

Article Description: *This one-woman play, "The Asperger's Syndrome Population on Trial," was presented at the GRASP Support Group in June 2009. Several attendees requested that it be put on line. The play is intended to show the degree of bias against persons with Asperger's and also to show that we can defend ourselves.*

About the Author: *My name is Irma Jacqueline Ozer and I have Asperger's Syndrome. I also have a severe thyroid dysfunction, Major Depression, and Multiple Sclerosis. My rather unusual academic background reflects my AS. First I studied singing and acting and then went to Munich, Germany where I appeared in 2 clubs every week, singing in multiple languages and voices. In Germany I taught English and translation methods after obtaining the U.S. equivalent of a Master's of Science in Medical Translation. My interest in the impact of brain dysfunctions began when I became the Exclusive Translator for the Max Planck Institute for Psychiatric Research. This was in the late 1960's and early 1970's before anyone had heard of Asperger's Syndrome.*

Back in New York, I worked as a translator for a publishing company, taught German as an Adjunct Professor, and studied towards a Ph.D. in German Literature which I attained in 1986. At that point I began to publish on literature and disability.

My publishing company employer went up for sale and I went to law school at the age of 49. As an attorney I practiced chiefly disability discrimination law. For nearly 8 years I worked for a criminal justice agency in their EEO Office, where I was in charge of Disability Rights. Between 2000 and 2007 I studied towards an M.A. in Forensic Psychology which I obtained in 2008. I also taught disability discrimination law at the academy of the criminal justice agency. Between 1988 and 1995 I led support groups for persons with mood disorders and also persons with alternative lifestyles.

Now retired, I volunteer for GRASP, for a 12-Step Group, and for the Disabled in Action organization. I also lecture for these groups as well as for the New York City Disabilities Network. At the temple to which I belong I initiated a Diversity Project and we are planning a Disability Awareness Day for March 2010, when I will speak on Asperger's Syndrome.

The Asperger's Syndrome Population on Trial

A One-Woman Play

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PROSECUTION

May it please the Court. I am here today as Prosecuting Attorney to bring suit against the Asperger's Syndrome Population. These are persons who, due to their disorder, are predisposed to commit serious crimes and therefore pose a danger to law-abiding citizens.

First of all, a significant number of persons convicted of murder have been found to have Asperger's Syndrome. The statistics for such cases are alarming: 18,200 in November of 2008. I will now present witnesses for the State.

Witnesses medical scholars J. Arturo Silva, with his colleagues Michelle Ferrari and Gregory Leong, found retrospectively that murderer/cannibal Jeffrey Dahmer and "Unabomber"

Theodore Kaczynski had Asperger's Syndrome. The witnesses testified that the homicidal behavior of these two murderers was intrinsically associated with autistic spectrum psychopathology, specifically with Asperger's Syndrome. Dahmer was said to evince in childhood poor eye contact, hatred of change, and an aloof manner. In adulthood Dahmer could not understand the feelings of others and was an avid collector of cadavers. With reference to the "Unabomber" Kaczynski, the witnesses noted that his aloofness, inability to understand the feelings of others, aversion to being touched, sensitivity to noise, and being old for his age all pointed to Asperger's Syndrome.

The next violent crime associated with an Asperger's defense is rape. The November 2008 statistics indicate that there were 13, 800 defendants tried for rape who used the Asperger's Syndrome defense. Witness Joelle Farrell, Staff Writer for the *Concord Monitor*, described the Newbury, New Hampshire case of eighteen-year-old Robert Derderian. The young man was accused of sexually assaulting two young girls, ages ten and twelve respectively. It was further alleged that the previous summer he had sexually assaulted the younger girl seven times and had recorded his assault of the older girl. Derderian was diagnosed with Asperger's Syndrome. The expert witness for the defense claimed that due to Asperger's Syndrome both children and adults cannot distinguish between right and wrong and are prevented from understanding reality. Your Honor, in most jurisdictions Derderian would have a ready-made insanity defense. Moreover, the defendant's lawyer claimed that because Derderian would not speak to him, his client was incompetent to stand trial. This was clearly a ploy to prevent Derderian from having to stand trial, which most probably would have resulted in a guilty verdict.

