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WHO IS ANDREA YATES? A SHORT STORY ABOUT INSANITY

DEBORAH W. DENNO*

INTRODUCTION

We all know by now the story of Andrea Yates. Or, at least we think we do. Andrea Yates, high school valedictorian, swim team champion, college graduate, and registered nurse married Russell ("Rusty") Yates in 1993 after a four-year courtship. Both were twenty-eight.¹ Over the next seven years, Andrea²

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1. See generally SUZY SPENCER, *BREAKING POINT* (2002) (providing a journalist's detailed account of Andrea's life, marriage, and competency hearing based upon courtroom observations as well as many hours of interviews with Rusty and key players in the Yates case); Timothy Roche, *The Yates Odyssey*, *TIME*, Jan. 28, 2002, at 44 (offering one of the most thorough descriptions available of Andrea's life and mental breakdown based on forty hours of conversation with Rusty, interviews with Andrea's family and friends, an examination of the Yates family home videos, and a study of "thousands of medical records, police files, autopsy reports and court documents"). For a sampling of recent commentaries discussing the Andrea Yates case in the context of a wide range of subjects, including the law and literature on postpartum psychosis, see Catherine Albiston et al., *Feminism in Relation*, 17 *WIS. WOMEN'S L.J.* 1, 14-15 (2002) (reviewing Michelle Oberman's analysis of Andrea's intense "maternal isolation" and the reasons for Andrea's narrow perception of the options available to her); Elizabeth T. Bangs, *Disgust and the Drownings in Texas: The Law Must Tackle Emotion When Women Kill Their Children*, 12 *UCLA WOMEN'S L.J.* 87, 87 (2001) (reviewing *THE PASSIONS OF LAW* (Susan A. Bandes ed., 1999) (analyzing the importance of emotion in how both the law and society responded to the Yates case and emphasizing "that the more appropriate emotional response for the legal system is compassion rather than disgust" in cases involving maternal infanticide)); Joan W. Howarth, *Executing White Masculinities: Learning From Karla Faye Tucker*, 81 *OR. L. REV.* 183, 218-19 (2002) (noting the significance of gender when comparing the Karla Faye Tucker death penalty case with the Andrea Yates case); Michele Connell, Note, *The Postpartum Psychosis Defense and Feminism: More or Less Justice for Women?*, 53 *CASE W. RES. L. REV.* 143, 145 (2002) (contending, in light of the Yates case, "that a legislative solution creating a separate postpartum defense is the only way to arrive at equal justice for mothers who commit filicide while suffering from postpartum psychosis"); Connie Huang, Note, *It's A Hormonal Thing: Premenstrual Syndrome and Postpartum Psychosis As Criminal Defenses*, 11 *S. CAL. REV. L. & WOMEN'S STUD.* 345, 345 (2002) (examining a range of female hormonal defenses and suggesting that postpartum depression and psychosis "should be allowed as a type of insanity defense, but not as a separate defense"); Sandy Meng Shan Liu, Comment, *Postpar-*

gave birth to five children and suffered one miscarriage, all the while plunging deeper into mental illness.³ Then on June 20, 2001, in less than an hour, Andrea drowned all of her children in the bathtub, one by one.⁴ Months later, she was convicted of capital murder in Harris County, Texas,⁵ where she now serves a life sentence.⁶

Some may think that a mentally ill mother who committed such an act should be judged insane. Yet, news accounts and court records suggest that Andrea impaired her attorneys' efforts to plead insanity.⁷ Such defense plans were already encumbered by the unusually strict Texas insanity standard⁸ and the state's renowned retributive culture.⁹ After a jury found Andrea competent to stand trial,¹⁰ she resented the efforts that her attorneys mounted on her behalf¹¹ even as she faced possible execution.¹² Andrea insisted there was nothing wrong with her mind¹³ and that she deserved to die.¹⁴ She seemed to be awaiting punishment for her sins.

To those closest to Andrea, this self-blaming reaction came as no surprise. They could testify that Andrea had been tormented by bouts of mental illness,¹⁵

tum Psychosis: A Legitimate Defense for Negating Criminal Responsibility?, 4 SCHOLAR 339, 349 (2002) (providing a thorough overview of the law and literature on insanity and postpartum psychosis and suggesting, in light of the Yates case, changes to the burden of proof in the defense of postpartum psychosis "or considering such a defense as a mitigating factor at sentencing, if not both").

2. For purposes of clarity, this Article generally calls the eight members of the Yates family by their first names only (Andrea, Russell ("Rusty"), Russell's mother (Dora), and the five children).

3. See *infra* Appendix 1 at 61: Timeline of Andrea Yates's Life and Trial: April 1993-April 2002 [hereinafter App. 1] (chronicling critical dates and details concerning Andrea's problems with mental illness).

4. See *id.* (June 20, 2001) at 70.

5. See *id.* (Mar. 12, 2002) at 74.

6. See *id.* (Mar. 18, 2002) at 75.

7. Associated Press, *Yates' Fate Hinges on Doctors' Words*, Feb. 25, 2002, available at http://www.courtstv.com/trials/yates/022502_ap.html (noting Andrea's declaration that she "deserve[d] to be punished" due to her self-proclaimed guilt as one manifestation of what Andrea's attorneys referred to as her "self-defeating attitude" resulting from her "severe mental illness").

8. See Christopher L. Tritico, *Real Culprit in Yates Case Is the System*, 18 TEX. LAW. 39, 39 (Apr. 1, 2002); *infra* Part II.B. The Texas Insanity Standard.

9. See, e.g., *infra* notes 180, 511 and accompanying text. For an excellent overview of the literature on the subculture of violence inherent in the South and how it relates to the use of the death penalty, see Carol S. Steiker, *Capital Punishment and American Exceptionalism*, 81 OR. L. REV. 97 (2002); see also ANTHONY G. AMSTERDAM & JEROME BRUNER, *MINDING THE LAW* 217-45 (2000) (providing a pointed discussion of how "culture" affects cases).

10. See App. 1 (Sept. 22, 2001) at 72. For a summary of the psychiatric testimony at Andrea's competency hearing and other expertise regarding competency in cases of postpartum psychosis, see *infra* Part VI.D., Andrea Yates's Competency, and accompanying notes.

11. See *infra* Part VI.D., Andrea Yates's Competency.

12. See *infra* note 479 and accompanying text; see also *infra* notes 74-79, 513-14 and accompanying text (noting the high rate of executions in the South generally as well as Texas and Harris County more specifically) and notes 430, 528-33 and accompanying text (discussing Andrea's desire to be executed).

13. See *infra* notes 523-33 and accompanying text.

14. See *infra* notes 26, 38, 429-31 and accompanying text.

15. See App. 1 (June 17, 1999; July 2-19, 1999; Mar. 31, 2001) at 62-63, 67-68.

and, in fact, both the prosecution and defense agreed that she was mentally ill.¹⁶ Andrea's life was also distinguished by religious obsession and a steadfast devotion to tales of sin and Scripture,¹⁷ a "repent-or-burn zeal"¹⁸ that led her to believe she was a bad mother with ruined offspring.¹⁹ According to Andrea, she killed her children to save them from Satan and her own evil maternal influences,²⁰ delusions that did little to help Andrea's defense because they fueled her own desire for punishment.

Public opinion on the Yates killings helps explain some of the more contradictory themes in the case. On the one hand, the public had much sympathy for Andrea and the life that she led.²¹ Yet, her composed behavior on the day she killed her children stirred a strong retributive response.²² Many were unable to comprehend such violence except by declaring it intentional and evil.²³ According to this view, it could be said that Andrea was supremely sane—her acts rational and premeditated²⁴—despite her unquestioned history of postpartum psychosis.²⁵ Andrea propelled this account, spurring the public, her "jury," to see her as the Satanic mother she believed herself to be.²⁶

16. See Tritico, *supra* note 8, at 39 ("Everyone agreed that Yates suffers from a mental illness. In her punishment phase final argument, prosecutor Kaylyn[n] Williford called it a 'severe mental defect.'").

17. See *infra* notes 240, 290-97 and accompanying text.

18. Roche, *supra* note 1, at 48.

19. See *infra* notes 296, 380-82 and accompanying text.

20. *Trial of Texas Mother Begins Third Week*, CNN.COM, Mar. 4, 2002, available at http://www.courttv.com/trials/yates/030402_cnn.html (quoting the defense expert witness's opinion that Andrea believed herself to be Satan, and thought that by drowning her children she was saving them from hell); see App. 1 (Mar. 1, 2002) at 73.

21. See SPENCER, *supra* note 1, at 147-48, 215-16; Liu, *supra* note 1, at 345; Janelle Brown, *Swift Injustice*, SALON.COM, Mar. 13, 2002, at http://archive.salon.com/mwt/feature/2002/03/13/yates_reacts/; Associated Press, *Groups Support Mother Who Drowned Children, Other Women Suffering Postpartum Depression*, Aug. 27, 2001, available at http://www.courttv.com/archive/news/2001/0827/yates_ap.html.

22. See Liu, *supra* note 1, at 345 (citing news accounts of the Yates case indicating that some viewed "postpartum psychosis as a contemptible excuse" engineered to evade criminal responsibility).

23. See *id.* at 377.

24. See Sherry F. Colb, *The Andrea Yates Verdict: A Nation in Denial About Mental Illness*, FINDLAW'S WRIT, Mar. 27, 2002, at <http://writ.news.findlaw.com/colb/20020327.html> (noting that many people doubted Andrea Yates was insane when she killed her children because she "planned her actions carefully" before the killings, her actions "seemed efficient and unrelenting" at the time of the killings, she appeared composed and rational after the killings, and she understood that she had killed her children and that the act was unlawful).

25. See Gerald E. Harris, *Psychological Report on Competency Status* (Aug. 30, 2001) (on file with author) (stating that Andrea's "family history is positive for mental illness, with her father and two siblings reportedly having significant mental disorders," and that Andrea "also has a personal history of significant mental problems, including severe postpartum depression, psychotic episodes and suicide attempts"); App. 1 (June 16-18, 1999; Mar. 13-30, 2001) (detailing episodes of Andrea's postpartum depression and postpartum psychosis) at 62, 67.

26. Roche, *supra* note 1, at 50 (reporting that after Andrea's arrest, she described the killing of her children as "a mother's final act of mercy" and told doctors that "[o]nly her execution would rescue her from the evil inside her"); see also Associated Press, *Yates Claimed She Killed Kids to Keep Them from Going to Hell*, Mar. 1, 2002, available at http://www.courttv.com/trials/yates/030102_pm.html

These complex and conflicting aspects of the Yates case fed into the prosecution's depiction of Andrea's mental state on the day she killed her children. But, one psychiatrist's testimony seemed to have a greater impact than the others on the case's outcome.²⁷ The prosecution's star expert, Park Dietz,²⁸ appeared particularly adept at persuading the jury to accept the prosecution's assertion that Andrea was sane and acting intentionally when she killed her children.²⁹ Because the Yates case is on appeal, many of the court records are not available.³⁰ In addition, the defense team still lacks funds to pay for the entire trial transcript³¹ so it too cannot be examined. Park Dietz's testimony, however, is now accessible³² and it warrants a thorough analysis in its own right.

(stating that Andrea "said she believed that if she killed her children, the state would execute her, Satan would be eliminated from the world and the children would be saved").

27. This Article focuses primarily on Dr. Park Dietz as an expert witness, since his testimony is considered to have been most significant to the outcome of the case. See *infra* notes 148-49, 153 and accompanying text. However, the testimony of other expert witnesses for the prosecution, such as Dr. Harry Wilson (a pediatric pathologist who testified that four of the children were alive but unconscious when Andrea removed them from the bathtub and placed them on the bed), also influenced jurors. See Alan Bernstein & Leigh Hopper, *Acquittal Not Equal to Free for the Insane*, HOUS. CHRON., Mar. 13, 2002, at A29; see also Terri Langford, *Juror: Yates Betrayed by Calm*, DALLAS MORNING NEWS, Mar. 18, 2002, at 1A.

28. See *infra* Appendix 4 at 97: Portions of Prosecuting Psychiatrist Park Dietz's Testimony in the Andrea Yates Trial [hereinafter App. 4].

29. See App. 1 (Mar. 7, 2002) at 74.

30. See Telephone Interview with Scott Durfee, General Counsel, Harris County, Tex. District Attorney's Office (Sept. 5, 2001) (explaining the limits on his office for releasing briefs and other information because the Yates case is on appeal). Because the entire trial transcript is not available for the Yates case, see *infra* note 31 and accompanying text, this Article must rely on news reports and popular literature to acquire factual information. This method of relying on media accounts to analyze trials has a long history. See MURDER MOST FOUL AND OTHER GREAT CRIME STORIES FROM THE WORLD PRESS 1 (Rob Warden & Martha Groves eds., 1980) (providing a collection of forty-seven crime stories covering 189 years (from 1788 to 1977) because not only is "[c]rime . . . a staple of the newspaper business," most significantly, "it is also history" and records the social and cultural reactions to law breaking across different eras).

31. Brenda Sapino Jeffreys, *State of Mind*, 18 TEX. LAW. 36, 36 (Dec. 23, 2002) (noting that Andrea's attorney, George Parnham, "wants to appeal the verdict, but the defense team hasn't been able to come up with all of the money to pay for a transcript of the trial"); see also *Paying for Yates*, 17 TEX. LAW. 3, 3 (June 10, 2002) (explaining that "[o]ne of the challenges of appealing the Andrea Yates verdict has been securing a transcript of the entire trial—expected to total about 12,000 pages and cost approximately \$50,000—which Yates' defense attorney . . . says will take the court reporter four or five months to transcribe"). Although George Parnham, Andrea's attorney, had asked for a hearing to establish Andrea's indigent status so that she could acquire a free copy of the transcript, he subsequently withdrew this request after entering an agreement with the court reporter and a financial donor. Carol Christian, *Yates Accord Set: Lawyer Drops Indigent Request*, HOUS. CHRON., May 31, 2002, at A38. According to Parnham, "I did not want to put [Andrea], quite frankly, through the rigors of being placed on the witness stand. . . . She is ill, and she is sad, and we have found a way to pay for the transcript." *Paying for Yates*, *supra*, at 3.

32. See generally App. 4. Fordham University School of Law purchased the entire transcript of Park Dietz's testimony (which is on file with the author), for \$307.50. At least initially, each page of a transcript cost \$4.00. See Carol Christian, *Yates Won't Seek A New Trial*, HOUS. CHRON., Apr. 18, 2002, at A25. For an intriguing historical account of the value of using transcripts in examining criminal cases, see Caleb Crain, *In Search of Lost Crime: Battered Bodies, Bigamous Love, and Other Literary Pleasures of the 19th Century Trial Transcript*, LEGAL AFF., July / Aug. 2002, at 28-33.

What is most striking about Dietz's testimony is how his opinions about Andrea's mental state could carry so much authority with the jury. Criminal trials commonly involve different sides presenting competing legal "stories" about their version of the facts.³³ The law's role is to ensure that just verdicts result from these conflicting representations. Courts must be perceived "as fair and disinterested, capable of rising above the self-serving and adversarial narratives by which cases are presented."³⁴ While the law provides evidentiary standards and procedures to oversee what information is released in court and how,³⁵ an immense amount of discretion exists nonetheless in the ways stories can be told. It remains unclear who is to police these narratives—beyond the structures already in place—or whether such oversight is even needed.

In the Yates case, the defense claimed that Andrea's mental illness caused her to believe that killing her children was the right course of action. Although Andrea's attorneys called a number of experts to prove their argument, each expert had a different twist on this central viewpoint.³⁶ Therefore, the defense's story about Andrea, while emphasizing her insanity, was still somewhat muddled. In contrast, the prosecution's story about Andrea's sanity was clearer and also apparently consistent with the cultural norms of Harris County, Texas. The prosecution argued that Andrea may have been gripped by her belief in some demonic command, but she was still fully capable of knowing she was doing something wrong.³⁷ And Andrea seemed to concur, damningly perhaps. Her story was congruent with the prosecution's. She had sinned and deserved punishment for acting out the devil's dictates.³⁸ In all likelihood, however, Andrea's own story was indicative of her mental illness,³⁹ not evidence of the disposition she felt she most deserved. Nonetheless, both her narrative and the prosecution's were accentuated by courtroom storyteller, Park Dietz.

This Article analyzes the problematic aspects of Dietz's testimony in an effort to contribute some balance to the Andrea Yates story. While Dietz's comments may have confirmed the Harris County jury's preconceptions, they were virtually unsubstantiated. Dietz also has no significant expertise in postpartum

33. See AMSTERDAM & BRUNER, *supra* note 9, at 110 (explaining that "the law is awash in storytelling"); see also LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW 2 (Peter Brooks & Paul Gewirtz eds., 1996) (examining law "not as rules and policies but as stories, explanations, performances, linguistic exchanges—as narratives and rhetoric"); JEROME BRUNER, MAKING STORIES: LAW, LITERATURE, LIFE 3-62 (2002) (emphasizing the often unrecognized power of stories in legal proceedings).

34. BRUNER, *supra* note 33, at 37.

35. See generally PAUL C. GIANNELLI & EDWARD J. IMWINKELRIED, SCIENTIFIC EVIDENCE (3d ed. 1999) (covering a wide span of different types of scientific evidence and the legal procedures used to control their admissibility).

36. See App. 1 (Feb. 22-23, 2002; Feb. 26, 2002; Feb. 26-27, 2002) at 72-73; see also Brown, *supra* note 21 (noting that "[d]efense witnesses included 11 psychiatrists, physicians and mental health experts").

37. See *infra* notes 144, 175, 385-87 and accompanying text. But see *infra* notes 466-67 and accompanying text.

38. See *supra* notes 7, 12, 26 and accompanying text; see also *infra* notes 429-31 and accompanying text.

39. See *infra* notes 245, 272-74 and accompanying text.

depression or psychosis even though both sides agreed that Andrea severely suffered from the disorders and that they significantly affected her conduct.

Of course, expert witnesses are routinely used in litigation.⁴⁰ Dietz is simply one of the more prominent and prolific examples of what the criminal justice system seeks.⁴¹ Despite the long history of expert witnesses in criminal trials, the justice system should question the fairness and efficacy of such an unregulated storytelling process. The potential for inequity is all the more pronounced in a case where the prosecution's story lacks factual justification, both sides agree the defendant is mentally ill, and the death penalty is at stake.

Part I of this Article briefly discusses Andrea's life up to her marriage to Rusty as well as the outcome of her trial. Part II provides an overview of the insanity defense and the strict Texas insanity standard. Part III examines Dietz's background, his reputation, and his psychiatric philosophy, in addition to his proclivity to testify for the prosecution. Part IV describes Andrea's history of mental illness, especially her postpartum psychosis that started with the birth of her first child and ended with a severe psychotic episode. Part V focuses on Dietz's testimony in the Yates trial, beginning with his pre-trial interview with Andrea and ending with an analysis of his conclusions. The discussion emphasizes the speculative nature of many of Dietz's statements and their lack of connection to Andrea's history of mental illness. Part VI presents the other perspectives and experts in the Yates case, and considers how the case might have reached a different result with a more consistent defense strategy or a less rigid insanity standard.

The Andrea Yates case is a vast, book-length, narrative. This commentary covers just a part of the trial. It is beyond this Article's scope, for example, to scrutinize the general role of psychiatric experts in the criminal justice system⁴²

40. Renee L. Binder, *Liability for the Psychiatrist Expert Witness*, 159 AM. J. PSYCHIATRY 1819, 1819-20 (2002) (noting that "[a]n increasing number of general psychiatrists are acting as expert witnesses in the legal system" and that "the use of experts in the legal system has proliferated in the past 30 years"); Steven Lubet, *Expert Witnesses: Ethics and Professionalism*, 12 GEO. J. LEGAL ETHICS 465, 465 (1999) (explaining that "[i]t is common in modern litigation to call individuals from a vast array of professions to testify as experts," including in criminal cases); L. Timothy Perrin, *Expert Witness Testimony: Back to the Future*, 29 U. RICH. L. REV. 1389, 1391 (1995) (stating that "expert testimony is used more today than ever before. Lawyers seem incapable of trying a lawsuit without one or more experts.").

41. See *infra* Part III.A.2. A Prosecutorial Bent; *infra* notes 146-49, 189, 216, 537 and accompanying text. The pronounced role of physicians as experts in the criminal justice system has a long history. See JAMES C. MOHR, *DOCTORS AND THE LAW: MEDICAL JURISPRUDENCE IN NINETEENTH-CENTURY AMERICA* (1993) (discussing the evolution of the modern association between this country's medical profession and the legal system, including the evolving history of doctors testifying in court); Mark Essig, *Poison Murder and Expert Testimony: Doubting the Physician in Late Nineteenth-Century America*, 14 YALE J.L. & HUMAN. 177, 177 (2002) (noting that the "triumph of the expert" commenced around 1900, attaining by 1920 a level of "enthusiasm unmatched elsewhere" and explaining that "[p]hysicians often occupy a starring role in this narrative of triumphant expertise" by developing over the decades "a remarkably powerful and prestigious professional organization").

42. For a thorough analysis of the subject see Christopher Slobogin, *Psychiatric Evidence in Criminal Trials: To Junk or Not to Junk?*, 40 WM. & MARY L. REV. 1, 2 (1998) (examining psychiatric and psychological testimony in criminal trials and questioning "whether this type of opinion evidence is worthy of consideration in courts of law"). See also J. Richard Ciccone, *Expert Testimony*, in 2 ENCYCLOPEDIA OF BIOETHICS 796, 796-99 (Warren Thomas Reich ed., 1995) (discussing the role of expert medical witnesses in the legal system, the advantages and disadvantages of the different models

or to review the research on postpartum depression and postpartum psychosis, which is available elsewhere.⁴³ Nonetheless, examining one piece of the Yates story can be enlightening. "Narrative, we are finally coming to realize, is indeed serious business—whether in law, in literature, or in life."⁴⁴

I. THE EARLY LIFE AND TRIAL OF ANDREA YATES

A. Meet the Yates Family

Andrea Yates was raised in the Houston area. Her family background appeared to be middle-American and middle-class.⁴⁵ Her father was a retired auto shop teacher who died of Alzheimer's disease shortly before the killings.⁴⁶ Her mother, Jutta Karin, was a homemaker.⁴⁷ Andrea, the youngest of five, was expected to be a high achiever⁴⁸ and, in high school, she succeeded: she was captain of the swim team, a National Honor Society member, and valedictorian⁴⁹ of her 1982 graduating class. Upon completing a two-year pre-nursing program at the University of Houston, she went on to the University of Texas School of Nursing in Houston, graduating in 1986. From 1986 to 1994, she was employed as a registered nurse at the University of Texas M.D. Anderson Cancer Center.⁵⁰

for this role, as well as the ethics and admissibility of expert testimony) [hereinafter Ciccone, *Expert Testimony*]; J. Richard Ciccone, *Murder, Insanity, and Medical Expert Witnesses*, 49 ARCH. NEUROL. 608, 608 (1992) (analyzing the history of the insanity defense and the modern role of medical expert witnesses "in integrating clinical and laboratory findings") [hereinafter Ciccone, *Murder*]; E.M. Coles & H.O.F. Veiel, *Expert Testimony and Pseudoscience: How Mental Health Professionals Are Taking Over the Courtroom*, 24 INT'L J.L. & PSYCHIATRY 607, 607-08 (2001) (purporting to "draw attention to some attitudes and practices that corrupt science and pervert the original purpose of expert testimony"); Arnold M. Ludwig, *A Bad Case of Mixed Metaphors: Psychiatry, Law, Politics, Society, and Ezra Pound*, 54 AM. J. PSYCHOTHERAPY 116, 116 (2000) (contending that "psychiatry has become so impressed by its seemingly scientific, diagnostic system and emerging technology that it no longer questions its fundamental conceptualizations").

43. See, e.g., ANN L. DUNNEWOLD, *EVALUATION AND TREATMENT OF POSTPARTUM EMOTIONAL DISORDERS* (1997); INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL (Margaret G. Spinelli ed., 2003); CHERYL L. MEYER & MICHELLE OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN: UNDERSTANDING THE ACTS OF MOMS FROM SUSAN SMITH TO THE "PROM MOM"* (2001); LITA LINZER SCHWARTZ & NATALIE K. ISSER, *ENDANGERED CHILDREN: NEONATICIDE, INFANTICIDE, AND FILICIDE* (2000); Deborah W. Denno, *Gender, Crime, and the Criminal Law Defenses*, 85 J. CRIM. L. & CRIMINOLOGY 80, 138-42 (1994); Shaila Misri et al., *Postpartum Blues and Depression*, in UP TO DATE (Burton D. Rose ed., 2003), available at <http://www.uptodate.com> [hereinafter Misri et al., *Postpartum Blues*]; Shaila Misri et al., *Postpartum Psychosis*, in UP TO DATE (Burton D. Rose ed., 2003), available at <http://www.uptodate.com> [hereinafter Misri et al., *Postpartum Psychosis*]. So far, this commentary is limited, particularly in psychiatric journals, where it is most needed.

44. BRUNER, *supra* note 33, at 107.

45. See Roche, *supra* note 1, at 45.

46. See App. 1 (Mar. 12, 2001) at 67; Alan Bernstein & Miriam Garcia, *A Life Unraveled: Mother Depicted as Private, Caring and Burdened by Hidden Problems*, HOUS. CHRON., June 24, 2001, at A1.

