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APPLICATION OF THE INSANITY DEFENSE TO POSTPARTUM DISORDER-DRIVEN INFANTICIDE IN THE UNITED STATES: A LOOK TOWARD THE ENACTMENT OF AN INFANTICIDE ACT

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I. INTRODUCTION

Over the past few years, the phenomenon of mothers who kill their children has occurred with great frequency across the United States and abroad. This phenomenon is known as infanticide[1] or filicide and has also been referred to as "suicide by proxy."[2] These mothers are often suffering from postpartum disorders brought on by hormonal changes associated with childbirth.[3] Inevitably, they are charged with murder in suits brought by state prosecutors. Due to their mental illness, these mothers' legal defense is almost always buttressed by a plea of insanity pursuant to the state's insanity defense statues. Most insanity statutes require that an individual suffer from a severe mental disease or defect and be unaware that her actions are wrong. Whether a mother is unaware of her actions may be determined by an analysis of whether the devil or God told her to commit the act. If the devil told her to do it, she must have known the act was wrong, while if God told her to do it, she must not have known the act was wrong. Adding to the difficulty of determining a mother's mental state is the fact that the Diagnostic and Statistical Manual (DSM-IV) does not recognize postpartum disorders as a distinct, separate category of mental illness.[4] Therefore, it is difficult for a court to find that postpartum disorder qualifies as a severe mental illness.

On June 20, 2001,[5] the country was shocked by the news that a mother in Houston, Texas, Andrea Pia Yates, drowned her five

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1. *See* Mark Levy, *Moms Who Kill: When Depression Turns Deadly*, PSYCHOL. TODAY, Nov-Dec. 2002, at 60, 62.

2. *Id.* at 62.

3. *Id.* at 64.

4. *See* DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 386 (4th ed., 1994).

5. *See* Yates v. Texas, 171 S.W.3d 215, 218 (Tx. Ct. App. 2005).

children in the bathtub.[6] Since that time, there have been similar occurrences: Dena Schlosser cut off the arms of her eleven-month old child in Plano, Texas,[7] and Deanna Laney stoned her two sons to death in Tyler, Texas.[8] Most remember Susan Smith, the South Carolina mother who drowned her children by driving her automobile into a lake.[9] Most recently, on October 19, 2005, Lashaun Harris of Oakland, California drowned her three children when she threw them into the San Francisco Bay.[10] The question becomes: do these individuals have the requisite culpable mental state to satisfy the elements of murder? It seems almost certain that they are insane, but can society allow them to be acquitted for killing their own children? Additionally, do current state insanity statutes provide a proper defense for such individuals?

This article will deal specifically with mothers who kill their children within twelve months of giving birth as a result of their postpartum disorders. While other countries have standardized statutes to deal with this particularized subset of killings,[11] there is no such standardized treatment or statute to guide American judges and juries.[12] This has led to very inconsistent legal results in the various cases.[13] In Texas, Andrea Yates did not prevail in her effort to plead insanity,[14] although the Texas Court of Appeals has since granted her a new trial for other reasons.[15] On the other hand, a Texas jury found Deanna Laney not guilty of capital murder by reason of insanity.[16]

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6. Lisa Teachey, *Yates' Lawyers Plan to Enter Insanity Plea*, HOUS. CHRON., July 31, 2001, at 1A.

7. *Texas Mother Who Killed Baby Is Acquitted on Insanity Grounds*, N.Y. TIMES, Apr. 8, 2006, at A11.

8. *Mother Is Held In Sons' Deaths*, N.Y. TIMES, May 13, 2003, at A25.

9. Rick Bragg, *Mother in South Carolina Guilty of Murder in Drowning of 2 Sons*, N.Y. TIMES, July 23, 1995, at 1.1.

10. Lee Romney & Monte Morin, *San Francisco Reeling as Search for 2 Boys Goes On*, L.A. TIMES, at A1, Oct. 21, 2005.

11. CHERYL L. MEYER ET AL., MOTHERS WHO KILL THEIR CHILDREN 171-72 (2001) (noting that England enacted the British Infanticide Act, which applies in cases where women kill their children within the first twelve months of life).

12. *Id.* at 172 (stating that because there are no federal or state statutes that govern infanticide in the United States, disparate sentencing occurs as a result of the predilections of local prosecutors, judges and jurors).

13. *Id.*

14. Levy, *supra* note 1, at 60 (pointing out that although Andrea Yates was "diagnosed with postpartum psychosis, she was judged capable of discerning right from wrong and sentenced to life in prison").

15. *See* Yates v. Texas, 171 S.W.3d 215, 220 (Tx. Ct. App. 2005) (reversing trial court's denial of Yates's Motion for Mistrial).

16. *See Mom Who Said She Killed on God's Orders Acquitted*, CNN.COM, Apr. 6, 2004, http://www.cnn.com/2004/LAW/04/03/childrenslain/.

This article will also address the viability of the insanity defense when applied to the phenomenon of infanticide, and specifically examine postpartum disorder-driven infanticide. This article will explore the similarities of the circumstances of Yates, Laney, and others, the differences in the legal outcomes, and the reasons why the legal outcomes were different. Finally, this article will also compare the insanity defense statutes and trends of other countries against individual American states in an effort to predict whether change may be on the horizon for the insanity defense statutes and whether it matters.

II. WHAT IS POSTPARTUM DISORDER-DRIVEN INFANTICIDE?

As stated above, infanticide is also referred to as filicide and sometimes "suicide by proxy."[17] Infanticide is defined as the act of a parent killing his or her child.[18] While infanticide has occurred all over the world, statistics indicate that the United States ranks high on the list of countries whose inhabitants kill their children.[19] Statistics compiled by the U.S. Bureau of Statistics also indicate that "[a] parent is the perpetrator in most homicides of children under age five."[20] It is, therefore, ironic that the United States does not have an infanticide act.

Infanticide resulting from mental illness is one of many categories of infanticide.[21] Infanticide resulting from mental illness

17. *See* Levy, *supra* note 1, at 62. *See also* Mike Tolson, *Parents Who Kill Vary in Motives, Researchers Say*, HOUS. CHRON., June 22, 2001, at A1 (in which Forensic psychologist George Rekers suggests that "suicide by proxy" occurs when the parent, usually a mother, has lost touch with reality to such a degree that she is no longer clear about her identity—in their confused state, they are thinking of suicide and end up killing their children instead).

