very long, slow process in which there are various stages characterized by deviate behavior. Usually something was missing in the childhood of schizophrenics. Gacy lacked a secure masculine identity and had instead a "very punishing father," a "sadistic father." According to Dr. Brocher, the important aspect in the development of Gacy's schizophrenia is the splitting process during which he denies he is a homosexual and projects his homosexual impulses onto other persons (his sexual partners). Because Gacy views these homosexual impulses of his own as "bad," this "bad" part of himself needs to be destroyed. He projects this "bad" part of himself onto the other person. Thus, because this bad part of himself needs to be disposed of and since the other person *is* the bad part of himself, he disposes of that person. Dr. Brocher testified that "only persons who are psychotic can split off so far that they negate reality" and that splitting like this is a totally unconscious matter.

When testifying as to his diagnosis, Dr. Brocher explained that borderline is a schizophrenic process and that according to European terminology it would be called a "paranoia," which is characterized by grandiose and delusional ideas. The witness stated that this diagnosis is difficult because the intellect of the subject

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<sup>461</sup> Dr. Brocher is licensed to practice psychiatry in Germany and in Kansas. He is Director of the Center for Applied Behavioral Sciences at the Menninger Foundation where he teaches forensics. He interviewed Gacy for one day, read statements made by Gacy to the police and read the psychiatric and psychological evaluations of several other expert witnesses.

is functioning adequately which results in the person appearing to be normal, but because of the deeper disturbance, his actions are very different than the subject perceives or states them to be. According to Dr. Brocher, the onset of the borderline condition in John Gacy, as is typical of borderlines, was very early in childhood. Such a person becomes fixated at about the age of three to five at which time the intellectual process continues, but the emotional growth stops. When a child is "beaten up or is under very strong, strict education, sadistic education . . . there is no possibility to correct this experience."

Dr. Brocher agreed with Dr. Rappaport's diagnosis except for the finding of antisocial subtype which Dr. Rappaport described. According to Dr. Brocher, this characteristic develops in time into a full psychosis. He noted studies performed on people in prison who had a sociopathic personality, and who later developed a full psychosis.

Dr. Brocher criticized Dr. Cavanaugh's report as concluding with a "more or less labeling diagnosis." Dr. Brocher disagreed with Dr. Cavanaugh's dismissing the psychosomatic episodes in Gacy's life; according to Dr. Brocher, Gacy's psychosomatic illnesses are a sign that he cannot resolve his internal conflicts so he "dumps" them on his body. Dr. Brocher also stated that the hypomanic symptoms described by Dr. Cavanaugh were in fact prepsychotic stages. Perhaps the most significant criticism of Dr. Cavanaugh's testimony was his dismissal of the possibility of irresistible impulses after finding that there was a defect in the conscious functions of Gacy. Dr. Brocher questioned how Dr. Cavanaugh could say these impulses which he termed "aggressive, massive aggressive and homicidal impulses" could be controlled consciously when he saw a defect in the consciousness.

Dr. Brocher stated that his diagnosis explained the apparent ambiguity in Gacy's conduct: that when John Gacy commits his crimes he "treats other people . . . like he was treated [as] a child, on the other hand, in certain areas he behaves as if he would be the better mother or the better father . . . and wanted to give to others what he didn't get." This explains why Gacy dressed as a clown and entertained children during the same period of time he was murdering young men and teenagers.

The last expert witness called by the defense was Dr. Helen Morrison.<sup>462</sup> She diagnosed Gacy as suffering from "mixed or atypical psychosis."<sup>463</sup> Dr. Morrison

<sup>462</sup> Dr. Morrison is in private practice in Chicago. She interviewed Gacy for about fifty hours over a three-month period. She also reviewed the police reports, statements of witnesses, Gacy's medical and educational records and transcripts of other psychiatric testimony and reports of psychologists. Dr. Morrison also interviewed Gacy's mother, younger sister, and Jeff Rignall, one of Gacy's surviving victims.

<sup>463</sup> Dr. Morrison based this diagnosis on eleven criteria:

- (1) primitive psychotic defense mechanisms shown by splitting (evidenced by Gacy's lack of memory for certain factors, his hot and cold grandiosity combined with feelings of inferiority, and his hypochiasases);
- (2) aggression expressed in polar attributes which accompany splitting (evidenced in Gacy

stated that her diagnosis was inconsistent with those given by other expert witnesses who labelled Gacy as pseudoneurotic paranoid schizophrenia or as borderline personality or having mixed personality disorder because her diagnosis included elements of various psychoses. Dr. Morrison stated that John Gacy could not conform his conduct to law, lacked substantial capacity to appreciate the criminality of his acts, and suffered from a mental disease continually throughout commission of all the crimes.

On cross-examination of Dr. Morrison the Prosecution focused on the definition of "atypical psychosis" from the *DSM-III*. The prosecution established that Dr. Morrison had not used the term "atypical psychosis" in her report to the court nor did the terms "atypical psychosis" or "mixed psychosis" appear in the diagnostic conclusion of her written report. The prosecution also establishes that the definition of "atypical psychosis" in *DSM-III* differed from the one employed by Dr. Morrison. She explained that there were two types of catatonic behavior: one type where the persons sits in one spot and doesn't move; and another type where the person is excited and extremely active. Dr. Morrison also described the type of hallucination she believed Gacy suffered. She stated that when Gacy committed his murders, he "felt that he saw the parts of him that were split off, that were despicable parts, he saw the parts of his father that he felt were destructive, terrifying parts," hallucinations she termed "psychological hallucinations." Dr. Morrison also defined psychosis under cross-examination as a "misperception of reality, basically." She testified that Gacy was psychotic each time he committed murder. When asked if she believed John Gacy would have killed Robert Piest if there had

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by a "hateful and a powerful destructiveness" combined with a weak way of expressing aggression);

(3) difficulty in maintaining object constancy i.e., a child being unable to develop a separate and independent identity from a parent (Gacy's inability to maintain an identity separate from that of his mother was the basis for his homosexuality);

(4) inability to differentiate one's childhood from one's adulthood (Gacy developed intellectually but not emotionally, continuing to react to fear or pain as an infant would);

(5) a defense against anxiety characterized by a flight into activity (Gacy functioned well in penal institutions because he felt safe there. This also explained his obsession with detail, list-keeping and timing everything down to the second);

(6) character defenses against oral needs i.e. the need for omnipotence flowing from a feeling that no one will take care of you so you must be independent (Gacy's father who should have been his protector was unpredictable while his mother was abused and threatened by her husband and left the family several times);

(7) self-object serving as a substitute for what is missing in an individual's psychological structure (manifested in Gacy by his inability to differentiate between himself and a parent);

(8) pathologic omnipotence (a psychotic defense maneuver that helps the individual deal with feelings of helplessness, frustration, threat or disintegration);

(9) grossly inconsistent and variable perception of others (manifested in Gacy by contradictions from one sentence to the next);

(10) projection of parts of self - i.e. an incapacity to relate to other people (people were inanimate objects to Gacy);

(11) spnatic destructiveness (Gacy's emotions were inappropriate "laughter if someone were dying, then crying if a flower were crushed").

been a uniformed policeman in the home with him at the time, Dr. Morrison answered that he would have killed him anyway.

d. *Prosecution Surrebuttal—Psychiatric Witnesses.* On surrebuttal, the State called Dr. Jan Fawcett<sup>64</sup> who testified that he found Gacy to be cooperative and at ease socially. However, Dr. Fawcett indicated that when asked a question, Gacy would answer part of it and claim not to be able to remember the rest. Dr. Fawcett believed that Gacy could remember more than he said he could. Dr. Fawcett concurred with Dr. Cavanaugh's diagnosis of mixed personality disorder with alcohol and drug abuse.

Dr. Fawcett testified as to what he viewed to be difficulties in using past acts as a basis for judging responsibility. He said that psychodynamic theories are very useful clinically in treatment and in understanding how people behave, "but they don't in themselves explain the individual's behavior in the sense of causation." According to Dr. Fawcett, this method of analyzing behavior is retrospective and mistakenly tends to explain things as if no other outcome is possible.

Dr. Fawcett defined "psychosis" as a condition in which the thoughts of an individual are interferred with, fragmented, disassociated or loose; this condition is manifested by delusions which are contrary to reality. He stated that hallucinations such as hearing voices, or believing that a force is inside one's body controlling him are also common. According to Dr. Fawcett, a psychotic person usually has a difficult time functioning in the day-to-day world.