47. Bernstein & Garcia, *supra* note 46.

48. See Roche, *supra* note 1, at 45.

49. See Paula Zahn & Ed Lavandera, *Do New 911 Tapes Help Andrea Yates Defense?*, MORNINGS WITH PAULA ZAHN (CNN television broadcast, Dec. 12, 2001) available at <http://www.cnn.com/transcripts/0112/12/ltn.11.html>.

50. See Roche, *supra* note 1, at 45.

Andrea's nursing career ceased entirely, however, soon after her marriage to Rusty.⁵¹

Andrea and Rusty first met in 1989 at the Houston apartment complex where they both resided. Both were twenty-five at the time.⁵² Rusty, "a popular jock" in high school and a summa cum laude graduate of Auburn University, was designing computer systems for NASA.⁵³ Andrea approached him first in conversation—an uncharacteristically bold move for her, Rusty would later reveal.⁵⁴ Only after Andrea's arrest would Rusty learn that she had never dated until she had turned twenty-three, that she was recuperating from a romantic break-up at the time they met, and that her directness in initiating contact with him was prompted by intense loneliness and, perhaps, depression.⁵⁵ Andrea and Rusty spent the next few years becoming acquainted, "living together, reading the Bible, and praying."⁵⁶

Their April 17, 1993 wedding ceremony was small and simple. Surprisingly, it was also nondenominational,⁵⁷ perhaps because of the influence of Rusty's spiritual mentor, Michael Woroniecki, from whom "[h]e had learned the faults of organized religion."⁵⁸ The couple confidently announced to wedding guests that they would not use birth control—they wanted as many children as nature would provide.⁵⁹ Their desire for children was immediately fulfilled. Within three months, Andrea was pregnant⁶⁰ with the first of five children. Eight years later she would kill them all.⁶¹

B. The Yates Trial

On July 30, 2001, Andrea was indicted on two counts of capital murder for the deaths of Noah (seven), John (five), and Mary (six months),⁶² but not for the deaths of her other two children, Luke (three) and Paul (two).⁶³ All of the indictments were for capital murder because they involved more than one person and victims less than six years old.⁶⁴ On the same day, Andrea's attorneys, George Parnham and Wendell Odom, filed a "notice of intent to offer evidence of the insanity defense," based upon the testimony of two psychiatrists claiming

51. *See id.*

52. *See id.*; SPENCER, *supra* note 1, at 129.

53. *See* SPENCER, *supra* note 1, at 128; Roche, *supra* note 1, at 45.

54. *See* SPENCER, *supra* note 1, at 129; Roche, *supra* note 1, at 45.

55. *See* SPENCER, *supra* note 1, at 80 (citing evidence that Andrea had been treated for depression when she was working as a nurse).

56. *See* Roche, *supra* note 1, at 45.

57. *See* App. 1 (Apr. 17, 1993) at 61.

58. Roche, *supra* note 1, at 48; *see also* Keith Morrison, *A Preacher Speaks Out: Spiritual Advisor to Andrea and Rusty Yates Talks about the Tragedy*, Dateline NBC (NBC television broadcast, Mar. 20, 2002) available at <http://www.msnbc.com/news/726946.asp?0dm=-24GV&cp1=1> (noting Woroniecki's view that priests and churches are not necessary components of religious worship).

59. *See* App. 1 (Apr. 17, 1993) at 61.

60. *See id.* (June 1993) at 61.

61. *See id.* (June 20, 2001) at 70.

62. *See id.* (July 30, 2001) at 71.

63. *See id.*

64. *See id.*

that Andrea was, at the time of the killings, "mentally insane" as defined by the Texas Penal Code.⁶⁵

The insanity defense for Andrea would ultimately dissolve.⁶⁶ Within eight months following her indictment, one jury decided that Andrea was sufficiently competent to stand trial for killing her children⁶⁷ and another refused her insanity plea.⁶⁸ Although this second jury declined to impose the death penalty,⁶⁹ Andrea received a mandatory life sentence for the killings.⁷⁰ Under the Texas capital felony statute, an inmate must serve forty years in prison before becoming eligible for parole.⁷¹ The case is currently on appeal.⁷²

Many theories could explain Andrea's conviction. Of course, the primary theory would speculate that the jury was so horrified by Andrea's acts that any psychiatric evidence offered on her behalf paled in comparison. Yet, the continuing controversy and debate over Andrea's conviction⁷³ suggest that there may be other, more complex, explanations.

Additional rationales primarily point to the retributive aspects of Texas law and culture. As one Harris County resident explained, "There's the rule of law, and there's the rule of law in Texas The rule of law in Texas is kind of cowboy law."⁷⁴ For example, Texas consistently executes more individuals than any other state;⁷⁵ annually it accounts for one-third of all executions in the country,⁷⁶ a pattern that conflicts with both national and international abolitionist trends. Harris County in particular is responsible for over one-third of the state's death row inmates, making it the harshest death penalty jurisdiction in the country⁷⁷

65. *See id.*

66. *See id.* (Mar. 12, 2002) at 74. Because the trial transcript is not yet fully available, the exact details of the Yates case are not known apart from what has been published in the media. *See supra* note 30 and accompanying text.

67. *See App. 1* (Sept. 22, 2001) at 72.

68. *See id.* (Mar. 12, 2002) at 74.

69. *See id.* (Mar. 16, 2002) at 74-75.

70. *See id.* (Mar. 18, 2002) at 75.

71. *See id.* (Mar. 18, 2002 n.209) at 84.

72. *See id.* (Apr. 3, 2002) at 75.

73. *See supra* notes 36-39 and accompanying text and *infra* note 145 and accompanying text.

74. Kate Zernike, *A Wife Betrayed Finds Sympathy at Murder Trial*, N.Y. TIMES, Jan. 24, 2003, at A18 (quoting a resident in neurosurgery).

75. Deborah W. Denno, *When Legislatures Delegate Death: The Troubling Paradox Behind State Uses of Electrocution and Lethal Injection and What It Says About Us*, 63 OHIO ST. L.J. 63, 116-17 (2002); William S. Lofquist, *Putting Them There, Keeping Them There, and Killing Them: An Analysis of State-Level Variations in Death Penalty Intensity*, 87 IOWA L. REV. 1505, 1546-47 (2002); Amnesty International, *United States of America: Texas—In a World of its Own as 300th Execution Looms*, Jan. 23, 2003, available at <http://www.web.amnesty.org/library/Index/ENGAMR510102003?open&of=ENG-USA>.

76. Amnesty International, *supra* note 75 (stating that "[w]hile the State of Texas accounts for less than 10 per cent of the USA's population, it has been responsible for more than a third of the national judicial death toll since 1976").

77. *Id.*; *see also* SPENCER, *supra* note 1, at 148 (asserting that "Harris County proudly called itself the death capital of the United States"); Cheryl L. Meyer & Margaret G. Spinelli, *Medical and Legal Dilemmas of Postpartum Psychiatric Disorders*, in Spinelli, *supra* note 43, at 167, 174 (noting that "Harris county prosecutors have sent more people to death row than any other county in Texas, a state that has led the nation in executions"); *A Deadly Distinction*, HOUS. CHRON., Feb. 5, 2001, at A1 (emphasizing that, with respect to the rates of execution attributed to Harris County, "one of the cruellest anomalies of the modern system of capital punishment" is that "geography means everything");

and one of the most punitive in the Western world.⁷⁸ If Harris County were considered a state, it would follow only two other states (Texas and Virginia) in its number of executions since 1977.⁷⁹

Because the Yates prosecution sought the death penalty, Andrea's jury was "death qualified." In other words, the prosecution could exclude potential jurors for cause if their negative views toward the death penalty were so strong they "would 'prevent or substantially impair the performance of [their] duties as [jurors]'"⁸⁰ and therefore render them "unable to faithfully and impartially apply the law."⁸¹ Research shows that death qualified juries are more anti-civil libertarian in attitude, particularly with respect to such principles as presumption of innocence and burden of proof, and they are significantly more likely to convict than juries that are not death qualified.⁸² Presumably, then, Andrea's jury was far less able to "comprehend the inconceivable"⁸³ in evaluating an insanity defense relative to a jury that had not been death qualified.

The Texas insanity standard is a comparably strict rule of law; in the eyes of one legal commentator, it is "one of the most stringent" in the United States.⁸⁴

Andrew Gumbel, *In God's Name*, THE INDEPENDENT (London), Mar. 14, 2002, at 1 ("Yates had the misfortune to fall under the jurisdiction of Harris County . . . which has a reputation as the most gung-ho prosecutorial machine in the United States. It has sent more defendants to Death Row than any other county, a fact that its prosecutors tend to wear as a badge of pride.").

78. Amnesty International, *supra* note 75. See generally ROGER HOOD, THE DEATH PENALTY: A WORLDWIDE PERSPECTIVE (3d ed. 2002) (documenting the increase in abolitionist countries over the decades).

79. Amnesty International, *supra* note 75. The death penalty statistics on Harris County are daunting. According to the Amnesty International report:

If Texas is the death penalty capital of the USA, Harris County, home to about 15 per cent of the state's population, is its main supplier of condemned inmates. Thirty-five per cent of the 450 men and women on death row in Texas were sent there by Harris County juries. Only seven of the thirty-eight death penalty states in the USA—Alabama, California, Florida, North Carolina, Ohio, Pennsylvania, and the rest of Texas—currently have more people on death row than Harris County. Nearly a quarter of the 291 prisoners executed in Texas between December 1982 and December 2002 were sentenced to death in this county.

Id.

80. *Wainwright v. Witt*, 469 U.S. 412, 424 (1985).

81. *Id.* at 426.

82. Brooke M. Butler & Gary Moran, *The Role of Death Qualification in Venirepersons' Evaluations of Aggravating and Mitigating Circumstances in Capital Trials*, 26 LAW & HUM. BEHAV. 175, 176-77 (2002); see also *State v. Yates*, Motion to Prevent the State from Excluding Qualified Jurors (Dist. Ct. Harris County, Tex.) (Oct. 30, 2001) (contending that "the state is acting in bad faith in seeking the death penalty based on the unique facts in this case and as such depriving the defendant of jurors she is constitutionally entitled to have sit in judgment over her").

83. George J. Parnham, *Insanity: Helping the Jury Comprehend the Inconceivable 2* (n.d.) (on file with author) (noting that "there is a surprising percentage of the general population that simply refuses to accept the reality of a mental disease" and that "[m]any of the potential jurors, if they are honest, will acknowledge their belief that the defense of insanity is simply an excuse and/or trick used by defense attorneys to get a, yet, otherwise responsible individual 'off the hook'").

84. Elaine Cassel, *The Andrea Yates Verdict and Sentence: Did the Jury Do the Right Thing?*, FINDLAW'S WRIT, Mar. 18, 2002, at http://writ.news.findlaw.com/commentary/20020318_cassel.html; see also TOM WHATLEY, RESHAPING THE INSANITY DEFENSE, House Study Group: Special Legislature Rep. 5 (Tex. House of Representatives 1984) (comparing the Texas death penalty standard to other state standards); Pam Easton, *Parnham: Insanity Statute Needs to Change*, HOUSTONCHRONICLE.COM, Mar. 28, 2002, at <http://www.chron.com/cs/CDA/story.hts/special/>

The Yates jury judged psychiatric testimony not only by Texas culture but also by that culture's narrow legal view of what constitutes insanity.

II. THE INSANITY DEFENSE

A. A Brief Overview of the Insanity Defense

Part II explores only the very basics of the insanity defense and how it is applied in the state of Texas.⁸⁵ The insanity defense is considered one of the most controversial criminal law doctrines, not only because of intense debate over how "insanity" should be defined, but also because of increasing conflict over whether the defense should exist in any form.⁸⁶ Statistics show that insanity pleas are seldom raised or successful in states throughout the country,⁸⁷ including Texas.⁸⁸ Nonetheless, the defense rankles social and community tensions over two conflicting goals: the desire to punish the horrendous, highly publicized crimes that the public typically hears about versus the need to understand that some mentally ill people should not be held responsible for what they do.⁸⁹

1. The Major Legal Standards for Insanity

The legal standard for insanity varies across the fifty states.⁹⁰ The first and strictest insanity test of modern usage was introduced in 1843 by the English House of Lords in the *M'Naghten* case.⁹¹ Under *M'Naghten*, a person is insane if, because of a "disease of the mind" at the time she committed the act, she (1) did

drownings/1321217 (discussing a panel at Texas Southern University Law School concerning efforts to change the state's insanity statute as a result of the conviction of Andrea Yates).

85. See generally GARY B. MELTON ET AL., *PSYCHOLOGICAL EVALUATIONS FOR THE COURTS: A HANDBOOK FOR MENTAL HEALTH PROFESSIONALS AND LAWYERS* 186-248 (2d ed. 1997) (discussing the basic procedural aspects of the insanity defense); MICHAEL L. PERLIN, 4 *MENTAL DISABILITY LAW: CIVIL AND CRIMINAL* (2d ed. 2001); RALPH REISNER ET AL., *LAW AND THE MENTAL HEALTH SYSTEM: CIVIL AND CRIMINAL ASPECTS* (3d ed. 1999).

86. See Michael L. Perlin, *Excuse: Insanity*, in 2 *ENCYCLOPEDIA OF CRIME & JUSTICE* 650-57 (Joshua Dressler et al. eds., 2d ed. 2002); Christopher Slobogin, *An End to Insanity: Recasting the Role of Mental Disability in Criminal Cases*, 86 VA. L. REV. 1199, 1199-200 (2000).

87. See generally MELTON ET AL., *supra* note 85, at 187-88 (providing state-wide comparisons demonstrating how infrequently the insanity plea is made and the low rate in which it is successful); PERLIN, *supra* note 85, at § 9C-3.1, 331-32 (noting the tendency of the public and the legal profession to "'grossly' overestimate" the number of insanity verdicts). For example, nationally, insanity acquittals probably constitute no more than 0.2 percent of terminated felony prosecutions. NAT'L MENTAL HEALTH ASS'N, *MYTHS & REALITIES: A REPORT OF THE NATIONAL COMMISSION ON THE INSANITY DEFENSE* 15 (1983). Data from New York specifically demonstrate a similar pattern. Defendants raise the insanity defense about once in every 600 to 700 cases and the defense is successful in about twenty-five percent of the cases in which it is invoked. *Id.*

88. WHATLEY, *supra* note 84, at 10-11.

89. JOSHUA DRESSLER, *UNDERSTANDING CRIMINAL LAW* 335 (3d ed. 2001).

90. MELTON ET AL., *supra* note 85, at 192-93. During the course of this country's history, five insanity standards have been used at some point: the *M'Naghten* rule; the "irresistible impulse" or "control" test; the *Durham* or "product" test; the American Law Institute's Model Penal Code standard in § 4.01; and the federal statutory standard for insanity. See *id.* at 190-93.

91. 8 Eng. Rep. 718 (1843). For a superb discussion of the history of the *M'Naghten* Case, see RICHARD MORAN, *KNOWING RIGHT FROM WRONG: THE INSANITY DEFENSE OF DANIEL MCNAUGHTAN* (1981).

not know the "nature and quality of the act" that she was performing; or (2) if she was aware of the act, she did not know that what she "was doing was wrong," that is, she did not know the difference between right and wrong.⁹² The *M'Naghten* rule, which soon became the most widely accepted insanity test in the United States,⁹³ considers only cognitive ability and not volitional conduct.⁹⁴

Concern over the narrowness of the *M'Naghten* test prompted attempts over the years to replace it.⁹⁵ The most successful attempt was the American Law Institute (ALI)'s 1962 insanity test which rapidly gained support from legislatures and courts; by the 1980s, the ALI standard was adopted nearly unanimously by the federal circuit courts and over one-half of the states.⁹⁶ Under the ALI test, an individual is not responsible for her criminal conduct if, because of mental disease or defect, she either lacked "substantial capacity" to appreciate the "criminality" (or, at the opting of the state legislature, the "wrongfulness") of her conduct, or she failed to "conform" her conduct "to the requirements of law."⁹⁷

The differences between the ALI and *M'Naghten* tests are striking. For example, the ALI test accepts both *cognitive* and *volitional* impairment as an excuse. In other words, the test considers a defendant's cognitive ability to "appreciate" the criminality or wrongfulness of her conduct as well as her ability to "conform" her conduct to the law.⁹⁸ This added "conform" requirement is often characterized as a "lack-of-control defense," pertaining to those individuals whose mental disease or defect leads them to lose control over their actions at the time they commit an offense.⁹⁹

The ALI and *M'Naghten* standards vary in other important ways. The ALI test requires only that defendants "lack substantial capacity," not total capac-

92. *M'Naghten's Case*, 8 Eng. Rep. at 722. The exact standard is as follows:

[T]o establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between right and wrong.

Id. Compare *infra* note 132.

93. MELTON ET AL., *supra* note 85, at 191.

94. Slobogin, *supra* note 86, at 1210-11 (reviewing the literature criticizing this narrow scope).

95. See Grant H. Morris & Ansar Haroun, "God Told Me to Kill": Religion or Delusion?, 38 SAN DIEGO L. REV. 973 (2001).

96. PERLIN, *supra* note 85, at 162.

97. MODEL PENAL CODE § 4.01(1) at 163 (Official Draft and Revised Comments, 1985) [hereinafter MODEL PENAL CODE 1985]. The exact standard is as follows:

A person is not responsible for criminal 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 [wrongfulness] of his conduct or to conform his conduct to the requirements of the law.

Id.

98. See *supra* notes 92, 94, 97.

99. MELTON ET AL., *supra* note 85, at 198-201.

ity.¹⁰⁰ In turn, the ALI applies the broader term “appreciate” rather than “know” when specifying the type of cognitive impairment that leads to insanity; hence, the defendant’s lack of emotional understanding can be incorporated into the defense.¹⁰¹ The ALI test also allows the state legislature to consider “wrongfulness” rather than “criminality.” This choice enables a finding of insanity if the accused does not know the act was illegal and also if she believes the act was “morally justified” according to community standards.¹⁰² At the same time, both the ALI and *M’Naghten* tests skirt any set definition of the term “mental disease or defect.”¹⁰³ According to the ALI, such an open-ended approach allows the term “to accommodate developing medical understanding”¹⁰⁴ and therefore avoid the constraints of old science.

The popularity of the ALI test dwindled in 1981 when a jury found John Hinckley not guilty by reason of insanity, based on an ALI standard, for his attempted assassination of Ronald Reagan.¹⁰⁵ The effects of the public furor over Hinckley’s acquittal were immediate:¹⁰⁶ the federal government and several of the ALI test states abolished the volitional component of the test entirely and imposed other limits, in some cases reverting back to a *M’Naghten*-type standard.¹⁰⁷ According to a 1995 survey of insanity laws, about twenty states still use the ALI test while nearly half of the states apply “[s]ome variation of the *M’Naghten*/cognitive impairment-only test.”¹⁰⁸ A handful of states have abolished the insanity defense entirely.¹⁰⁹

2. Modern Problems with the *M’Naghten* Insanity Standard

The return to a *M’Naghten*-type standard spotlights the problems that the test has always had and why there have been continuing efforts to change it. For

100. According to the ALI drafters, “[t]he adoption of the standard of substantial capacity may well be the Code’s most significant alteration of the prevailing tests.” MODEL PENAL CODE 1985, *supra* note 97, § 4.01 cmt. 3, at 172.

101. *Id.* at 169 (“The use of [the term] ‘appreciate’ rather than ‘know’ conveys a broader sense of understanding than simple cognition.”).

102. *Id.* at 169-70.

103. MELTON ET AL., *supra* note 85, at 196 (explaining that “legal definitions of the mental disease or defect threshold, if they exist at all, are extremely vague and will vary from jurisdiction to jurisdiction. Thus, it would be unwise to assume that a particular diagnosis can be equated with insanity or its threshold.”).

104. MODEL PENAL CODE 1985, *supra* note 97, § 4.01 cmt. 3, at 169.

105. PERLIN, *supra* note 85, at 325-28; REISNER ET AL., *supra* note 85, at 538-39. For a thorough account of the Hinckley case, see RICHARD J. BONNIE ET AL., *THE TRIAL OF JOHN W. HINCKLEY, JR.: A CASE STUDY IN THE INSANITY DEFENSE* (2d ed. 2000); LINCOLN CAPLAN, *THE INSANITY DEFENSE AND THE TRIAL OF JOHN W. HINCKLEY, JR.* (1984).

106. The swift reforms in the insanity defense following the Hinckley verdict demonstrate the strength of public opinion. Polls conducted the day after the verdict was announced showed so much public indignation that legislative and presidential reaction and change were immediate. See Valerie P. Hans & Dan Slater, *John Hinckley, Jr. and the Insanity Defense: The Public’s Verdict*, 47 PUB. OPINION Q. 202, 202-03 (1983) (for example, Delaware passed new legislation the day after the verdict was announced).

107. REISNER ET AL., *supra* note 85, at 526-27.

108. MELTON ET AL., *supra* note 85, at 193.

109. Slobogin, *supra* note 86, at 1200 n.2, 1214 (the five states are Idaho, Kansas, Montana, Nevada, and Utah).

example, the word "know" and the phrase "nature and quality of the act" can be defined either very broadly or narrowly.¹¹⁰ Such vagueness gives legal actors little guidance for interpreting the test and heightens the chance that they will apply it inconsistently across different cases. Likewise, it is not clear whether the "wrong" in the right-and-wrong prong pertains to legal or moral wrongdoing because the language in *M'Naghten* itself could bolster either approach.¹¹¹ England has since established that the right-and-wrong element represents the defendant's recognition that an act is legally wrong.¹¹² Yet, American law sides in the opposite direction.¹¹³ Most American courts have interpreted the word "wrong" to mean "moral wrong," not "legal wrong."¹¹⁴ This issue was important in the Yates case because Texas law does not specify a particular approach¹¹⁵ and a moral wrong approach would have benefited Andrea. According to some defense experts, Andrea knew that her acts were illegal but she believed they were morally right, given the context of her delusional circumstances.¹¹⁶

In American states that apply the moral right-and-wrong test, questions typically concern whether the defendant knowingly transgressed *society's* standards of morality, not whether the *defendant* personally perceived *her* acts to be morally acceptable. In other words, even if a defendant is mentally ill and, as a result, commits an offense that she believes is *morally* correct, she is considered sane if she is aware that her conduct is condemned by society.¹¹⁷ As one commentator notes, however, this difference can "be blurred to near extinction" depending on how the particular circumstances in a case are pitched.¹¹⁸ For example, a mentally ill individual "is apt to know that society considers it morally wrong to kill, but if she is acting pursuant to a delusionary belief that God wants her to kill, she might now believe that society would agree with her God-endorsed actions."¹¹⁹

Interpretation of the moral-right-and-wrong standard can vary somewhat in the few *M'Naghten* jurisdictions that have a "deific decree doctrine," in other words, a rule that allows a mentally disordered defendant to be judged legally insane if she believes that she is acting under the direct command of God (for

110. DRESSLER, *supra* note 89, at 346-47 (2001).

111. *Id.* at 347; see also Morris & Haroun, *supra* note 95, at 1008 (explaining that the *M'Naghten* judges did not specify "whether a defendant is insane if he or she knows the act is illegal, but who, through mental disorder, believes the act to be moral").

112. Regina v. Windle, 2 All E.R. 1, 2 (1952).

113. Morris & Haroun, *supra* note 95, at 1013.

114. *Id.* at 1013 n.247 ("Although a few courts have construed the word 'wrong' to mean 'legal wrong,' most have adopted the 'moral wrong' interpretation.") (citations omitted).

115. See *infra* notes 130-37, 144-45 and accompanying text.

116. See *infra* notes 463-65 and accompanying text.

117. DRESSLER, *supra* note 89, at 347. The California Supreme Court has clarified the distinction:

[M]orality . . . is . . . not simply the individual's belief in what conduct is or is not good. While it need not reflect the principles of a recognized religion and does not demand belief in a God or other supreme being, it does require a sincerely held belief grounded in generally accepted ethical or moral principles derived from an external source.

People v. Coddington, 2 P.3d 1081, 1144 (Cal. 2000), *overruled on other grounds by* Price v. Superior Court, 25 P.3d 618 (Cal. 2001).

118. DRESSLER, *supra* note 89, at 347 n.73.

119. *Id.*

example, a belief that God commanded the defendant to kill someone).¹²⁰ Two primary rationales explain the origins of the deific decree doctrine. First, the doctrine “was merely a logical extension of the Judeo-Christian belief that God would not order a person to kill another” because the Sixth Commandment prohibits murder.¹²¹ Therefore, a person thinking that God is commanding her to kill is entertaining a false belief and thus should not be held accountable. Likewise, nineteenth-century courts and juries would not grant the insanity defense to individuals contending that they acted under the command of the Devil or some other religiously corrupt figure because people accepted only “the One True God.”¹²² Second, the doctrine may have been a vehicle for inserting a volitional component exception to the cognitive-only limitations of the *M’Naghten* rule so that *M’Naghten* could incorporate at least a narrow category of uncontrolled individuals.¹²³

The exceptions and qualifications for the deific decree doctrine apparently still apply today for defendants experiencing such “command hallucinations.”¹²⁴ The doctrine presumes that the defendant’s behavior results from a delusion (a “false belief based on incorrect inference about external reality”),¹²⁵ and not from a religious conviction,¹²⁶ although determining the difference between the two can be very difficult.¹²⁷ While some jurisdictions treat the deific decree rule as an exception to the general insanity standard, other jurisdictions view it as a major factor in assessing an individual’s capability to tell right from wrong.¹²⁸ Irrespective of a jurisdiction’s particular approach, these right-wrong issues were key in the Andrea Yates case. Andrea’s command hallucinations were a focus of the

120. Morris & Haroun, *supra* note 95, at 1003.

121. *Id.*

122. *Id.* at 1004.