18. Wikipedia, *Infanticide,* http://www.reference.com/browse/wiki/filicide (last visited Nov. 27, 2005).

19. True Crimes and Justice, *Infanticide*, http://www.karisable.com/crinfant.htm (last visited Nov. 26, 2005). *See also* Tolson, *supra* note 17 (noting that within the country's annual homicide statistics there is a category of child-killings by parents).

20. *See* James Alan Fox & Marianne W. Zawitz, U.S. Dep't of Justice, *Homicide Trends in the U.S* (2003), http://www.ojp.usdoj.gov/bjs/homicide/children.htm (noting that of all children under age 5 murdered from 1976-2004, 31% were killed by fathers, 30% were killed by mothers, 23% were killed by male acquaintances, 7% were killed by other relatives and 3% were killed by strangers).

21. *See* MEYER, *supra* note 11, at 169-70 (opining that there are five categories of infanticide: (1) neonaticide; (2) assisted-coerced killings of children; (3) neglect-related cases; (4) those resulting from mental illness; and (5) abuse-related infanticide). *See also* Tolson, *supra* note 17 (noting that experts say filicide falls within one of five categories: accidental,

frequently occurs as a result of temporary illness, and it is also committed by mothers who suffer from more severe forms of chronic sustained mental illness.[22] It is believed that fifty to eighty percent of women experience some level of emotional depression after childbirth, which is also known as the "baby blues."[23]

There are at least three known postpartum mood disorders: postpartum "blues," postpartum depression and postpartum psychosis.[24] Postpartum depression is also referred to as PPD and is a mood disorder that has characteristics similar to those of clinical depression.[25] On the other hand, postpartum psychosis is rare and is the most severe form of postpartum disorders.[26] Andrea Yates had a long history of mental illness and was diagnosed with postpartum psychosis.[27] One of the most predominant symptoms of postpartum psychosis is a break with reality—an inability to recognize the difference between what is real and what is not.[28] While mothers with PPD may exhibit violent thoughts about her child, they have the ability to recognize that such thoughts are wrong, and as such, may not act on them.[29]

Infanticide caused by mental illness is thought to be a rare phenomenon and statistics indicate that only "four percent of women who become psychotic kill their babies."[30] Researchers have not yet determined the cause of postpartum mood disorders, however, one theory suggests that a sharp drop in estrogen and progesterone following childbirth is the cause.[31] Other researchers have theorized that certain thyroid antibodies produced in some women during

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altruistic, acutely psychotic, unwanted child or spouse revenge). Accidental, the most common, occurs when physical punishment goes too far. It can include shaken baby syndrome or Munchausen Syndrome by proxy, a mental illness in which the mother causes injury to the child then seeks medical treatment. *Id.* Unwanted-child deaths occur when a parent discards a baby shortly after birth. *Id.* Revenge or retaliation killings result when a plan to inflict pain on a spouse or former spouse includes using the child as a means to that end. *Id.* Acutely psychotic cases usually result from serious mental illness when the parent may have delusions that the child is a threat. *Id.* Altruistic filicide involves mothers who are depressed, often suicidal, and sometimes psychotic. They believe they are doing the best for their children by killing them. *Id.*

22. *See* MEYER, *supra* note 11, at 170.
23. Levy, *supra* note 1, at 60, 62.
24. *Id.*
25. *Id.* at 62.
26. *Id.*
27. *Id.* at 60.
28. *Id.*
29. Levy, *supra* note 1, at 62.
30. *Id.*
31. *Id.* at 64.

pregnancy were three times more likely to experience depression after childbirth.[32]

III. OVERVIEW AND HISTORY OF THE INSANITY DEFENSE IN THE UNITED STATES

The roots of the insanity defense find its origins in England, when, in 1843, Daniel M'Naghten raised the defense after he killed the secretary of Prime Minister Peel of the Tory Party during a schizophrenic episode.[33] M'Naghten was acquitted of responsibility for the killing at trial and, on appeal, the House of Lords devised the M'Naghten test.[34] The first part of the test excuses an accused party from a crime committed while under a "defect in reason" that prevented the accused from knowing "the nature and qualify of the act [s]he was doing."[35] The second part of the test excuses the accused even if she does know the nature and quality of the act, as long as she "did not know" that what she was doing was wrong.[36] The third part of the test provides that individuals with "partial delusion[s]" should be placed "in the same [category of responsibility] as if the facts, in respect to which the delusion exists, were real."[37] As such, if a person kills another because he delusionally believes the victim was about to kill him, he would be excused because killing to defend oneself against deadly force is justifiable.[38]

In the Model Penal Code, the American Law Institute (ALI) adopted a test, which provides that "a person is not responsible for criminal conduct if at the time of the conduct as a result of mental disease or defect he lacks substantial capacity either to *appreciate* the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law."[39] The ALI test provided an excuse for individuals who are unable to "appreciate" that a criminal act was wrong. The ALI test was adopted by over half the states in the United

32. *Id.*
33. M'Naghten's Case, (1843) 8 Eng. Rep. 718 (H.L.).
34. *Id.* at 720.
35. *Id.* at 722.
36. *Id.*
37. *Id.* at 719.
38. *Id.* at 723.
39. MODEL PENAL CODE § 4.01 (1962) (emphasis added).

States.[40] Some states identify this test as a "diminished capacity" defense.[41] The ALI test was abolished by many states in response to the outrage resulting from the acquittal of John Hinckley, Jr. in 1982.

After the acquittal of John Hinckley, Jr. in 1982, the federal test for insanity was adopted in 1984.[42] The federal test provides that "[i]t is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts."[43] Although the federal test is not as rigid as the M'Naghten test, because the federal test requires only that the individual fail to appreciate that a criminal act is wrong, while the M'Naghten test requires that the individual fail to have knowledge that the criminal act is wrong, the federal test is more rigid than the ALI test because it requires a severe mental disease or defect.

