

# The Other Trial

*With plea bargaining attempts having failed, Gilbert Gauthe's criminal trial is set to start Monday.*

By Jason Berry

**T**he classical image of justice is a blindfolded woman holding empty scales in either hand—one signifying guilt, the other innocence. And like the chorus of a Greek tragedy, 12 jurors, chosen from the roll of registered voters, must weigh the evidence in rendering their verdict.

When Gilbert Gauthe Jr., 40, enters Judge Hugh Brunson's courtroom in Lafayette, October 14 an immeasurably sad legal ritual begins. The prosecution of a priest, who has admitted to sexually molesting children, tells an ominous knell: Will jurors from an historically Catholic region send him to prison, or will they accept his attorney's defense that addictive pedophilia is a manifestation of insanity, for which he bears no criminal guilt?

Gauthe's trial is believed to be the first of an American priest for such crimes; since January clerics in Idaho, Wisconsin and Rhode Island have pleaded guilty or no contest to similar crimes, thus alleviating full jury trials. Priests in the first two states received seven and 10 years, respectively, while the Rhode Island priest received three years. Two other priests in that state have pleaded innocent to charges of sexual misconduct with youths in separate cases.

## A TARNISHED IMAGE

Who in Acadiana really wanted this trial? To the Church, it draws sharp attention to the scandal of a diocese where Gauthe and three other priests have been removed from duties for sexually molesting youngsters. To civic leaders in a region in the grip of economic recession, the trial is not good public relations. Nor will it restore faith in the men at the chancery's helm for those critical of their actions in the case.



Gilbert Gauthe

PHOTO COURTESY OF ALEY TV, LAFAYETTE

## THE LEGAL TRAVAILS OF GILBERT GAUTHE

**Indicted:** October, 1984

**Charges:** 11 counts of aggravated crimes against nature, 11 counts of committing sexually immoral acts with minors, one count of aggravated rape, 11 counts of contributing to the delinquency of juveniles by taking pornographic pictures.

**Trial Date:** Oct. 14, 1985

**Presiding Judge:** Hugh Brunson

**Prosecuting Attorney:** Nathan Stansbury

**Defense Attorney:** F. Ray Mouton

**Civil Cases:** 11 civil suits brought by victims' families have netted settlements totalling \$4.9 million. Ten suits involving Gauthe have yet to be resolved.



Stansbury



Mouton

*The Times* has learned that recent plea bargain attempts, aimed at averting a trial, have failed. In an interview last spring, defense attorney F. Ray Mouton said Gauthe feared a prison term "because child molesters historically occupy the lowest rung in criminal society: it is the one unpardonable crime. He fears for his life, and I fear he may commit suicide if he goes to (the state penitentiary at) Angola." Mouton's concerns evoked no sympathy from District Attorney Nathan Stansbury.

In an August 1983 meeting with parents of 11 Vermilion Parish children molested by the priest, Stansbury told them that to secure an indictment, the youngsters must be willing to give statements about what the priest did. Still, no one welcomed the idea of the boys actually having to testify in court. If Gauthe would plead guilty, no testimony would be necessary. The youngsters underwent psycho-therapy for over a year in preparation for the video-taped statements Stansbury used to secure the 34 count criminal indict-

ment. During that time, Gauthe was in a Church-run treatment facility near Boston, the House of Affirmation, which does not have specialized treatment for pedophiles.

Since the indictment a year ago, Gauthe has been in treatment at the Institute for the Living, a secular facility in Connecticut.

Under state law, the felony charges cannot be reduced to a suspended sentence. To plead guilty and avoid trial, Gauthe would have to serve time; Mouton, having entered an insanity plea, balked at sending his client to prison. The most serious charge, aggravated rape of a child under 12, carries a sentence of life at hard labor.

Had Mouton and Stansbury reached an agreement for reduced charges, Gauthe might have served less time than life. The crime against nature counts carry 11 years each. A plea bargain of three counts would bring 33 years, meaning Gauthe would be 73 when released. Life expectancy of American males is 72—meaning Gauthe would serve the majority, if not all of his life behind bars. On the other hand, if Gauthe showed himself to be a model prisoner, he would become eligible for parole at some point. A hearing on whether to release him would bring back harsh reminders to his victims, some of whom by then would be young men.