123. *Id.*

124. A hallucination is “[a] sensory perception that has the compelling sense of reality of a true perception but that occurs without external stimulation of the relevant sensory organ The person may or may not have insight into the fact that he or she is having a hallucination.” AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, TEXT REVISION (DSM-IV-TR) 823 (4th ed. 2000) [hereinafter DSM-IV-TR].

125. *Id.* at 821. A more complete definition of “delusion” is as follows:

A false belief based on incorrect inference about external reality that is firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary. The belief is not one ordinarily accepted by other members of the person’s culture or subculture (e.g., it is not an article of religious faith). When a false belief involves a value judgment, it is regarded as a delusion only when the judgment is so extreme as to defy credibility. Delusional conviction occurs on a continuum and can sometimes be inferred from an individual’s behavior. It is often difficult to distinguish between a delusion and an overvalued idea (in which case the individual has an unreasonable belief or idea but does not hold it as firmly as is the case with a delusion).

Id.

126. Morris & Haroun, *supra* note 95, at 1003.

127. See *id.* at 1014.

128. DRESSLER, *supra* note 89, at 348.

expert testimony and what was supposed to be considered "wrong" was neither specified, nor constrained, in the jury charge.¹²⁹

B. The Texas Insanity Standard

In 1973, Texas joined the ranks of other states and adopted the more lenient ALI definition of insanity.¹³⁰ A decade later, however, the state returned to a *M'Naghten* type standard, partly in response to developments surrounding the Hinckley verdict.¹³¹ Yet, a critical feature of the Texas test¹³² is that it is even narrower than *M'Naghten*, although comparably confusing. The typical *M'Naghten* standard refers to two parts: the defendant's ability to know (1) the "nature and quality of the act committed" or (2) whether the act was "right or wrong."¹³³ The Texas standard, however, eliminates the first part and refers only to the second, that is, whether the defendant knew the act was right or wrong.¹³⁴ Texas also limits the defense to cases of *severe mental illness* and puts the burden of proving insanity on defendants.¹³⁵ As legal commentators rightly contend, the Texas standard "could hardly be narrower"¹³⁶ or more "impossible to meet."¹³⁷

Similar to the *M'Naghten* standard, defining the terms "right" and "wrong" is a problem.¹³⁸ For example, the Texas insanity statute does not clarify whether "wrong" should be considered from a legal or a moral standpoint.¹³⁹ This ambiguity was a key issue in the Yates case, both for the law and the psychiatric pro-

129. Mary Connell, *Expert Opinion*, AM. PSYCHOL. L. SOC'Y NEWS, Spring/Summer 2002, at 18, 19 (quoting Mary Alice Conroy, the Director of Practicum Training for the Forensic Clinical Psychology Program at Sam Houston State University).

130. Ray Farabee & James L. Searly, *The New Insanity Law in Texas: Reliable Testimony and Judicial Review of Release*, 24 S. TEX. L. J. 671, 673 (1983).

131. WHATLEY, *supra* note 84, at 5.

132. See TEX. PENAL CODE ANN. § 8.01 (Vernon 2002). The Texas test defines insanity in the following terms:

(a) It 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. (b) The term 'mental disease or defect' does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Id.

133. See *supra* notes 91-94, 110-14 and accompanying text.

134. See *supra* note 132; see also *infra* notes 141-43 and accompanying text (describing the confusion concerning jurors' interpretations of "wrong").

135. WHATLEY, *supra* note 84, at 12; see also Farabee & Searly, *supra* note 130, at 681-84.

136. Cassel, *supra* note 84; see also Jennifer Bard, *Unjust Rules for Insanity*, N.Y. TIMES, Mar. 13, 2002, at A25; Katherine Seligman, *Legal Affairs*, S. F. CHRON., Mar. 17, 2002, at A6.

137. Bard, *supra* note 136; Seligman, *supra* note 136.

138. See *supra* notes 110-13.

139. Connell, *supra* note 129, at 18-19. According to Mary Alice Conroy, the Director of Practicum Training for the Forensic Clinical Psychology Program at Sam Houston State University, *id.* at 18, *Bigby v. State*, 892 S.W.2d 864 (Tex. Crim. Ct. App. 1994), is often cited as bolstering a very limited, totally legal, definition of "wrong." Connell, *supra* note 129, at 18. However, Conroy notes that *Bigby* did not directly address the conflict between moral and legal wrongfulness because the defendant, who was denied the insanity defense, stated that his actions were illegal. While the *Bigby* court enabled the state to contend that "wrong" should mean legally wrong, the court's effort was to uphold the jury's use of reasonable discretion in how it would view the word "wrong" rather than binding future courts with a definition of "legal wrong." *Id.*

fession. As one psychiatric expert commenting on the case said, there is still no "test" available to determine who is genuinely controlled by command hallucinations; rather, psychiatrists must rely on "a certain degree of approximation[]" in their assessments.¹⁴⁰ Likewise, the Yates jury charge did not specify what "wrong" should mean and expert testimony did not seem to restrict the definition of "wrongfulness."¹⁴¹ The Yates jury was free to use the term's "common and ordinary meaning"¹⁴² and apply "the statutory language to the facts as it saw fit."¹⁴³

Such a legally muddled circumstance prompted conflicting approaches to interpreting the Texas insanity standard. As the Yates case evolved, for example, it became clear that both the prosecution and the defense would define the legal-or-moral wrong issue because of the statute's silence. Both sides agreed that Andrea was mentally ill and, in general, that she knew her actions were legally wrong.¹⁴⁴ The issue of whether Andrea's mental illness rendered her unable to control her actions, although hotly debated, was moot under the narrow confines of the Texas insanity statute.¹⁴⁵ Thus, only one significant question was left for the jury to resolve: Did Andrea know that her actions were morally wrong?

III. PARK DIETZ'S EXPERTISE AND PSYCHIATRIC PHILOSOPHY

There was little legal or psychiatric clarity guiding the determinations to be made in the Yates case. For this reason, the opinions of expert witnesses were especially important. According to a synopsis of the ethical guidelines established by the American Academy of Psychiatry and the Law, "the medical expert is expected to provide a clinical evaluation and a review of the applicable data in light of the legal question posed and in the spirit of honesty and striving for objectivity—the expert's ethical and professional obligation."¹⁴⁶ The Academy specifies that such an obligation "includes a thorough, fair, and impartial review and should not exclude any relevant information in order to create a view favoring either the plaintiff or the defendant."¹⁴⁷

According to some legal commentators, Park Dietz's expert testimony was considered "crucial"¹⁴⁸ for the conviction of Andrea Yates—the "defining moment" of the trial.¹⁴⁹ Part III examines Dietz's background, experience, and psy-

140. Michael Jonathan Grinfeld, *Mother's Murder Conviction Turns Insanity Defense Suspect*, 19 PSYCHIATRIC TIMES, June 2002, available at <http://www.psychiatrictimes.com/p020601.html>.

141. Connell, *supra* note 129, at 18-19.

142. *Id.* at 19.

143. Cassel, *supra* note 84.

144. See generally *infra* Part VI (discussing experts' views of Andrea's knowledge of the legality of her actions).

145. Brown, *supra* note 21.

146. Ciccone, *Expert Testimony*, *supra* note 42, at 797 (citing the American Academy of Psychiatry and the Law, *Ethical Guidelines for the Practice of Forensic Psychiatry*, 12 NEWSLETTER 16, 17 (1987)).

147. *Id.*

148. Interview: Dr. Park Dietz, TIME.COM, Mar. 19, 2002, available at <http://www.time.com/time/nation/printout/0,8816,218743,00.html>.

149. *The Yates Case: Criminal Defense Attorney Brian Wice Comments on the Trial of the Houston Mother Who Drowned Her Five Children*, COURT TV.COM, Mar. 7, 2002, available at http://www.court tv.com/talk/chat_transcripts/2002/0307yates-wice.html (quoting criminal defense attorney Brian

chiatric philosophy in an effort to explain why Dietz's story about Andrea seemed so much more compelling than the other stories experts had to offer. Notably, much of the information about Dietz derives from interviews with Dietz himself, or from his supporters, in magazines and newspapers. Dietz is commendably forthright about his views in general and was immediately open to commenting on the Yates case as soon as Andrea was sentenced.¹⁵⁰ What becomes apparent is how his own self-described, pro-prosecution leanings could mesh so well with a death qualified, Harris County jury.

A. Dietz's Background and Reputation

Park Dietz is considered one of the most "prominent and provocative" psychiatric expert witnesses in the country.¹⁵¹ In one professional capacity or another, he has been involved with a long list of famous homicide defendants: John Hinckley, Jr., Jeffrey Dahmer, Susan Smith, Melissa Drexler, the Menendez brothers, O.J. Simpson (in the civil case), and Ted Kaczynski, to name a few.¹⁵² He can now add Andrea Yates to that list. As the prosecution's star witness in the Yates case,¹⁵³ he both interviewed and videotaped Andrea,¹⁵⁴ and he subsequently testified in court about his evaluation.¹⁵⁵

Dietz also has extensive professional credentials. He acquired a B.A. from Cornell in biology and psychology, an M.D. from Johns Hopkins School of Medicine, and a Masters in Public Health and Ph.D. in sociology, both from Johns Hopkins. He has held academic posts at Johns Hopkins, the University of Pennsylvania, Harvard, and the University of Virginia.¹⁵⁶ His professional experience is substantial, including consulting positions with the Department of Justice and the Federal Bureau of Investigation.¹⁵⁷ In addition, Dietz has over one hundred publications, "nearly all" of which concern violent or injurious behavior,¹⁵⁸ and he has examined "thousands" of criminal defendants for forensic psychiatric purposes, including sanity determinations.¹⁵⁹

Currently (and at the time he testified in the Yates trial), Dietz runs two businesses in Newport Beach, California. He is the president and founder of Park Dietz & Associates, Inc., forensic consultants in medicine and the behav-

Wice as stating that Andrea's fate "will likely turn" on the cross-examination of Dietz, which "will for better or worse be the defining moment of this trial").

150. Dietz's interview in the *New York Times* a month after Andrea's sentencing was particularly noteworthy. See Anastasia Toufexis, *A Conversation with Park Dietz: A Psychiatrist's-Eye View of Murder and Insanity*, N.Y. TIMES, Apr. 23, 2002, at F5.

151. *Id.*; see also Joyce Johnson, *Witness for the Prosecution*, NEW YORKER, May 16, 1994, at 42 (characterizing Dietz as "the virtuoso expert witness who keeps showing up on Court TV").

152. See App. 4 at 99, tr. at 11; see also Toufexis, *supra* note 150.

153. Carol Christian, *Prosecution Witness in Yates Trial Assailed*, HOUS. CHRON., Apr. 30, 2002, at A17 (referring to Dietz as the "prosecution's star witness" in the Yates case).

154. See App. 4 at 99, tr. at 15; Transcript of Park Dietz's interview with Andrea Yates (Nov. 7, 2001) [hereinafter Dietz-Yates interview] (full transcript on file with author).

155. See generally App. 4.

156. See *id.* at 97-98, tr. at 1-7.

157. See *id.* at 98, tr. at 6-7.

158. See *id.* at 98-99, tr. at 7-8.

159. See *id.* at 99, tr. at 8.

ioral sciences, as well as president and founder of Threat Assessment Group, Inc. (TAG), which specializes in the prevention of workplace violence.¹⁶⁰ Before arriving in Houston to testify in the Yates case, Dietz mailed his business brochure (describing his companies and the types of cases on which they work) to a wide range of members of Houston's legal community—prosecutors, defense attorneys, attorneys specializing in premises liability for violent crime, and lawyers representing elder abuse victims.¹⁶¹ Although the Yates defense brought forth evidence of Dietz's brochure distribution during cross-examination in an effort to portray Dietz as a "professional testifier,"¹⁶² Dietz did not seem apologetic.¹⁶³ Nor did such a revelation appear to dent the perceived validity of his testimony.

1. A Desire to Emphasize "Facts"

Media articles about Dietz claim he is known for emphasizing "facts" rather than "theoretical conjecture" when evaluating a case.¹⁶⁴ Indeed, both Dr. Jonas Rapoport, a renowned professor of Dietz's at Johns Hopkins Medical School,¹⁶⁵ as well as Roger Adelman, one of the prosecutors in the Hinckley case,¹⁶⁶ credit Dietz's precision and "focus on the facts" as major contributions Dietz has brought to modernizing the field of forensic psychiatry.

In line with this facts-driven orientation, Dietz seems to be more concerned with the physical evidence linked to a crime than with the defendant's history that can be acquired in an interview.¹⁶⁷ According to Dietz, for example, interviews with defendants have typically "been the linchpin of forensic assessments"; yet, there are "serious risks" associated with them because the "[n]atural human techniques for gaining information from an interview unthinkingly cut corners by suggesting answers or guessing at the answer or offering multiple choices."¹⁶⁸ Such leading or suggestive procedures are comparable to crime scene evidence that has been contaminated or corrupted.¹⁶⁹ Dietz favors instead the second source of mental evidence, which includes examining the crime scene, analyzing autopsies and weapons, and interviewing witnesses to the crime.¹⁷⁰ Although "the ideal" would be to have both types of evidence when making an evaluation, Dietz has stated that, "[i]f I had to choose between

160. See *id.* at 124-25, tr. at 147-50; see also Park Dietz & Associates, Inc., website at <http://www.parkdietzassociates.com> (last visited Feb. 2, 2003) (providing a complete description of Dietz's businesses).

161. See App. 4 at 124-25, tr. at 150-53.

162. See *id.* at 125, tr. at 151-52.

163. See generally App. 4.

164. Johnson, *supra* note 151, at 43; see also Dale Keiger, *The Dark World of Park Dietz*, JOHNS HOPKINS MAG., Nov. 1994, available at <http://www.jhu.edu/~jhumag/1194web/dietz.html> (stating that "Dietz is known for stringent analysis of the facts of a case and an avoidance of opinion when on the witness stand").

165. Johnson, *supra* note 151, at 43.

166. Keiger, *supra* note 164 (citing Roger M. Adelman, a prosecutor on the Hinckley case and now an attorney with Kirkpatrick & Lockhart in Washington, D.C.).

167. See Johnson, *supra* note 151, at 46.

168. Toufexis, *supra* note 150.

169. *Id.*

170. *Id.*

the interview [with the defendant] only or everything except the interview as a means of getting to the truth, I'd prefer everything except the interview because it would get me to the truth more often."¹⁷¹

Dietz's apparent stress on facts,¹⁷² combined with what even Rappeport views as a "rigid" approach towards defendants,¹⁷³ has prompted criticism. According to an article about Dietz in *Johns Hopkins Magazine*, "[s]ome forensic psychiatrists" have accused him of presenting "mere informed opinion as solid fact, and [complain] that his standard of criminal responsibility is harsh and unforgiving of mentally ill defendants."¹⁷⁴ For example, during his testimony in the Yates case, Dietz indicated that because Andrea claimed that Satan, rather than God, told her to kill her children, she knew her actions were wrong.¹⁷⁵ Andrea also failed to act in a way a loving mother would if she really thought she was saving her children from hell by killing them. As Dietz stated, "I would expect her to comfort the children, telling them they are going to be with Jesus or be with God, but she does not offer words of comfort to the children."¹⁷⁶ However, there appears to be no empirical support for this kind of interpretation of the deific decree doctrine, if in fact that is what Dietz was referencing.¹⁷⁷ Rather, if Dietz's explanation has any source at all, it seems to derive from the centuries-old, Judeo-Christian origins of the doctrine itself.¹⁷⁸ As one legal critic asked in response to Dietz's comments, "Is one to infer that it is somehow more loving to invoke the name of Jesus while you drown your children than to drown them without any religious commentary?"¹⁷⁹ In other words, Dietz appears to be stressing religion, not facts, a focus more aligned with Southern Bible belt culture¹⁸⁰ rather than with a medical assessment of Andrea's mental state.

Even Dietz's supporters have admitted that his inflexible approach may prevent him from being able (or willing) to comprehend "some of the psychological nuances of human behavior."¹⁸¹ According to Rappeport, a strong advocate,¹⁸² Dietz has the capability to understand and apply knowledge of human behavior, he simply chooses not to.¹⁸³ As Rappeport explained, "I have a suspicion he may not like to do that. So he may find himself more frequently on the side of the prosecutor, who doesn't like to do those things either."¹⁸⁴ Such an omission is a troubling handicap in a field where "[f]ifty percent or more of

171. *Id.*

172. See Johnson, *supra* note 151, at 48.

173. See *id.*

174. See Keiger, *supra* note 164.

175. See App. 4 at 109, tr. at 86; see also Associated Press, *Doctor: Yates Suffered Mental Illness*, Mar. 8, 2002, available at http://www.courtstv.com/trials/yates/030802-illness_ap.html.

176. See App. 4 at 114, tr. at 106.

177. Morris & Haroun, *supra* note 95, at 1003.

178. See *id.*

179. Susan Jacoby, *Needed: Guilty but Insane Option*, *NEWSDAY*, Mar. 14, 2002, at A35.

180. Steiker, *supra* note 9, at 124-25; see also *Professor to Discuss Death Penalty*, *SAN ANGELO STANDARD-TIMES*, Jan. 14, 2003, at A3 (referring to the Bible belt culture in Texas).

181. See Johnson, *supra* note 151, at 48.

182. See *id.* at 46 (noting that Rappeport "recalls that when he discovered Dietz at Hopkins his feeling was one of 'love at first sight,' for 'Park consumed books, consumed information'").

183. See *id.* at 48.

184. *Id.*

medicine is emotional.”¹⁸⁵ It is particularly problematic given that the cases that typically involve Dietz’s testimony often turn on the very “nuances” that Dietz discounts.

Indeed, in media interviews¹⁸⁶ and his testimony in the Yates case,¹⁸⁷ Dietz has made clear that he does not treat patients in a psychiatry practice. This lack of engagement with patients is “rare” among medical expert witnesses.¹⁸⁸ Rather, Dietz opts to concentrate on research and one-time interviews with criminal defendants.¹⁸⁹ Yet, such a view of the psychiatric world is distorted. For example, it is difficult to comprehend how Dietz can evaluate an individual’s normality or abnormality if he only engages in short-term interviews with highly abnormal people. By encountering briefly only the most extreme criminal cases, all Dietz sees is pathology. He has no “control group” as a comparison, no in-depth evaluations of individuals from whom he can learn nuances. Such an approach may explain additional criticisms concerning where Dietz draws the line for distinguishing sanity from insanity. According to Fred S. Berlin, associate professor of psychiatry at Johns Hopkins and one of the defense’s psychiatric experts in the Jeffrey Dahmer case, Dietz’s line is too stringent. “He has a high threshold for evidence that tends to suggest impairment. A narrow range for what he defines as psychiatric disorder.”¹⁹⁰

Consistent with this view, in the Yates case Dietz minimized the defense expert witnesses’ testimony that Andrea had suffered years of delusions, auditory hallucinations, and visions of violence.¹⁹¹ Instead, Dietz claimed that Andrea had, at most, experienced “obsessional intrusive thoughts.”¹⁹² Yet, contrary to other high profile defendants pleading insanity, Andrea had a substantial and documented history of mental illness before she killed her children.¹⁹³ Not only had she twice attempted suicide, she had also been hospitalized and prescribed anti-psychotic drugs after the birth of her fourth and fifth children.¹⁹⁴ The de-

185. *Id.* For further discussion of the significance of understanding and applying knowledge of human behavior in the field of psychiatry, see generally WILLARD GAYLIN, *THE KILLING OF BONNIE GARLAND* 252 (1982) (explaining that two key axioms of psychiatry are, first, that “[e]very individual act of human behavior is the resultant of a multitude of emotional forces and counterforces” and, second, “[t]hese forces and counterforces are shaped by past experience”).

186. See Johnson, *supra* note 151, at 43, 48 (noting that although Dietz’s colleagues often have clinical practices, Dietz “himself has no interest in treating patients” and that “Park never treats anybody and has no qualms about it”).

187. See generally App. 4.

188. Ciccone, *Expert Testimony*, *supra* note 42, at 798. Commentators on psychiatric expert testimony emphasize the importance of psychiatric experts engaging in a clinical practice:

The medical expert witness usually engages in [testifying] as a part of a larger clinical practice. While some experts have given up clinical work, this is rare. Medical experts who have not actively engaged in their discipline or who have given it up may find their credibility questioned in court. Medical experts have the ethical obligation to inform the court or attorney hiring them of the status of their clinical practice.

Id.

189. See Toufexis, *supra* note 150.

190. Keiger, *supra* note 164.

191. See App. 4 at 105, tr. at 68-70.

192. See *id.*, tr. at 69.

193. See App. 1 (June 17, 1999; July 21, 1999; Mar. 31, 2001; May 4, 2001) at 62, 64, 67-68.

194. See *id.* (June 17, 1999; June 19, 1999; July 20, 1999; Mar. 31, 2001) at 62-64, 67-68.

fense could call experts who had actually treated Andrea, some repeatedly,¹⁹⁵ in sharp contrast to Dietz's relatively brief interview. As one scholar on expert testimony emphasizes, "[t]he legal system assumes that the treating doctor is more credible than a nontreating doctor"; therefore, the treating physician "is frequently sought to provide expert testimony."¹⁹⁶

Nonetheless, Dietz's effectiveness as a witness appears to be due to his alleged emphasis on fact. Because jurors received conflicting expert testimony during the Yates trial, minimal statutory guidance, and unclear stories from both the prosecution and defense, they were left with little to rely on other than the supposed "facts."¹⁹⁷ Compounding this dilemma, the multiple defense psychiatrists gave somewhat contradictory analyses of Andrea's mental state,¹⁹⁸ presumably in part because she had been treated or assessed by a number of them during different stages of her illness. Such a multiple-theory defense narrative contrasted with the more uniform "factual" narrative presented by Dietz. Given a choice, Dietz's story may have been the preferred alternative; the jury could base a decision on something tangible—"facts"—rather than confusion.

2. A Prosecutorial Bent

Almost immediately, Dietz's testimony and post-trial commentary about the Yates case sparked notoriety for the views he expressed both inside and outside the courtroom. In an interview with the *New York Times* six weeks after his trial testimony, Dietz stressed that his involvement in the Yates case was "troubling," both "professionally and personally."¹⁹⁹ As he explained, "[i]t was obvious where public opinion lay, it was obvious she was mentally ill, it was obvious where professional organizations would like the case to go."²⁰⁰ Therefore, while "[i]t would have been the easier course of action to distort the law a little, ignore the evidence a little, and pretend she didn't know what she did was wrong," it also would have been "wrong . . . to stretch the truth and try to engineer the outcome" in that way.²⁰¹

Dietz also tried to justify his career-long tendency to appear primarily for the prosecution. According to Dietz, prosecutors, like good forensic psychiatrists, strive "to seek truth and justice" and therefore to make available all the information important in a case.²⁰² In contrast, defense attorneys attempt to help their clients—a goal that conflicts with a thorough search for data. "[O]ften there are pieces of evidence that are not in their client's interest to have disclosed or

195. See *id.* (Andrea met with Dr. Flack throughout the period of June 19, 1999 to June 24, 1999; Dr. Starbranch from July 1, 1999 to Jan. 2000; and Dr. Saeed from Apr. 1, 2001 to June 18, 2001) at 62-70.

196. Ciccone, *Expert Testimony*, *supra* note 42, at 797.

197. See Cassel, *supra* note 84.

198. See *infra* notes 461-69.

199. See Toufexis, *supra* note 150.

200. *Id.*

201. *Id.*

202. *Id.*; see also Keiger, *supra* note 164 (noting that Dietz "almost always appears in court as a witness for the prosecution"); *Interview: Dr. Park Dietz*, *supra* note 148 (commenting on how Dietz's approach benefits prosecutors).

produced.”²⁰³ Of course, Dietz’s statements imply that defense attorneys and their witnesses want to distort information in some way and shield the truth.²⁰⁴

The irony of Dietz’s points, however, were spotlighted a week later by Andrea’s attorneys. They discovered a factual error that Dietz had made during cross-examination. As the next section discusses, their research showed that Dietz had testified incorrectly about the existence of a television episode about postpartum depression that never aired.²⁰⁵

3. A Mistake in Testimony

Dietz is a technical advisor to two television shows: *Law & Order* and *Law & Order Criminal Intent*. In his advisory capacity, he has viewed nearly three hundred episodes of both shows.²⁰⁶ During the Yates trial, Dietz mistakenly testified that, shortly before Andrea killed her children, *Law & Order* aired an episode involving a postpartum depressed mother who successfully won an insanity appeal after drowning her children in a bathtub.²⁰⁷ The episode never existed.²⁰⁸ When Dietz learned of his error, he wrote prosecutors Joe Owmbly and Kaylynn Williford and informed them that he had confused the insanity episode he testified about with other *Law & Order* episodes and infanticide cases. Dietz’s mistake about such a fact, however, may be part of the grounds for Yates’s appeal.²⁰⁹ It is not a stretch to think the jury may have been affected by Dietz’s implication that Andrea was somehow influenced by the show.