Although rape does not entail loss of life, it is a crime that can destroy the psyche of the victim. A finding of not guilty based on a mental defect sends a message to rapists that if their attorneys can mount a successful Asperger's defense, they may be set free to rape again.

Aside from rape, defendants with Asperger's Syndrome may commit sexual offenses such as stalking. The November 2008 statistics for stalkers who used the Asperger's defense were 16,700. Witness Tom Berney, a mental health professional, testified that obsessive harassment, or stalking, as well as other offenses, result from misjudged social relationships. Moreover, Berney observed that such offenses stem from the innate Asperger's Syndrome characteristics of impulsivity, social naivety, misinterpretation of rules, and overriding obsessions.

Child molestation is a sexual offense that evokes the greatest public outrage. Witness Robert D. Seidenstein, an attorney, related how in State v. Burr the New Jersey Supreme Court upheld the appellate court's ruling. On appeal it was held that the trial court had erred in not allowing Burr's attorney to present exculpatory evidence of his client's Asperger's Syndrome, which under New Jersey Law constitutes Diminished Capacity. A new trial was ordered.

Specifically, the expert witness for the defense was to have provided an explanation for the defendant piano teacher's inappropriately touching a young girl during a piano lesson. The Prosecution had contended that Burr had been grooming the girl for sexual assault while holding her in a compromising position. The defendant Franklin Jack Burr II had been convicted by the trial court of Sexual Assault and Endangering the Welfare of a Child. Your Honor, this case opens a virtual Pandora's Box for pedophiles to get a free pass by claiming to have Asperger's Syndrome. Since no medical test for Asperger's Syndrome exists, a clever defendant with acting talent could convince a jury that he suffers from this disorder.

The next violent crime for which the Prosecution has several witnesses is assault. Again, the November 2008 statistics indicate that there were 11,700 cases of assault in which the Asperger's defense was used.

Witness Simon Baron-Cohen, an internationally recognized expert on autistic spectrum conditions, testified regarding a twenty-one-year-old man diagnosed with Asperger's Syndrome who was romantically involved with a seventy-one-year-old woman. He would beat her despite knowing that such conduct is wrongful. The young man claimed that beating his girlfriend made him feel powerful. Witnesses Bettina Bankier and her psychiatrist colleagues testified with regard to a twenty-five-year-old man who had recurrent outbursts of violence and would assault his mother. The young man had been diagnosed with Asperger's Syndrome. Finally, witness Richard Perry, a highly-regarded diagnostician for Asperger's Syndrome, testified that his young Asperger's patients tended to menace and even hit their mothers. Your Honor will surely realize that the testimony of these witnesses makes it clear that there is strong potential for persons with Asperger's Syndrome to commit assault, which can result in lifelong injury and trauma to the victim.

The Prosecution acknowledges that persons with Asperger's Syndrome often commit non-violent crime. Information Technology is a field in which many persons with Asperger's Syndrome are known to be interested. Witness Dancho Danchev, writer for *ZD Net Zero Day Blog*, testified that defendant Owen Thor Walker, age eighteen, was the acknowledged ringleader of an international cyber-crime group apprehended by the FBI. The young defendant, diagnosed with Asperger's Syndrome, smiled upon hearing from the prosecution in the case that the team of international investigators considered Walker's programming to be among the most advanced that they had ever encountered. Walker was ordered by the judge to pay a fine but was never indicted. In fact, he was to be offered a position as a cyber-crime fighter.

Witness Pete Donohue, Staff Writer for New York's *Daily News*, testified that Darius McCollum had flashed a bogus badge and a forged ID and was "busted" for the 26th time for impersonating a transit worker. He had also taken a passenger-filled subway for a joy ride.