When asked to comment on Dr. Brocher's diagnosis of "prepsychotic condition," Dr. Fawcett stated that the *DSM-III* lists the following for prodromo symptoms of psychosis: onset of bizarre beliefs, unusual feelings of clairvoyance, decline in capacity to relate to others, a change in thinking, and withdrawal from social relationships. He testified that he did not find these symptoms present in Gacy. Dr. Fawcett disagreed with Dr. Helen Morrison's diagnosis of "mixed psychosis," as well as with her description of the psychological hallucinations suffered by Gacy. Dr. Fawcett said the term psychological hallucination as used by Dr. Morrison does not meet the criteria which is used in the diagnosis of a psychosis. According to Dr. Fawcett, "psychological hallucination" is a descriptive term which is useful clinically but does not establish the real presence of such hallucinations.

Dr. Fawcett stated that over and above a psychodynamic theory, a solid history and solid observations of the individual are necessary to make a diagnosis. Dr. Fawcett concluded that based on his observations and review, Gacy did not have a mental disease, and that he could appreciate the criminality of his conduct and conform his conduct to the requirements of law.

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<sup>64</sup> Dr. Fawcett is a psychiatrist and is a professor and Chairman of the Department of Psychiatry at First Presbyterian-St. Luke's Medical Center in Chicago. He examined Gacy at Dr. Cavanaugh's request after reviewing all of the psychiatric and psychological documents and police reports. He interviewed Gacy for seven hours on three separate occasions within a two-week period.

The final witness was Chicago police officer James Hanley, who testified that he met John Gacy in 1971 at a restaurant where Gacy was working, and that Gacy could have heard his name in conversation. Gacy had confessed that he picked up many of his victims in an area frequented by homosexuals while portraying himself as a police officer called Jack Hanley. The implication of the police officer's testimony was that Gacy simply had used the officer's name as a disguise, so if any of his victims had checked with police, they would have learned that there was indeed an Officer Hanley.<sup>465</sup> When the State rested, the jury had heard a total of 101 witnesses, 79 for the prosecution and 22 for the defense.<sup>466</sup>

### C. *Closing Arguments*

In its closing arguments, the defense asked the jurors to put aside anger and hatred, and not to find Gacy guilty on the basis of hysteria.<sup>467</sup> The defense recounted examples of Gacy's erratic conduct to support their contention that he acted like a man with a mental disease. It was argued that Gacy's actions, including inviting a policeman into his house, were not the actions of a sane man. The defense maintained that Gacy "had the drive of a madman. He was driven by perverted obsessions and compulsions he could not control." It was observed that Gacy "tried to consume all of his time. He knew there was a raging disease inside his mind." The defense attacked the prosecution's expert witnesses, labeling them "mechanics for the state." It was argued that these psychiatrists "have no business making moral judgments. Only God can judge this man's blackened soul."

Defense counsel characterized Gacy as "a 'madman' who had been reaching out, saying 'Stop me before I kill again.' " Gacy "tried so hard when he was a little kid. He tried so hard to be good" yet "he was caged in his own flesh. He was eaten up by this raging illness." Counsel argued that a man "does not have to look like a bulging-eyed monster to be insane . . . . Mr. Gacy is not an evil man. He has done some evil things."

Counsel appealed to the jury to save his client's life urging them not to "decide this case with revenge, passion, or fear. Commit yourself to your laws." Counsel implored the jury to find a verdict of not guilty by reason of insanity so that Gacy could be studied. Counsel pleaded, "take the first step to have him studied, to try to prevent something like this from happening again." Then counsel concluded by reading a passage from Robert Louis Stevenson's "Dr. Jekyll and Mr. Hyde," about the compulsively evil Hyde, about how Hyde, could not distinguish between right and wrong. Counsel ended his argument by quoting from the story: "If I am the chief of sinners, then I am also the chief of sufferers."

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<sup>465</sup> See P. Galloway, *Gacy Case Heading for Jury*, Chicago Sun-Times, March 11, 1980, sec. 1, p. 3, col. 2. See also *KILLER CLOWN* at 327.

<sup>466</sup> See J. Fritsch, *Cop Rebuts Gacy Split Personality*, Chicago Tribune, March 11, 1980, sec. 2, p. 1, col. 5.

<sup>467</sup> See R. Simon, *Jekyll-Hyde Tie In: A Final Gamble by Gacy's Side*, Chicago Sun-Times, March 12, 1980, sec. 1, p. 4, col. 3.

The theme of the prosecution's closing argument was that Gacy was evil, not insane. The prosecution attacked the use of the insanity defense. One of the prosecutors told the jury: "I'm not going to stand here and tell you John Gacy is normal . . . . We consider him abnormal . . . but because he is abnormal doesn't mean he doesn't know the difference between right and wrong . . . . There is quite a difference between being abnormal and legally insane." He went on to suggest that anyone who kills is abnormal but the very manner of Gacy's killings established that he was not insane but a premeditated murderer; the prosecutor maintained that "These killings were planned. They were calculated and then they were covered up. Seldom, if ever, has anything been so cold, so calculating, so cunning over such a long period of time as John Gacy." Gacy had chosen to engage in homosexual activity, then he killed his sex partners when he feared they might inform police; he killed "to escape detection." The jury was reminded of Gacy's sodomy conviction, and the fact that Gacy had vowed to a friend at the time of his release that he "would never go to prison again." The prosecution concluded that Gacy's use of the insanity defense was a "fraud," "a defense of convenience" which Gacy concocted and laid the foundation for with his statements to police about his other self known as "Jack."

The prosecutor continued by describing Gacy as an "evil" man; he called Gacy "evil, vile, base, mean, and diabolical." He turned to the defendant and exclaimed: "John Gacy, you are the worst of all murderers because your victims were the young, the naive, the unassuming;" he went on to say accusingly: "you have pilfered the most precious thing parents can give—human life." As to Gacy, the prosecutor observed: "A rat is a rat is a rat. He was and he is and he hasn't changed." Another thrust of the prosecution's argument was a call for retribution for Gacy's victims. The prosecutor placed photographs of each of the twenty-two identified victims on a large display board which he called the "gallery of grief." The prosecutor pointed to each photo and said: "This was murder! This was murder! Murder!" The prosecutor concluded by urging the jury: "Justice implores you to find John Gacy guilty of murder. Murder in the worst degree."

In a rebuttal closing argument a second prosecutor argued that Gacy was responsible for his crimes; he argued that "There is no evidence to support insanity in this defendant at the time of the crime, other than the crimes themselves." The prosecutor argued that Gacy consciously chose to be a homosexual, consciously chose his victims, consciously decided to kill, consciously disposed of the bodies to escape detection. Counsel maintained that a person who functioned as well as Gacy in everyday life could not have the severe mental disease which defense psychiatrists ascribed to Gacy.

The prosecutor criticized the defense experts for failing to provide any causal explanation of Gacy's killings except a general invocation of determinist psychoanalytic theory. The prosecutor said: "When you turn that around, what it really means is that no one is responsible for his actions. We can't run society that way." He accused defense witnesses of "stringing together paragraphs and sentences and long words." He dismissed testimony about blackouts and epileptic

seizures as "nothing but a smokescreen." He observed to the jury: "Can you picture the defendant in an epileptic seizure writhing around on the floor tying the three knots in the rope?"

The prosecutor then addressed the defense's reference to the Jekyll and Hyde metaphor and to the plea for sympathy for Gacy. The prosecutor called to the jury's attention how Dr. Jekyll grew to enjoy taking the potion that turned him into Mr. Hyde, giving him "the power of playing God, the power of deciding who will live and who will die." Similarly, the prosecutor said, Gacy sought the ultimate power of life or death: "He could torture victims to within seconds of their death and still maintain that Godlike power to let them live."

Again, the prosecutor urged the jury not to express sympathy for Gacy, but concern for his victims. As he removed the photographs of Gacy's victims from the large display board, he urged: "We are not asking you to show sympathy. No matter what you do you can't bring back these lives." He pleaded with the jury: "Don't show sympathy! Show justice! Show the same sympathy and pity this man showed when he took these lives and put them there!" With that, the prosecutor tossed the photographs onto the trap door of the crawl space that had been introduced into evidence by the prosecution.<sup>468</sup>

#### D. *The Verdict and Post-Conviction Hearing*

The jury deliberated for one hour and fifty minutes.<sup>469</sup> John Gacy was found guilty on thirty-three counts of murder, one count of deviate sexual assault, and one count of indecent liberties.

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<sup>468</sup> See J. Fritsch, *Convicted of All 33 Murders*, Chicago Tribune, March 13, 1980, sec. 1, p. 1, col. 4, providing an account of this dramatic gesture which concluded the trial of John Gacy: The five-week trial ended Wednesday with a dramatic flourish when Kunkle [the chief prosecutor] in his final argument, flung the photographs of the 22 identified victims into the hatch to the crawlspace, which had been placed on the courtroom floor about 6 feet from the jury-box.