Mouton had another plan. An attorney representing several victimized families told *The Times* that for the alternative to work, his clients were faced with an unsatisfactory option: They could drop charges against the priest, and alleviate the stress of their sons having to testify. Gauthe, in turn, would serve the rest of his life in a psychiatric facility with the Church footing the bill, or at a Church-run facility.

"It was their decision," the lawyer says, "and I didn't think it proper for me to try and influence them either way." In any event, the plan was rejected. Church officials, having long since exhausted their stock of influence, played no role in negotiations over the fate of the aberrant priest.

For his part, Stansbury says the Church never attempted to influence him to drop the case. Nor, says the

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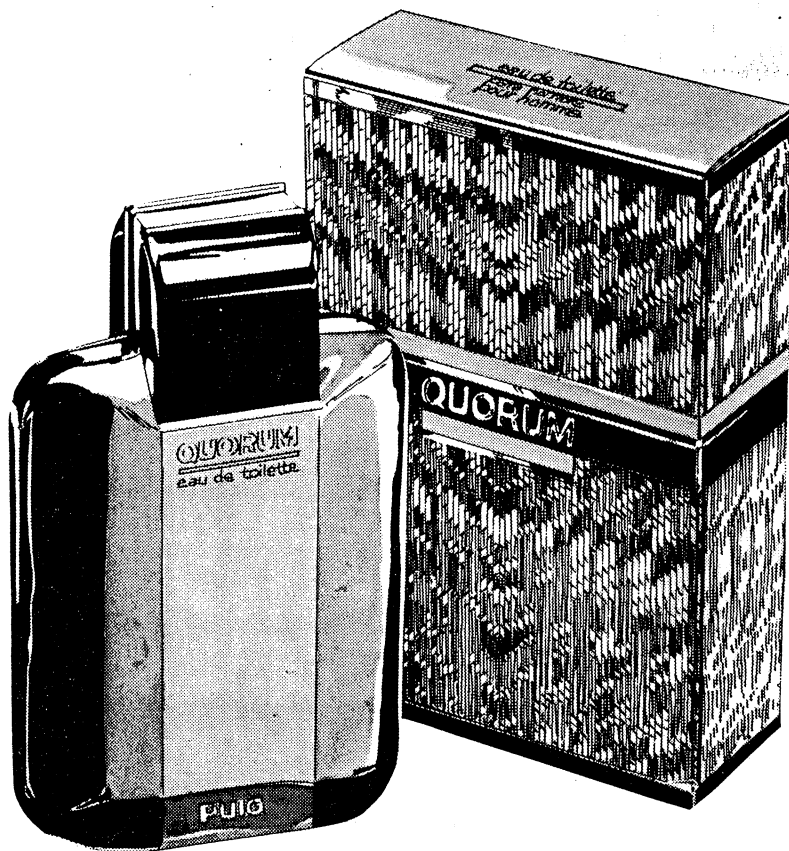
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*Men's Fragrances*

prosecutor, has there been "any heat from people asking me to avoid going to trial. If anything, sentiments have run in the opposite direction."

**PROTECTING THE VICTIMS**

Stansbury and Judge Hugh Brunson have voiced concerns over the impact on the families and children who must testify. While no Louisiana law prohibits news media from identifying victims of sex abuse, a tacit rule of thumb prohibiting such a practice has developed in recent years, analagous to rape cases in which women are not identified in news reports. In jurisdictions elsewhere in America, journalists have reported testimony, but not the names, of child abuse victims.

"I'm not worried about our local media," Brunson said in a telephone interview last week, adding that he expected other reporters to respect the "the justifiable need for privacy." The judge said he did not plan to restrict journalists from covering testimony by the youngsters.

Even before the Gauthe case neared, the judges of the 15th District issued a rule barring cameras from the courtroom, and sketchpad artists from the courtroom. While ostensibly not aimed directly at coverage of the Gauthe case, television reporters in Lafayette consider the upcoming trial the primary reason for the edict. Last Friday, a request by KLFY Channel 10 to allow sketch artists in the proceedings, with the understanding that no images of children or parents would be rendered, was denied.