In the mid-nineteenth century, a few jurisdictions also adopted the "irresistible impulse test" (IIT).[44] The IIT states that a person is insane if, at the time of the offense: (1) she acted from an irresistible and uncontrollable impulse; (2) she lost the power to choose between right and wrong; and (3) she lacked the will to control her actions.[45] The IIT adds a third prong to the M'Naghten test by adding the requirement of volitional capacity.[46] As such, the IIT requires that the individual was infirmed with a mental disease, impeding the individual from controlling her actions.[47] The IIT faced many of the same criticisms of the M'Naghten test, and it was never favored enough to be adopted by a majority of states.[48]

Eleven states have adopted the Guilty But Mentally Ill (GBMI) standard—Alaska, Delaware, as an additional option for individuals at the time of trial.[49] The judge or jury may find that the individual's mental illness was not serious enough to justify an acquittal, but still

40. MICHAEL L. PERLIN, MENTAL DISABILITY LAW: CIVIL AND CRIMINAL 162 (1st ed. 1989).
41. *See infra* note 200 and accompanying text.
42. 18 U.S.C. § 17 (1984).
43. *Id.* at (a).
44. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 321 (New York: Lexis, 2d ed. 1995).
45. *Id.*
46. *Id.* at 321-23.
47. *Id.*
48. WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW 320 (2d ed. 1986).
49. DRESSLER, *supra* note 44, at 321.

warrants a need for treatment.[50] The GBMI requires that the individual is found mentally ill, but not legally insane, at the time of the offense.[51] When an individual receives a verdict of GBMI, she is found guilty of the offense, receives a penal sentence, and may receive treatment for her mental illness.[52]

Many jurisdictions still follow some variation of the M'Naghten test and the federal test. As stated above, the federal test requires that the mother possess more than a mere mental disease—it must be a "severe" mental disease. This result has led to varying degrees of treatment of the specific case of mothers who kill their young children as a result of postpartum disorders. Postpartum disorders have barely received recognition as mental disorders, let alone as "severe" mental disorders. Even the most severe form of postpartum disorders—postpartum psychosis—has not been formally recognized by the psychiatric/psychological community, or the criminal justice system as a severe mental disorder. As such, many mothers who have killed their young children as a result of postpartum psychosis are not successful in their insanity pleas and are found guilty of murder or capital murder.Georgia, Illinois, Indiana, Michigan, Mississippi, New Mexico, Pennsylvania, South Carolina and South Dakota.[53] GBMI is not a replacement for the insanity plea but serves

IV. THE PROBLEM: IN ITS PRESENT FORM, DOES THE INSANITY PLEA IN THE UNITED STATES PROVIDE A VIABLE DEFENSE FOR MOTHERS WHO COMMIT INFANTICIDE?

A. Treatment of the Crime of Infanticide Committed by Mothers in Other Countries

1. The British Infanticide Act

Many countries recognize the circumstances resulting in infanticide and have enacted laws that provide leniency for mothers who kill their children within close proximity (twelve months or so) to

50. *Id.*
51. *Id.*
52. *Id.*
53. *See* ALASKA STAT. § 12.47.030-12.47.050 (Michie 1986); DEL. CODE ANN. tit. 11, § 401(b) (1996); GA. CODE ANN. § 17-7-131(b)(1)(D) (1992); 720 ILL. COMP. STAT. 5/6-2(c) (1993); IND. CODE ANN. § 35-36-2-3(4) (West 1986); MISS. CODE ANN. § 99-13-9 (1972); N.M. STAT. ANN. § 31-9-3 (Michie 1978); 18 PA. STAT. ANN. § 314 (West 1983); S.C. CODE ANN. § 17-24-20 (Law. Co-op. 1989); S.D. CODIFIED LAWS § 23A-7-2 (Michie 1985).

giving birth.[54] Most notable is the British Infanticide Act, which applies to all women who kill their children within the first twelve months of life.[55] The British Infanticide Act states the following:

> Where a woman by any willful act or omission causes the death of her child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, she is by statute guilty of the offence of infanticide even though but for the statute the offence would have been murder. The punishment is as if the woman had been guilty of manslaughter of the child.[56]

The British Infanticide Act was enacted in 1922 and was amended in 1938.[57] Since that time the imposition of prison sentences against such individuals have been virtually abandoned as a method of punishment.[58] The British Infanticide Act takes into consideration the imbalances that occur within women as a result of giving birth.[59] The Act creates a legal presumption that women who kill their children within the first twelve months of life are ill.

There is no such federal or state statute in the United States, and, therefore, no consistency for the treatment of individuals like Andrea Yates.[60] Due to a lack of research in the area of postpartum disorders, the insanity defense, in its current form in many states, is akin to fitting a square peg in a round hole; unable to provide a viable defense for mothers who commit this specialized subset of killings.[61]

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54. *See* MEYER, *supra* note 11, at 171.

55. *See* Infanticide Act of 1938, 1 & 2 Geo. 6, c. 36, § 1(1) (Eng.).

56. *Id.*

57. *Id.* (the 1922 act refers to "newborns" while the 1938 Amendment refers to children under the age of twelve months).

58. *See* MEYER, *supra* note 11, at 171 (citing 1 NIGEL WALKER, CRIME AND INSANITY IN ENGLAND 133 (Edinburgh University Press 1973)).

59. *See id.*

60. *See id. See also* MARGARET G. SPINELLI, INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL (2003).

61. *See* MEYER, *supra* note 11, at 172 (noting that a mother's defense lawyer failed to raise the issue of postpartum psychosis at trial because there was very little research to support the phenomenon).

2. The Canadian Infanticide Act

Canada also has an Infanticide Act. The Canadian Infanticide Act reads as follows:

> A female person commits infanticide when by a willful act or omission she causes the death of her newly-born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed.[62]

The Canadian Act, enacted in 1948,[63] was based on the British Act.[64] Since its enactment, no mother who has killed her own child of less than twelve months has been sentenced to imprisonment for longer than five years.[65] The Canadian Infanticide Act was most recently applied in the case of *Her Majesty the Queen v. Krystal Ann Coombs*.[66]

Krystal Ann Coombs killed her baby Hazel Ann by strong shaking and the application of blunt trauma to Hazel Ann's head.[67] Hazel Ann was ten weeks old.[68] The Court pointed out that the maximum sentence for the crime of infanticide was five years.[69] The Court also noted that infanticide constitutes a lesser offense and is an included offense in the offense of murder.[70] In Canada, it is a requirement that there be a link between the mental disturbance and the birth of the child or lactation.[71] It is not required, however, that the act itself be caused by the mental disturbance—only that the mother's mind is disturbed at the time of the act.[72] In fact, it is implied that if a mother with a disturbed mind kills her child, the disturbance caused the killing.[73] Furthermore, the degree of mental disturbance is not defined by the Canadian Infanticide Act and does not require an actual