Although both Thor Walker's and Darius McCollum's violations of the law were non-violent, cyber-crime may entail identify theft, and taking a subway for a joyride would pose a danger to passengers therein.

The Prosecution proposes the following solutions: Specialized schools for children diagnosed with Asperger's Syndrome and group homes to house adults diagnosed with this disorder. Both children and adults with Asperger's Syndrome should receive high doses of anti-psychotic medications. Although these suggestions may be perceived as draconian, the need to protect the interests of the public from these so -often dangerous individuals must outweigh the rights of persons diagnosed with Aspererger's Syndrome. I thank this Court for your attention and request that Your Honor find the defendant Asperger's Syndrome Population guilty.

DEFENSE

May it please the Court. I appear here today as Attorney for the Defense. I speak in the name of countless persons with Asperger's Syndrome who lead lives of law-abiding quiet dignity. Yet they suffer gravely from the publicity surrounding extreme cases of violence committed by persons who allegedly have Asperger's Syndrome. For the record, Your Honor, the statistics cited by my esteemed colleague are derived from international cases rather than from United States cases alone.

My first witness is Dr. Richard Perry, also called as witness for the prosecution. Dr. Perry testified that in his more than 25 years of practice not one of his Asperger's Syndrome clients has committed any crime –let alone a violent one.

Next I submit the findings of witness Hans Asperger after whom the disorder was later named. Asperger, a pediatrician, educated boys who had been expelled from their Austrian schools during the Nazi regime. These boys, who were boarded in Asperger's facility, had been defiant and often physically aggressive or coldly rejecting of affection from their families. Moreover, the boys failed to distinguish their mental state from that of others. Witness Asperger followed up a number of his students after they left his facility and found no evidence of their committing crimes. In fact, some of Asperger's charges attained professional success and socialization followed. This Court will surely realize that the boys in Asperger's facility did not represent all Asperger's Syndrome students but rather only the most incorrigible ones. Asperger also testified that his boys were often brutally tormented at school by their peers. Perhaps it was this bullying, and not Asperger's Syndrome, that was the real cause of the boys' misconduct.

The witness whose testimony follows was instrumental in making Asperger's work known in the English-speaking world. Uta Frith translated Asperger's thesis from the German language and also reported extensively on persons with Asperger's Syndrome whom she encountered in her practice. According to Frith, most people with this disorder are law abiding; however, difficult forensic cases do occur when the person with Asperger's Syndrome is pursuing a special interest or when there is a defensive, panic-induced reaction. Frith concluded her testimony with the remark that many people with Asperger's Syndrome are not delinquent but rather excessively concerned with doing the right thing.

It was witness Lorna Wing whose research on clients with Asperger's Syndrome kindled international interest in the condition. She was also the first to use the term "autistic spectrum." Wing had studied 34 patients who had Asperger's Syndrome and found that many had superimposed or co-occurring psychiatric conditions such as depression, bipolar disorder, and obsessive-compulsive disorder. Of the 34 patients Wing had studied only four committed "antisocial acts." No mention was made of violent crime. Moreover, Wing admitted that her study was biased towards persons who had more severe handicaps.

Witness Digby Tantam, a mental health professional, researched Asperger's Syndrome in adults and testified that they were "strictly law-abiding citizens." Although Tantam admitted that "in a minority" there may be a lack of empathy, the witness noted that "unconcern for others is not a universal characteristic of people with Asperger Syndrome." Tantam also studied adolescents with Asperger's Syndrome and testified that in his experience teens with Asperger's Syndrome rarely commit theft and sexual offenses. Tantam added that they tend to be victims rather than perpetrators.

Witnesses Fred Volkmar and Ami Klin, also mental health professionals, testified, consistent with Tantam, that with regard to violence the person with Asperger's Syndrome is far more likely to be a victim than a victimizer. These witnesses emphasized that the available data do not support the alleged connection between Asperger's Syndrome and violent criminal behavior. Volkmar and Klin deem persons with Asperger's to be "perfect victims" because they are "overly rigid and moralistic."