"Don't show sympathy. Don't show pity," Kunkle thundered. "Show justice. Show the same sympathy and pity this man showed when he took those lives and put them there."

Kunkle then stunned the hushed courtroom when he threw the picture into the hatch and they resounded with a thud.

"You didn't have the power to change the fact," the prosecutor said. "But you can control the future of this villain."

"You can do justice for the people of the State of Illinois. You represent the people of the State of Illinois. If you allow this evil man to walk the earth, then God help us all."

<sup>469</sup> An account of the jury's deliberations was provided by one juror and reported in P. Galloway, *Gacy: No Hard Feelings Toward Prosecutors*; Chicago Sun-Times, March 16, 1980, sec. 1, p. 34, col. 1:

"After we retired to deliberate," Charles E. Hanson said, "we elected our foreman, and we took a vote. It was unanimous for conviction. Then we had to sign those 35 verdict forms." Each juror signed each form, a total of 420 signatures.

"That took us quite a while," Hansen said. "We talked about the insanity defense then, while we were signing. Nobody felt he was insane."

Hansen is supervisor of data processing for the Woodward Governor Co. in Rockford,

On the day following the jury's verdicts the court proceeded to hold a death penalty hearing as required under Illinois law.<sup>470</sup> The hearing, over the objection of the defense, was presented to the same jury which had made the guilty determination. The prosecution requested the death sentence in the cases of twelve of the murders which occurred since the present Illinois capital punishment statute went into effect.<sup>471</sup> After opening statements, the prosecution and defense advised

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where the jury was selected. On Friday, he talked about his impressions during the 31 days of the trial.

I think Gacy's main problem was his homosexuality. We didn't think he had a mental disease, which you need to be insane. I thought he was a big con man, really," Hansen said.

This was a description repeatedly used by the prosecution in opposing the defense's insanity position.

"He organized his life too well. I thought it was obvious he had control of himself and his life. If he was insane, it should show up in some part of his life besides the killings. You should be able to see it. But it wasn't ever apparent he had a mental disease."

"And the accuracy of that drawing he made in the Des Plaines police station impressed me."

The crude diagram Gacy drew for police after his arrest of the locations of the bodies under the crawl space of his house was close to being exact.

Hansen said that the first week of the trial, when the grieving families of the victims took the witness stand, was the most unsettling for him. Many of the mothers wept, and one collapsed.

Hansen said the jury members got so they could pick out members of the victims' families who regularly attended the trial.

Hansen was asked what effect some moments in the closing arguments had. One of them came when Assistant State's Attorney Terry Sullivan pointed at Gacy and called him a "predator." Gacy laughed.

Another was when Kunkle removed the photographs of the 22 known victims from a large exhibit. He told the jury to have the same "sympathy and pity" for Gacy that he had for the victims. Then he tossed the photos into the crawl space hatch, which was on the courtroom floor as an exhibit.

"The dramatic stuff didn't do much for me," Hansen said. "And when Gacy laughed, I think it affected the players more than us. It amused me. It's like they're playing a role."

The jury took only one hour and 50 minutes to find Gacy guilty. . . .

<sup>470</sup> ILL. ANN. STAT. ch. 38 § 9-1(d) (Smith-Hurd 1979) provides in part: where requested by the State, the court shall conduct a separate sentencing proceeding to determine the existence of factors set forth in Subsection (b) [Aggravating Factors Necessary For Sentence of Death] and to consider any aggravating or mitigating factors as indicated in Subsection (c). The proceeding shall be conducted:

1. before the jury that determines the defendant's guilt; or
  2. before a jury impanelled for the purpose of the proceeding if:
    - A. the defendant was convicted upon a plea of guilty; or
    - B. the defendant was convicted after a trial before the court sitting without a jury; or
    - C. the court for good cause shown discharges the jury that determined the defendant's guilt; or
  3. before the court alone if the defendant waives a jury for the separate proceeding.
- <sup>471</sup> See ILL. ANN. STAT. CH. 38 § 9-1(b)(3) (Smith-Hurd 1979) which provides in part: A defendant who at the time of the commission of the offense has attained the age of 18 or more and who has been found guilty of murder may be sentenced to death if:

- (3). the defendant has been convicted of murdering two or more individuals . . . regardless



the jury that there were broad stipulations entered into between the parties including that: "All of the evidence, all of the physical evidence, all of the testimony, all of the evidence that you heard during the course of the trial would be admitted or stipulated to by the parties for your use in this hearing in reaching your determination. It will be stipulated that you may consider all of that evidence as though it has been presented here again over for your consideration." Both the prosecution and defense then rested.

In its argument, the defense urged the jury to reject the death penalty on the basis of the sole mitigating factor that the murders were "committed while the defendant was under the influence of extreme mental or emotional disturbance, although not such as to constitute a defense to prosecution." The closing argument of the defense had three principal themes. First, counsel urged that it would be legally and morally wrong to execute a sick man. Second, to execute Gacy would be to engage in an act of mere revenge. And third, Gacy's life should be spared so that he could be an object of scientific study in order that future similar crimes might be prevented. The prosecution's closing argument carried two dominant themes. First, that a prison sentence would not be an adequate punishment for Gacy's acts of murder, rape and torture. Second, that if Gacy were sentenced to imprisonment for life, he would have an opportunity to repeat his crimes. The jury decided in two hours and ten minutes to impose the death sentence. Following the death penalty hearing, the trial judge sentenced John Gacy to natural life in prison for each of the remaining twenty-one counts of murder.

#### VI. EXPERT TESTIMONY IN THE GACY APPEAL

Although the primary focus of this Article has been on the insanity defense as it operates in the trial context, several issues raised by Gacy in the appeal of his conviction and sentence can be profitably explored herein because they directly impacted on the trial process. These issues had a direct bearing on the trial testimony of the expert witnesses in that they constrained or broadened the scope and areas that the expert witnesses could cover in their testimony. These issues, their effects and legal justifications will be addressed in this section. The specific focus of this section will be limited to issues raised concerning expert testimony and psychiatric matters in the context of the Gacy case.

Under an Illinois constitutional provision, a defendant sentenced to death has the right of automatic appeal to the Illinois Supreme Court.<sup>472</sup> Gacy's appeal raised numerous issues concerning trial court errors which will not be addressed in this Article. The appeal is presently pending.

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of whether the deaths occurred as the result of the same act or of several related or unrelated acts so long as the deaths were the result of either an intent to kill more than one person or of separate premeditated acts. . . .

<sup>472</sup> ILL. CONST. art. 6, § 4(b).

The first issue to be discussed will be the propriety and effect of the trial court's order that allowed the prosecution psychiatric expert witnesses to recount statements made to them by Gacy during examinations, while denying the privilege to defense experts. The second issue regards the propriety and legal effect of permitting a state psychiatrist to testify about the dispositional alternatives and procedures if Gacy were to be found not guilty by reason of insanity. The third issue to be addressed in this section of the Article concerns the testimony by expert witnesses as to Gacy's fitness to stand trial. The final issue considered involves the failure of defense counsel to present psychiatric evidence to establish mental disorder as a mitigating factor at the death penalty hearing.

#### A. *Recounting the Statements Made by Gacy to Expert Witnesses*

##### 1. Appellant's Argument

Gacy asserted three alternative arguments regarding the expert testimony at his trial: 1) that he was denied due process of law, his right against self-incrimination, and his right to present a defense, because the experts who testified for the State were permitted to recount in their testimony the statements made to them by the defendant, while the experts who testified for the defense were forbidden from referring to or recounting such statements; 2) that he was denied his fifth amendment right against self-incrimination when his statements to State experts were disclosed to the jury; and 3) that he was denied his rights to be free from self-incrimination and to due process of law because of the failure of the trial judge to instruct the jurors that the statements made to the expert witnesses by him could only be considered with reference to his mental condition. These three arguments are premised upon the same contention regarding the unfairness towards the defendant of allowing only the State's experts to testify regarding the basis for their conclusions from the statements of this defendant. Therefore, they will be treated together.

At trial the judge ruled that expert witnesses testifying for the State would be allowed to recount statements made to them by John Gacy, while the defense expert witness were not permitted to testify regarding such statements.<sup>473</sup> Gacy asserted that this "astonishing ruling violated every notion of fundamental fairness in trial practice."<sup>474</sup> He argued that this ruling deprived him of his rights to due process of law, to be free from self-incrimination, and to present a defense, as guaranteed by the fifth, sixth and fourteenth amendments to the Constitution.