Dietz’s statements about the “truth seeking” differences between the prosecution and the defense were also problematic in other ways totally beyond his control and, presumably, his awareness. For example, trial testimony revealed that the defense was not able to acquire copies of particular documents, including Andrea’s police offense report. George Parnham, Andrea’s attorney, was allowed only to read her police report but not to photocopy it.²¹⁰ Therefore, Parnham resorted to taking notes on the report, based only on what he could remember of it. As one defense expert later revealed, having only Parnham’s notes on Andrea’s report put the expert “at a real disadvantage.”²¹¹

Dietz also claimed that the defense experts asked “shocking examples of leading questions” of Andrea and provided only partial, and biased, videotapes of their interviews with her.²¹² Predictably, his accusation prompted a response. According to Lucy Puryear, a Houston psychiatrist who testified for Andrea’s

203. Toufexis, *supra* note 150.

204. Christian, *supra* note 153.

205. *Id.*

206. *Id.*

207. See App. 4 at 127, tr. at 161.

208. Christian, *supra* note 153.

209. Andrew Gumbel, *Life Sentence for Texan Mother Who Drowned Her Five Children; Andrea Yates: A History of Mental Health Problems*, THE INDEPENDENT (London), Mar. 16, 2002, at 18 (explaining that Dietz’s mistake about the *Law & Order* episode might be an issue on appeal and that Joseph Owmbly, the lead prosecutor, “insinuated that Mrs. Yates—a fan of the show—might have hatched a plot for infanticide based on what she saw on TV”).

210. See App. 4 at 130, tr. at 171.

211. Christian, *supra* note 153.

212. See Toufexis, *supra* note 150.

defense, Dietz did the same.²¹³ Puryear added that Dietz edited his eight hours of videotaped interviews with Andrea and only “showed the jury portions that supported his testimony.”²¹⁴

Such media debates simply seem to accentuate the general problems associated with incorporating psychiatric testimony in an adversarial process, as well as the weaknesses of the profession itself. Legal commentators emphasized the extent to which both sides in the Yates case differed in their conclusions about Andrea’s mental state given that they were purportedly examining the same evidence.²¹⁵ As the following sections suggest, however, the backgrounds of the experts appeared to have an impact on what kind of evidence they believed was most significant and why.

B. Dietz’s Limitations in Expertise and Investigation

This section examines the extent of Park Dietz’s background and experience for testifying in a case involving a defendant with an undisputed history of postpartum depression and postpartum psychosis. As one scholar on expert witnesses has emphasized, “[m]edical professionals who undertake the role of expert witnesses are generally expected . . . to be knowledgeable and experienced in the area in which they are functioning as a medical expert.”²¹⁶

1. Postpartum Depression and Postpartum Psychosis

The Yates trial revealed the degree to which Dietz was unfamiliar with patients diagnosed with postpartum depression or postpartum psychosis and his admitted void in treating patients.²¹⁷ This observation is not meant to elevate the psychiatric classification of postpartum disorders to a level of scientific precision and sophistication that it does not deserve.²¹⁸ Rather, this section makes clear that there is still much to be learned about postpartum disorders and how much they can justifiably mitigate criminal culpability, if at all. At the same time, what is known medically about the disorders—especially their neurobiological aspects—should not be ignored. Two postpartum experts highlighted the problem of such informational inadequacy specifically with respect to the prosecution’s approach in the Yates case: “The real challenge for psychiatry is to educate the legal profession and juries about the physiological underpinnings of postpartum disorders and other psychoses . . . and, ultimately, to encourage verdicts based on facts.”²¹⁹

Of course, Park Dietz was not responsible for such a lack of education. It is not the role of the expert witness to provide answers to questions that are never asked or to draw conclusions without a foundation. Andrea’s defense attorneys could have more aggressively revealed Dietz’s gaps and confronted him with

213. Christian, *supra* note 153.

214. *Id.*

215. See *infra* Part VI.A., The Overall Defense and Prosecution Perspective, and accompanying notes.

216. Ciccone, *Expert Testimony*, *supra* note 42, at 797.

217. See *supra* notes 186-90 and accompanying text.

218. See *infra* notes 230-33 and accompanying text.

219. Meyer & Spinelli, *supra* note 77, at 176.

the history of Andrea's illnesses that Dietz bypassed in his evaluations. Nonetheless, without a fuller expertise on postpartum issues, Dietz's story about Andrea offered a much simpler mental landscape—and a greater level of speculation—than may have been warranted given her background.

Direct and cross examinations in the Yates trial made clear that Dietz has been asked to consult on an "unusually high proportion" of cases concerning mothers who kill their children.²²⁰ Yet, according to his testimony, the last time he ever treated a female patient with postpartum depression was twenty-five years ago (in 1977).²²¹ Nor was Dietz "sure" that he ever treated a patient for postpartum depression with "psychotic features."²²² Dietz conceded that he stopped treating patients totally "many many years ago," in "1981 or 1982"²²³ and that he has no expertise in women's mental health.²²⁴ Dietz's error concerning the showing of a Law & Order episode on postpartum depression²²⁵ came about when Parnham was cross-examining him to assess two issues: the sources of Dietz's income, but also whether Dietz had any more expertise in postpartum disorders, even at the level of consulting for television shows, than what he indicated in his testimony on direct examination.²²⁶ It appears Dietz did not have more background because he did not offer any information other than his consultancy on a nonexistent show. Such inexperience does not comport with accepted diagnostic principles of psychiatry.²²⁷

Dietz's lack of expertise in postpartum depression and postpartum psychosis is striking given the psychiatric community's recognition of postpartum disorders²²⁸ and the acceptance by both sides that Andrea was afflicted with one.²²⁹ The disorders are included in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), published by the American Psychiatric Association, and now in its fourth (text revised) edition (DSM-IV-TR).²³⁰ As courts and professionals have noted, "[t]he DSM is often referred to as 'the psychiatric profession's diagnostic Bible.'"²³¹ DSM-IV-TR also clearly recognizes the link between postpartum-related mental disorder and infanticide in the context of delusions.²³² Notably,

220. See App. 4 at 99, tr. at 21. Although the transcript reads "usually high proportion," it is logical to assume that Dietz either meant to say "unusually high" or said "unusually high" and the transcript omitted the "un."

221. See *id.* at 124, tr. at 148.

222. See *id.*, tr. at 149.

223. See *id.*, tr. at 148.

224. See *id.* at 125-26, tr. at 154.

225. See *supra* notes 206-09 and accompanying text.

226. See App. 4 at 127, tr. at 161.

227. See generally JAMES MORRISON & RODRIGO A. MUNOZ, BOARDING TIME: A PSYCHIATRY CANDIDATE'S GUIDE TO PART II OF THE ABPN EXAMINATION (2d ed. 1996) (advising candidates to avoid discussing with examiners diagnoses of which they have no knowledge or experience).

228. See *infra* note 232.

229. See *supra* notes 16, 116, 144 and accompanying text.

230. DSM-IV-TR, *supra* note 124, at xxiii. The DSM, first published in 1952, has had periodic revisions, starting in 1968 (DSM-II), 1980 (DSM-III), 1987 (DSM-III-R), 1994 (DSM-IV), and 2000 (DSM-IV-TR). *Id.* at xxiv-vi.

231. Morris & Haroun, *supra* note 95, at 1023 (citations omitted).

232. DSM-IV-TR, *supra* note 124, at 422-23. As one legal commentator explains, symptoms of postpartum psychosis typically include delusions and hallucinations. The "plasticity" of the psycho-

however, postpartum psychosis is not presently treated as an individual diagnostic classification in the DSM-IV-TR. Rather, the symptoms are categorized according to the established criteria used to diagnose psychosis (for example, major depressive, manic, or mixed episode). The "postpartum onset specifier" applies if symptoms occur within four weeks after childbirth.²³³

2. Andrea's Postpartum Risk Factors and Life Stressors

It appears that Dietz never really adequately investigated or acknowledged Andrea's postpartum risk factors—most particularly in the context of the postpartum period's "unique . . . degree of neuroendocrine alterations and psychosocial adjustments," which the DSM emphasizes.²³⁴ In other words, the medical literature stresses that the risk factors for postpartum disorders cover a broad scope of biological, psychological, and social influences. These factors include an individual's personal and family history of depression, biochemical imbalances, recent stressful events, marital conflict, and perceived lack of support from the partner, family, or friends.²³⁵

sis is manifested by the pattern of its symptoms—"delusions and hallucinations may abruptly surface, followed by periods of deep depression, only to be replaced with psychoses." Judith Macfarlane, *Criminal Defense in Cases of Infanticide and Neonaticide*, in Spinelli, *supra* note 43, at 133, 136. By the time psychiatric evaluations and trials occur, many defendants have suffered memory loss during the psychosis and are unable to even describe to a psychiatrist or jury what their thought processes were at the time of the crime. *Id.* at 163-64. Yet, the psychosis has passed, so defendants can be found competent to stand trial. Meyer & Spinelli, *supra* note 77, at 173.

233. Misri et al., *Postpartum Psychosis*, *supra* note 43. The DSM-IV-TR classification for "Postpartum Onset Specifier" is as follows:

Symptoms that are common in postpartum-onset episodes, though not specific to postpartum onset, include fluctuations in mood, mood lability, and preoccupation with infant well-being, the intensity of which may range from overconcern to frank delusions. The presence of severe ruminations or delusional thoughts about the infant is associated with a significantly increased risk of harm to the infant.

Postpartum-onset mood episodes can present either with or without psychotic features. Infanticide is most often associated with postpartum psychotic episodes that are characterized by command hallucinations to kill the infant or delusions that the infant is possessed, but it can also occur in severe postpartum mood episodes without such specific delusions or hallucinations. Postpartum mood (Major Depressive, Manic, or Mixed) episodes with psychotic features appear to occur in from 1 in 500 to 1 in 1,000 deliveries and may be more common in primiparous women. The risk of postpartum episodes with psychotic features is particularly increased for women with prior postpartum mood episodes but is also elevated for those with a prior history of a Mood Disorder (especially Bipolar I Disorder). Once a woman has had a postpartum episode with psychotic features, the risk of occurrence with each subsequent delivery is between 30% and 50%. There is also some evidence of increased risk of postpartum psychotic mood episodes among women without a history of Mood Disorders with a family history of Bipolar Disorders. . . .

A past personal history of nonpostpartum Mood Disorder and a family history of Mood Disorders also increase the risk for the development of a postpartum Mood Disorder. The risk factors, recurrence rates, and symptoms of postpartum-onset Mood Episodes are similar to those of nonpostpartum Mood Episodes. However, the postpartum period is unique with respect to the degree of neuroendocrine alterations and psychosocial adjustments, the potential impact of breast-feeding on treatment planning, and the long-term implications of a history of postpartum Mood Disorder on subsequent family planning.

DSM-IV-TR, *supra* note 124, at 422-23.

234. DSM-IV-TR, *supra* note 124, at 423.

235. Misri et al., *Postpartum Psychosis*, *supra* note 43; Misri et al., *Postpartum Blues*, *supra* note 43.

Andrea experienced all of the postpartum risk factors that the DSM mentions.²³⁶ She was also subject to a host of family and environmental life stressors shown to be linked to postpartum depression and postpartum psychosis.²³⁷ Dietz only occasionally alluded to these stressors if he mentioned them at all in his testimony. Even if it could be argued that the direct and cross examinations of Dietz did not prompt further references to Andrea's disorders, it would be expected that they would be part of Dietz's evaluation of Andrea independent of his courtroom testimony.

Andrea's stressors were numerous. First, over the course of her marriage to Rusty (during which she was nearly always either pregnant or breastfeeding), Andrea consistently demonstrated DSM-listed criteria for postpartum mood disorder: "fluctuations in mood, mood lability, and preoccupation with infant well-being."²³⁸ Like the DSM specification, these feelings "ranged from overconcern to frank delusions"²³⁹ and they also took the form of suicide attempts related to the other circumstances in Andrea's life—uprooted living conditions and transiency, home schooling her five children, her father's death, depressive illnesses throughout her family, Rusty's own bizarre behavior and pressure for more children, as well as Andrea's increasing obsession with religious doctrine, particularly as it was pitched by Michael Woroniecki and his wife, Rachel.²⁴⁰ As the DSM notes, "[t]he presence of severe ruminations or delusional thoughts about the infant is associated with a significantly increased risk of harm to the infant."²⁴¹ Part IV considers in further detail how Andrea wove such delusional thoughts into a highly stressed life that seemed to spur the thoughts all the more.

IV. ANDREA YATES'S HISTORY OF POSTPARTUM DISORDERS

A. The Early Years of Andrea's Marriage

Andrea's postpartum difficulties appeared with her first pregnancy. Soon after Noah's birth in 1994,²⁴² for example, Andrea experienced hallucinations—a striking vision of a knife and her stabbing someone. She dismissed the image and never revealed it to anyone²⁴³ until after her arrest, when she told Rusty.²⁴⁴ As research shows, postpartum depressed or psychotic women often feel ashamed or embarrassed to admit to others their thoughts about harming their infants.²⁴⁵

When Andrea became pregnant a second time in 1995 (with John), she gave up swimming and jogging and also saw less of her friends.²⁴⁶ Her lifestyle

236. See *supra* note 233.

237. See *infra* Part IV. Andrea Yates's History of Postpartum Disorders, and accompanying notes.

238. DSM-IV-TR, *supra* note 124, at 422.

239. *Id.*

240. See Roche, *supra* note 1, at 48. See generally App. 1.

241. DSM-IV-TR, *supra* note 124, at 422.

242. See App. 1 (Feb. 26, 1994) at 61.

243. See *id.*

244. See Roche, *supra* note 1, at 45-46.

245. See Meyer & Spinelli, *supra* note 77, at 181; Misri et al., *Postpartum Blues*, *supra* note 43.

246. See App. 1 (Dec. 15, 1995) at 61.

switched yet again in 1996, when Rusty was offered work on a six-month NASA-related project in Florida—an event that prompted the leasing of their four-bedroom suburban house and a drive to Florida in a thirty-eight foot trailer.²⁴⁷ That trailer would become their “home” in a recreational-vehicle community where Andrea would care for Noah and John while Rusty worked.²⁴⁸ In Florida, Andrea miscarried but then became pregnant a third time just when Rusty had completed his job and was ready to move back to Houston.²⁴⁹

The return to Houston did not mean re-inhabiting their house even though in 1997 Andrea gave birth to a third child, Paul.²⁵⁰ Rusty had other ideas. In an effort to live “light” and “easy,” the Yateses rented a lot for their trailer.²⁵¹ By 1998, after several months of trailer living, Rusty’s “easy living” philosophy took a new twist. He learned that a traveling evangelist, Michael Woroniecki, whose advice had inspired Rusty in college, was selling a motor home that Woroniecki had converted from a 1978 Greyhound bus.²⁵² Woroniecki, his wife Rachel, and their children had used the 350-square feet of bus for home and travel for their mobile lifestyle.²⁵³ Because Andrea and Noah preferred the bus to the trailer, Rusty bought it. Noah and John slept in the luggage compartment, while Andrea, Rusty, Paul, and now, Luke, who was born in 1999, slept in the cabin.²⁵⁴

While her brood expanded, Andrea also became devoted to helping her father, who now had Alzheimer’s disease. This task was overwhelming for Andrea.²⁵⁵ At the same time, Andrea became further isolated from everyone. When she did choose to see people, she always visited them, never reciprocating by inviting them to the trailer.²⁵⁶

Rusty’s role in Andrea’s increasing aloneness, oddity of lifestyle, religious obsession, and continual state of pregnancy should not be downplayed with respect to any facet of Andrea’s behavior.²⁵⁷ And it may never be known to what extent Andrea’s pregnancies were based on a mutual decision with Rusty or primarily a product of Rusty’s desire for a large family. A number of people, including Andrea’s mother and her friend Debbie Holmes, suggested Rusty was a dominating force in the Yates family, including the decision to have babies.²⁵⁸

247. *See id.* (Early-mid 1996) at 61.

248. *See id.* (Early-mid 1996, Oct. 12, 1996, Nov. 1996, Dec. 1996) at 61.

249. *See id.* (Nov. 1996, Dec. 1996) at 61.

250. *See id.* (Sept. 13, 1997) at 61.

251. *See id.* (May 1998) at 62.

252. *See id.*

253. *See id.*

254. *See id.* (Oct. 1998, Feb. 15, 1999) at 62.

255. *See id.* (Mar. - May 1999) at 62.

256. *See id.*

257. Indeed, at one point the Harris County district attorney was examining whether Rusty was in any way culpable for the killings because he had left Andrea alone with the children. *See Associated Press, DA Looks at Russell Yates' Conduct*, Mar. 26, 2002, available at http://www.courtvtv.com/trials/yates/032602_ap.html.

258. *See infra* notes 299-301 and accompanying text; *see also Roche, supra* note 1, at 48.

B. The Start of Andrea's Breakdown

On June 16, 1999, Andrea called Rusty at work, sobbing and hysterical. He returned to find her shaking uncontrollably and biting her fingers.²⁵⁹ His efforts to calm her to no avail, Rusty took Andrea to her parents' home that evening.²⁶⁰ The next day, while Andrea's mother was napping and Rusty was out doing errands, the full force of Andrea's troubles became unmistakably clear. She attempted suicide by taking forty pills of her mother's antidepressant medication.²⁶¹ An unconscious Andrea was rushed by ambulance to Methodist Hospital, with Rusty following behind.²⁶²

Andrea told the staff at Methodist Hospital that she had consumed the pills to "sleep forever," but afterwards she felt guilty because she had her "family to live for."²⁶³ At the same time, her recovery was slow. According to notes taken by a hospital psychiatrist and a social worker, Andrea was evasive about the reasons for her suicide attempt and deflected questions.²⁶⁴ Although Andrea was still depressed, the hospital discharged her for "insurance reasons," the explanation written on her medical chart. The psychiatrist prescribed Zoloft, an antidepressant, and Rusty took Andrea back to her parents' home to rest.²⁶⁵

Andrea did not like taking the medication, however, and her condition only worsened.²⁶⁶ She would stay in bed all day and self-mutilate. At one point, she scratched four bald patches on her scalp, picked sores in her nose, and obsessively scraped "score marks" on her legs and arms.²⁶⁷ Later, she would tell psychiatrists that during this time, she saw visions and heard voices, telling her to get a knife. She also watched a person being stabbed, although she would not identify the victim.²⁶⁸ At the same time, Andrea refused to feed her children or nurse her baby Luke, claiming that they were "all eating too much."²⁶⁹ Such delusions and thoughts about her children are consistent with the criteria listed for postpartum disorders in the DSM.²⁷⁰

It was only after Andrea's attempted suicide that her relatives discovered the extent of her family history of mental illness: Andrea's brother and sister had ongoing treatment for depression, another brother was bipolar, and in hindsight, her father also suffered from depression.²⁷¹ According to the DSM, this

259. See App. 1 (June 16, 1999) at 62.

260. See *id.*

261. See *id.* (June 17, 1999) at 62.

262. See *id.*

263. See *id.* (June 18, 1999) at 62.

264. See *id.*

265. See *id.* (June 19, 1999, June 20, 1999, June 21, 1999, June 22, 1999, June 23, 1999, June 24, 1999) at 62-63.

266. See *id.* (June 18, 1999, July 1, 1999, July 2-19, 1999) at 62-64.

267. See *id.* (July 2-19, 1999) at 63-64.

268. See *id.*

269. See *id.*

270. See DSM-IV-TR, *supra* note 124, at 422.

271. See App. 1 (July 2-19, 1999) at 63-64.

family history of mental disorder (particularly bipolar disorder),²⁷² along with Andrea's pre- and post-pregnancy experiences with depression,²⁷³ are all factors that would heighten the likelihood of postpartum psychotic features. As the DSM explains, "[o]nce a woman has had a postpartum episode with psychotic features, the risk of recurrence with each subsequent delivery is between 30% and 50%."²⁷⁴

At different times, Andrea also experienced bizarre delusions and hallucinations. She believed that there were video cameras in the ceilings watching her in various rooms in the house and that television characters were communicating with her. She told Rusty of these hallucinations; however, neither of them informed Andrea's doctors, even though Andrea was continually asked whether she had hallucinations.²⁷⁵

Of all of her family members, Andrea seemed to suffer the most and her condition continued to deteriorate. The day before she had an appointment with one of her psychiatrists, Eileen Starbranch, Rusty found Andrea in the bathroom looking at the mirror with a knife at her throat. Rusty had to grab the knife away.²⁷⁶ When Rusty told Starbranch of the incident, she insisted that Andrea be hospitalized again, this time at Memorial Spring Shadows Glen, a private facility in Houston.²⁷⁷

The initial results of this hospitalization were disastrous. Andrea was virtually catatonic for ten days.²⁷⁸ According to clinicians, catatonia is an objective sign of mental disorder whether or not an individual reveals what he or she is thinking.²⁷⁹ It was also only during Andrea's stay at Memorial Spring Shadows Glen that there would ever be any record suggesting that she experienced hallu-

272. DSM-IV-TR, *supra* note 124, at 423 ("There is also some evidence of increased risk of postpartum psychotic mood episodes among women without a history of Mood Disorders with a family history of Bipolar Disorders."); *see also supra* note 235 and accompanying text.

273. DSM-IV-TR, *supra* note 124, at 422 ("The risk of postpartum episodes with psychotic features is particularly increased for women with prior postpartum mood episodes but is also elevated for those with a prior history of a Mood Disorder (especially Bipolar I Disorder).").

274. *Id.* at 423.

275. *See App.* 1 (July 2-19, 1999) at 63-64.

276. *See id.* (July 20, 1999) at 64.

277. *See id.* (July 21, 1999) at 64.

278. *See id.* (July 25, 1999) at 64.