Witness Tony Attwood is one of the major contemporary experts on Asperger's Syndrome. First of all, he testified that only "on extremely rare occasions" do persons with Asperger's Syndrome commit criminal offenses, and then usually in connection with their special interests. Attwood also noted that the "strict moral code" of a person with Asperger's Syndrome may result in a confrontation with another person who appears to be engaging in "immoral behavior."

Witness Valerie Gaus practices cognitive-behavioral therapy for adults with Asperger's Syndrome. With regard to criminal conduct in general, Gaus stated that bizarre reactions to stress and poor social judgment may cause people in the community to provoke persons with Asperger's Syndrome and then to report them as a threat. At no point did witness Valerie Gaus assert that persons with Asperger's Syndrome are inherently predisposed to criminal behavior. It is important to note that the testimony provided by witness Gaus is based on her experiences with persons who seek professional help for depression or anxiety, or who are urged by family members or employers to seek treatment. Valerie Gaus also distinguished Asperger's Syndrome from personality disorders: In personality disorders the person seeks to do harm, whereas in the case of Asperger's Syndrome there is no intent to do harm.

The final witnesses for the defense are psychiatrists Stewart Newman and Mohammad Ghaziuddin. They studied 37 subjects with Asperger's Syndrome who had committed violent crimes. These witnesses found that at the time of commission of the crimes 29% of the subjects had a definite psychiatric disorder while 54% had a probable psychiatric disorder. Newman and Ghaziuddin hypothesized that it was the co-morbidity with a psychiatric disorder which triggered the violent crime.

Your Honor, the findings by these witnesses raise the question: Is it not possible that it was the psychiatric disorder ALONE that was the cause of the violent behavior? Is it also not possible that a person with Asperger's Syndrome might have a co-existing personality disorder such as Anti-Social Personality Disorder or Narcissistic Personality Disorder?, Both of these disorders may manifest themselves in violent behavior?

Sometimes silence speaks louder than words. Carl Gacono and Louis Schlesinger, two major scholars in the field of violent criminal behavior, published texts on the subject of homicidal offenders in 2000 and 2004 respectively. This was well after 1994, when Asperger's Syndrome had become known in the psychiatric and legal communities. Neither Gacono's nor Schlesinger's text contains any mention of Asperger's Syndrome whatsoever.

I thank this Court for the opportunity to offer rebuttal to the Prosecution's allegations against my client, the Asperger's Syndrome population. Certainly, my esteemed colleague is correct in asserting that measures must be taken when children or adults with Asperger's Syndrome manifest antisocial behavior. My proposal would be to retain the children in their regular classes and provide them with specialized counseling during school hours. When adults with Asperger's Syndrome commit crimes other than murder, rape, or extremely serious assault, they should be referred to Mental Health Court and required to undergo specialized treatment rather than be subject to a trial. I respectfully request that this Court find my client, the Asperger's Syndrome population, not guilty.

JUDGE

Today this Court has been asked to decide a case without precedent. Can an entire disability population be found guilty of criminal conduct when, in the overwhelming majority of cases, this conduct is only predicted and has not yet occurred?

I sincerely hope that the Prosecuting Attorney never experiences having a child with Asperger's Syndrome or with any other disorder that has a negative impact upon behavior.

Segregating children and adults with Asperger's Syndrome before a crime has occurred ostensibly constitutes incapacitation or taking preventive action. In reality, it is punitive action before any crime has been committed. This entails a gross deprivation of due process, which violates both the letter and the spirit of the U.S. Constitution. I agree completely with the corrective measures suggested by the Attorney for the Defense.

In one respect I agree with the Prosecuting Attorney: Asperger's Syndrome has become a "hot" defense for attorneys who will resort to any means in order to secure a verdict of Not Guilty, or at least a lighter sentence. The sensationalism surrounding this defense is harmful to the Asperger's Syndrome population and, clearly, to the legal community as well.

It is my fervent hope that such a case never again comes before this Court.

NOT GUILTY!!

End of Play