The judge based his ruling on the premise that the statements made to the defense expert witnesses were "self-serving."<sup>475</sup> According to Gacy, however, any evidence which a defendant seeks to introduce on his behalf is, by definition, "self-

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<sup>473</sup> Record at 690-92, 2603-04, 2610-12, 2618-27, 2641-43, 1662-63, 2731, 3055, 3062, 3064-65, 3083, 3096, 3105, 3310-11, 3328, 3346-67, 3348, 3363, 3364, 3368-70, 3435-38, 3572-73, 4820.

<sup>474</sup> Brief for Defendant-Appellant at 134.

<sup>475</sup> *Id.*

servicing." Thus, Gacy asserted that "merely saying that something is self-serving . . . is stating the obvious, and the exclusion of evidence must therefore have some more substantial basis than this."<sup>476</sup> In addition, Gacy contended that statements made by him to the prosecution's experts were just as likely to be self-serving as those made to the defense experts. As such, if the statements made to the defense experts are to be excluded, so also should the statements made to the prosecution experts.

Gacy further contended that permitting the State experts to use the defendant's statements while forbidding the defense to do so "put the defense at a disadvantage,"<sup>477</sup> since the credibility of the prosecution experts was enhanced because they were able to testify regarding the basis for their diagnosis.<sup>478</sup> Gacy cited a series of decisions supporting his contention that there was a need to allow defense expert witnesses to testify regarding the underpinnings of their medical conclusions. For example, in *United States v. Albright*,<sup>479</sup> the Fourth Circuit Court of Appeals stated that "if resort to medical opinion is to be had, and, indeed it is to be encouraged, the law would lack common sense if it diminished the usefulness of medical opinion by erecting obstructions to its completeness and certainty."<sup>480</sup> Gacy contended that not allowing defense psychiatrists to testify regarding his statements to them constituted such an obstruction.

Next Gacy maintained that in addition to placing the defendant at a disadvantage, the double standard implied in the judge's ruling, infringed upon the defendant's fifth amendment rights against self-incrimination.<sup>481</sup> Gacy asserted that the fifth amendment rights require that a "fair-balance" ought to be maintained between the rule allowing the defense to introduce psychiatric medical testimony and the requirement that the defendant submit for examination by the prosecution expert witnesses. If the State is the only party allowed to use the defendant's statements there is no balance, and the fifth amendment is implicated "in the same way that it is where only the State examines the defendant."<sup>482</sup> Moreover, the defendant claimed that his fifth amendment right against self-incrimination was violated when

<sup>476</sup> *Id.*

<sup>477</sup> *Id.* at 135.

<sup>478</sup> *Id.*

<sup>479</sup> 388 F.2d 719 (4th Cir. 1968).

<sup>480</sup> 388 F.2d at 726 n.9.

<sup>481</sup> Brief for Defendant-Appellant at 137. See *Estelle v. Smith*, 451 U.S. 454 (1981).

<sup>482</sup> Brief for Defendant-Appellant at 137-38. See *United States v. Baird*, 414 F.2d 700 (2d Cir. 1969) where the court held that allowing a prosecution psychiatrist to testify about statements made to him by the defendant was permissible and not a Fifth Amendment violation because the defendant's psychiatrists had also been permitted to testify about statements made to them by the defendant; *State v. Whitton*, 45 N.J. 3, 210 A.2d 763 (1965), where the Supreme Court of New Jersey asserted that there was no bar to a defense psychiatrist recounting statements of the defendant, and since defense psychiatrists could do so, state psychiatrists could do likewise without violating the Fifth Amendment. *Id.* at 219, 210 A.2d at 772.

the jury was allowed to hear repeated references regarding inculpatory statements made by him to State psychiatric experts.<sup>483</sup>

Next, Gacy argued that his right against self-incrimination was violated because he was not warned of his fifth amendment rights, nor of the uses to which his statements might be put, prior to his being examined by State experts.<sup>484</sup> The use of statements made by the defendant to a psychiatric expert witness are limited by Illinois statute to the issue of insanity.<sup>485</sup> Any use of such statements for purposes other than the issue of mental illness, according to Gacy is violative of the defendant's constitutional rights.<sup>486</sup>

Gacy asserted that in this case the jurors were not informed regarding the proper use and consideration of the defendant's statements as indicative solely of mental condition. Even if the jury had been so informed, Gacy contended that such an instruction would have been ineffective in this case since the jurors heard only damaging inculpatory statements, and it was unrealistic to expect the jury to disregard the statements or to believe that the jury would limit its use of these statements solely to the issue of insanity.<sup>487</sup>

Alternatively, Gacy argued that the failure to give a limiting instruction to the jury regarding the use of statements made by him to psychiatric experts strictly for the assessment of the defendant's mental condition, was a violation of his fifth and fourteenth amendment rights.<sup>488</sup> The defendant asserted that this omission was even more damaging at the sentencing phase than at the trial itself, since the jurors were told that they could use the evidence introduced at trial in its totality to decide on the appropriate sentence.<sup>489</sup>

At the sentencing hearing, the jurors may have considered the incriminating statements for answering questions such as: 1) whether Gacy would be dangerous in the future; 2) whether he faked insanity; 3) whether he was generally of "low moral character;" 4) whether he was callous and did not show any remorse; 5) whether he was a liar; 6) whether he had committed other criminal acts in addition to the ones with which he was charged.<sup>490</sup> If indeed the jury did use the information provided from the statements Gacy made to State expert psychiatrists for purposes other than the assessment of the defendant's mental state, Gacy claims his constitutional rights were violated.<sup>491</sup>

<sup>483</sup> Brief for Defendant-Appellant at 138.

<sup>484</sup> *Id.* at 139.

<sup>485</sup> *Id.* See ILL. ANN. STAT. ch. 38, §§ 115-16 (Smith-Hurd 1979).

<sup>486</sup> Brief for Defendant-Appellant at 140. See *United States v. Alvarez*, 519 F.2d 1036 (3rd Cir. 1975); *State v. McGauthan*, 617 S.W.2d 554 (Mo. Ct. App. 1981).

<sup>487</sup> Brief for Defendant-Appellant at 140.

<sup>488</sup> *Id.* at 142.

<sup>489</sup> *Id.* at 143.

<sup>490</sup> *Id.*

<sup>491</sup> *Id.* at 144. See *People v. Ehler*, 114 Ill. App. 2d 171, 252 N.E.2d 227 (1969) where the appeals

## 2. Appellee's Arguments

The State asserted that, contrary to Gacy's contention, the prosecution expert witnesses testified to very few statements made by Gacy and that overall this testimony did not contain inculpatory information.<sup>492</sup> As confirmation of this assertion, the State pointed to the fact that Gacy did not mention anywhere in his brief any of his statements that appeared in the testimony of the prosecution experts which in any way prejudiced him.<sup>493</sup> Furthermore, the prosecution contended that since the only real issue at Gacy's trial was the issue of his insanity, the jury could not have used the information it obtained from the State experts' testimony for any other purpose other than the assessment of Gacy's mental condition.<sup>494</sup> Similarly, at sentencing, the State contended that the only contested mitigating factor was his alleged extreme emotional disturbance. Since mitigation based on extreme emotional disturbance is similar to the defense of insanity, the jury would have used the experts' testimony for the purpose of assessing the defendant's mental condition, and thus be in compliance with the Illinois statute and with constitutional principles.<sup>495</sup>

The State contended that the trial judge's ruling that the defense psychiatrists would not be allowed to testify regarding the statements made to them by Gacy was supported by Illinois law.<sup>496</sup> According to the prosecution, "any order admitting statements by Gacy to defense psychiatrists would have violated well established principles of Illinois law."<sup>497</sup> In general, statements by a patient to a treating physician are admissible under an exception to the hearsay rule, but statements to a physician examining the patient solely for the purpose of testifying at trial are not.<sup>498</sup> This principle has also been applied to psychiatric testimony presented by examining psychiatrists in cases where the defendant has asserted the insanity defense.<sup>499</sup> The State cited *People v. Hester*<sup>500</sup> as illustrative of this point. In that case the Supreme Court of Illinois stated:

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court stated that "incriminating statements . . . [made to a state psychiatrist and contained in his report] should not be given to the jury beyond those clearly necessary to show mental conditions, and the jury should then be advised that the statements are not submitted for their truth, and the issue of guilt." *Id.* at 177, 252 N.E.2d at 232.

<sup>492</sup> Brief for Plaintiff-Appellee at 128.

<sup>493</sup> *Id.* at 130.

<sup>494</sup> *Id.* at 130.

<sup>495</sup> *Id.* at 131.