279. Telephone Interview with Shari Lusskin, M.D., Director of Reproductive Psychiatry, Clinical Assistant Professor, New York University School of Medicine (Dec. 15, 2002). Under the DSM, the criteria for catatonic features specifier include a clinical picture dominated by at least two of the following features:

- (1) motoric immobility as evidenced by catalepsy (including waxy flexibility) or stupor
- (2) excessive motor activity (that is apparently purposeless and not influenced by external stimuli)
- (3) extreme negativism (an apparently motiveless resistance to all instructions or maintenance of a rigid posture against attempts to be moved) or mutism
- (4) peculiarities of voluntary movement as evidenced by posturing (voluntary assumption of inappropriate or bizarre postures), stereotyped movements, prominent mannerisms, or prominent grimacing
- (5) echolalia or echopraxia

DSM-IV-TR, *supra* note 124, at 418.

cinations.²⁸⁰ This record was based on a doctor's report and observations by the doctor's assistant.²⁸¹

Starbranch gave Andrea a multi-drug injection that immediately improved Andrea's behavior, according to Rusty.²⁸² After a sound sleep, Andrea seemed much more like the person he had first met and they had in the evening what he thought was one of their best conversations.²⁸³ Only later did Andrea assert that she considered the injection a "truth serum" that led her to lose self-control in a way she abhorred.²⁸⁴ Andrea's view of the injection as a "truth serum" could be considered yet one more bizarre delusion on her part.²⁸⁵

When Andrea returned to her family after treatment, "home" was neither her parents' house (which was too small) nor the bus, which her parents considered unhealthy for her and the children. With her parents' urging, Rusty, a well-salaried (\$80,000 a year) project manager at NASA, bought a three-bedroom, two-bath house in a tree-lined, residential neighborhood.²⁸⁶ The house even had a place to park the bus, which was still very important to Rusty. In the more serene surroundings, Andrea apparently prospered—swimming laps at dawn, baking and sewing, playing with her children, and fostering an environment for home schooling,²⁸⁷ which Rusty encouraged despite the past stress on Andrea.²⁸⁸ At this point, Andrea admitted to Rusty that she had "failed" at their life in the bus; this new phase in their life was a chance to succeed.²⁸⁹

During this period, the family was engaging in three nights per week of Bible study in the living room because Rusty did not like any of the churches in their area. Again, the views of the bus-selling traveling minister Michael Woroniecki would come to have a profound effect on the lives of Andrea and Rusty.²⁹⁰ Through Woroniecki, Rusty came to doubt organized religion, even though Rusty was not in complete agreement with Woroniecki's views.²⁹¹ Andrea was another story, however. Woroniecki's "repent-or-burn zeal"²⁹² captivated her and she corresponded with Woroniecki and his wife for years after she and Rusty bought their bus.²⁹³ Indeed, at times, the Yates family seemed to imitate the Woronieckis—a bus-living, home-schooling, Bible-reading brood relishing the isolation of itinerancy.²⁹⁴ According to Woroniecki, "the role of woman is derived . . . from the sin of Eve."²⁹⁵ Likewise, he thought that "bad mothers" create

280. See App. 1 (July 27-28, 1999) at 64-65.

281. See *id.* (July 27-28, 1999 n.61) at 77.

282. Roche, *supra* note 1, at 47.

283. See App. 1 (July 28, 1999) at 65; Roche, *supra* note 1, at 47.

284. Roche, *supra* note 1, at 47.

285. Telephone interview with Shari Lusskin, M.D., *supra* note 279.

286. See App. 1 (Aug. 9, 1999) at 66.

287. See *id.* (Dec. 14, 1999) at 67.

288. See *id.*

289. See *id.*

290. See *id.* (Early-mid 1996-Oct. 1998) at 61-62.

291. See Roche, *supra* note 1, at 48.

292. *Id.*

293. See App. 1 (Oct. 1998) at 62.

294. See *id.* (Early-mid 1996 n.11) at 75.

295. See Roche, *supra* note 1, at 48.

"bad children."²⁹⁶ There came a time when Woroniecki's "hell burning" influence on Andrea was so great, it distressed both her parents and even Rusty.²⁹⁷

By the spring of 2000, Andrea became pregnant again, a decision seemingly made with Rusty when Andrea started to improve so markedly.²⁹⁸ Yet, the news greatly alarmed Starbranch, who had warned that Andrea's problems could be far more serious if they returned,²⁹⁹ as well as Andrea's mother, who had believed all along that Rusty's demands prompted Andrea's breakdown.³⁰⁰ Debbie Holmes, a former nursing colleague of Andrea's, echoed this view of Rusty, claiming that Andrea continually depicted Rusty as manipulative and controlling and that Rusty pushed her to have the fifth baby.³⁰¹

C. Andrea's Plunge into Mental Illness

Starbranch's predictions rang true. Andrea's pregnancy was met by another downward dive into mental illness, this time precipitated by the death of Andrea's father.³⁰² Andrea also became more absorbed with the teachings of the Bible.³⁰³ The effects of the traumatic circumstances surrounding her father's death were obvious: Andrea stopped talking; she would continually hold Mary but not feed her; she would not drink liquids; she scratched and picked at her scalp until she started to become bald again.³⁰⁴

On March 31, 2001, four months after Mary's birth,³⁰⁵ Rusty sought to re-hospitalize Andrea, with Starbranch's urging. This time, Rusty took Andrea to the Devereux Texas Treatment Center Network,³⁰⁶ a trip that Andrea adamantly resisted.³⁰⁷ Only with much prodding from Rusty and her brother did Andrea finally agree to go to the hospital. Once there, she refused to sign forms admitting herself. Because he thought Andrea's condition was dangerous, her attending psychiatrist, Mohammed Saeed,³⁰⁸ initiated the process of requesting that a state judge confine Andrea to Austin State Hospital.³⁰⁹ Only after Rusty's continual pleading did Andrea finally agree to sign the forms admitting herself to Devereux.³¹⁰

Saeed's account of Andrea's condition appeared to be based entirely on Rusty's description rather than from Andrea's treating psychiatrists or from Andrea herself who, Saeed said, rarely spoke.³¹¹ When Rusty insisted that Saeed

296. *Id.*

297. *Id.*

298. *See App. 1 (Mar. 2000) at 67.*

299. *See id.*

300. *See id.* (Mar. 2000 n.93) at 78; *see also Roche, supra note 1, at 48.*

301. *See App. 1 (Mar. 2000 n.93) at 78; see also Roche, supra note 1, at 48.*

302. *See App. 1 (Mar. 12, 2001) at 67.*

303. *See id.* (Mar. 12, 2001 n.95) at 79; *see also Roche, supra note 1, at 48.*

304. *See App. 1 (Mar. 13-30, 2001) at 67.*

305. *See id.* (Mary was born on November 30, 2000) at 67.

306. *See id.* (Mar. 31, 2001) at 67-68.

307. *See id.*

308. *See id.*

309. *See id.*

310. *See id.*

311. *See id.* (Apr. 2, 2001, Apr. 5, 2001, Apr. 9, 2001 n.109) at 68, 79.

put Andrea on Haldol,³¹² a drug that had been helpful to her in the past, Saeed complied.³¹³ Saeed discontinued the treatment shortly thereafter because, he said, her “flat face” seemed to be a side effect.³¹⁴ Later, Saeed would testify that, based on the little Andrea said, she did not seem psychotic, never described the torment she was going through, and denied experiencing hallucinations and delusions.³¹⁵

After ten days at Devereux, Andrea finally started feeding herself again—a behavioral improvement which, in Saeed’s opinion, justified discharging her even though her medication regime was still not stable.³¹⁶ Also, Andrea wanted to go home and Saeed thought that Rusty could take care of her.³¹⁷

When Andrea returned home, Rusty’s mother, Dora, visited from Tennessee to help out during the day while she stayed at a motel in the evenings.³¹⁸ Yet, there were clear signals of Andrea’s desperate mental state. On May 3, for example, after Andrea and Dora returned from taking the children for a walk, Noah told Dora that he saw Andrea filling up the bathtub with water.³¹⁹ When Dora turned the water off and asked Andrea why she was running the water, Andrea replied only, “[j]ust in case I need it.”³²⁰ Presumably, Andrea’s behavior must have been quite unusual for such an (otherwise) innocuous event to have garnered so much notice from Noah and Dora.³²¹ Andrea also would not allow her friend Debbie Holmes inside the house when Debbie stopped by to leave food that afternoon. Later, Holmes stated that she thought Andrea had been repossessed by the Devil, an issue that both she and Andrea had discussed after Andrea’s illness in 1999.³²² This time, however, Debbie thought the “the demons had returned a hundredfold.”³²³

Based upon what was happening, Andrea returned to Devereux for rehospitalization. Again, Saeed was her chief caretaker.³²⁴ During her entire stay at Devereux, Andrea was almost completely silent and lethargic, particularly around Rusty. Apparently, in group sessions, Rusty dominated discussions and always answered questions asked of Andrea, who would not even nod her head.³²⁵ While on a combination of Haldol and antidepressants, Andrea stayed in her room most of the time on fifteen-minute suicide checks.³²⁶ By May 14, Saeed

312. Haldol is used “in the management of manifestations of psychotic disorders.” PHYSICIAN’S DESK REFERENCE 2534 (56th ed. 2002).

313. See App. 1 (Apr. 9, 2001 n.109) at 79.

314. See *id.*

315. See *id.* (Apr. 13, 2001 n.113) at 79-80.

316. See *id.* (Apr. 12, 2001) at 68.

317. See *id.* (Apr. 18, 2001) at 68.

318. Roche, *supra* note 1, at 49.

319. See App. 1 (May 3, 2001) at 68.

320. See *id.*

321. Telephone interview with Shari Lusskin, M.D., *supra* note 279.

322. See App. 1 (May 3, 2001 n.117) at 80; see also Roche, *supra* note 1, at 49.

323. See Roche, *supra* note 1, at 49.

324. See App. 1 (May 4, 2001) at 68.

325. See *id.* (May 5, 2001, May 10, 2001, May 14, 2001 n.126) at 69, 80; see also Roche, *supra* note 1, at 49.

326. See Roche, *supra* note 1, at 49.

suggested that she could go home. Although Andrea was still depressed and basically mute (apart from responding with her name when asked), her sleeping and eating had greatly improved and she was no longer expressing suicidal thoughts.³²⁷

On June 18, a month after Andrea's release from Devereux and after six days of outpatient therapy, Rusty and Andrea met with Saeed.³²⁸ Andrea's mental state was sharply declining.³²⁹ At that point, Andrea was off Haldol and Saeed was experimenting with other drug combinations.³³⁰ As usual, Rusty answered most of the questions addressed to Andrea, but he expressed deep concern. Andrea was getting worse and was now having nightmares.³³¹ Rusty asked that Saeed reconsider applying shock therapy, a strategy Saeed declined, saying it was for far more serious disorders.³³² Also, Saeed did not want to re-prescribe Haldol.³³³ Instead, he readjusted Andrea's level of antidepressants, suggested that she see a psychologist, rather than a psychiatrist, and, perhaps most strikingly, "think positive thoughts."³³⁴

The next afternoon, Andrea watched cartoons on television and then joined Rusty and Noah for a quick round of basketball in the garage.³³⁵ Yet, moments later, she returned inside and went to bed without changing her clothes.³³⁶ She slept until the next morning, June 20, but had a nightmare during the night.³³⁷ She would not tell Rusty what the nightmare was about.³³⁸ That morning, while Andrea set out cereal bowls and milk for breakfast, Rusty made sure that she had swallowed her dose of antidepressants before he left for work.³³⁹ According to Rusty, his last picture prior to the killings was one of seeing Andrea eating cereal from a box.³⁴⁰

D. Andrea's Killings and The Aftermath

1. Andrea Drowns Her Children

From all accounts, Andrea started the drownings nearly as soon as Rusty left because her children were still having breakfast.³⁴¹ First, she selected "Perfect Paul," then three-years-old, apparently her greatest joy (and the "least trouble")

327. See App. 1 (May 14, 2001) at 69.

328. See *id.* (June 18, 2001) at 69-70.

329. See *id.*

330. See *id.*

331. See *id.*

332. See *id.*

333. See *id.*

334. See *id.*

335. Roche, *supra* note 1, at 50.

336. *Id.*

337. See App. 1 (June 19, 2001) at 70; see also Roche, *supra* note 1, at 50.

338. See Roche, *supra* note 1, at 50.

339. See App. 1 (June 20, 2001) at 70.

340. Roche, *supra* note 1, at 50.

341. See *infra* Appendix 3 at 89; Transcript of Andrea Yates's Confession (June 20, 2001) [hereinafter App. 3]; see also Paul Burka, *It's Crazy*, TEX. MONTHLY, July 2002, at 8 (examining Andrea's confession in light of the problems with, and possible alternatives to, the Texas insanity standard).

of the five.³⁴² Paul's death took only seconds. She tucked his body in her bed and laid his head on the pillow. Next came Luke (age two), John (age five), and then Mary (age six months), who was nursing a bottle while Andrea was drowning the others. Andrea left Mary in the tub.³⁴³

Seven-year-old Noah was still eating his cereal when Andrea asked him to the bathroom.³⁴⁴ When he "saw his sister facedown in the water, he asked, 'What happened to Mary?'"³⁴⁵ Noah then tried to run away. But, Andrea ran after him, dragging him back to the tub—struggling to drown him while he came up twice for air. Afterwards, Andrea put Mary in the bed with her brothers, ensuring that their arms were wrapped around their little sister.³⁴⁶ She left Noah in the tub.³⁴⁷

2. Andrea's Confession

Andrea immediately dialed 911.³⁴⁸ While speaking "unemotionally"³⁴⁹ and hesitating in response to questions, Andrea finally requested police and an ambulance.³⁵⁰ When the dispatcher asked Andrea if she was ill, she said that she was. When he asked her if she was "sure" she was alone, Andrea responded that her sister was with her when, in fact, she was alone.³⁵¹ After Andrea called 911, she called Rusty. "It's time. I finally did it," was her first statement to him.³⁵² Then she told him to come home and hung up. Rusty called back, alarmed by her tone of voice, and asked Andrea if anyone was hurt. "It's the kids," Andrea said. He inquired which one. She said, "All of them."³⁵³

342. Roche, *supra* note 1, at 50.

343. See App. 3 at 92; see also Roche, *supra* note 1, at 50.

344. See App. 3 at 92; see also Roche, *supra* note 1, at 50.

345. See App. 3 at 93; see also Roche, *supra* note 1, at 50.

346. See App. 3 at 93; see also Roche, *supra* note 1, at 50.

347. See App. 3 at 93; see also Carol Christian, *Deciding Fate Takes Heavy Toll*, HOUS. CHRON., Mar. 10, 2002, at A1 (reporting the testimony of a pediatric pathologist who stated that four of Andrea Yates's children were still alive but unconscious when she took them from the bathtub and put them in her bed).

348. Associated Press, *Mother Faces Jury for Drowning Five Kids*, Jan. 18, 2002, available at http://www.courttv.com/trials/yates/021802_ap.html.

349. *911 Tape Reveals Unemotional Andrea Yates*, CNN.COM, Jan. 6, 2002, available at <http://www.cnn.com/2001/US/12/10/yates.911>.

350. See *infra* Appendix 2 at 85: Transcript of Andrea Yates's 911 Call (June 20, 2001) [hereinafter App. 2].

351. See *id.*

352. Roche, *supra* note 1, at 44; *911 Tape Reveals Unemotional Andrea Yates*, *supra* note 349.

353. Roche, *supra* note 1, at 44; *911 Tape Reveals Unemotional Andrea Yates*, *supra* note 349. Dateline NBC's interview with Rusty Yates taped the following account:

Mr. R. YATES: She said, you know, like, "You need to come home." I said, "Is anyone hurt?" And she said, "Yes." And I said—I said, "Who?" And she said, "The children." And I sa—and she said, "all of them," and I—and I just—I mean, and my heart just sunk, you know?

Bob McKeown & Dawn Fratangelo, *The Stranger Within: Suzy Spencer Discusses Andrea Yates' Life and Postpartum Depression*, *Dateline NBC*, Mar. 17, 2002 (NBC television broadcast, Mar. 17, 2002).

The police officers who arrived described Andrea as “composed.” She showed them where they could get clean glasses for a drink of water in the kitchen, for example, and keys to unlock the back door.³⁵⁴

But it was Andrea’s seventeen-minute³⁵⁵ confession to Houston Police Sargent Eric Mehl that was to have one of the biggest impacts on the jury. During the jury’s brief forty minutes³⁵⁶ of deliberation, they had requested the audiotape of Andrea’s account of what had transpired when she killed her children.³⁵⁷ To the jurors, it appeared as though Andrea’s “plan” to kill her children was cold and methodical.³⁵⁸ Nearly all of Andrea’s answers to questions were monosyllabic and the way that Mehl questioned her fostered the impression of matter-of-fact indifference to the killing. “No,” she did not hate her children. “No,” she was not mad at them. She had, however, considered the prospect of killing them for two years.³⁵⁹ She realized that she was not being a good mother to them and “they weren’t developing correctly,” either in their learning or their behavior.³⁶⁰ She also “realized that it was time to be punished” and, in response to Mehl’s question, she wanted the criminal justice system to punish her.³⁶¹ She added that she had thought of drowning the children two months earlier³⁶²—and filled the tub with water—but she “[j]ust didn’t do it at that time” and also believed that Rusty would have stopped her.³⁶³

To those who did not “know” Andrea Yates, her attitude would, no doubt, appear indifferent and her behavior calculated. But, as two postpartum specialists have noted with respect to the Yates case, organic psychosis involves a “waxing and waning” of sensation and mood.³⁶⁴ Simply because Andrea called her husband and the police after the killings does not necessarily mean she was experiencing a “normal mental status” and could tell the difference between right and wrong at the time of the killings.³⁶⁵ That kind of analysis suggests that “we extrapolate backward then ‘predict’ that she had an intact thought process.”³⁶⁶ Another expert honed the key issue: Crimes based on “deluded moral reasoning” can be “well planned, carefully executed, and . . . have evidenced high degrees of behavioral control.”³⁶⁷ As Part V discusses, Dietz’s perspective on Andrea’s mental state was entirely different.

354. Jim Yardley, *Texas Jury Convicts Mother Who Drowned Her Children*, N.Y. TIMES, Mar. 12, 2002, at A23.

355. Roche, *supra* note 1, at 50.

356. See App. 1 (Mar. 16, 2002) at 74-75.

357. Roche, *supra* note 1, at 44; 911 *Tape Reveals Unemotional Andrea Yates*, *supra* note 349.

358. See Connell, *supra* note 129, at 18.

359. See App. 3 at 94.

360. See *id.* at 90.

361. See *id.* at 95.

362. See *id.*

363. See *id.*

364. Meyer & Spinelli, *supra* note 77, at 176.

365. *Id.* (“A call for help is not indicative of a normal mental status during an event.”).

366. *Id.*

367. Connell, *supra* note 129, at 19.

V. PARK DIETZ'S INTERVIEW AND TESTIMONY IN THE ANDREA YATES CASE

Park Dietz's interview with Andrea Yates and his trial testimony provide additional evidence for assessing how Dietz appeared to influence jurors. Part V explores one particularly striking feature of Dietz's testimony: Even though both sides agreed that Andrea severely suffered from postpartum depression and psychosis and that it significantly affected her conduct, neither side seriously questioned Dietz's statements or his knowledge.

A. Dietz's Interview with Andrea

Dietz interviewed Andrea for two days in November 2001,³⁶⁸ nearly five months after the killings and four months after Phillip Resnick, the defense's primary psychiatric expert, interviewed Andrea.³⁶⁹ Over the months after the killings, Andrea showed substantial progress due to a regimen of antipsychotic medication. Other professionals estimated that by August, Andrea's psychosis seemed under control³⁷⁰ and by September, a jury found her competent to stand trial.³⁷¹

According to Dietz, Andrea was grossly psychotic the day after the killings³⁷² and was suffering from schizophrenia when he met her in November 2001.³⁷³ He still believed, however, that she knew the difference between right and wrong at the time she killed her children.³⁷⁴ This conclusion, of course, stemmed in part from the November interview he conducted with her and the questions he asked about how and why she planned to kill her children.

In response to Dietz's questions, Andrea explained that she did not want her children "tormented by Satan" as she was.³⁷⁵ She noted that Satan had been conveying "bad thoughts" through the television and the cameras in her home.³⁷⁶ She was also "afraid Satan would lure [her] children to himself—and maybe that [she] had some Satan in [her]."³⁷⁷ She believed Satan was "inside [her] giving [her] directions . . . about harming the children . . . about a way out—to drown them."³⁷⁸ According to Andrea, the drowning would be "a way out" because the children "would go up to heaven and be with God, be safe."³⁷⁹ Basically, "at the time" Andrea thought "this was a good idea" because she "didn't want [her children] ruined—[she] was afraid they would continue to go downhill—and [she] thought [she] should save them before that happened."³⁸⁰

368. Dietz-Yates interview, *supra* note 154; see App. 4 at 100, tr. at 27.

369. Transcript of Phillip Resnick's interview with Andrea Yates (July 14, 2001) [hereinafter Resnick-Yates interview] (on file with author).

370. Meyer & Spinelli, *supra* note 77, at 174.

371. See App. 1 (Sept. 22, 2001) at 72.

372. See App. 4 at 114, tr. at 109.

373. See *id.* at 101, tr. at 51.

374. See *id.* at 137, tr. at 201.

375. Dietz-Yates interview, *supra* note 154.

376. *Id.*

377. *Id.*

378. *Id.*

379. *Id.*

380. *Id.*

Andrea believed "the children were in torment" from Satan because they were exhibiting relatively "more strife and disobedience"; however, she did not think that Dora, her mother-in-law, was in such torment nor Rusty, who she believed was a "good man."³⁸¹ In Andrea's mind, Satan had selected her children because of Andrea's own personal "weaknesses"; in fact, she had stopped reading the Bible close to the time of the killings because she "felt like Satan was nearby."³⁸²

Andrea seemed to have been markedly influenced by the 1995 movie "Seven,"³⁸³ a crime thriller about two homicide detectives who strive to solve a series of mysterious murders patterned on the seven deadly sins: gluttony, greed, sloth, pride, lust, envy, and wrath.³⁸⁴ Andrea told Dietz that because "[she] felt [she] had done all the other sins" but murder, she believed that the drowning would constitute her seventh, and last, sin.³⁸⁵ She claimed that she was thinking of the movie on the day she killed her children—"about what [she] was about to do, and how it fit in there—the deadly sins—and how [she had] done all of them after [she] drowned the children."³⁸⁶ She "saw [the drowning] as a sin that [she was] going to commit." Although the act of drowning would "condemn" her, it would save the children.³⁸⁷

While Andrea had ruminated about the seven deadly sins a week before she killed her children, she picked the specific date she was going to drown them only the night before.³⁸⁸ She did not tell Rusty her thoughts about the deadly sins or of her plans to kill because, in response to Dietz's question, she believed Rusty would interfere.³⁸⁹ As Andrea explained, if she had been stopped, "the children would still be alive" and she "would still worry about their soul with Satan around."³⁹⁰ On the morning of the killings, she tried to act as normally as possible so Rusty would not be alarmed.³⁹¹

Despite Andrea's claims of careful planning, however, on the day of the killings, she did not close the blinds or the curtains or take the phone off the hook (the door had already been locked the night before and Rusty left through the garage exit).³⁹² She also remembers taking her medication.³⁹³ In answer to Dietz's questions, she said she felt "the presence of Satan that morning . . . just helping [her] fill up the tub, and getting ready."³⁹⁴ Yet, she believed she would be punished ("jail") and she knew the act was illegal.³⁹⁵ It seemed as though An-

381. *Id.*

382. *Id.*

383. For a review of the story of the film, "Seven," see Janet Maslin, *A Sickening Catalogue of Sins, Every One of Them Deadly*, N.Y. TIMES, Sept. 22, 1995, at C18.

384. Dietz-Yates interview, *supra* note 154.

385. *Id.*

386. *Id.*

387. *Id.*

388. *Id.*

389. *Id.*

390. *Id.*

391. *Id.*

392. *Id.*

393. *Id.*

394. *Id.*

395. *Id.*

drea viewed the killing as a balancing test: "Doing it, [the children would] go to heaven; not doing it, there's the risk of Satan messing them up Probably if I did it, I'd get in trouble."³⁹⁶

Notably, in his court testimony, Dietz conceded that he did not interview either Rusty or Dora, both of whom refused to see him.³⁹⁷ Dietz also stated that Andrea had difficulty being viewed by others as mentally ill and that her attitude hindered her recovery. For example, after her first suicide attempt, Andrea refused to take the antipsychotic medication prescribed to her and flushed it down the toilet.³⁹⁸ As Dietz emphasized, "the most consistent story she's indicated is that she didn't think she was psychotic, didn't want to be thought of that way and resented someone calling her that."³⁹⁹ However, a key issue that was not brought out in Dietz's testimony, either in direct or cross, is that Andrea, like many psychotic people, was wrong about her mental status.⁴⁰⁰

B. Dietz's Empirically Unsupported Conclusions

Dietz's testimony about Andrea's condition is full of troubling speculations that sound authoritative but have no empirical support. Of course, the field of psychiatry in general is vulnerable to such criticisms.⁴⁰¹ As the following analysis suggests, however, in a number of instances, Dietz's accounts give Andrea's actions a degree of intentionality and manipulation that seem to derive only from Dietz's interpretations and no other source.

396. *Id.*

397. See App. 4 at 100, tr. at 27.

398. See *id.* at 102, tr. at 57.

399. See *id.*

400. See Sonia Johnson & Martin Orrell, *Insight and Psychosis: A Social Perspective*, 25 PSYCHOL. MED. 515, 515-20 (1995).

401. See Binder, *supra* note 40, at 1819-25 (noting in the context of expert witness testimony that "[t]he field of medicine is not an exact science" and that "opinion is the result of reasoning, and no one can be prosecuted for defective mental processes") (citation omitted); Coles & Veiel, *supra* note 42, at 609-10 (contending that many health experts testifying in the areas of psychology and psychiatry fail to meet the required standards for science and expert testimony by: "1. presenting idiosyncratic theories; 2. making inappropriate conceptualisations; 3. quantifying data inappropriately; and/or 4. selectively collecting, presenting, or interpreting data; and thereby 5. lacking the prime requirement of an open, sceptical, mind"). For criticisms of psychoanalysis in particular, see Deborah W. Denno, *Crime and Consciousness: Science and Involuntary Acts*, 87 MINN. L. REV. 269, 306-07 (2002) (noting that, "over the last four decades, the status of psychoanalysis as a science has been seriously undermined"); Eric R. Kandel, *A New Intellectual Framework for Psychiatry*, 155 AM. J. PSYCHIATRY 457, 458 (1998) (discussing the specific "limitations of psychoanalysis as a system of rigorous, self-critical thought"). One psychiatric expert's characterization aptly addresses the sweeping nature of the profession's flaws:

Although many of the psychopharmacological and technical developments in psychiatry have been impressive, the conceptual foundation for the field continues to be primitive. As a result, inconsistencies, contradictions, and confusion reign whenever certain fundamental issues arise. Psychiatry still has yet to come up with sound definitions of "mental illness," "insanity," "normality," or "sanity." And it still has yet to come up with a sensible notion of personal responsibility, which lies at the heart of most legal issues.

Ludwig, *supra* note 42, at 116.