62. R.S.C. 1985, c. C-46, s. 233 (Canada).
63. The Queen v. Krystal Ann Coombs, 2003 W.C.B.J. LEXIS 2646, at *49 (2003).
64. *Id.* at *51.
65. *Id.* at *50.
66. *Id.* at *49.
67. *Id.* at *23.
68. *Id.* at *2.
69. *Coombs*, 2003 W.C.B.J. LEXIS at *18-19.
70. *Id.* at *19.
71. *Id.*
72. *Id.*
73. *Id.*

diagnosis of mental disorder.[74]

Although the Canadian system recognizes the DSM-IV, similar to the United States system, there is no requirement that the mother meet any criteria for a diagnosis under the DSM-IV classification system to use the Canadian Infanticide Act as a defense.[75] A very low threshold has been set by the Parliament for the level of mental disturbance required to qualify for protection under the Canadian Infanticide Act[76] and it is not necessary to establish that the mother suffered from any form of postpartum disorder.[77] All that is required is if at the time when a mother killed her baby, she was "not fully recovered from the effects of giving birth to the child and by reason thereof . . . her mind was then disturbed."[78] There is no requirement that the mother prove anything, and the Crown "would have to prove beyond a reasonable doubt that the mother was fully recovered from the effects of giving birth and that her mind was not disturbed by the effects of giving birth."[79] The *Coombs* court opined that it is essentially impossible for the Crown to ever prove a negative.[80] The court sentenced Krystal Ann Coombs to "48 months imprisonment followed by 3 years of probation."[81] Since Krystal had already served time, she was required to "serve one day in custody plus three years probation."[82]

The construction of the Canadian Infanticide Act given by the *Coombs* court and a reading of the British Infanticide Act suggests that a mother would only qualify for protection under an Infanticide Act if she killed her own child within the first twelve months of giving birth. In this regard, Andrea Yates would not qualify for protection under the Act for any of the charges of murder except the one associated with her youngest child, Mary, who was six months old at the time of the drownings. Furthermore, the *Coombs* court noted that a mother who killed her newly adopted baby or a new mother who killed persons other than her baby would not qualify for protection under the Canadian Infanticide Act.[83] This holding is problematic given the

74. *Id.* at *21.
75. *Coombs*, W.C.B.J. LEXIS at *21.
76. *Id.* at *22.
77. *Id.* at *33.
78. *Id.*
79. *Id.* at *34.
80. *Id.*
81. *Coombs*, 2003 W.C.B.J. LEXIS at *57.
82. *Id.*
83. *Id.* at *20.

recent reports of adoptive mothers suffering from postpartum disorders.[84]

B. Texas's Insanity Plea Applied to Recent Cases

1. State of Texas v. Yates

The history of the insanity defense in Texas reveals that it followed the "irresistible impulse test" until 1983, when the Texas legislature enacted the M'Naghten test, which includes the requirement that the defendant suffer from a "severe" mental disease at the time of the offense.[85] The Texas Penal Code sets forth that "[i]t is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong."[86] This rule combines the rigidity of the M'Naghten test, in that the actor must show that she did not "know" the criminal act was wrong at the time of the offense, together with the rigidity of the federal test, in that the actor must be infirmed with a "severe" mental disease or defect.

On June 20, 2001, Andrea Yates drowned her five children in a bathtub.[87] Leading up to the drownings, Andrea gave birth to her fourth child, Luke, in February of 1999.[88] In June of 1999, Andrea suffered severe depression and attempted to commit suicide.[89] The next month, Andrea was found in a bathroom holding a knife to her neck.[90] At that time, Dr. Eileen Starbranch treated Andrea and recommended that she be admitted to a psychiatric hospital.[91] While at the hospital, Andrea told doctors that she had visions and heard voices since the birth of her first child.[92] Dr. Starbranch ranked Andrea as one of the five sickest patients she had ever seen.[93] Before discharging Andrea, Dr. Starbranch warned Andrea and her husband,

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84. *See* Melanie Lawrence, *Beyond Baby Blues: Understanding and Coping with Postpartum Depression*, PARENT'S PRESS (2001), http://www.parentspress.com/pardepression.html (noting that even adoptive mothers can suffer a form of PPD, one that is not biochemically induced, perhaps caused by the high expectations associated with motherhood).

85. Tom Whatley, Reshaping the Insanity Defense, House Study Group: Special Legislative Report 12 (Tex. House of Representatives 1984).

86. TEX. PENAL CODE ANN. § 8.01 (Vernon 2005).

87. *See* Yates v. Texas, 171 S.W.3d 215, 218 (Tx. Ct. App. 2005).

88. *Id.* at 216.

89. *Id.*

90. *Id.* at 217.

91. *Id.*

92. *Id.*

93. *Yates*, 171 S.W.3d at 217.

Russell Yates, that Andrea had a high risk of suffering another psychotic episode if she gave birth to another baby.[94] While Andrea was receiving treatment in the psychiatric hospital Russell purchased a house, before the purchase of the house the Yates family had resided in a converted bus.[95] In August of 1999, they moved into the house and Andrea began home-schooling Noah, her eldest child.[96] Andrea saw Dr. Starbranch for the last time in January of 2000 and told Dr. Starbranch that she stopped taking her medication in November of 1999.[97]

In November of 2000, Andrea gave birth to her fifth child, Mary.[98] In March of 2001, Andrea's father died and Andrea spiraled into disfunctionality and again began to suffer from depression.[99] On March 28, 2001, Russell called Dr. Starbranch and Dr. Starbranch instructed him to bring Andrea in immediately, but Russell stated that he could not bring Andrea in until the following Monday.[100] Andrea did not make it to Dr. Starbranch's office,[101] and instead was admitted to a different psychiatric hospital.[102]

At the new psychiatric hospital, Dr. Mohammed Saeed treated Andrea and observed that she was catatonic and delusional.[103] At the Yates' request, Andrea was discharged from this hospital on April 13, 2001, and began an outpatient treatment program.[104] Dr. Saeed instructed that someone should stay with Andrea at all times and that she should not be left alone with the children.[105] Although Russell did not think it was unsafe to leave Andrea at home alone with the children, when he told his mom Andrea was suffering from depression, Russell's mom began visiting Andrea daily.[106] During these visits, Andrea was observed as catatonic, unresponsive and erratic.[107] On May 3, 2001, approximately a month prior to the fatal drownings, Andrea filled a bathtub with water. When asked why she filled the