<sup>496</sup> Brief for Plaintiff-Appellee at 131. See *People v. Noble*, 42 Ill. 2d 425, 248 N.E.2d 96 (1969); *People v. Hester*, 39 Ill. 2d 489, 237 N.E.2d 466 (1969).

<sup>497</sup> Brief for Plaintiff-Appellee at 131.

<sup>498</sup> *Id.* at 132. See *Dickson v. Baltimore and Ohio Chicago Terminal R.R. Co.* 42 Ill. 2d 103, 245 N.E.2d 762 (1969); *Jensen v. Elgin, Joliet and Eastern Railway Co.*, 24 Ill. 2d 383, 182 N.E.2d 211 (1962).

<sup>499</sup> Brief for Plaintiff-Appellee at 132.

<sup>500</sup> 39 Ill. 2d 489, 237 N.E.2d 466 (1968).

The reason for the court's refusal to allow [the psychiatrist's] opinion on [the defendant's] suggestibility was that the psychiatrist was not a "treating" physician but rather an examining doctor secured solely for the purpose of giving testimony on the defendant's behalf at the forthcoming trial. . . . It is our rule that a doctor who examines a patient merely for the purpose of qualifying as a witness ordinarily may not testify as to his medical opinion based on subjective symptoms described by the patient because of the absence of his relationship of the normal trustworthiness accompanying symptomatic descriptions by a patient to a treating physician.<sup>501</sup>

The State concluded that this "was a particularly appropriate case in which to exclude statements made by the defendant to his own examining psychiatrists,"<sup>502</sup> since Gacy was a highly intelligent and manipulative person who could have statements favorable to him introduced into evidence via the defense psychiatrists' testimony.

According to the State, the record did not support Gacy's contention that the prosecution expert witnesses were allowed to quote statements made by Gacy to them, while defense psychiatrists were not.<sup>503</sup> Thus, the State insisted, the trial judge's order could not have given the State an advantage. The State claimed that overall, the expert witnesses on both sides refrained from testifying concerning statements made to them by Gacy. The prosecution asserted that on the few occasions the experts testified regarding the defendant's statements, the defense experts quoted him more often than the prosecution witnesses.<sup>504</sup>

The State asserted that Gacy's fifth amendment rights were not violated since: 1) the issue was waived because Gacy did not object at trial on fifth amendment grounds; 2) the issue was moot because the prosecution expert witnesses did not testify on direct examination to statements made by the defendant regarding his crime; and 3) the overwhelming weight of authority indicates that when a defendant asserts an insanity defense and supports it with expert witnesses he waives his fifth amendment right to object to the admission of his statements to the prosecution's experts.<sup>505</sup>

The State argued that it was well established that when the insanity defense is raised, the defendant may be required to submit to psychiatric examination by State psychiatrists who may testify at trial regarding those examinations.<sup>506</sup> This is the governing principle in most federal courts<sup>507</sup> and in Illinois, where this rule

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<sup>501</sup> *Id.* at 509-10, 237 N.E.2d at 479.

<sup>502</sup> Brief for Plaintiff-Appellee at 133.

<sup>503</sup> *Id.* at 135.

<sup>504</sup> *Id.*

<sup>505</sup> *Id.* at 137. See *People v. Hicks*, 44 Ill. 2d 550, 256 N.E.2d 823 (1970); *People v. Burkman*, 33 Ill. 2d 150, 210 N.E.2d 537 (1965).

<sup>506</sup> Brief for Plaintiff-Appellee at 138.

<sup>507</sup> *Id.* See *United States v. Reason*, 549 F.2d (4th Cir. 1977); *United States v. Cohen*, 530 F.2d 43 (5th Cir. 1976); *United States v. Greene*, 497 F.2d 1068 (7th Cir. 1974). The following statement

has been codified<sup>508</sup> and interpreted by several court decisions.<sup>509</sup> The Illinois statute provides that a defendant does not have to submit to court-ordered examination, but if he refuses to do so, he may be precluded from introducing the testimony of his own psychiatric witnesses. The statute further provides that statements made during a court-ordered examination are to be used only for the limited purpose of ascertaining the defendant's mental status, and not as evidence that the defendant had committed the crime. According to the State, this statute "fully protects a defendant's fifth amendment rights, since when an insanity defense is raised, the fifth amendment does not prevent a court from ordering a psychiatric examination or prevent the examining psychiatrists from testifying about their interviews with the defendant."<sup>510</sup> This concept finds support in *People v. Krauser*<sup>511</sup> where the Supreme Court of Illinois held that "where the defense imposed is insanity, evidence of the facts disclosed at a physical and mental examination of accused by physicians . . . does not vitiate the constitutional privilege of accused not to be a witness against himself."<sup>512</sup>

The State contended that Gacy's claim that his fifth amendment rights were violated by the admission of psychiatric evidence at the sentencing hearing was waived since Gacy never objected on any grounds to the introduction of particular evidence at the hearing.<sup>513</sup> The State pointed out that not only did the defendant not object to the admission of this evidence, but he stipulated to it.<sup>514</sup> Further the State maintained that the failure to object to this testimony cannot be considered either plain error or incompetence of counsel. The State's argument is that this procedure was a matter of tactics consistent with Gacy's contention that the psychiatric evidence was favorable to him as indicative of an impaired mental condition which was the defendant's main mitigating favor advanced at sentencing.<sup>515</sup>

The State next asserted that the psychiatric evidence was admissible at sentencing for the same reasons that rendered it admissible to trial. Since Gacy stipulated to the psychiatric evidence contained in the testimony of his experts, the prosecu-

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from *Pope v. United States*, 372 F.2d 710 (8th Cir. 1967) is illustrative of the position taken by Federal courts: "We therefore specifically hold that by raising the issue of insanity, by submitting to psychiatrist and psychological examination by his own examiners, and by presenting evidence as to mental incompetency . . . the defense raised that issue for all purposes and the government was appropriately granted leave to have the defendant examined by experts of his choice and to present their opinions in evidence." *Id.* at 720-24.

<sup>508</sup> ILL. ANN. STAT. ch. 38, §§ 115-16 (Smith-Hurd 1979).

<sup>509</sup> Brief for Plaintiff-Appellee at 139. See *People v. Williams*, 38 Ill. 2d 115, 230 N.E.2d 224 (1967); *People v. Carpenter*, 13 Ill. 2d 470, 150 N.E.2d 100 (1958); *People v. Krawser*, 315 Ill. 485, 146 N.E. 593 (1925).

<sup>510</sup> Brief for Plaintiff-Appellee at 139.

<sup>511</sup> 315 Ill. 485, 146 N.E. 593 (1925).

<sup>512</sup> *Id.* at 506, 146 N.E. at 603 (1925).

<sup>513</sup> Brief for Plaintiff-Appellee at 142.

<sup>514</sup> *Id.* at 143.

<sup>515</sup> *Id.*

tion was entitled to introduce the evidence presented by its experts.<sup>516</sup> The State further maintained that decisions from federal courts support the theory that a defendant may be required to submit to a psychiatric examination at sentencing and that the evidence thus obtained may be admitted for the limited purpose of ascertaining the defendant's mental condition.<sup>517</sup>

The State asserted that Gacy's reliance on *Estelle v. Smith*<sup>518</sup> was misplaced since in that case at the death penalty hearing the defendant did not rely on emotional or mental impairment as a mitigating factor. In *Estelle v. Smith* the United States Supreme Court vacated a death sentence on the grounds that Smith's attorney had not been given a report of the psychiatrist's examination and that the defendant had not been given required warnings prior to the examination nor informed that the examination could be used in the sentencing hearing. In *Smith*, the psychiatrist was called by the State to testify regarding the defendant's future potential for dangerousness, not on the issue of insanity or emotional disturbance. The United States Supreme Court in that case recognized that the result might be different where the defendant relies on psychiatric evidence to show insanity or emotional disturbance:

Nor was the interview analogous to a sanity examination occasioned by a defendant's plea of not guilty by reason of insanity at the time of the offense. When a defendant asserts the insanity defense and introduces supporting psychiatric testimony, his silence may deprive the State of the only effective means it has to controverting his proof of an issue that he had interjected into the case.<sup>519</sup>

The additional differences between Gacy's case and *Estelle v. Smith* are that in *Smith* the psychiatric examination was conducted without the knowledge and consent of the defense attorney and the defense objected to psychiatric testimony at the death penalty hearing.<sup>520</sup>

Finally, the State asserted that Gacy's failure to offer an instruction to the effect that his statements to psychiatrists could be considered only on the question of mental condition constituted a waiver of that issue.<sup>521</sup>

In summary, the State's argument was that: 1) the psychiatrists who testified for both sides generally refrained from recounting Gacy's statements to them; 2) Gacy was quoted more often by the defense experts than by the prosecution experts; 3) none of the statements presented into evidence by the State psychiatrists prejudiced Gacy either at trial or at the sentencing hearing; 4) there was no viola-

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<sup>516</sup> *Id.*

<sup>517</sup> *Id.* at 144. See *United States v. Jones*, 640 F.2d 284 (10th Cir. 1981); *Hallis v. Smith*, 571 F.2d 685 (2d Cir. 1978).