1. Andrea's Suicide Attempts

Dietz testified that when Andrea attempted suicide the first time using pills, she got a "*week away* from the stressors, *only* with an overdose," when she was hospitalized (her admission to Methodist Hospital's psychiatric unit).⁴⁰² In other words, the idea conveyed was that with "*only*" an overdose, Andrea could get a substantial break from taking care of the kids and the house. After her week-long stay at Methodist, however, Andrea came back to the same stressful environment in the cramped bus.⁴⁰³ For that reason, according to Dietz, the second time Andrea attempted to commit suicide, she "*upped the ante*" by using a knife.⁴⁰⁴ Presumably, by employing a more certain and serious instrument of death, Andrea could acquire even more help and a bigger break than she got the first time by "*only*" ingesting pills. Dietz indicated that Andrea was successful with this approach.⁴⁰⁵ While she was hospitalized the second time, her parents insisted to Rusty that Andrea could no longer stay in the bus because it was not healthy for her or the children.⁴⁰⁶ As a result, Rusty purchased a nice new house, which was all ready for Andrea to live in when she returned from the hospital.⁴⁰⁷ In Dietz's eyes, a new home was the reward that Andrea was seeking: "[T]his time, [the suicide attempt] not only got her *hospitalized*, it got her a *house*."⁴⁰⁸

The implication, of course, is that Andrea somehow realized that she would get both a long break and material benefit—"a house"—for her more dramatic second suicide attempt. But, that view contradicts everything we know of Andrea: that she hated to be hospitalized, that she continually resisted psychiatric help, that she resented any kind of psychiatric label. Indeed, Andrea was so opposed to being re-hospitalized at Devereux Texas Treatment Center on March 31, 2001, that Saeed had to start the process of involuntarily committing her to a state hospital.⁴⁰⁹ For Dietz to suggest, even indirectly, that Andrea's suicide attempts were strategic efforts to gain a better home derides the reality of Andrea's psychosis and the severity of her postpartum disorders. As the defense noted, Andrea "*never told any doctor that, 'I wanted a new house.'*"⁴¹⁰ Andrea's marital history suggests just the reverse—that Andrea was enamored (perhaps even more than Rusty) with the Woronieckis' bus-living existence and later apologized to Rusty for not being able to handle it.⁴¹¹

It is also questionable even by Dietz's own account whether Andrea was in fact "*upping the ante*"⁴¹² by using a knife rather than pills. Only moments before making that statement, Dietz claimed that it was unclear what level of severity Andrea's knife-using episode entailed ("*varying degrees of intent*"); in contrast, her ingestion of pills would most likely have resulted in her death if her mother

402. See App. 4 at 102 (emphasis added), tr. at 58.

403. See *id.* at 102-03, tr. at 58-59.

404. See *id.* at 102, tr. at 58.

405. See *id.* at 102-03, tr. at 58-59.

406. See App. 1 (Aug. 9, 1999) at 66.

407. See *id.*

408. See App. 4 at 102-03 (emphasis added), tr. at 59.

409. See App. 1 (Mar. 31, 2001) at 67-68.

410. See App. 4 at 135, tr. at 193.

411. See App. 1 (Dec. 14, 1999) at 67; see also Roche, *supra* note 1, at 47.

412. See App. 4 at 102, tr. at 58; see also Roche, *supra* note 1, at 48.

had not awakened her.⁴¹³ Most importantly, as Dietz conceded on cross-examination, Andrea's overdose and knife threat could be "interpreted by medical experts as an alternative to hurting her children."⁴¹⁴ Psychological research suggests that "aggression against others and aggression against self frequently co-occur" and that "[r]isk assessment for suicide and homicide should go hand in hand."⁴¹⁵ Andrea's psychiatric history and her final act of killing her children support, rather than contradict, this suicide-homicide relationship.

2. Andrea's Pregnancies

Dietz also portrayed Andrea as manipulative and controlling in her decision to discontinue medication and become pregnant again with Mary, her fifth child.⁴¹⁶ Initially, Dietz emphasized that Andrea did not want to admit her mental illness and therefore did not take her medication for that reason;⁴¹⁷ yet, he depicted her motives very differently when he discussed the medication issue in the context of Andrea and Rusty's apparent efforts to have another child. According to Dietz, Andrea's pregnancy was "one of the repeated examples of Mrs. Yates not following the advice of her doctor and thinking she knows best and *maintaining control*."⁴¹⁸ Dietz suggests that Andrea directed the entire decision to conceive: "She's the one deciding what to do. She will not take the medicine unless she wants it. She will get pregnant when she wants to. She's not taking the medicine during pregnancy."⁴¹⁹

Dietz's analysis assumes realities of Andrea's life that did not exist. First, all accounts of Andrea and Rusty's marriage indicate that Rusty was the one in control, the one making decisions, and the one pushing for more children.⁴²⁰ Second, testimony revealed that *both* Andrea and Rusty had been advised by multiple staff members "on the importance of staying on medications and on the importance of not having another pregnancy."⁴²¹ Dietz's conclusions suggest that Rusty had nothing to do with the decision. Indeed, Rusty continually joked (even at his children's funeral) that he always wanted enough boys "to make up a basketball team."⁴²² Likewise, Debbie Holmes testified that Andrea complained to her about the continual pregnancies.⁴²³ Third, noncompliance with taking medication is the norm among psychiatric patients for a variety of reasons, but

413. See App. 4 at 102, tr. at 58.

414. See *id.* at 135, tr. at 193.

415. Marc Hillbrand, *Homicide-Suicide and Other Forms of Co-Occurring Aggression Against Self and Against Others*, 32 PROF. PSYCHOL.: RES. & PRAC. 626, 632 (2001); see also Anna Lembke, *A Psychosocial Approach to Postpartum Depression*, 19 PSYCHIATRIC TIMES, June 2002, available at <http://www.mhsource.com/pt/p020611.html> (noting that in some cases of postpartum depression, a mother's belief that her child would be better off without her can result in maternal suicide while "[t]he not uncommon corollary to that is a mother's belief that her children are somehow defective or developing improperly, which can—in cases—lead to infanticide").

416. See App. 4 at 104, tr. at 65.

417. See *id.* at 98, tr. at 4.

418. See *id.* at 104 (emphasis added), tr. at 65.

419. See *id.*

420. See *supra* notes 300-01 and accompanying text; see also Roche, *supra* note 1, at 48.

421. See App. 4 at 103-04, tr. at 64.

422. See App. 1 (Mar. 2000 n.93) at 78-79.

423. See *supra* note 301 and accompanying text; see also App. 1 (Feb. 28, 2002) at 73.

often because the mentally ill are paranoid or delusional about what doctors give them.⁴²⁴ By his comments, Dietz implied that Andrea's behavior was anomalous and that her refusal of medication related to her need to "control." Yet, recent research suggests that "more serious mental illness is a *cause* not a *consequence*, of [a patient's] refusal of treatment" with antipsychotic medication.⁴²⁵ In fact, when Andrea was being evaluated for her competency hearing, she expressed concern that her medication may be contributing to her psychotic episodes. Resisting medication was also a matter of pride.⁴²⁶ Fourth, many women reject medication while they are pregnant; the DSM entry on postpartum disorders discusses this very issue and makes recommendations to medical personnel about how to counteract it.⁴²⁷ Finally, Dietz never acknowledged that more than fifty percent of all pregnancies are unplanned, irrespective of what couples want or the decisions they make.⁴²⁸ Throughout his testimony about Andrea's last pregnancy, Dietz attributes a level of intentionality to events that may well have simply been an accident.

3. Andrea's Knowledge of Right and Wrong

In an interview with *Time Magazine* on the day that Andrea was sentenced, Dietz stated that despite Andrea's mental illness, her "thought process" still

424. Paul S. Appelbaum & Thomas G. Gutheil, *Drug Refusal: A Study of Psychiatric Inpatients*, 137 AM. J. PSYCHIATRY 340, 340 (1980) (noting that during a three-month study of patients at a community mental health center, "refusal of medication was common" even though it did not severely affect the care of most patients; when patient care was seriously impaired, however, the reasons for patient refusal appeared to be "delusionally motivated"); see also Lorna R. Amarasingham, *Social and Cultural Perspectives of Medication Refusal*, 137 AM. J. PSYCHIATRY 353, 358 (1980) (explaining that "[a] substantial number of patients do not comply with prescribed regimens" and that the reasons for patient refusal must take into account "the social and cultural meaning of medication" to the patient); Kathleen M. Carroll et al., *Targeting Behavioral Therapies to Enhance Naltrexone Treatment of Opioid Dependence: Efficacy of Contingency Management and Significant Other Involvement*, 58 ARCH. GEN. PSYCHIATRY 755, 761 (2001) (referring to the "significant problems with [drug therapy] compliance" among psychiatric patients, particularly those who are most "compromised by compliance issues, including the more highly impaired subgroups (. . . patients with dual diagnoses and those with personality disorders)"). One study concluded that patients who refused medication comprised three "relatively distinct" categories:

1) situational refusers—a diverse group of patients who on occasion refused medication for a short period of time and for one of a variety of reasons; 2) stereotypic refusers—chronically ill patients with paranoid traits who habitually and predictably responded to a variety of stresses with brief medication refusal; and 3) symptomatic refusers—young relatively acutely ill patients whose refusal, often based on delusional premises, was sustained over a long period and successfully stymied treatment efforts.

Appelbaum & Gutheil, *supra*, at 342.

425. John A. Kasper et al., *Prospective Study of Patients' Refusal of Antipsychotic Medication Under a Physician Discretion Review Procedure*, 154 AM. J. PSYCHIATRY 483, 488 (1997) (emphasis added).

426. See App. 1 (Aug. 10, 1999, Jan. 2000) at 66-67; see also Jacqueline A. Sparks, *Taking A Stand: An Adolescent Girl's Resistance to Medication*, 28 J. MARITAL & FAM. THERAPY 27, 31 (2002) (noting that for those patients "choosing to resist, the price may be worth it when it means the preservation of choice, dignity, and a sense of personal agency").

427. DSM-IV-TR, *supra* note 124, at 422-23.

428. *Ortho Gives Packaging a New Twist*, 23 CHAIN DRUG REV. 8 (June 4, 2001) (noting that, "[a]ccording to the Association of Reproductive Health Professionals, more than 50% of all pregnancies in the United States are unplanned each year") (citation omitted).

permitted her to know right from wrong.⁴²⁹ “Her mind recognized murder as wrong or she would not have sought the death penalty to get rid of her inner demons and protect her children from falling into [Satan’s] grasp.”⁴³⁰ Also, “by wanting to dispose of Satan, she had to believe Satan had evil ideas. Therefore, she still comprehended evil to be wrong. She also ‘knew that society and God would condemn her actions.’”⁴³¹ Of course, Dietz’s analysis of Andrea, both in this interview and in court, presumes that Satan actually exists.

Frequently during his testimony, Dietz would strain the interpretation of an incident to support the view that Andrea knew the difference between right and wrong. For example, on May 3, when Andrea filled the home bathtub with water while Dora Yates was present, the incident was perceived to be so bizarre, it sent Andrea back to Devereux.⁴³² According to Dietz, Andrea “doesn’t give a reasonable account of why she did that [fill the tub], and they [Devereux] take her back the next day or the day after.”⁴³³ But, in the months following the incident, Andrea gave several accounts of why she filled the tub that day, including what seemed to be the most reasonable (and defense-oriented) one—she had thoughts of drowning her children.⁴³⁴ A portion of the direct examination of Dietz seemed to recognize that this explanation could support the defense’s position.⁴³⁵ If Andrea were contemplating drowning her children with Dora present, it would fuel the defense’s argument that she may not have known that what she was doing was wrong. While this interpretation of Andrea’s motives is purely speculative, it is the most rational account that Andrea herself provides. It is also congruent with the vague statement that Andrea made in response to Dora’s question of why she was running the water, that is, “Just in case I need it.”⁴³⁶

Indeed, at a later point in his testimony, Dietz downplayed the fact that Andrea told others that she was considering drowning her children while Dora was present. Dietz’s story is intertwined with Andrea’s own conflicting accounts. As Dietz explained, “[s]ometimes she told doctors that she was thinking of drowning the children then. Sometimes she said she thought she might drown the children then. Sometimes she said that she might need it [the tub water] because they might have their water cut off by the utility company; and at those times, she said that she wasn’t thinking of drowning the children then.”⁴³⁷ However, the explanation that Andrea gave Dietz while he was interviewing her is the *least* reasonable one: “the utility company truck explanation rather than drowning the children.”⁴³⁸

429. See *Interview: Dr. Park Dietz*, *supra* note 148.

430. See *id.*

431. See *id.*

432. See App. 1 (May 3, 2001) at 68.

433. See App. 4 at 104-05, tr. at 67.

434. See App. 1 (Feb. 21, 2002 n.180) at 82.

435. See App. 4 at 107, tr. at 78.

436. See App. 1 (May 3, 2001) at 68.

437. See App. 4 at 106, tr. at 75. There are also some accounts suggesting that Rusty was present, but this is not entirely clear.

438. See *id.*

The more pointed question to ask is, why did Andrea tell Dietz the company truck answer when she told others she was thinking of drowning her children? Does it really make sense for a woman to fill her family tub in such an odd manner on May 3 because of a possible water shortage but then fill it again on June 20 to drown her children? It seems unlikely that Andrea's disruptive actions on May 3, which were sufficiently disturbing to hospitalize her again, appeared due to her concern over a water shortage, particularly in light of the other evidence.

In sum, Dietz's testimony was too focused on trying to explain Andrea's illogical thinking, which basically stemmed from her mental illness. His analysis was not based on "facts" but rather pure speculation about her delusional thought patterns. According to one legal scholar, "medical expert witnesses are not advocates for either side in the litigation, but may advocate their opinion."⁴³⁹ Yet, there were a number of aspects of Dietz's testimony where his prosecutorial bent came through quite obviously. For example, despite his level of experience, Dietz repeatedly referred to the drownings as "homicides"⁴⁴⁰ or "crimes,"⁴⁴¹ even though at the time, Andrea had not been convicted of anything. Likewise, at certain points, it was Dietz who directly led the prosecution to a criminal conclusion about Andrea. For example: "Q. Now, you noted that - or Dr. Saeed told Mr. Yates that someone must be with his wife, but she was left alone; was that correct? A. Yes. And, of course, the significance of that is that it gives her the opportunity to commit the crimes."⁴⁴²

C. Dietz's Attempts to Give "Logic" to Andrea's Illogical Delusions

A major portion of Dietz's testimony was analyzing Andrea's "homicide" in three phases: (1) the pre-homicide phase, (2) the homicide phase, and (3) the post-homicide phase. The pre-homicide phase was key for Andrea's defense because it went to the issue of whether she knew the difference between right and wrong. Dietz conceded that Andrea told both Rusty and her friend Debbie Holmes about "her concerns for the presence of Satan, the influence of Satan."⁴⁴³ Even in Dietz's opinion, Andrea was open about her fears and did not attempt to hide them.

What Dietz emphasizes, however, is that despite Andrea's openness about Satan, she concealed the thoughts of harming her children from other people. If, for example, she was concerned that by mentioning the harm to other people it would actually happen, Dietz responds that this fear would be even more reason for Andrea to talk about it.⁴⁴⁴ Dietz's "legal-like" logic applied to the thinking of a mentally ill Andrea Yates goes as follows:

If it's true that she believed that killing the children would save them, then why would she not want it to happen. She would want to talk about it so it came true

439. Ciccone, *Expert Testimony*, *supra* note 42, at 798.

440. *See, e.g.*, App. 4 at 108, tr. at 83.

441. *See, e.g.*, *id.* at 108, 110-11, tr. at 82, 92, 95.

442. *See id.* at 108, tr. at 81-82.

443. *See id.* at 109, tr. at 87.

444. *See id.*, tr. at 88.

and the children would be saved. So, I concluded at that point that she's keeping it secret, she knows that other people are going to stop her, that it's wrong, that it's a bad idea; and she admits as such. She admits that she knows people will stop her.⁴⁴⁵

Yet, there is no factual support for anything Dietz says. Dietz also rather bizarrely analyzes Andrea's statements as real and "debates" her theories about Satan even though everyone agreed that Andrea was mentally ill and delusional. Delusions are by definition illogical. As a key text on delusional disorders emphasizes, "[i]n the delusional mode, thought form is relatively normal but the abnormal content predominates and is associated with profound, but focused *illogicality*."⁴⁴⁶ Dietz's story is based on applying a logical analysis to Andrea's truly illogical ruminations. There is really no diagnostically acceptable point to it. Nor is it even clear that Andrea intended what Dietz said because she never articulated it, he did.

Perhaps anticipating this criticism, Dietz explained that he is entitled to apply such an inordinate amount of logic to the thinking of a mentally ill person because Andrea seemed to him to be "psychologically ready" to engage in the act of killing.⁴⁴⁷ Yet again, Dietz does not provide any empirical support for this very vague explanation. Parenthetically, the field of psychiatry does not encourage members of its profession to engage in logic-applied analyses of the illogical ramblings of mentally ill people.

But, for Andrea, there was no escape from Dietz's testimony; he seemed to have cut off every avenue with some explanation based entirely on speculative presumptions. Dietz showed striking confidence in his conclusions, despite the conjecture. Comparably noteworthy was Dietz's complete disregard of the literature on postpartum depression, which indicates that women generally *do not* tell others that they are thinking about harming or killing their children; they are afraid and embarrassed and disturbed by such thoughts.⁴⁴⁸ Dietz's sweeping generalizations about Andrea's mental state are consistent with his ignorance of the subject matter.

D. Dietz's Criticism of Andrea's Inability to Nurture Her Dead Children

Dietz also focused on the easiest emotional target of Andrea's illogicalities—how Andrea treated her children after she killed them. For example, Dietz queried why Andrea did not try to "comfort the children, telling them they are going to be with Jesus or be with God."⁴⁴⁹ Again, however, such comments were guesswork on Dietz's part. In other words, is it typical for mentally ill people to give their children religious words of comfort before they kill them, particularly if they think Satan is their guide?⁴⁵⁰

445. See *id.*

446. Alistair Munro, *The Classification of Delusional Disorders*, 18 *PSYCHIATRIC CLINICS OF N. AM.* 199, 203 (1995) (emphasis added).

447. See App. 4 at 110, tr. at 89.

448. See Roche, *supra* note 1, at 47.

449. See App. 4 at 114, tr. at 106.

450. See *supra* notes 175-79 and accompanying text.

While being cross-examined, Dietz acknowledged that Andrea had been nurturing toward her dead children. She had placed her children's heads on pillows, for example, with Mary's head "resting on her older brother's shoulder" and Mary's hand "cupped by her older brother's hands."⁴⁵¹ According to the police officers who arrived on the scene, the children's bodies appeared "posed," as though the "older brother were taking care of the younger sister."⁴⁵² Such arrangements are perhaps a more objective gauge of Andrea's thoughts than the speculative hindsight Dietz offered. At the very least, the way that Andrea situated her children suggested that she may have believed they were going to take care of one another; in contrast, Dietz had nothing to support his comments apart from sheer conjecture.

Similarly, Dietz noted that Andrea seemed to cover each of her children's heads and faces as she put them on the bed.⁴⁵³ He suggested that she may have covered them so that the remaining children, who were still alive, would not discover the bodies.⁴⁵⁴ Later in his testimony, however, Dietz stated that Andrea's covering of her children's faces was "an indication of her feeling guilt or shame."⁴⁵⁵ Dietz's explanation for Andrea's behavior is perplexing; there is a social norm to cover the faces of the deceased for reasons of respect or reverence. It would have been just as reasonable for Dietz to have pitched Andrea's motives in an alternative way, in other words, to state that covering the children was Andrea's way of showing care and comfort to them, given that all of these explanations are speculative anyway. Nonetheless, Dietz did resist supporting one of the prosecution's more damning insinuations—that Andrea's decision to leave Noah in the bathtub after he died was cold hearted. Instead, Dietz noted that, at fifty pounds, Noah was too heavy for Yates to lift.⁴⁵⁶ "Nurses know not to lift heavy weights."⁴⁵⁷

Lastly, Dietz explained that Andrea seemed "grossly psychotic" and mentally disturbed from June 21 to some period thereafter, so "very sick" that she was hearing "growls and voices" and seeing "teddy bears and ducks and marching soldiers" that she believed were satanic.⁴⁵⁸ Yet, he claimed there was not "nearly as much evidence of that kind of extreme sickness or gross psychosis on June 20th as [there is] for the period beginning June 21st."⁴⁵⁹ Dietz attributed his impression that Andrea was "different in a sicker way" to the rapid changes in Andrea's life after she was arrested.⁴⁶⁰ However, there is an alternative explanation. Andrea did not receive nearly as much medical attention on June 20 as she did on June 21, when she became the object of intense evaluation. On June 20, she was with police for much of the day whereas on June 21, she was surrounded by psychiatrists who were able to assess her mental state. Given these

451. See App. 4 at 131, tr. at 175.

452. See *id.*

453. See *id.* at 113-14, tr. at 105.

454. See *id.*

455. See *id.* at 116, tr. at 115.

456. See *id.* at 137-38, tr. at 202.

457. See *id.*

458. See *id.* at 114, tr. at 109.

459. See *id.* at 115, tr. at 110.

460. See *id.*

day-to-day differences in the amount of time Andrea spent with medically trained professionals, Dietz's conclusions are unwarranted.

This analysis of Dietz's testimony could extend even further, continually assessing every word in the way that Dietz evaluated Andrea's every move. However, this Article is not intended to be an indictment of Dietz *per se*. Rather, it is a commentary on how swayed and fragile insanity determinations can be in the heat of litigation and how inadequate the criminal justice system is to handle them. Dietz did not create this situation; he merely responds to the many who want him to be part of it. As the following discussion makes clear, other aspects of the Yates trial as well as the law and culture of Harris County also appeared to be critical contributors to Andrea's conviction.

VI. OTHER VIEWPOINTS ON THE ANDREA YATES CASE

Up to this point, discussion of the Yates trial has focused on Park Dietz. Of course, there were other perspectives and experts involved in the case. Part VI examines briefly only a selected number of these additional people and issues to give a glimpse of a broader story about Andrea.

A. The Overall Defense and Prosecution Perspective

In general, the defense contended that Andrea's mental illness led her to believe she made the right choice when she killed her children. Andrea's long history of illness and her many visits to doctors⁴⁶¹ created a situation in which a number of defense experts were called to testify about her condition at the time they treated her or her mental state at the time she killed her children.⁴⁶² Yet, because of the numbers of medical specialists involved in the case who had evaluated Andrea at different times and for different purposes, some offered seemingly conflicting narratives of Andrea's perception of right and wrong. This range of opinion for the defense contrasted with the prosecution's more consistent argument that Andrea's acts were sane and intentional because the prosecution primarily relied only on Dietz's narrative.

Ironically, then, the severity and extent of Andrea's mental illness may have undercut her defense. There was one story of sanity from the prosecution and several stories of insanity from the defense. For example, Dr. Melissa Ferguson, a psychiatrist at the Harris County Jail, testified that Andrea told her in a post-arrest interview that drowning her children was "the right thing to do"

461. See generally App. 1.

462. The following is a list of some of the major defense experts and the dates they testified: Dr. Melissa Ferguson (psychiatrist at Harris County jail)—Feb. 22-23, 2002; Dr. George Ringholz (neuropsychologist from Baylor College of Medicine)—Feb. 26, 2002; Dr. Eileen Starbranch (psychiatrist who treated Andrea for five months)—Feb. 26-27, 2002; Dr. Steve Rosenblatt (psychiatrist who examined Andrea after the drownings)—Mar. 1, 2002; Dr. Phillip Resnick (psychiatrist from Case Western University)—Mar. 1, 2002; Dr. Ellen Allbritton (psychiatrist who admitted Andrea to Devereux)—Mar. 4, 2002; Dr. Debra Osterman (psychiatrist who saw Andrea after the drownings)—Mar. 6, 2002; Dr. Lucy Puryear (psychiatrist)—Mar. 7, 2002; Dr. Mohammad Saeed (psychiatrist who treated Andrea at Devereux)—Mar. 6, 2002. See generally App. 1.

since it saved them from a life of torment and eventual damnation in hell.⁴⁶³ Defense expert Dr. Phillip Resnick testified that although Andrea knew her actions were illegal, "she did what she thought was right in the world she perceived through her psychotic eyes at the time."⁴⁶⁴ Describing Andrea's motives as "altruistic," Resnick explained that she believed that she was sending her children to heaven and, in setting herself up for execution, ridding the world of Satan.⁴⁶⁵ Another expert witness for the defense, Dr. George Ringholz, explained that in the midst of her "acute psychotic episode," Andrea "did not know the actions she took on that day were wrong."⁴⁶⁶ Dr. Steve Rosenblatt further elaborated: "She was out of contact with reality, did not know right from wrong, and in my opinion, clearly was within what's considered the legal definition of insanity."⁴⁶⁷

Jurors struggling to make sense of it all would be additionally taxed by the open disagreement between Resnick and another defense expert, Dr. Lucy Puryear. According to Puryear, Andrea was too sick to know that her actions were wrong. In contrast, Resnick stated that Andrea knew her acts were illegal, but believed they were right because they saved her children from eternal damnation.⁴⁶⁸ Granted, these two positions are not entirely mutually exclusive; however, Puryear acknowledged during cross-examination that there were conflicts between her testimony and Resnick's and stated merely that they had "differing opinions."⁴⁶⁹

Prosecutor Joseph Owmbly claimed, on the other hand, that determining insanity did not come down to "'a battle of the experts,'" but rather was "'a question of common sense[.]'"⁴⁷⁰ According to Owmbly, the experts simply "present the evidence from the medical side" while the jurors, though unable to diagnose mental illness, "can tell you whether they believe a person knew right from wrong at the time."⁴⁷¹ Similar to Dietz's testimony, the prosecution downplayed Andrea's history of mental illness as well as the neurobiological underpinnings of her disorder.