94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.*
99. *Yates*, 171 S.W.3d at 217.
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.*
104. *Id.*
105. *Yates*, 171 S.W.3d at 217.
106. *Id.*
107. *Id.*

bathtub with water, Andrea responded, "I might need it."[108]

On May 4, 2001, Andrea was re-admitted to the psychiatric hospital under Dr. Saeed's care and was prescribed Haldol.[109] Andrea was discharged on May 14, 2001, and was able to care for her children, but was still slightly withdrawn.[110] On June 4, 2001, Dr. Saeed began to taper Andrea off of Haldol.[111] On June 18, 2001, Andrea denied any psychotic symptoms or suicidal thoughts and was no longer taking Haldol.[112] Dr. Saeed also adjusted the dosages of her other medications.[113] On June 20, 2001, Andrea called 911 and reported that she needed a police officer to come to her home.[114] The police officers arrived within minutes and discovered four dead children, soaking wet and covered with a sheet lying on Andrea's bed.[115] The fifth child, Noah, was still in the bathtub floating face down.[116]

Andrea was charged with intentionally and knowingly causing the deaths of Noah Yates and John Yates pursuant to the Texas Penal Code, section 19.03(a)(7)(A), which provides that the murder of more than one person in the same transaction is capital murder.[117] Andrea was also charged with intentionally and knowingly causing the death of Mary Yates, pursuant to the Texas Penal Code, section 19.03(a)(8), which provides that murder of an individual under six years of age is capital murder.[118] At trial, Andrea pled insanity.[119]

Ten psychiatrists and two psychologists testified regarding Andrea's mental state.[120] Five of these psychiatrists and one psychologist treated Andrea on or soon after the June 20 episode.[121] Four of these five psychiatrists and the psychologist testified that on June 20, 2001, Andrea Yates did not know right from wrong, was incapable of knowing that what she did was wrong, or believed that her acts were right.[122] The fifth of these psychiatrists, Dr. Melissa

108. *Id.*
109. *Id.*
110. *Id.*
111. *Yates*, 171 S.W.3d at 217.
112. *Id.* at 217-18.
113. *Id.* at 218.
114. *Id.*
115. *Id.*
116. *Id.*
117. *Yates*, 171 S.W.3d at 216 n.1.
118. *Id.*
119. *Id.* at 216.
120. *Id.* at 218.
121. *Id.*
122. *Id.*

Ferguson, testified that she had not made a determination regarding Andrea's ability to know whether her actions were right or wrong, but noted that Andrea did make a statement to her in which Andrea stated that drowning the children was the right thing to do.[123]

One of the ten psychiatrists, the State's sole mental-health expert, Dr. Park Dietz (who had not treated Andrea in close proximity to the June 20 episode), testified that although psychotic on June 20, Andrea knew what she did was wrong.[124] Dr. Dietz opined that Andrea knew her actions were wrong because the devil told her to kill the children,[125] and also testified that Andrea had watched an episode of *Law & Order* where a mother killed her children and was found insane due to postpartum depression.[126] It was later determined during trial, after the jury had already returned a verdict of guilty, but prior to the punishment phase, that there was no such episode.[127] Andrea's attorneys moved for a mistrial based on the false testimony but the court denied the motion.[128]

Andrea was found guilty of the murder charges, her insanity plea was found to be without merit, and she was sentenced to life in the Texas prison system.[129] Andrea filed an appeal with the Texas Court of Appeals seeking review of the trial court's decision to deny the motion for mistrial.[130] The Texas Court of Appeals decided that a mistrial should have been granted.[131] The decision was appealed to the Texas Criminal Court of Appeals and was upheld.[132] The Texas Court of Appeals has recently ordered that Andrea Yates be given a new plea deal or new trial.[133]

2. State of Texas v. Laney

Meanwhile, less than a couple hundred miles away in Tyler, Texas, and a little less than two years after the killing of the Yates children, on May 11, 2003—the day before Mother's Day—Deanna Laney called 911, reporting that "[she] just killed [her] boys."[134]

123. *Yates*, 171 S.W.3d at 218 n.2.
124. *Id.* at 218.
125. *Id.*
126. *Id.*
127. *Id.* at 219.
128. *Id.* at 220.
129. *Yates*, 171 S.W.3d at 216.
130. *Id.*
131. *Id.* at 222.
132. *See* In re Yates, 2005 Tex. Crim. App. LEXIS 1923 (Tex. Crim. App. Nov. 9, 2005).
133. *See id.*
134. *See Mother Is Held In Sons' Deaths, supra* note 8.

Deanna stoned two of her sons to death and assaulted a third son, also by stoning.[135] The children were identified as Joshua, eight, Luke, six, and Aaron, fourteen months.[136] Deanna told police that God instructed her to kill the children.[137] Reportedly, Deanna awoke at eleven p.m. and tried to lock her husband in their bedroom as he slept.[138] Deanna then went to bedrooms of Joshua and Luke and took the children to the rock garden in their front yard and killed each one by striking him in the head with a large rock.[139] Deanna also attacked the baby, Aaron, with a rock while he lay in his crib.[140] Aaron survived the attack, although he suffered injuries that have rendered him partially blind and he will need special care for the rest of his life.[141]

Deanna was charged with murder in the same manner as Andrea Yates,[142] and Deanna pled insanity in the same manner as Andrea Yates. The two cases shared additional similarities. Both women gave birth to infants just months prior to the killings, both home-schooled their children, both were devotedly religious, and the forensic psychiatrist, Dr. Park Dietz, testified for the prosecution in both cases. Although the facts of the two cases were very similar, Deanna's case resulted in a different verdict.