<sup>518</sup> 451 U.S. 454 (1981).

<sup>519</sup> 451 U.S. at 462.

<sup>520</sup> Brief for Plaintiff-Appellee at 145.

<sup>521</sup> *Id.* at 146.



tion of Gacy's fifth amendment rights in the admission of testimony regarding Gacy's statements to State psychiatric experts; and 5) since Gacy relied on expert psychiatric testimony regarding his impaired mental condition, the prosecution had the right to have the defendant examined by its own psychiatrists who are to testify to the results of such examinations.

### 3. Appellant's Reply

Gacy asserted that his objection to the judge's ruling allowing the prosecution experts to testify to Gacy's statements referred not only to their recounting to the jury incriminating statements, but also to the State experts being permitted to quote any of the defendant's statements in either their direct, cross or re-direct testimony.<sup>522</sup> Further, Gacy maintained that contrary to the State's contention, there were many of his comments testified to by the prosecution experts.<sup>523</sup> Gacy contended, on the other hand, that defense psychiatrists were consistently prevented from referring to the defendant's statements and as such this ruling had been "terribly prejudicial" to the defense.<sup>524</sup>

Gacy challenged the assertion that the judge's ruling was required by any Illinois law forbidding introduction of statements made to an examining physician, since the rule was not applied equally to both sides. Furthermore, the defense contended this rule had been modified by recent court decisions holding that experts may testify to opinions based on hearsay and may testify to that hearsay in defending their conclusions.<sup>525</sup> According to Gacy these cases give experts on both sides the prerogative of using the defendant's statements to substantiate their testimony.

Gacy argued that the claim that the law required his statements to defense psychiatrists be ruled inadmissible because they were hearsay and "self-serving" was refuted by the Illinois Appellate Court decision in *People v. Vanda*.<sup>526</sup> In this case the court held admissible such statements "where . . . they are offered to show defendant's mental state rather than the literal truth of the defendant's assertions."<sup>527</sup> Gacy pointed out that the court in *Vanda* had observed that "[w]e find the term 'self-serving' to be something of a misnomer because any evidence or testimony offered by any party to a lawsuit is logically and necessarily 'self-serving' to that party's case."<sup>528</sup> Gacy went on to argue that even though *Vanda* ruled that exclusion of evidence consisting of the defendant's letters in that case was harmless error, that in his own case the exclusion of his statements to defense psychiatrists was very prejudicial. The prejudice, it was argued, was a consequence of the enhanced credibility of the State experts compared to the defense psychiatrists.

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<sup>522</sup> Reply Brief for Defendant-Appellant at 49.

<sup>523</sup> *Id.* at 49, 52-57.

<sup>524</sup> *Id.* at 60.

<sup>525</sup> *Id.*

<sup>526</sup> 111 Ill. App. 3d 551, 444 N.E.2d 609 (1982).

<sup>527</sup> *Id.* at 556, 444 N.E.2d at 614.

<sup>528</sup> *Id.* at 557, 444 N.E.2d at 615-16.

Gacy also argued that he had not waived this objection even though his counsel had not cited the fifth amendment as a basis for his objection.<sup>529</sup>

Gacy restated his argument that even if the jury would have been given a limiting instruction regarding the use of the experts' testimony for the purpose of establishing mental health only, it would have been insufficient. The defense contended that the jurors would have likely ignored such a limiting instruction and therefore "the only solution to this problem [was] a ban on the recounting of defendant's statements by experts."<sup>530</sup>

*B. State Psychiatrist Permitted to Testify Regarding the Dispositional Provisions Afforded to Gacy after a Finding of Not Guilty by Reason of Insanity*

1. Appellant's Argument

Gacy asserted that he was denied a fair trial and due process when the jury heard the uncontested testimony presented by Dr. James Cavanaugh about the likely effect of an insanity acquittal in this case.<sup>531</sup> Dr. Cavanaugh, one of the State psychiatrists testified that it was "absolutely impossible" to guarantee that a person who was found not guilty by reason of insanity and then civilly committed to a mental hospital would remain there permanently.<sup>532</sup> Gacy contended that contrary to the court's charge, the defense did not waive this issue because Mr. Amirente, one of Gacy's attorneys objected to the prosecution's question, while Mr. Motta, Gacy's other attorney, objected to the psychiatrist's answer.<sup>533</sup>

It was argued that the impact of Dr. Cavanaugh's testimony was exacerbated when on cross-examination the defense attorneys were hampered in determining the basis for the psychiatrist's opinion. Dr. Cavanaugh's most startling comment was that "if [Gacy] was found not guilty by reason of insanity, he would not meet the State's involuntary commitment standards (and therefore) if the law were followed . . . he would have to be released."<sup>534</sup> When the defense attorneys tried to pursue the basis for the psychiatrist's opinion, the court sustained the prosecution's objection, and thus this testimony was left untested by cross-examination.

Gacy maintained that this "uneven handed application of evidentiary rulings" denied him a fair trial and due process since the jury was in effect told that if Gacy were to be found insane, there were no guarantees that he would be permanently committed, while the defense was prevented from inquiring as to the basis of this contention.<sup>535</sup> Even though the judge commented that this line of discussion

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<sup>529</sup> Reply Brief for Plaintiff-Appellee at 62.

<sup>530</sup> *Id.* at 63.

<sup>531</sup> Brief for Defendant-Appellant at 146.

<sup>532</sup> *Id.*

<sup>533</sup> Record at 494.

<sup>534</sup> Record at 4705.

<sup>535</sup> Brief for Defendant-Appellant at 148.

“was not very helpful,” the jurors were in effect invited to speculate about the defendant’s fate.<sup>536</sup>

Although the court attempted to redress the situation with an instruction to the jury which read: “I instruct you to disregard any comment by any attorney or testimony by any witness regarding what would happen to this defendant should you return a verdict of not guilty by reason of insanity,”<sup>537</sup> Gacy maintained that the jury was left with the overwhelming fear that Gacy might soon be free to roam the streets if acquitted.

## 2. Appellee’s Argument

The State asserted that Dr. Cavanaugh’s testimony was properly allowed to stand on the following grounds: 1) it merely informed the jurors of what they already knew and what they had been specifically told during jury selection; 2) the testimony was invited by Gacy’s opening statement; 3) any prejudice was cured by the trial court’s instruction to the jury to disregard the matter.<sup>538</sup>

The State maintained that most lay persons know that persons civilly committed are likely eventually to be released. Furthermore, the jurors in this case, at the request of the defense, were informed during the voir dire process that if Gacy were acquitted on grounds of insanity he would be subject to a commitment hearing, and that, even if he was confined to the Department of Mental Health, he could be released in the future.<sup>539</sup> Thus, the State asserted that the jurors were not given new information by Dr. Cavanaugh’s testimony.

The State maintained that Gacy opened the door to the dispositional discussion when the defense attorneys told the jury during the opening statement that “this man belongs in a hospital for the rest of his life.”<sup>540</sup> According to the prosecution, such an assertion was misleading, in that it may have given the jurors an impression that the judge could order Gacy’s indefinite commitment. Accordingly, the State contended that it was proper for the prosecution to produce evidence that there are no guarantees that a person found not guilty by reason of insanity and committed to an institution will remain in that institution for the rest of his life. Next, the State asserted that even if the testimony of the State psychiatrist was in any way prejudicial the error or prejudice was cured by the judge’s instruction to the jury to disregard the entire subject.<sup>541</sup>

The State denied Gacy’s contention that his attorneys were not allowed to properly cross-examine Dr. Cavanaugh; it was asserted that their proposed cross-

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<sup>536</sup> *Id.* at 149, 152.

<sup>537</sup> Record at 4719.

<sup>538</sup> Brief for Plaintiff-Appellee at 148.

<sup>539</sup> Record at 691.

<sup>540</sup> Record at 78.