463. See *Yates' Husband Set to Testify for Defense*, CNN.COM, Feb. 27, 2002, available at http://www.courttv.com/trials/yates/022702_cnn.html.

464. See *Yates Claimed She Killed Kids to Keep Them from Going to Hell*, *supra* note 26.

465. See *Trial of Texas Mother Begins Third Week*, *supra* note 20.

466. See Associated Press, *Psychiatrist Says She Warned Yates*, Feb. 27, 2002, available at http://www.courttv.com/trials/Yates/022702-pm_ap.html.

467. See *Trial of Texas Mother Begins Third Week*, *supra* note 20.

468. See Associated Press, *Videotapes Show Two Sides of Yates*, Mar. 7, 2002, available at http://www.courttv.com/trials/yates/030702-a_ap.html.

469. *Id.*

470. See Grinfeld, *supra* note 140.

471. *Id.* According to some commentators, prosecutor Owmbly's image of experts framing a picture that jurors fill in using common sense seemed flawed. The "huge chasm between our common-sense understanding of insanity and the legal definition of insanity," Seligman, *supra* note 136, seems to consider it inappropriate for jurors to judge Andrea's actions using the same rationale that they use to make daily decisions in their own lives. Even if jurors did understand that Andrea's version of right and wrong may be different from that of a non-mentally ill person, is it realistic to think that a lay person would have the capacity to grasp the nature of Andrea's mental illness, and its impact on her ability to determine right from wrong? It seems more likely that, when confronted with the conflicting complexities of determining Andrea's "knowledge" of the legal and moral concepts of right and wrong, jurors' confusion will make reliance on expert testimony all the more likely.

Yet, most of the expert testimony offered in the Yates case did little to abate the confusion surrounding Andrea's mental state. Not surprisingly, the testimony of expert witnesses for the prosecution directly clashed with the testimony of expert witnesses for the defense. As one psychiatric journalist explained, although prosecution expert Park Dietz and defense expert Phillip Resnick are well known in their mutual fields, they nonetheless viewed Andrea's insanity defense "in polar opposite ways."⁴⁷²

Overall, it appeared to be a tactical problem for the defense to deal with so many psychiatric experts. Their contrasting analyses blunted the defense's theory. Which story should the jurors choose? Assuming that Resnick was probably one of the stronger psychiatrists in terms of his demeanor and experience and was therefore more equal to Dietz,⁴⁷³ the defense may have been better off presenting just Resnick (in addition to the psychiatrists who actually treated Andrea). With this approach, the defense would have had a clearer, more linear, story that Andrea was indeed insane. As it so happened, Dietz probably appeared better with his single theory in contrast to the defense's multiple theories concerning Andrea's mental state.

The defense also would have benefited from questioning Dietz more aggressively about the facts of Andrea's history of postpartum depression and psychosis. Such a "detailing to death"⁴⁷⁴ tactic could have accomplished two goals: (1) it would have accentuated Dietz's lack of expertise in the area, and (2) it would have stressed the neurological and biological aspects of the disorders. The jury would perhaps more fully appreciate that insanity determinations are based on far more than just "common sense" or speculation. The jurors' own comments indicate that this kind of psychiatric evidence had little to no impact in their forty minutes of deliberation before deciding to convict Andrea.

B. The Jurors' Comments

The jurors' explanations for their verdict suggest that they were heavily swayed by the prosecution's presentation of the case. In their view, Andrea's manner of killing her children seemed "premeditated and methodical."⁴⁷⁵ They cited Andrea's videotaped confession and the photographs of her children, alive and dead, as "the most compelling evidence" of their unequivocal belief that Andrea knew right from wrong.⁴⁷⁶ According to one juror, for example, because

472. See Grinfeld, *supra* note 140.

473. Dietz and Resnick have testified for the prosecution and the defense, respectively, in prior trials, which resulted in the convictions of Jeffrey Dahmer and Unabomber Ted Kaczynski. Oliver Burkeman, *Family Murder Trial Splits Texas: The Killing of Five Children by Their Mentally Ill Mother Highlights Controversial Death Penalty Laws in America*, GUARDIAN (London), Feb. 19, 2002, at 15.

474. For a discussion of the "detailing to death" tactic, see GREGORY M. MATOESIAN, *LAW AND THE LANGUAGE OF IDENTITY: DISCOURSE IN THE WILLIAM KENNEDY SMITH RAPE TRIAL*, at v, 6, 69, 102 (2001).

475. See Associated Press, *Yates Family Members Decry Husband*, Mar. 18, 2002, available at http://www.courtstv.com/trials/yates/031802_ap.html.

476. See *The Yates Trial Jury*, HOUSTONCHRONICLE.COM, Mar. 16, 2002, at <http://www.chron.com/cs/CDA/story.hts/special/drownings/1233919>; *Yates Family Members Decry Husband*, *supra* note 475. The jury consisted of eight women and four men. At least five of the women were married and held jobs, and four of those five had children. The three unmarried women were employed, and

Andrea called the police immediately after the killings and could converse with them and account for her behavior, "it seemed as if she was thinking pretty clearly."⁴⁷⁷ Another juror emphasized that Andrea "was able to describe what she did . . . I felt like she knew exactly what she was doing."⁴⁷⁸ These "objective" actions of Andrea's are the kinds of factual evidence that Dietz stressed in his determination that Andrea was sane.

The jurors also appeared to take seriously the prosecution's depiction of Andrea's religiosity and her perception of her conduct as sinful. Indeed, religion was an important force throughout the trial in a number of different ways. For example, prosecutor Owmbly claimed to have prayed before deciding to seek the death penalty for Andrea,⁴⁷⁹ and he expressed his firm belief that she was aware that she had sinned.⁴⁸⁰ He also elicited testimony from one of the defense's expert witnesses admitting that Andrea knew she had sinned.⁴⁸¹ Surely, Andrea's own statements supported that view.⁴⁸²

On the surface at least, the jury seemed predisposed to embrace such religious characterizations. In a television interview with four of the jurors conducted shortly after the Yates verdict, the jurors' comments indicated that they all shared some Christian convictions.⁴⁸³ As the interviewer emphasized, "[i]n a case [the Yates jurors] found emotionally draining, they say prayer got them through."⁴⁸⁴ According to one juror, for example, all the jurors "held hands and prayed . . . [the] Lord's prayer, most mornings" and they "did the same thing before and after the verdict."⁴⁸⁵ Another juror affirmed the prosecution's sentiment that Andrea "knew it was wrong in the eyes of God."⁴⁸⁶ During the trial, there appeared to be little left for the defense to hold on to other than evidence of Andrea's mental illness,⁴⁸⁷ and the nature and severity of her illness did not come across adequately.

Dietz also accentuated sin and religion generally throughout his testimony, far more than the "facts" of Andrea's mental history.⁴⁸⁸ Of course, on the surface, Andrea's explanations for why she killed were laced with religion. Yet, given the severity of her mental illness, the religious aspects of her delusions were symptoms of her disorder, not a substantive issue for Dietz to "debate" with her.

two had children. All of the men were employed, at least three were married, and two had children. Three women and two men had some exposure to psychology, either through counseling or an educational degree. See *The Yates Trial Jury*, *supra*.

477. See *Yates Family Members Decry Husband*, *supra* note 475.

478. *Id.*

479. See Cassel, *supra* note 84.

480. See *Mother Faces Jury for Drowning Five Kids*, *supra* note 348.

481. See *Yates' Mom: 'She Was a Wonderful Mother'*, CNN.COM, Mar. 6, 2002, available at http://www.courttv.com/trials/yates/030602_cnn.html.

482. See *supra* notes 463-65 and accompanying text.

483. See Dawn Fratangelo, *The Jury Speaks: Jury Members Discuss Andrea Yates' Trial*, Dateline NBC (NBC television broadcast, Mar. 17, 2002).

484. *Id.*

485. *Id.*

486. *Id.*

487. See *Third Day of Testimony to Begin in Trial of Texas Mom*, CNN.COM, Feb. 20, 2002, available at http://www.courttv.com/trials/yates/022002_cnn.html.

488. See generally App. 4.

Delusions and hallucinations about the devil are not uncommon among women with postpartum psychosis and those who end up killing their children.⁴⁸⁹ In turn, all mental illnesses are contextually based, reflecting the culture and day-to-day circumstances of the mentally ill person.⁴⁹⁰ In other words, mental disability is interlinked with other influences in a person's life, including the community where that person lives.

C. Religion and Culture

Given Andrea and Rusty's intense interest in the Bible and the Wornieckis' lifestyle, it is understandable that such themes would provide the foundation for Andrea's delusional thoughts. While the Yateses were not affiliated with any church,⁴⁹¹ Rusty decided to hold the children's funeral close to their home at the Clear Lake Church of Christ,⁴⁹² which Rusty now regularly attends.⁴⁹³ Over a two-century history, Churches of Christ have divided into eight primary branches,⁴⁹⁴ now totaling nearly two million members worldwide.⁴⁹⁵ The majority mainstream wing of the Churches of Christ is especially strong in the region of the United States spanning from Middle Tennessee to West Texas.⁴⁹⁶ The tenets of this mainstream branch give some perspective on Rusty's current religious views and what he may have believed in the past.

Consistent with Rusty's prior distance from organized religion,⁴⁹⁷ Churches of Christ purport to be nondenominational and therefore are not Catholic or Protestant.⁴⁹⁸ Rather, followers of the Church simply call themselves "Christians."⁴⁹⁹ Commonly, members contend "that they have restored the primitive church of the apostolic age and are therefore nothing more or less than the true,

489. See *supra* note 232.

490. For a specific example of how culture shapes insanity, see ROBERT L. WINZELER, *LATAH IN SOUTHEAST ASIA: THE ETHNOGRAPHY AND HISTORY OF A CULTURE-BOUND SYNDROME* (1995).

491. See Roche, *supra* note 1, at 47.

492. See SPENCER, *supra* note 1, at 68-75.

493. Carlton Stowers, *Tracks of His Tears*, DALLAS OBSERVER, Jan. 23-29, 2003, at 30.

494. RICHARD T. HUGHES, *REVIVING THE ANCIENT FAITH: THE STORY OF CHURCHES OF CHRIST IN AMERICA 1* (1996) (noting that these branches of the Churches of Christ include the Pre-millennial Churches of Christ, the Non-Class Churches of Christ, the One-Cup Churches of Christ, as well as the International (Boston) Churches of Christ).

495. Edwin S. Gaustad, *Churches of Christ in America*, in 2 *THE RELIGIOUS SITUATION: 1969*, at 1013, 1017 (Donald R. Cutler ed., 1969); see also ChurchZip Coverage, at <http://www.churchzip.com/statisticalsummary.htm> (last visited Feb. 24, 2003). ChurchZip purports to provide "the world's largest and most accurate on-line directory of Churches of Christ" and cites a daily total of membership in Churches of Christ. ChurchZip Coverage, *supra*. As of February 24, 2003, this membership totaled 1,848,728 people worldwide. *Id.*

496. HUGHES, *supra* note 494, at 1; see also ChurchZip Coverage, at <http://www.churchzip.com/uscastatisticalsummary/US> (last visited Feb. 24, 2003) (indicating that Tennessee and Texas still have the highest concentrations of Church of Christ members in the United States as of Feb. 24, 2003).

497. See *supra* notes 57-58, 291 and accompanying text.

498. Gaustad, *supra* note 495, at 1013-14. But see HUGHES, *supra* note 494, at 2 (noting that although the "Churches of Christ have passionately rejected the labels *sect* and *denomination* as pertinent to their own identity . . . their denial of these categories flies in the face of social reality, [hence] their story is one of deep irony and absorbing interest").

499. Gaustad, *supra* note 495, at 1013.

original church described in the New Testament."⁵⁰⁰ Indeed, Churches of Christ have essentially "denied that they had a defining history other than the Bible itself" and many members have no knowledge of the Church's original founders.⁵⁰¹ "Biblical authority," therefore, is paramount⁵⁰² and Church members defy "hierarchy or headquarters or national program."⁵⁰³ As a result, each congregation is an independent body⁵⁰⁴ and "practices vary widely" among them.⁵⁰⁵

The Clear Lake Church of Christ has an extensive website,⁵⁰⁶ which offers a range of lessons.⁵⁰⁷ The Church also sponsors the White Stone Ministry, whose mission is in part to aid "those who do not know Christ" by introducing them to Jesus and the Bible's scriptures.⁵⁰⁸ In addition to posting specific scriptures, the White Stone Ministry offers a number of instructive articles, which appear to focus on "sexual sin"⁵⁰⁹ and the hazards of pornography, particularly in comparison to a good marriage.⁵¹⁰

500. HUGHES, *supra* note 494, at 2. According to Richard Hughes, "arguably the most widely distributed tract ever published by Churches of Christ or anyone associated with that tradition" was entitled, "Neither Catholic, Protestant, Nor Jew." *Id.* at 4. Published during the 1960s, the tract asserted the following:

[T]he church of Christ is neither Catholic, Protestant, nor Jewish. We are unique and different for we are endeavoring to go all the way back to the original New Testament church. Using the New Testament as our blueprint we have re-established in the twentieth century Christ's church. It fits No modern label. It is not just another denomination.

Id. (citation omitted).

501. *Id.*

502. Edwin S. Gaustad, *Churches of Christ*, in 1 *ENCYCLOPEDIA OF CHRISTIANITY* 573 (Erwin Fahlbusch et al. eds., 1999). According to one author's account of the Church of Christ, most members believe that the original manuscripts that now constitute the Bible "were divinely inspired, by which it means they are infallible and authoritative." *What Is the Church of Christ?*, 1 *BIBLICAL STUD. J.* (Apr. 1, 1997), at <http://www.biblicalstudies.org/v001n03.html>.

503. Gaustad, *supra* note 502, at 573; *see also* *What Is the Church of Christ?*, *supra* note 502 (noting "that by the very nature of the organization of the church of Christ, it is not possible for this author, or anyone else, to speak officially for the churches of Christ throughout the world" although the author asserts that his "comments [describing the Church] express the basic beliefs and convictions of most members of the churches of Christ").

504. Jack Harriman, *What's Different About the Church of Christ?*, West-Ark Church of Christ Online Library, at <http://www.westarkchurchofchrist.org/library/topic1.htm> (last visited Feb. 24, 2003).

505. *See* ChurchZip Coverage, *supra* note 495.

506. Clear Lake Church of Christ, at <http://www.clearlakechurch.com> (last visited Mar. 25, 2003).

507. Clear Lake Church of Christ, *The Truth Will Set You Free*, at <http://www.clearlakechurch.com> (last visited Mar. 25, 2003). The lessons provided through the Clear Lake Church of Christ website cover a wide range, although a prevalent message is the notion that humans cannot "make it" without God. *Id.* According to the Church's minister, Byron Fike, for example, human beings cannot "make it" without God and must be "dependent or broken" because "[b]eing broken is the first step of coming to know God." *Id.* (Lesson 4—Dependence Upon God).

508. Clear Lake Church of Christ, *White Stone Ministries Mission Statement*, at <http://www.clearlakechurch.com> (last visited Mar. 25, 2003).

509. David K. Foster, *Sexual Sin & Bondage: What Does it Look Like to Be Healed? Part I*, White Stone Ministries, at <http://www.clearlakechurch.com> (last visited Mar. 25, 2003).

510. David E. Longacre, *Marriage and the Power of Porn*, White Stone Ministries, at <http://www.clearlakechurch.com> (last visited Mar. 25, 2003).

The importance of religion in the south and Harris County in particular should not be downplayed when analyzing the reasons for Andrea's conviction, especially since religious themes were highlighted by the prosecution. According to one legal scholar's analysis of the literature on "[t]he southern subculture of punitiveness,"⁵¹¹ a key "facet of American Southern exceptionalism is the South's distinctive embrace of Protestant fundamentalism," which is why the South is commonly referred to as "the Bible belt."⁵¹²

In turn, a substantial body of research shows a link between Southern fundamentalism and support of the death penalty.⁵¹³ While the precise explanation for this association is not clear, it is "real" nonetheless and exists along with other evidence of the South's disproportionate proclivity to violence.⁵¹⁴

With respect to the Yates case specifically, it seems that the prosecution and Dietz were in religious sync with the jury, presuming the jurors were in any way representative of Harris County, the heart of the Bible belt.⁵¹⁵ While the role of the jury is to reflect community values, Dietz's "Bible thumping" may have merely reinforced what could have been the jury's own initial, moral, thesis about Andrea's mental state. The defense should have detailed Dietz to death to separate the religion from the "real" facts of the case. As it stands, religion appeared to dominate much of the testimony, and the medical aspects of postpartum psychosis and Andrea's history of mental illness took a substantially smaller role.

D. Andrea Yates's Competency

One of the most significant problems that the defense confronted was Andrea's resistance to assisting in her own case. From the moment she completed the killings, Andrea seemed intent upon seeking punishment for her actions.⁵¹⁶ This kind of thinking may have been a symptom of her particular mental illness—her suicidal and homicidal ideas—and it is not unusual.⁵¹⁷

In an interview with the police who responded to her call immediately after the killings, for example, the only question Andrea asked was when she would be tried.⁵¹⁸ The next day, she told her prison psychiatrist, Melissa Ferguson, that she was guilty and deserved punishment.⁵¹⁹ Dr. Gerald Harris, the clinical psychologist who testified for the defense at Andrea's competency hearing, recalled that when he first spoke to Andrea shortly after the killings, she made troubling comments regarding Satan.⁵²⁰ In arguing that Andrea was not yet competent to

511. Marian J. Borg, *The Southern Subculture of Punitiveness? Regional Variation in Support for Capital Punishment*, 34 J. RES. CRIME & DELINQ. 25, 25 (1997).

512. Steiker, *supra* note 9, at 124.

513. *Id.*; Professor to Discuss Death Penalty, *supra* note 180.

514. Steiker, *supra* note 9, at 124.

515. See *supra* notes 8-9, 511-12 and accompanying text.

516. See *supra* notes 11-20 and accompanying text.

517. Telephone interview with Shari Lusskin, M.D., *supra* note 279.

518. Associated Press, *Psychiatrist Testifies in Yates Trial*, Feb. 22, 2002, available at http://www.courtstv.com/trials/yates/022202-defense_ap.html.

519. See *Yates' Fate Hinges on Doctors' Words*, *supra* note 7.

520. See Associated Press, *Mother Accused in Deaths of Five Children Not Yet Mentally Stable to Stand Trial*, Sept. 19, 2001, available at http://www.courtstv.com/news/2001/0919/yates_ap.html.

stand trial, Harris emphasized that people are not going to adequately defend themselves if they believe that their death will eliminate Satan.⁵²¹

In his competency report, Harris also noted that even though Andrea was experiencing both auditory and visual hallucinations,⁵²² she claimed that she was "fine and has no mental problems."⁵²³ In turn, Andrea "admit[ted] only that she was depressed in the past and had some irrational thoughts"; yet, she "appear[ed] to believe" that her medication "helped the depression" but may also "have caused the psychotic symptoms."⁵²⁴ Likewise, Andrea "repeatedly express[ed] an aversion to taking any medication because of her 'pride.'"⁵²⁵ Harris found Andrea incompetent to stand trial, given that "[h]er denial of mental illness and reluctance to provide information about it prevents access to information that could be important to her defense."⁵²⁶ He further observed that "she is easily confused and manipulated and has a diminished emotional capacity, likely preventing her from presenting herself appropriately in court."⁵²⁷

Dr. Steven Rubenzer, the state's forensic psychologist, found Andrea competent to stand trial despite the fact that she denied her mental illness and

521. *See id.*

522. *See Harris, supra* note 25. What is also clear from Harris's competency report is Andrea's improvement during the three periods in which he examined her. When he first met with her on June 25, 2001, for example, she was on suicide watch and had started treatment for antipsychotic medication. As Harris noted:

At that time she was exhibiting overt signs of psychosis and depression. She appeared to meet most of the criteria for catatonia. Motor movement was slow, her affect was flat, there was very little eye contact, she had poor short and long term memory, and her response time to questions was up to two minutes or more. She also expressed delusional thinking, such as talking directly to Satan, being involved in an elaborate plan to destroy Satan, and seeing satanic symbols in the walls. Her insight and judgment were extremely poor. She stated at this time that her thinking was clear.

Id. When Harris met with Andrea for the second time on June 29, 2001, her condition had not really improved. Despite continuing on Haldol and Zoloft, she again exhibited clear symptoms of psychosis and depression. Poor memory and responsiveness, flat affect and delusional thinking were present. By August 31, 2001, Andrea had "appeared, on the surface, to have significantly improved functioning," although she still had definite problems:

She was oriented to time and place and interacted more appropriately. Affect was blunted but not flat, made some eye contact, and response delay was decreased. However, she still had staring spells, frequently needed questions or instructions repeated, and exhibited poor insight and judgment. Her memory also continues to be impaired and abstract thinking or reasoning is poor.

Despite denial of any hallucinations or delusions, she clearly continues to have some degree of belief in her grandiose and paranoid ideation. When talking about such things as cameras watching her every move as a mother, or messages being sent to her through the television, she easily slips into language describing them as credible or true and becomes emotionally agitated. Asked if there were video cameras monitoring her in the past, she stares off and slowly replies, "maybe."

Id.

523. *Harris, supra* note 25.

524. *Id.*

525. *Id.*

526. *Id.*

527. *Id.*

downplayed her depression.⁵²⁸ When Rubenzer asked Andrea about her use of the insanity defense, Andrea “stated she does not believe she is mentally ill and *should* be punished for her actions.”⁵²⁹ This response supported her attorneys’ claim that “she has consistently expressed the desire to plead guilty” and “has expressed reluctance to use an insanity plea.”⁵³⁰ In addition, Rubenzer reported that Andrea evidenced feelings of “depression, social isolation, suspiciousness of other people” as well as a “feeling that her thoughts are blocked, or taken away, or can be heard by other people.”⁵³¹ Andrea also stated that “she has heard voices that others cannot hear in the past.”⁵³² However, while Rubenzer acknowledged that Andrea’s desire for punishment could hinder her ability to assist in her own defense,⁵³³ this factor did not preclude his determination that she was competent to stand trial.

The transient nature of Andrea’s postpartum psychosis contributed to the defense’s hurdles because she was being treated and her mental state therefore improved. Ferguson observed that Andrea continued to show signs of psychosis for a full month after the drownings, but by early August the psychosis had lifted.⁵³⁴ Legally, the fact that Andrea no longer suffered from psychosis at the time of trial should not have posed a problem. The Texas insanity statute clearly states that defendants need only have lacked knowledge as to the wrongfulness of their actions “at the time of the conduct charged.”⁵³⁵ Nonetheless, jurors may have been skeptical of a mental illness that allegedly existed during the commission of the crime, but seemed to have disappeared by the time of trial.⁵³⁶

The defense introduced psychiatric testimony and a vast array of medical records to establish Andrea’s history of mental illness and post-arrest psychosis.⁵³⁷ But the only person who could genuinely testify to Andrea’s state of mind at the essential moment, the moment of the killings, was Andrea herself.⁵³⁸ In an interview with Rubenzer, Andrea claimed that she thought her actions were

528. See Steven J. Rubenzer, Competency Evaluation, Aug. 5, 2001 (for Andrea Pia Yates, case #88025) (on file with author).

529. As Dr. Rubenzer reports, on August 2, 2001, Andrea Yates “stated she does not believe that she is mentally ill, a position she has also reported to her past treating psychiatrist, Dr. Ferguson.” *Id.* at 3. Andrea also “minimized the degree of her depression, which those around her have often described as severe.” *Id.*

530. *Id.* at 5.

531. *Id.* at 3-4.

532. *Id.* at 4.

533. *Id.* at 6 (“She has stated she wants to be punished and could fail to assist her attorney develop her defense because of this desire.”).

534. See Associated Press, *Doctor: Yates Was in Psychotic Fog*, Mar. 6, 2002, available at http://www.courtTV.com/trials/yates/030602_ap.html.

535. TEX. PENAL CODE ANN. § 8.01 (Vernon 2002).

536. See Liu, *supra* note 1, at 362 (noting that the “ephemeral nature” of postpartum psychosis “is particularly problematic in that it contradicts the stereotypical notion of a severe mental illness as a debilitating disorder that affects the defendant both during the commission of the act and at the time of trial, although this illness may be abated presently with the aid of medication”).

537. See generally App. 1.

538. See *Texas Mom Drowns Kids*, COURTTV.COM, Feb. 28, 2002, available at http://www.courtTV.com/talk/chat_transcripts/2002/0227yates-deltito.html (quoting Dr. Joseph Deltito, professor of psychiatry at New York Medical College: “There is no way to prove [that someone is experiencing a psychotic episode right at the time] other than observation and report on the part of the person.”).

right during the time she drowned her children, and only “realized they were legally wrong after the fact when she called the police.”⁵³⁹ Given that Andrea’s knowledge of right and wrong was at the crux of her entire case, it would have been helpful if Andrea had elaborated upon this statement for the jury’s benefit. Rubenzer testified that as Andrea’s mental health improved, she would become better able to appreciate her actions;⁵⁴⁰ one can only wonder whether part of Andrea’s reluctance to assist in her own defense was due to her growing guilt and horror at the enormity of what she had done.