The two cases were different in that, in addition to the experts hired by the prosecution and the defense, the trial judge in the Laney case called an expert to testify, Dr. William Reid. Dr. Reid testified that Deanna was "crazy" and suffered from a severe mental disease at the time of the killings and did not know that her actions or conduct were wrong.[143] Three other psychiatrists declined to declare that Deanna was insane, stating that it was a legal distinction that could only be made by a jury.[144]

The different psychiatric opinions highlight the significant difference between the two cases and the impact of the Texas insanity defense statute.[145] In Texas, even if a person is found to suffer from a

135. *Id.*
136. *Id.*
137. *Id.*
138. *Id.*
139. *Id.*
140. *See Mother Is Held In Sons' Deaths, supra* note 8.
141. *See* John Springer, *Psychiatrist: Mother Who Stoned Kids 'Crazy'*, COURTTV.COM, Apr. 2, 2004, http://www.courttv.com/trials/laney/040204 _ctv.html.
142. *See Mom Who Said She Killed on God's Orders Acquitted*, CNN.COM, Apr. 6, 2004, http://www.cnn.com/2004/LAW/04/03/children.slain.
143. *See Mother Is Held In Sons' Deaths, supra* note 8.
144. *See id.*
145. E.G. Morris, *Civil Commitment vs. Life in Prison; What Andrea Yates Knew That Deanna Laney Didn't*, TEX. LAWYER, Apr. 12, 2004, at 27.

severe mental disease at the time of a criminal offense, the individual has the burden of proving by a preponderance of the evidence that, at the time of the alleged offense, the individual did not know that his or her conduct was wrong.[146] Dr. Dietz reasoned that Yates knew her actions were wrong and would be considered wrong by others and God,[147] while Laney was struggling to carry out God's will. Dr. Dietz further reasoned that Yates knew her actions were wrong because the devil told her to kill the children,[148] while Laney did not know what she was doing was wrong because God told her to do it.[149] Dr. Dietz deduced that Yates knew her actions were wrong while Laney did not. This is the critical analysis that distinguishes Texas Insanity law—the individual must prove she did not know her actions were wrong at the time of the offense. Interestingly, Dr. Dietz also testified in the Jeffrey Dahmer and John Hinckley, Jr. cases.[150]

On April 6, 2004, a jury acquitted Deanna Laney of the charges of murder, and she is currently under evaluation at a maximum-security state psychiatric hospital, where she could remain for forty years.[151] Deanna Laney's acquittal was due in large part to Dr. William Reid, who specifically testified that Laney suffered from a severe mental disease at the time of the killings and did not know that her actions or conduct were wrong.[152]

3. The Current Status of Texas Insanity Law and Its Probable Impact on Future Postpartum Infanticide Cases

Postpartum psychosis can cause an individual to experience a break with reality, rendering the individual incapable of discerning what is real from what is not.[153] The question becomes whether postpartum psychosis rises to the level of a "severe" mental disease and, if so, whether the individual knew her actions were wrong at the time the crime was committed.

Shortly after the Laney verdict, Lt. Gov. David Dewhurst requested that the Texas Senate Jurisprudence Committee study the Texas Insanity Defense laws and specifically evaluate changing the

146. *Id.*
147. *Id.*
148. Yates v. Texas, 171 S.W.3d 215, 218 (Tx. Ct. App. 2005).
149. Morris, *supra* note 145.
150. Pam Easton, *Yates to Leave Prison for Mental Hospital*, U.S. NAT'L ASSOCIATED PRESS, Dec. 20, 2005.
151. *See Mom Who Said She Killed on God's Orders Acquitted*, *supra* note 142.
152. *See Mother Is Held In Sons' Deaths*, *supra* note 8.
153. *See* Levy, *supra* note 1, at 62.

defense of "not guilty by reason of insanity" (NGRI) to "guilty but insane" (GBI).[154] Some lawmakers questioned whether this change would give more uniformity to trial verdicts.[155] In the end, however, the Committee recommended that no change be made to the NGRI defense.[156] While prosecutors and criminal defense lawyers agreed that the Texas Legislature needed to fix the State's insanity defense laws in the 2005 session, they could not agree on the best solution.[157] Reports to the Committee have recommended that an expert who will examine individuals arguing the insanity defense must be a state-licensed physician or psychologist with a doctoral degree and have experience or certification in forensic psychiatry or psychology.[158] In addition, leading legal scholars, forensic psychiatrists, and psychologists are working on drafting a proposed amendment to the Penal Code Section 8.01, which will read as follows:

> It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of a severe mental disease or defect did not appreciate that his conduct was legally or morally wrong.[159]

The amendment will not cure the problem. Changing the insanity defense statute is a good start for other situations, but it will do nothing to remedy the disparate outcomes of postpartum disorder-driven infanticide. Even under this amendment, the mother must prove that she suffered from a postpartum disorder and that it is a "severe" mental disease.

C. Application of the Insanity Defense Statute of Other States

1. New York

The New York Penal Code reads as follows:

> In any prosecution for an offense, it is an affirmative defense that when the defendant engaged in the

154. Mark Donald, *Guilty But Insane in the Legislature*, TEX. LAWYER, May 24, 2004, at 1.

155. *Id.*

156. *The 2005 Legislative Wish List; A Preview of the Action the 79th Texas Legislature Will See*, TEX. LAWYER, Jan. 10, 2005, at 13.

157. *Id.*

158. *Id.*

159. *Id.*

> proscribed conduct, he lacked criminal responsibility by reason of mental disease or defect. Such lack of criminal responsibility means that at the time of such conduct, as a result of mental disease or defect, he lacked substantial capacity to know or appreciate either: (1) the nature and consequence of such conduct; or (2) that such conduct was wrong.[160]

The test used in New York is a slight departure from the M'Naghten test in that it departs from the rigidity of the test and takes on the wording of the ALI test. Although the New York legislature has not adopted an infanticide act, New York courts seem to have more empathy and awareness of postpartum psychosis.[161] A jury in the Supreme Court of New York acquitted Ann Green, a former pediatric nurse, of killing her two newborn babies in 1980 and 1982, and the attempted suffocation of her third child in 1985.[162] Ann Green raised the defense of postpartum psychosis, was found not guilty by reason of insanity, and ordered to receive psychiatric treatment on an outpatient basis.[163]

2. Illinois

The Illinois Insanity Statute states:

> A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct.[164]

Prior to August 20, 1995, the Statute provided a defense if:

> A person lacked substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.[165]

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160. N.Y. PENAL LAW § 40.15 (McKinney 2005).

161. *See* Ronald Sullivan, *Jury Citing Mother's Condition Absolves Her in Two Babies' Death*, N.Y. TIMES, Oct. 1, 1988, at 29.

162. *Id.*

163. Martin Berg, *Postpartum Psychosis Defense Gaining*, L.A. DAILY J., Oct. 7. 1988, at 5; *see also* Sullivan, *supra* note 161.