<sup>541</sup> Brief for Plaintiff-Appellee at 149. *See* *People v. Williams* 66 Ill. 2d 478, 363 N.E.2d 801 (1977); *People v. Youder*, 44 Ill. 2d 373, 256 N.E.321 (1969).

examination was outside the scope of direct and "amounted to an attempt to instruct the jury on the law of involuntary commitment."<sup>542</sup> The State maintained that on direct examination it had not explicitly inquired into the implications of Gacy's being remanded to the custody of the Department of Mental Health if acquitted, but had only addressed the general question of the possibility of life-long commitment to a mental institution. Therefore, the State contended, the specific question of whether Gacy met the Illinois standard for civil commitment was outside the scope of the direct examination.<sup>543</sup> Further, the State maintained that defense attorneys' questioning was an attempt at impeachment on a collateral matter, and that defense counsel "had no right to get into an argument with Cavanaugh on a collateral matter."<sup>544</sup> In conclusion, the prosecution asserted that the People were properly allowed to correct the mistaken impression given by the defense during the opening statement.

### C. Testimony Regarding Gacy's Fitness for Trial

#### 1. Appellant's Argument

Gacy asserted that over the defense's repeated objections, the court allowed the psychiatric experts to testify that Gacy was fit to stand trial, and that this testimony was irrelevant and prejudicial.<sup>545</sup> The standards for fitness to stand trial and for sanity at the time of the offense are different.<sup>546</sup> In ascertaining whether a defendant is fit to stand trial the issue is whether the defendant is able to participate in his own defense and in general, function appropriately during the trial process. On the other hand, finding insanity entails that the defendant was not criminally responsible for the offense with which he was charged. A defendant may be suffering from a mental disease or defect and yet be found fit to stand trial.<sup>547</sup> Thus a finding of fitness to stand trial is not relevant to the issue of the defendant's sanity at the time of the offense. The issue at Gacy's trial was his mental state at the time of the crimes and not at the time of the trial. Therefore, whether he was found fit to stand trial was "irrelevant and immaterial" to the issue of sanity.<sup>548</sup> Gacy cited as support for his contention, section 4244, title 18 of the United States Code which expressly prohibits the introduction of such evidence.<sup>549</sup>

Further, Gacy contended that the credibility of defense psychiatrists was severely

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<sup>542</sup> Brief for Plaintiff-Appellee at 150-51.

<sup>543</sup> *Id.* at 151.

<sup>544</sup> *Id.* at 152.

<sup>545</sup> Brief for Defendant-Appellant at 153.

<sup>546</sup> *Id.* at 154. See *People v. Nichols*, 70 Ill. App. 3d 748, 388 N.E.2d 984 (1979).

<sup>547</sup> Brief for Defendant-Appellant at 155. See *People v. Murphy*, 72 Ill. 2d 421, 381 N.E.2d 677 (1978).

<sup>548</sup> Brief for Defendant-Appellant at 155. See *People v. Ward*, 19 Ill. App. 3d 833, 313 N.E.2d 314 (1974), *rev'd on other grounds* 61 Ill. 2d 559, 338 N.E.2d 171 (1975) where the appellate court held that the defense counsel's questioning of defendant regarding his mental condition at the time of trial was irrelevant to his insanity at the time of the offense. 19 Ill. App. 3d at 839, 313 N.E.2d at 320.

<sup>549</sup> 18 U.S.C. § 4244 (1982).

undermined because of the apparent inconsistency between a defense expert's testimony to the effect that Gacy was insane at the time of his crime, but fit to stand trial, while the prosecution psychiatrists testified that he was both sane at the time of the crimes and fit to stand trial.<sup>550</sup> According to the defendant, the jury might have been more inclined to give greater weight to the evidence presented by the State experts because of the apparent consistency present in their testimony. Therefore the admission of testimony regarding Gacy's fitness to stand trial was prejudicial and deprived him of a fair trial.<sup>551</sup>

## 2. Appellee's Argument

The State maintained that the psychiatric testimony regarding Gacy's fitness for trial was properly admitted because in the context of this case it had probative value and had no prejudicial impact on the defense.<sup>552</sup> According to the prosecution, the testimony that Gacy was found fit to stand trial was probative because it showed (1) the circumstances under which the psychiatrists had first examined and evaluated Gacy and therefore what methodology was used; and (2) the defendant's ability to understand the nature of the charges against him which was relevant, though not dispositive, on the question of his ability to appreciate the criminality of his conduct.<sup>553</sup>

Moreover, the State asserted that the evidence regarding Gacy's fitness to stand trial did not prejudice him. Since all the psychiatric experts conceptually agreed that Gacy was fit to stand trial and that he was of superior intelligence and ability, specific questions regarding fitness did not prejudice the defense.

Furthermore, the prosecution contended that even though there is a great difference between the statutory definitions for fitness to stand trial and for insanity, a psychiatric determination that Gacy understood the nature of the proceedings against him and was able to participate in his defense gave an indication regarding the "workings of Gacy's mind" similar in importance to psychological test results.<sup>554</sup> Thus, according to the State, this testimony had probative value and was properly admitted unless it was outweighed by the prejudice it might have caused to the defense.<sup>555</sup> The State contended that Gacy was in no way prejudiced by the testimony regarding fitness since, even in its absence, the jury would have concluded from Gacy's actions and from the other evidence presented that he was completely aware of the proceedings against him and that he participated fully in his defense.

Further, the prosecution asserted that no Illinois statute, rule or precedent pro-

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<sup>550</sup> Brief for Defendant-Appellant at 156.

<sup>551</sup> *Id.*

<sup>552</sup> Brief for Plaintiff-Appellee at 153.

<sup>553</sup> *Id.*

<sup>554</sup> *Id.* at 154.

<sup>555</sup> *Id.* at 155. See *People v. Monroe*, 66 Ill. 2d 317, 362 N.E.2d 295 (1977); *People v. Lefler*, 38 Ill. 2d 216, 230 N.E.2d 827 (1967).

hibited questioning a psychiatric expert witness regarding his findings concerning the defendant's fitness to stand trial. Federal court decisions on this topic have held that the government may ask the psychiatrists relevant questions regarding their findings on the defendant's fitness.<sup>556</sup> The State maintained that Gacy misstated the effect of 18 U.S.C. section 4244 which, it was asserted, states only that the jury must not be informed of a prior judicial determination of competence to stand trial and does not prevent a psychiatrist from testifying regarding his examination of the defendant's fitness to stand trial. The same rule has also been adopted in Illinois.<sup>557</sup> Therefore, the State concluded that the psychiatrists' testimony regarding Gacy's competence to stand trial was properly admitted.

### 3. Appellant's Reply

Gacy denied the State's assertion that evidence of his fitness to stand trial was probative, and observed that the State cited no case authority supportive of its position that this evidence was relevant to the issue of the defendant's insanity. Furthermore, Gacy asserted that contrary to the State's contention that there is no Illinois precedent, "which forbids questioning of a psychiatrist at a sanity trial concerning his finding that the defendant is capable of understanding the charges and assisting in his own defense,"<sup>558</sup> such precedent can be found in the Illinois Appellate Court's decision in *People v. Ward*.<sup>559</sup> In *Ward* the court held that psychiatric testimony regarding a defendant's fitness to stand trial was immaterial to the question of sanity.<sup>560</sup> Gacy also cited the Illinois Supreme Court decision of *People v. Murphy*<sup>561</sup> for the proposition that it did not necessarily follow that one who is fit to stand trial is not suffering from a mental disease or defect.<sup>562</sup>

Gacy challenged the State's contention that this evidence was not prejudicial to him because the jury would have realized the defendant's intelligence and ability to help in his own defense regardless of the psychiatric evidence. Gacy maintained that the testimony regarding his fitness for trial was not equivalent to performance evidence indicative of his intellect since a finding of competence "has a ring of legal significance which would have been given greater weight by the jury than merely testimony that the defendant was intelligent."<sup>563</sup>

Further, Gacy asserted that the State's interpretation of federal court opinions

<sup>556</sup> Brief for Plaintiff-Appellee at 156. *See, e.g.* *United States v. Hoe*, 586 F.2d 1015 (4th Cir. 1978); *United States v. Fortune*, 513 F.2d 883 (5th Cir. 1975); *United States v. Harper*, 450 F.2d 1032 (5th Cir. 1971).

<sup>557</sup> Brief for Plaintiff-Appellee at 157. *See, e.g.*, *People v. Reck*, 392 Ill. 311, 64 N.E.2d 526 (1946); *People v. Bechtel*, 297 Ill. 312, 130 N.E. 728 (1921).

<sup>558</sup> Reply Brief for Defendant-Appellant at 66.

<sup>559</sup> 19 Ill. App. 3d 833, 313 N.E.2d 314 (1974), *rev'd on other grounds*, 61 Ill. 2d 559, 338 N.E.2d 171 (1975).

<sup>560</sup> 19 Ill. App. 3d at 838, 313 N.E.2d at 319.