Stansbury has voiced a more complicated concern: that spectators at the trial may recognize families, not previously known to be involved, and leak their identities in conversations outside of proceedings. "I might want to issue passes for certain days of testimony," he explains. "On the other hand, we may not get large crowds. They were running thin during the first few days of the Edwards trial."

The crucial question of this trial is: Was Gilbert Gauthe legally insane during the years he molested altar boys and other youngsters at St. John's parish in Henry?

**PEDOPHILIA AND INSANITY:  
THE EXPERTS BATTLE**

Since John Hinckley was found insane in his trial for shooting President Reagan, an intense debate has arisen in legal circles relative to the insanity defense. How much must the prosecution do in order to prove criminal intent, as opposed to insane behavior, in a given felony? In federal courts, the burden has traditionally been the government's in proving that a defendant was sane when he committed a crime. Since the controversial Hinckley verdict, federal statutes have been amended, granting prosecutors more leeway, shifting the burden to prove insanity more upon the defense.

In state proceedings, the burden of proof is much more on the defense counsel to prove that a man who committed crimes was insane. Under Louisiana law, the insanity defense is governed by the M'Naughten Rule, under which the test for legal responsibility is restricted to the sole question of whether the defendant, at the time the offense was committed could discern the difference between right and wrong. This is especially pertinent

in Gauthé's case because after more than a year of expensive therapy in Connecticut, his present state of mind is not what matters. How he thought, the way he functioned during his active priesthood, are at issue.

In this respect, the key witnesses may not be the victimized children, whose testimony, however powerful, will confirm what Gauthé himself has already admitted in civil depositions. Rather, the opinions of expert witnesses—psychologists—will lay down the insanity issue before jurors. Here, too, divergences between federal and state procedure are important.

In federal court, expert witnesses cannot give their opinion as to the final issue of insanity; they present facts and offer analyses, but jurors interpret those statements amongst themselves. An expert witness at a federal trial can't say, "This man was insane when he committed the crime." In state proceedings it's just the opposite.

Mouton is expected to call Dr. Fred Berlin of the Sexual Disorders Clinic at Johns Hopkins to discuss mental ramifications of pedophilia as they relate to Gauthé. Several months ago, Stansbury hired Dr. Edward Shwery of New Orleans, an expert on child sexual abuse, to interview Gauthé in Connecticut, and Shwery's testimony should be important to the prosecution; he has screened some of Gauthé's victims. More so than Berlin he is witness to the tragedy from both sides: perpetrator and victim.

One case Stansbury prosecuted bearing resemblance to this one, in strictly legal terms, was that of Joe Breland, who violently murdered his wife. In 1979, defense attorney Tommy Guilbeau argued that Breland's multiple sclerosis contributed to a psychotic break. The jury found him not guilty by reason of insanity. "There've been three hearings since the verdict," Stansbury explains, "for Breland's release. He has doctors saying he's no longer a danger. It flies in the face of an insanity ruling." Judge Brunson, who heard the trial, refused motions filed by Breland's new defense attorney, which are on appeal. Breland remains in the state mental facility at Jackson.

#### NATIONAL REPURCUSSIONS

Mouton, known for aggressive courtroom tactics, enters the trial in a virtual no-lose situation. At best, winning Gauthé's acquittal is a long shot. Gauthé's crimes offend society all the more because of the sacred trust he held as a priest. But should Mouton succeed, Bishop Frey's claim that Gauthé fooled him with "a Dr. Jekyll and Mr. Hyde" personality will make a little more sense than the reality of the hierarchy's pattern of letting him remain a priest, even after the priest received counseling in 1973 and 1976 for sexual involvement with boys in Broussard and Abbeville.