164. 720 ILL. COMP. STAT. ANN. § 5/6-2(a)(West 2005).

165. *Id.*

(a) The People of the State of Illinois v. Sims

Paula Sims gave birth to a baby girl, Loralei, in 1986.[166] Loralei died a few weeks thereafter.[167] The pathologist reported that Loralei died of suffocation as a result of someone placing their hands over Loralei's nose and mouth.[168] Paula stated that Loralei was abducted by a masked intruder.[169] Loralei's remains were found in a wooded ravine by Jersey County authorities.

In 1988, Paula gave birth to Randall,[170] and, in 1989, Paula gave birth to another baby girl, Heather, who also mysteriously came up missing a few weeks after her birth.[171] Again, Paula stated that Heather was abducted by an intruder.[172] Several days later, Heather's remains were found wrapped in a small plastic trash bag and stuffed in a public park trash can.[173] The State removed Randall from Paula and her husband's care.[174]

A grand jury indicted Paula on charges of first-degree murder, obstruction of justice, and concealment of the homicidal death of Heather.[175] Paula was never charged with the death of Loralei.[176] The State of Illinois sought the death penalty.[177] Paula's trial took place in early 1990 and Paula testified.[178] The jury found Paula guilty on all charges, and prior to sentencing, Paula admitted that she killed both Loralei and Heather.[179] Paula maintained that she drowned both of her baby girls.[180] The jury deadlocked during deliberations on the issue of capital punishment and the judge sentenced Paula to life imprisonment.[181]

While in prison, Paula began to talk to a prison psychologist and an author about her case, and became educated on the subject of postpartum disorders.[182] Paula petitioned the court for a new trial on

166. Illinois v. Sims, 750 N.E.2d 320, 323 (Ill. App. Ct. 2001).
167. *Id.*
168. *Id.*
169. *Id.*
170. *Id.*
171. *Id.*
172. *Sims*, 750 N.E.2d at 323.
173. *Id.*
174. *Id.*
175. *Id.* at 324.
176. *Id.* at 323.
177. *Id.* at 324.
178. *Sims*, 750 N.E.2d at 324.
179. *Id.*
180. *Id.*
181. *Id.* at 325.
182. *Id.*

the basis of ineffective assistance of counsel because of her attorney's failure to raise the defense of insanity based on postpartum depression.[183] During the hearing on Paula's motion, an assistant appellate defender, Kathleen Hamill, testified that she was familiar with postpartum depression-based insanity pleas and had provided Paula's attorney with this information.[184] Ms. Hamill further testified that she provided Paula's attorney with documentation and a list of expert witnesses, including a letter explaining the importance that Paula be tested immediately to determine if she possessed the hormonal imbalances associated with postpartum disorders.[185] The prison psychologist, Edward Loew, also testified during the hearing that Paula suffered from major depression.[186] In addition, a postpartum disorder expert, Dr. Diane Sanford, testified that Paula suffered from a postpartum disorder at the time she killed Heather.[187]

The Illinois Court of Appeals admitted that Paula's attorney was aware of the postpartum-based insanity defense, that blood tests would have revealed whether Paula suffered from the disorder, and that Illinois case law held that "failure to conduct a proper examination of medical records that would reveal evidence in support of an insanity defense has been held to constitute constitutionally deficient legal assistance."[188] The court also admitted that the evidence established that Paula most likely suffered from a postpartum disorder at the time she killed her children.[189] Nonetheless, the court determined that Paula's medical records failed to reveal any indication that she suffered from a postpartum disorder, and, as such, her legal representation did not constitute ineffective assistance.[190]

(b) The People of the State of Illinois v. Hulitta

The *Sims* case was decided by the Fifth District of the Illinois Appellate Court. A full reading of the *Sims* decision suggests that the Fifth District Court would have accepted the defense of insanity based on postpartum depression if it had been timely offered. However, in late 2005, Calandra Hulitta did not receive the same openness to such

183. *Id.*
184. *Sims*, 750 N.E.2d at 325-26.
185. *Id.* at 326.
186. *Id.*
187. *Id.*
188. *Id.* at 328.
189. *Id.* at 329.
190. *Sims*, 750 N.E.2d at 329-30.

a defense from the First District of the Illinois Appellate Court.[191] The Hulitta case is another illustration of disparate ideologies of different courts in the same jurisdiction on the subject of postpartum disorders.

Calandra Hulitta gave birth to a newborn baby on or about July 1, 1999. She already had a daughter, Moneka, who interrupted her efforts to sleep shortly after giving birth.[192] Within days of giving birth, on the morning of July 7, 1999, Calandra tied Moneka's hands and feet together, stuffed a sock in her mouth and wrapped tape around her mouth and neck.[193] Moneka died of suffocation.[194]

The state of Illinois charged Calandra with two counts of first degree murder.[195] The trial court refused to allow Calandra's expert, Dr. Robert Smith, a psychologist, to testify that she suffered from postpartum depression at the time of Moneka's suffocation.[196] Dr. Smith opined that although Calandra was not legally insane at the time of the offense, she suffered from postpartum depression that disallowed her of the ability to appreciate the danger of her actions.[197]

The Illinois Insanity Statute was amended to do away with the excuse for culpability that a person lacked substantial capacity to appreciate the danger of her actions.[198] This defense represents a diminished capacity excuse, which is not recognized in Illinois.[199] The trial court therefore granted the State's motion to bar a diminished capacity or postpartum depression defense and did not allow Dr. Smith's testimony.[200] The trial court found that Calandra's postpartum depression was not relevant to the issue of intent.[201] The trial court stated that expert testimony was not needed to show that Calandra was depressed—that "anyone with any sense" could see that she was depressed.[202] The jury found Calandra guilty of first-degree murder.[203] Although the State requested the death penalty, the jury sentenced Calandra to thirty years imprisonment.[204] Calandra filed a motion for

191. Illinois v. Hulitt, 361 Ill. App. 3d 634 (2005).
192. *Id.* at 635.
193. *Id.*
194. *Id.*
195. *Id.*
196. *Id.*
197. *Hulitt*, 361 Ill. App. 3d at 636.
198. *Id.*
199. *Id.* at 641.
200. *Id.* at 637.
201. *Id.* at 636.
202. *Id.*
203. *Hulitt*, 361 Ill. App. 3d at 637.
204. *Id.*

new trial that was denied.[205] Calandra appealed the conviction arguing that the trial court committed error by granting the State's motion to exclude Dr. Smith's expert testimony regarding the effect of postpartum depression on Calandra's mental state at the time of the offense.[206]

The Court of Appeals found that Dr. Smith's testimony would raise an "impermissible affirmative defense," and that the admissibility of psychiatric evidence regarding a defendant's intent depends on whether the expert testifies to scientific knowledge not within the common knowledge of the jury.[207] The Illinois Court of Appeals found that the jury was more than capable of determining, based on their common knowledge, that Calandra was depressed at the time of the offense and acted recklessly, rather than knowingly or intentionally, and thus did not need the testimony of an expert.[208] But is "depression" the same as "postpartum depression"—a disease that causes hormonal imbalances and drives a mother to kill her own children? And does a jury need an expert to explain this difference?