<sup>561</sup> 72 Ill. 2d 421, 381 N.E.2d 677 (1979).

<sup>562</sup> *Id.* at 422, 381 N.E.2d at 678.

<sup>563</sup> Reply Brief for Defendant-Appellant at 67.

on this issue was incorrect. As an example he cited *United States v. Fortune*<sup>564</sup> in which the United States Court of Appeals for the Fifth Circuit stated: "We must . . . emphasize that trial courts should be vigilant in minimizing unnecessary reference to competency issues. References that are irrelevant and are elicited in bad faith may indeed have prejudicial effect on the defense's right to a fair trial on the issue of insanity."<sup>565</sup>

#### D. *Post-Trial and Death Penalty Hearing*

Gacy challenged the propriety of the imposition of the death penalty in his case principally on the ground of incompetent representation of counsel at the death penalty hearing.

##### 1. Appellant's Argument<sup>566</sup>

Gacy asserted that his death penalty hearing was perfunctory because the defense "virtually conceded the outcome of the death penalty hearing." Gacy argued that the sentencing hearing should have shifted the jury's attention from its finding that he was sane and guilty, to a determination of whether his life ought to be spared based on the statutory definition of the major mitigating factor that "the murder[s] [were] committed while the defendant was under the influence of extreme mental or emotional disturbance, although not such as to constitute a defense to prosecution."<sup>567</sup> Gacy contended that his attorneys completely abdicated their responsibility by not developing a theory of mitigation. In fact, no expert witnesses were called to support such a theory. According to Gacy, this omission was remarkable in view of the fact that virtually all the psychiatrists for both sides indicated that Gacy had committed the crimes because of some extreme form of mental or emotional disturbance although they were not specifically questioned on the issue.

Gacy asserted that counsel should not have entered into a stipulation which permitted the jury to consider all the testimony presented at trial rather than calling witnesses to specifically testify to the issue. None of the psychiatric experts had been specifically examined at trial regarding the issue of extreme mental or emotional disturbance. Gacy noted that his defense attorneys did not even direct the jury's attention to the specific passages in the expert testimony that supported the mitigation theory.

In addition to the mental health issue, Gacy further argued that there was additional mitigation evident which should have been presented. Such evidence would include Gacy's traumatic childhood experiences, his successful business career and his charitable and civic work. Additionally, Gacy asserted that defense counsel's

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<sup>564</sup> 513 F.2d 883 (5th Cir. 1975).

<sup>565</sup> *Id.* at 888-89. *See also* *United States v. Hoe*, 586 F.2d 1015 (4th Cir. 1978) (where the court upheld the admission of evidence of defendant's fitness for impeachment purposes).

<sup>566</sup> Brief for Defendant-Appellant.

<sup>567</sup> ILL. ANN. STAT. ch. 38 § 9-1(c)(2) (Smith-Hurd 1979).

incompetence was further evidenced in the fact that no jury instruction was tendered to enumerate the nonstatutory mitigating factors.

## 2. Appellee's Argument<sup>568</sup>

The State maintained that Gacy's contention of incompetence of counsel was intrinsically inconsistent in the context of his arguments on appeal. It was suggested that the major inconsistency in Gacy's argument involved his claim that defense attorneys because of incompetence had not introduced testimony at the death penalty hearing regarding mitigating factors, while in another argument, Gacy alleged that there was sufficient mitigating evidence presented to require that the court vacate Gacy's death penalty.

The State contended that every consideration that could have been presented in mitigation had been presented in mitigation had been presented to the jury since the trial testimony was admitted in its entirety at the sentencing hearing. The prosecution maintained that Gacy's attorneys acted properly when they decided not to recall defense psychiatrists because their testimony regarding Gacy's mental state had already been rejected by the jury. Furthermore, the state contended that contrary to the defendant's assertion prosecution expert witnesses did not testify that Gacy suffered from extreme mental or emotional disturbance, but rather from a personality or character disorder. The State argued that Gacy's lawyers were justified in concluding that their client would not have been helped by additional or repetitive psychiatric testimony.

In fact, the State contended that recounting the testimony presented by defense psychiatrists would be counterproductive. The jury deliberated only briefly, indicating that it gave little weight to the psychiatric evidence which had been introduced.

The prosecution argued that the failure to present evidence was not in itself conclusive proof of incompetence of counsel. Particularly, failure to present psychiatric evidence or to ask any particular questions of a psychiatrist does not, according to the State, demonstrate incompetence of counsel.

## 3. Appellant's Reply<sup>569</sup>

Gacy denied the State's contention that there was an inconsistency in his argument. Gacy again asserted that counsel was incompetent for not introducing mitigating evidence at the sentencing hearing. In the alternative, Gacy contended that there was enough mitigating evidence which could be inferred from the evidence presented at trial. The jury may not have been completely aware of it since it was not directly presented at the sentencing hearing. Gacy asserted that this deficiency could not have been cured by merely stipulating that everything presented at trial

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<sup>568</sup> Brief for Plaintiff-Appellee.

<sup>569</sup> Reply Brief for Defendant-Appellant.



was to be considered at sentencing. Such an approach would not have provided any guidance to the jury. Thus, Gacy argued, it was incumbent upon the defense attorneys to bring to the jury's attention what was meant by mitigating evidence.

Further, Gacy contended that the fact that the jury rejected defense psychiatrists' diagnoses regarding Gacy's impaired mental condition on the issue of insanity, did not mean that the jurors necessarily would have rejected the testimony concerning the extreme mental or emotional disturbance as a mitigating factor at the death penalty hearing. Further, Gacy argued that even though prosecution psychiatrists found Gacy sane they may have been willing to testify that he was suffering from extreme mental or emotional disturbance. The condition of extreme mental or emotional disturbance as described in the death penalty statute, need not amount to mental illness.

## VII. CONCLUSION

The trial of John Wayne Gacy on thirty-three counts of murder provides a unique opportunity to examine the nature and functioning of the insanity defense. Having confessed and assisted the police in locating and identifying his victims, Gacy was limited to a defense of insanity. Within the context of the case, both the principles and practical limits of the insanity defense emerge. The case clarifies the legal principle underlying the insanity defense. While no one involved in the case disputed the fact that Gacy suffered from a mental disorder, the trial makes clear that the insanity defense requires establishing mental disease or defect in the defendant which has the causal consequence that the defendant was unable to appreciate the criminality of his conduct or to conform to the requirements of law. All the principals in the trial accepted the need to show the presence of a psychotic condition and not merely a personality disorder or psychopathology. They conceded the limited exculpatory function of the defense which was treated as requiring some delusional condition or lack of understanding of the wrongful nature of his conduct on the part of Gacy.

Equally instructive is the opportunity to observe the limited acceptance of psychiatric insight and explanation as a relevant consideration in the legal proceeding. As Gacy's psychiatric profile indicates, he is a very complex and profoundly disturbed person. Nevertheless, psychiatric witnesses failed to produce a consensus in their view of the nature and the diagnosis of his disorder. Even more significant is the difficulty which these experts faced in translating their psychiatric insights into legal evidence. Perhaps the most disturbing feature of the case is the reported indifference of the jury to the complex psychiatric testimony presented in the case.

John Gacy, independent of the verdict in his trial, presents a challenge to the legal system. There is first the need to derive some insight from the case to provide improved police responsiveness not only to missing person reports, but also the complaints of victims who are members of an identifiable subculture or minority. Second, there is a need to develop criteria to identify and a means to deal with persons who manifest traits and behavior of the type characteristic of Gacy and

observed as early as the time of his Iowa sodomy conviction. Finally, there is a need for greater study, development of treatment programs, and formation of an effective and acceptable public policy for dealing with persons identified or characterized as having a personality disorder.

Even though the only real legal issue presented to the jury was the defense of insanity, the Gacy case reveals the manner in which the operating law transforms cases into procedural disputes. While the appeal of Gacy does raise issues about the weight of evidence on the issue of insanity, and questions of legal competence about the adequacy of counsel especially in the death penalty phase of the trial, it is interesting to observe the effort given to challenging the adequacy of warrants, the proper scope of authorized searches, evidentiary rulings limiting scope of testimony, and the propriety of prosecutorial arguments and tactics. Given the media and newspaper coverage of the case, the public is of course convinced that Gacy is guilty, as there is a tendency for the public to view the insanity defense as well as the procedural objections raised on appeal to be mere technicalities which the guilty use to escape their just punishment. This was the apparent view of the jury to Gacy's insanity defense; reports about the jury's deliberation suggest they did not properly consider the evidence and testimony related to the defense of insanity. This case shows that there is a continuing need to provide the public with an explanation of the significance and meaning of the insanity defense.