The broader impact of a successful defense would reach far beyond Louisiana. Only in the last few years have criminal courts taken a harder look at sexual offenses against children—because children are now testifying. In the past, courts often sent pedophiles to mental institutions or committed them to out-patient treatment, if they were tried at all. Clearly, that is changing now. Last week in Miami paroled child-abuser Frank

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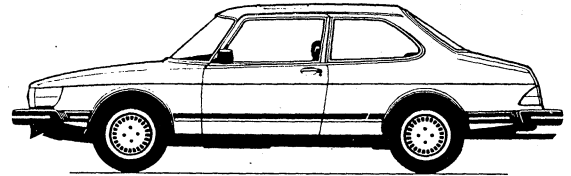
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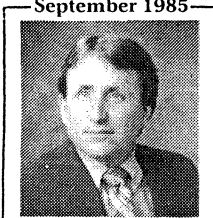


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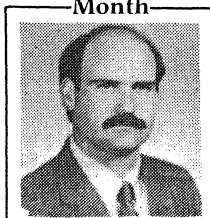
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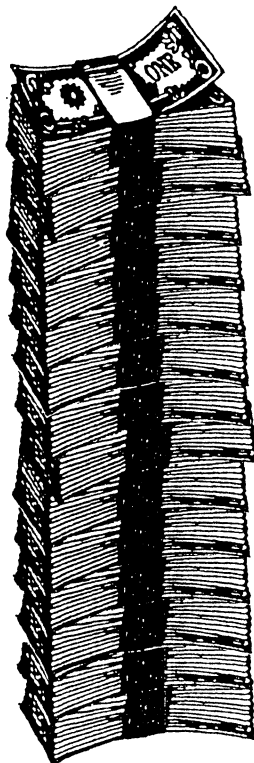
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Fuster Escalona, 36, was convicted of sexual assaults against children in his care at a baby-sitting service he ran. He got six consecutive life terms plus 110 years in prison.

The tougher, law-and-order approach was forecast in a 1972 article in *Journal of Juvenile Law* called "Sexual Psychopathy" and Child Molesters: The Experiment Fails." Author Irving Prager, a law professor who as a California prosecutor won the conviction of a sadistic pedophile named Theodore Frank, argued that the new approach grew from "the realization that there is no substantial evidence that child molesters commit their crimes due to mental disease, that the mental conditions of pedophiles can be cured, or that mental health professionals can accurately predict that sex offenders will not reoffend in the future."

Prager's article is dated by new research in sexual disorders, particularly the biological aberrations studied by Berlin and his colleagues at Johns Hopkins Hospital, and their use of the drug Depo-Provera, which is said to alter the sexual cravings of pedophiles. Nevertheless, the gist of Prager's thesis—that pedophiles should be incarcerated—is now the governing principle among countless prosecutors.

Although the majority of child abuse cases occur incestuously, there are increasing signs of organized criminal behavior by pedophiles in search of other people's children. In Washington, the Senate Judiciary Subcommittee on Juvenile Justice recently held hearings on computer networks which transmit names of adolescents available for sex. *Senate investigator Bruce Selcraig told The Times*, "The phenomenon grew out of 'swingers'—people advertising themselves for heterosexual encounters. You can go into big city porn shops and buy listings, small ads with postage stamp photos of people saying, 'I'm available.' Homosexual networks started using these; then pedophiles got into the act. Police are now tapping into these systems. I'm not aware of any huge nation-wide pedophilia rings, but groups are being discovered monthly."

Pending legislation in Congress would prohibit the exchange, through a common carrier, of sexually explicit material about children. A law is also being considered that would allow police to intercept computer-based telephone communications between suspected sexual offenders, like a wiretap.

Against this unfolding background, the insanity defense confronts deeply-rooted social values. Few people dispute that pedophiles are sick. The question is, how sick? If Gauthé was legally insane when he left Henry on July 1, 1983, what is he like now? The argument will partially revolve around testimony concerning neurological traits of the disease: how the pedophilic brain functions, its biochemical divergences, most of which is rather new legal territory. Ten of 12 jurors must agree on a verdict either way; a failure of the jurors to reach the same verdict will cause a mistrial, allowing the state to retry him.

In effect, the fate of Gilbert Gauthé hinges on the way his attorney navigates a dozen citizens of Acadiana through darkened channels of his client's mind. □