3. California

The California Penal Code reads as follows:

> (a) The defense of diminished capacity is hereby abolished. . . .
> (b) In any criminal proceeding, including any juvenile court proceeding, in which a plea of not guilty by reason of insanity is entered, this defense shall be found by the trier of fact only when the accused person proves by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense.[209]

The California test seems to follow the M'Naghten approach, but the individual must not know that her act was wrong at the time she commits the act. The California test is nonetheless less rigid than the

205. *Id.*
206. *Id.*
207. *Id.*
208. *Id.* at 638.
209. CAL. PEN. CODE § 25 (2005).

Texas test in that the individual does not have to be found to have suffered from a "severe" mental disease or defect.

(a) The People of the State of California v. Massip

Sheryl Lynn Massip was charged with killing her six-week old son Michael on April 29, 1987, when she ran over him with her Volvo station wagon.[210] Sheryl Lynn gave birth to Michael on March 17, 1987.[211] Michael cried fifteen to eighteen hours a day and suffered a great deal of pain,[212] and doctors were never able to determine the source of Michael's pain.[213] During the six weeks following Michael's birth, Sheryl Lynn could not eat or sleep and began to have suicidal thoughts of "jumping off a building or out of a window."[214] On April 29, 1987, Sheryl Lynn took Michael for a walk.[215] Sheryl Lynn first threw Michael into the pathway of an oncoming car, that was able to swerve and miss Michael.[216] Sheryl Lynn then ran over Michael with her Volvo, and subsequently placed him in a trash can.[217] Michael died as a result of the injuries inflicted by Sheryl Lynn.[218]

Sheryl Lynn was charged with second degree murder and received a jury trial.[219] Sheryl Lynn raised the defense of not guilty by reason of insanity, based on postpartum psychosis.[220] The Orange County jury rejected this defense, found that Sheryl Lynn was sane at the time of the killing, and convicted her of second degree murder.[221] The court, however, reduced the conviction to voluntary manslaughter, set aside the finding of sanity, acquitted her on the grounds of temporary insanity, and sentenced her to one year of outpatient treatment.[222] The court found that on the day of the killing, Sheryl Lynn's mental condition was disrupted and delusional as a result of postpartum depression, and, at times, postpartum psychosis.[223] These findings were significant in light of the fact that this was the first case in California in which the postpartum psychosis defense was raised.

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210. People v. Massip, 271 Cal. Rptr. 868-69 (Cal. Ct. App. 1990).
211. *Id.* at 868.
212. *Id.*
213. *Id.*
214. *Id.* at 869.
215. *Id.*
216. *Massip*, 271 Cal. Rptr. at 869.
217. *Id.*
218. *Id.*
219. *Id.*
220. *Id.* at 869, 873.
221. *Id.* at 869.
222. *Massip*, 271 Cal. Rptr. at 869.
223. *Id.* at 873.

(b) The People of the State of California v. Harris

A more recent postpartum case in California occurred on October 19, 2005, when twenty-three year old Lashaun Harris tossed her three young children into the San Francisco Bay.[224] The children were identified as Treyshaun, six years old, Taronta, two years old, and Joshua, sixteen months old.[225] Reportedly, Lashaun told authorities that voices told her to throw her children into the water.[226] She told family members that she would feed the children "to the sharks."[227] Lashaun was charged with three counts of murder.[228]

On October 21, 2005, relatives reported that Lashaun had a history of mental illness, suffered from schizophrenia, and that she had quit taking her medication.[229] Another family member reported that the family "knew the girl needed help," and had tried to get her into a mental hospital, but the hospital declined to admit Lashaun.[230] Lashaun will undoubtedly raise the defense of postpartum psychosis, and, if so, based on the *Massip* case, she may prevail. A jury would have a difficult time finding her sane.

V. CONCLUSION

Postpartum psychosis is still not accepted as a separate form of mental illness in the DSM-IV.[231] In this regard, the DSM-IV does not recognize postpartum disorders in a category of their own.[232] Until federal and state court systems in the United States standardize treatment for mothers who kill their children as a result of postpartum disorders, extremely disparate results will occur in courts in the same jurisdiction and jurisdictions across the country. In turn, this will create a lack of confidence in the judicial system. Irrespective of the individual state's insanity defense statute, each state should move toward enacting a separate infanticide statute based on the defense of postpartum psychosis.

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224. *See, e.g., Mother Arrested after Tossing Kids in San Francisco Bay*, FOXNEWS.COM, Oct. 20, 2005, http://www.foxnews.com/story/0,2933,172824,00.html.

225. *Id.*

226. *Id.*

227. *Id.*

228. *See, e.g., Mother Charged with Three Counts of Murder*, CNN.COM, October 21, 2005, http://edition.cnn.com/2005/US/10/20/children.bay/index.html/.

229. *Id.*

230. *Mother Arrested after Tossing Kids in San Francisco Bay*, *supra* note 224.

231. *See* Diagnostic and Statistical Manual of Mental Disorders, *supra* note 4, at 386.

232. *Id.*

It is also not sensible to limit the mother to protection only if she commits the homicidal act against her child within twelve months of giving birth. The insanity defense should be available to a defendant who commits a homicidal act committed against any individual if the defendant is found to have given birth within a twelve-month period or close to that time and that the defendant suffered from postpartum psychosis.

The legal community will look forward to the enactment of the American Infanticide Act, or such enactments by individual states, and to the day when postpartum disorders are recognized in the DSM-IV as a distinct category of mental disease characterizing postpartum psychosis as a "severe" mental disease.