E. Final Comments

The Yates case concerned a multitude of legal and social issues; this Article focused on just a few. There is no in-depth discussion, for example, of potential solutions for the problems that the case revealed although, of course, improvements are clearly needed. While it is beyond the bounds of this Article to consider this topic in any more detail, a few points merit brief mention.

A critical point pertains to the narrow nature of the Texas insanity standard. According to Dietz, Andrea most likely would not have been convicted if the insanity standard had been more lenient,⁵⁴¹ such as the ALI test.⁵⁴² Indeed, in a postpartum depression case that followed Andrea’s conviction, Dietz successfully testified as an expert for the *defense* in an ALI test state (Illinois).⁵⁴³ The mother, a pediatrician who killed one of her sons with a knife and severely assaulted the other son, was found not guilty by reason of insanity based largely, it seems, on Dietz’s testimony.⁵⁴⁴

Most states, like Texas, follow a *M’Naghten*-type standard, not an ALI test.⁵⁴⁵ Dietz has suggested that one possible solution to any injustice that the Yates case may have created is to adopt the approach applied in Great Britain.⁵⁴⁶ Under the British Infanticide Act of 1922⁵⁴⁷ which was amended in 1938,⁵⁴⁸ a mother who

539. See *The Andrea Yates Case*, COURTTV.COM, Mar. 15, 2002, available at http://www.courtstv.com/talk/chat_transcripts/2002/0315yates-crier.html.

540. See *Mother Accused in Deaths of Five Children Not Yet Mentally Stable to Stand Trial*, *supra* note 520.

541. See Toufexis, *supra* note 150.

542. See MODEL PENAL CODE 1985 § 4.01(1), *supra* note 97, at 163.

543. Karen Mellen & Bonnie Miller Rubin, *Mom Found Insane, Not Guilty in Her Son’s Killing*, CHI. TRIB., Dec. 4, 2002, at 1.

544. *Id.*

545. See Farabee & Searly, *supra* note 130, at 673.

546. See Toufexis, *supra* note 150.

547. INFANTICIDE ACT of 1922, Ch. 18, repealed (Eng). For a history of the development of the British Infanticide Act, see Karen Lewicki, *Can You Forgive Her? Legal Ambivalence Toward Infanticide*, 8 S. CAL. INTERDISC. L.J. 683 (1999).

548. INFANTICIDE ACT of 1938, c. 36, § 1 (Eng.). The Act reads as follows:

§ 1 Offence of infanticide.

(1) Where a woman by any wilful act or omission causes the death of her child being a 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 having 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, then, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, she shall be guilty of felony, to wit of infanti-

evidences a postpartum disorder and kills her infant during the first year of its life can only be convicted of manslaughter, and not murder. Postpartum disorders are recognized as a form of diminished capacity that reduces murder to manslaughter, thereby providing a trial court some range in determining sentencing (anywhere from life imprisonment to a psychiatric sentence).⁵⁴⁹ Of course, Great Britain does not have the death penalty,⁵⁵⁰ which was a key element in the Yates case irrespective of the insanity defense.⁵⁵¹

Other kinds of reforms have also been suggested for incorporating postpartum disorders as evidence for a defense or mitigation.⁵⁵² Yet, the British Infanticide Act is an established illustration of how infanticide can be treated as a separate category of crime when there are medical problems associated with the killing. As it stands, American law has neither a separate criminal category nor

cide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.

(2) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having 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, then the jury may, notwithstanding that the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide.

(3) Nothing in this Act shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of guilty but insane[.]

Id.

549. *Id.*; see also Velma Dobson & Bruce Sales, *The Science of Infanticide and Mental Illness*, 6 PSYCHOL. PUB. POL'Y & L. 1098, 1101 (2000) (reviewing the range of legal outcomes available under the British Infanticide Act of 1938). Presently, none of the states has a statute similar to the British Infanticide Act. Macfarlane, *supra* note 232, at 138. The differences between the ways the United States and Great Britain treat mothers who commit infanticide and then claim a defense of postpartum depression were strikingly illustrated by the case of Caroline Beale. See Mark Jackson, *Infanticide: Historical Perspectives*, 146 NEW L.J. 416, 416 (Mar. 22, 1996) (stating that "one of the most controversial aspects of the case of Caroline Beale has been the explicit comparison between English and American law"). Beale was English but killed her newborn daughter in New York on September 21, 1994. The terms of Beale's plea bargain mandated that Beale plead guilty to manslaughter and receive a sentence of eight months imprisonment (which amounted to time served), five years' probation, and at least one year of psychiatric treatment. Beale's trial drew international attention to postpartum depression as a legal issue since the outcome of her case was so much harsher under American rather than British law. See generally DUNCAN CAMPBELL, *A STRANGER AND AFRAID: THE STORY OF CAROLINE BEALE* (1997). Accordingly, the British press emphasized that Andrea Yates would have received a substantially more lenient outcome in England than in the United States. Gumbel, *supra* note 77, at 1 ("In Britain, by contrast, the chances are that Yates would have been acquitted on the grounds of temporary insanity—if she had been brought to trial at all."). But see Dobson & Sales, *supra*, at 1100 (contending "that the proper criminal legal response to infanticide lies somewhere between the inappropriately broad British approach and the myopic American position that effectively ignores the subclass of women who deserve closer scrutiny for the relation of their serious mental illness to the criminal defenses of insanity and diminished capacity").

550. Murder (Abolition of Death Penalty) Act 1965, c. 71, Enactment Clause 1 (Eng.); Human Rights Act 1998, c. 42, sched. 1, pt. III (Eng.) ("A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war.").

551. See *supra* note 12.

552. Liu, *supra* note 1, at 388-98.

any legislative recognition of postpartum psychosis as a mitigating factor, although the disorder can be used as a defense in criminal cases.⁵⁵³

Notably, one key issue potentially on appeal in the Yates case could have had a major impact on the outcome apart from any kind of new reform proposal involving postpartum disorders. Under Texas law, Andrea's attorneys were unable to explain to the jury the consequences of Andrea being found "not guilty by reason of insanity."⁵⁵⁴ The state has a provision requiring that a defendant not be automatically released from the trial court's jurisdiction when acquitted under the insanity defense.⁵⁵⁵ In fact, the trial court has the "continuing jurisdiction to impose involuntary commitment for a defendant acquitted by reason of insanity" as well as "maintain jurisdiction to involuntarily commit an acquitted defendant to the state mental hospital for the rest of the defendant's natural life."⁵⁵⁶ Because of the stringent nature of the court's control over a defendant determined to be insane, it is conceivable that the Yates jury would have been influenced by knowing that Andrea could not possibly have "walked free" if they had accepted her insanity plea.⁵⁵⁷ It also seems likely that Dietz's expert testimony would not have had the same effect if Texas did not have such a harsh insanity provision.

Debates abound on how psychiatric experts like Dietz should be treated in cases involving insanity determinations. Historically, the criminal justice system encouraged experts to become involved in insanity cases because it was believed that doctors and lawyers working together would produce a higher form of justice for defendants.⁵⁵⁸ By the mid 1800's, however, conflict between the two professions was rampant and the strategy of using experts was both expensive and commonly unproductive.⁵⁵⁹ As this Article's analysis of Dietz's testimony indicates, these problems remain today. Some legal scholars have recommended that judges appoint experts approved by both sides to avoid the potential biases that

553. See Denno, *supra* note 43, at 138-42; Michelle Oberman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 34 AM. CRIM. L. REV. 1, 1-109 (1996).

554. TEXAS CODE CRIM. PROC. art. 46.03 § 1(e) (Vernon 2002).

555. WHATLEY, *supra* note 84, at 5 (comparing the Texas death penalty standard to other state standards); see also *State v. Yates*, Motion to Declare Article 46.03, Section 1(e) of the Texas Code of Criminal Procedure Unconstitutional (Dist. Ct., Harris County, Tex.) (Oct. 30, 2001) (declaring article 46.03, section 1(e) of the Texas Code of Criminal Procedure unconstitutional because "[t]he Statute precludes a juror in a case in which the insanity defense is raised from knowing that the trial court continues to maintain jurisdiction over the defendant after a finding of not guilty by reason of insanity").

556. TEXAS CODE CRIM. PROC. art. 46.03 (Vernon 2002).

557. In a Dateline NBC interview with four of the jurors, one juror said "it wouldn't have changed [her] opinion at all" to have known that Andrea would not have been set free after an acquittal because the juror "assumed she would go to an institution all along" in such a circumstance. Fratangelo, *supra* note 483. Another juror claimed that he thought "there needs to be a punishment for this crime" and he was "not sure" if institutionalization in a mental health facility "would have been punishment enough" in his opinion. *Id.* However, these comments reflect the views of only two of the jurors and the second juror was ambivalent about how he would have responded. *Id.* Of course, it is also difficult to assess how jurors would really have been affected because their opinions reflect hindsight after they have just convicted someone for life imprisonment.

558. See generally MOHR, *supra* note 41, at 3-139.

559. *Id.* at 140-224.

arise because of the experts' partisanship.⁵⁶⁰ Those skeptical of the contention that any expert can be unbiased, however, have other suggestions. For example, the criminal justice system could (1) require that the experts be hired by one party but have their role limited or (2) mandate that the experts serve only as a consultant to an attorney.⁵⁶¹ While other kinds of reforms have been suggested,⁵⁶² the law remains quite static in terms of any changes, despite the obvious difficulties.

The issue of bias among experts perhaps becomes especially provocative in cases involving gender specific criminal defenses⁵⁶³ as well as gender differences in the context of the death penalty.⁵⁶⁴ As legal commentators have insightfully noted, the Yates case evokes sensitive subjects that arise when mothers are charged for killing their children.⁵⁶⁵ Dietz's testimony specifically targeted Andrea's role as "mother" both before and after she killed her children;⁵⁶⁶ it is no leap to suggest this issue was significant in her conviction.

This overview provides some inkling of the broad range of factors bearing on the Andrea Yates case. For this reason alone, it appears that the case is one of the most significant and complex insanity stories in the past few decades.

CONCLUSION

This Article examined the different stories behind the Andrea Yates death penalty case—the defense's, the prosecution's, and the explanation that Andrea herself provided. The jury did not accept the defense's story that Andrea was insane and thought she was under Satan's influence at the time she drowned her five children in the bathtub. Rather, the jury convicted Andrea and sentenced her to life in prison based on the prosecution's story that Andrea was sane and acting intentionally when she killed her children, even though she was mentally ill. Andrea herself fueled the prosecution's account and, of course, to her detriment. She felt that she had sinned and that she deserved to die.

The most persuasive storyteller of them all, however, was Park Dietz, the prosecution's star expert witness. His singular, consistent narrative of Andrea's sanity contrasted sharply with the multiple, inconsistent portrayals provided by defense experts. Ironically, the severity of Andrea's mental illness appeared in some sense to be a negative force in her case. It constituted the underpinnings of her wish to be punished (even executed) and it also produced the numbers of doctors who became involved in her life and, consequently, her trial. All of these factors contributed to a psychiatrically muddled snapshot of who Andrea was.

560. Ciccone, *Expert Testimony*, *supra* note 42, at 796.

561. *Id.*; see also Ciccone, *Murder*, *supra* note 42, at 608.

562. See generally Perrin, *supra* note 40 (providing an overview of the role of expert witnesses in the criminal justice system and suggesting reforms).

563. Denno, *supra* note 43, at 138-42.

564. For an excellent overview of gender differences in the application of the death penalty, see Elizabeth Rapaport, *Equality of the Damned: The Execution of Women on the Cusp of the 21st Century*, 26 OHIO N.U. L. REV. 581 (2000); Victor Streib, *Gendering the Death Penalty: Countering Sex Bias in a Masculine Sanctuary*, 63 OHIO ST. L.J. 433 (2002); see also Howarth, *supra* note 1, at 218-19 (noting the significance of gender in comparing the Karla Faye Tucker case with the Andrea Yates case).

565. See Albiston et al., *supra* note 1, at 14-15; Bangs, *supra* note 1, at 93-108.

566. See generally App. 4.

There were other apparently key influences in Andrea's case—the punitive nature of Harris County and Andrea's death qualified jury, for example, as well as the atypically strict and ambiguous structure of the Texas insanity standard. The power of Dietz's testimony, however, was the primary focus of the discussion. Despite his reputation for emphasizing "facts" and his ability to offer a much simpler landscape of Andrea's mental state, Dietz's level of speculation was troubling. There was little, if any, empirical basis for his conclusions, and his sweeping conjecture spotlighted his lack of expertise in postpartum depression and postpartum psychosis.

Dietz's version of "Who is Andrea Yates?" was convincing to the jury, although it is difficult to discern how much reality was behind it. At the same time, legal scholars and policy makers have yet to offer substantial improvements on the way expert testimony is treated in court. The Park Dietzes of the expert testimony world are not simply invited to be part of the criminal justice system, they are avidly embraced. It is not up to them to change a system in which they are providing what is viewed to be a necessary service. They should, however, comport with the ethical requirements of their profession. And legal procedures should also control what kinds of stories can be told.

This Article's analysis of the Andrea Yates case makes no claim to have the "right" story about Andrea, whatever that may be. Based on the limited amount of information yet available on the case, it had other goals. For example, an examination of the Yates trial shows "how unsettled and unsettling narratives from life are" and how many different views of a person can arise depending on who holds the lens.⁵⁶⁷ As one scholar emphasizes, "it is not just who and what we are that we want to get straight but who and what we might have been, given the constraints that memory and culture impose on us."⁵⁶⁸ It seems that the legal system did not "get straight" the Andrea Yates story during the trial. Maybe it will get it right when the case is appealed.

567. BRUNER, *supra* note 33, at 14.

568. *Id.*

APPENDIX 1

TIME LINE OF ANDREA YATES'S LIFE AND TRIAL APRIL 1993 – APRIL 2002

April 17, 1993	Andrea and Russell Yates are married by a non-denominational pastor ¹ in Clear Lake Park, Texas. ² After the simple ceremony, the couple tells wedding guests that they will not use birth control, but rather have as many children as nature allows. ³
April – May 1993	The couple honeymoon in Cancun, Mexico, then move into the \$90,200 "brand-new and roomy" house in Friendswood, Texas, that Russell had purchased on March 30, 1993. ⁴
June 1993	Andrea becomes pregnant for the first time. ⁵
Feb. 26, 1994	Noah is born. ⁶ Andrea leaves her job with the University of Texas M.D. Anderson Cancer Center. ⁷ Shortly after Noah's birth, Andrea has a vision in which an image of a knife turns into a scene of someone being stabbed. The vision disappears quickly, and Andrea tells no one until after her arrest. ⁸
Dec. 15, 1995	John is born. ⁹ While pregnant with John, Andrea gives up swimming, jogging, and socializing with friends. ¹⁰
Early-to-mid 1996	Andrea writes to Rachel Woroniecki, wife of traveling evangelist Michael Woroniecki, expressing her loneliness. ¹¹ Rachel writes back, directing Andrea to read a chapter of the New Testament that describes the role of women to love their husbands and children, work at home, and be subject to their husbands. ¹² Russell is offered an opportunity to be part of a six-month NASA project in Clearwater, Florida. He views this as an opportunity to "check out life on the road." ¹³ Russell and Andrea lease out the Friendswood house, sell their possessions, and move into a 38-foot travel trailer. ¹⁴
Oct. 12, 1996	The Yates family parks their trailer in the Lazy Days RV Campground in Hitchcock, Texas. They live at the campground for about a month before they move to Florida. ¹⁵
Nov. 1996	The Yates family moves into a recreation vehicle community in Seminole, Florida. ¹⁶ Andrea becomes pregnant but miscarries. ¹⁷
Dec. 1996	Andrea becomes pregnant with Paul. ¹⁸
June 17, 1997	The Yates family returns to the Lazy Days RV Campground in Texas. ¹⁹
Sept. 13, 1997	Paul is born. ²⁰

May 1998	The Yates family takes a trip to Florida after learning through a newsletter that the Woronieckis, whose address at the time was in Miami, were selling their 300-square foot motor home – a converted 1978 GMC bus that the Woronieckis had lived in while traveling and preaching. ²¹ Andrea and Noah prefer the bus to the trailer, so Russell decides to buy it. ²² During this trip, Luke is conceived. The family returns to the Lazy Days RV Campground, while still in their old trailer, yet some residents note that Russell is no longer friendly towards neighbors. ²³
July 1998	Rachel Woroniecki writes to both Andrea and Russell, praising Andrea for "taking to heart the things they shared" and thanking Russell for his donation. ²⁴
Oct. 1998	The Yates family sells the Friendswood house and moves into the bus. ²⁵ Noah and John sleep in the luggage compartment, while Andrea, Russell, Paul, and Luke sleep in the cabin. ²⁶ The Yateses continue to correspond with the Woronieckis. ²⁷
Feb. 15, 1999	Luke is born. ²⁸
March – May 1999	Andrea cares for her father, who suffers from Alzheimer's disease and the effects of an earlier heart attack. Family members note that Andrea insists on visiting them at their homes, rather than inviting them to the bus. ²⁹ Neighbors observe that Andrea seems exhausted, yet the Yates family takes the bus on a trip to the Grand Canyon and Lake Mead. ³⁰
June 16, 1999	Andrea calls Russell at work, asking him to come home. He returns to the bus to find her shaking, crying, and biting her fingers. He takes her on a walk, and eventually brings her to her parents' house. ³¹
June 17, 1999	Andrea attempts to commit suicide. She overdoses on her father's prescription medication and is rushed to Houston's Ben Taub General Hospital. Andrea is diagnosed with a major depressive disorder and transferred to Methodist Hospital. ³²
June 18, 1999	Andrea is officially admitted to Methodist Hospital's psychiatric unit. A nurse notes that Andrea seems unsure as to whether she will receive the help she needs there, and Andrea refuses to consent to medication. ³³ Andrea tells the staff at Methodist Hospital that she consumed the pills to "sleep forever," but afterwards felt guilty because she had her "family to live for." ³⁴ Andrea later says that she wants to stay off medication so that she can continue to breastfeed. ³⁵ Andrea meets with social worker Norma Tauriac, but Tauriac is forced to call Russell and interview him over the phone about Andrea because Andrea "wasn't giving her the information she needed." ³⁶
June 19, 1999	Andrea meets with her Methodist Hospital psychiatrist, Dr. James Flack. He finds her severely depressed and "essentially

	non-verbal." She begins taking Zoloft and stops breastfeeding. ³⁷
June 20, 1999	Dr. Flack meets with Andrea and finds her "slightly improved." He raises her Zoloft dosage. Andrea attends a group meeting and nurses note that she seems to be in a better mood. ³⁸
June 21, 1999	Andrea attends a group meeting but seems withdrawn and guarded. She tells nurses she is worried about paying the hospital bill. Russell visits the hospital for a family meeting with Andrea and a social worker. Dr. Flack notes that Andrea will probably need to take more Zoloft and to remain in the hospital through the week. ³⁹
June 22, 1999	Andrea expresses concern that she is being charged for a breast pump she is no longer using, but tells a nurse that she is "doing okay." ⁴⁰
June 23, 1999	Andrea meets with Dr. Flack. She is depressed, detached, and does not communicate. She does not ask to be discharged. Dr. Flack increases her Zoloft to 150 milligrams. Andrea's social worker files a complaint with Child Protective Services based on Russell's decision to permit his sons to handle power tools; however, the agency decides not to investigate further. ⁴¹
June 24, 1999	Andrea and Russell meet with Dr. Flack and request that Andrea be discharged from Methodist Hospital. Dr. Flack agrees with the hope that the home environment may prove more therapeutic, since hospital therapy sessions do not appear to be helping. ⁴² Russell agrees to provide Andrea with 24-hour supervision. Dr. Flack refers Andrea to psychiatrist Eileen Starbranch. Andrea's discharge papers indicate that Andrea "remained quite depressed, but denied suicidal ideation." ⁴³ The reason for her release is cited as "insurance restrictions." ⁴⁴ Russell takes Andrea to her parents' house to recuperate. ⁴⁵
July 1, 1999	Dr. Starbranch meets with Andrea for the first time. Andrea says that the Zoloft was helping a little, but she still feels anxious. Dr. Starbranch recommends that Andrea switch from Zoloft to Zyprexa, a last-resort antipsychotic used to treat bipolar mania and schizophrenia. Andrea flushes the Zyprexa samples down the toilet. ⁴⁶
July 2-19, 1999	Andrea's condition worsens. She stays in bed all day and self-mutilates, scratching bald patches on her scalp, picking sores in her nose, and scraping her legs and arms. Andrea refuses to feed her children or nurse Luke, claiming that they were "all eating too much." Later, she would tell psychiatrists that during this time, she saw visions and heard voices telling her to get a knife. She envisioned a person being stabbed, although she would not identify that person. ⁴⁷ At varying times, Andrea also believes that there are video cameras in the ceilings watching her in different rooms in the house and that

	television characters are communicating with her. She tells Russell about these hallucinations, but neither of them tells Andrea's doctors even though her doctors continually question her about having hallucinations. ⁴⁸ In addition, Andrea's family begins discussions that reveal that mental illness runs in the family. Andrea's brother and sister are being treated for depression, another brother is bipolar, and her father suffered from depression. ⁴⁹
July 20, 1999	Andrea attempts to commit suicide again. Russell wrestles away from her a knife that she holds to her neck in the bathroom of her mother's house. ⁵⁰
July 21, 1999	Andrea is admitted to Memorial Spring Shadows Glen for psychiatric treatment. ⁵¹ Her psychiatric assessment upon arrival indicates that her thoughts are delayed and she is unresponsive. She is noted as being in an "acutely depressed mood." Her preliminary diagnosis indicates that she suffers from post-partum depression. The goals of her initial treatment are to provide her with a safe environment, stabilize her medication, and help her develop "positive coping skills." ⁵²
July 22, 1999	A social worker at Memorial Spring Shadows Glen tries to interview Andrea. Andrea refuses to disclose any clinical information and resists all psychotropic medication. ⁵³ Dr. Lara Longo notes that Andrea makes poor eye contact, is "minimally communicative," seems anxious, and "has a blunted affect." Dr. Longo also reports that Andrea has sores on her scalp that she appears to have been picking, as well as superficial scratches on her extremities that seem to be self-inflicted. ⁵⁴ Andrea refuses to dress for bed and seems frightened of nurses. ⁵⁵
July 23, 1999	At Memorial Spring Shadows Glen, Andrea is given an emergency shot of Haldol, a powerful anti-psychotic drug. ⁵⁶
July 24, 1999	Andrea continues to refuse to answer interview questions at Memorial Spring Shadows Glen. She signs a consent form allowing hospital staff to speak to Russell and her mother. She eventually agrees to take the anti-psychotic drug Zyprexa. ⁵⁷
July 25, 1999	A Memorial Spring Shadows Glen nurse notes that Andrea appears "almost catatonic," but later observes Andrea feeding her baby. ⁵⁸
July 26, 1999	Andrea again refuses a psychosocial interview at Memorial Spring Shadows Glen and does not eat. ⁵⁹
July 27, 1999	Andrea responds to her name but rarely speaks otherwise. She barely eats, and Memorial Spring Shadows Glen nurses note that she appears "paranoid." She says that she is still having suicidal thoughts, but less often. ⁶⁰
July 27-28, 1999	Records from Memorial Spring Shadows Glen indicate that Andrea "decided to kill herself because she was having visions and hearing voices that were telling her to hurt others and

	feared she might act on them. [Andrea] recounted having at least 10 visions over several days." Andrea also said that she had visions after Noah's birth. ⁶¹
July 28, 1999	Andrea is given another emergency dose of Haldol at Memorial Spring Shadows Glen and agrees to a psychosocial interview. During the interview, she waits before answering questions, but states that she is angry at herself for not knowing how to commit suicide. She also says that she's been depressed since Noah's birth, needs more help from Russell, and does not take her Zoloft. Just when she finally agrees to open up to the social worker asking her questions, he informs her that he will be leaving his job in two days. She eats a complete dinner, and Russell asks when she can be discharged. ⁶²
July 29, 1999	Andrea appears "distressed" and refuses to take a Rorschach test from her new social worker. She later consistently denies having suicidal or homicidal thoughts when doctors and nurses ask her about her mental state on a regular basis. ⁶³
July 30, 1999	While being prepped to transfer into adult services and group therapy, Andrea seems troubled. ⁶⁴
July 31, 1999	Andrea tells her nurse that she does not care for the transition and does not find it useful. She is quiet when her husband and children visit later that day. She walks away from a meeting with her social worker, who describes her as "despondent." ⁶⁵
Aug. 1, 1999	Andrea transitions into adult services and has her first group therapy meeting. She seems slightly better that afternoon but becomes depressed again at night. ⁶⁶
Aug. 2, 1999	Russell visits Andrea and they have a family therapy session. The therapist stresses the need for follow-up therapy, and Andrea appears unenthusiastic. Later, she rejects medicine and food. ⁶⁷
Aug. 3, 1999	Andrea refuses to get out of bed and skips group therapy, saying that she does not feel like talking. ⁶⁸
Aug. 4, 1999	Andrea gets "teary" when speaking to a social worker about Russell, but is unable to explain why she is upset. ⁶⁹
Aug. 5, 1999	Russell visits with the children at Memorial Spring Shadows Glen and tells nurses that Andrea has not bathed or changed clothes in four days. ⁷⁰ Consulting physician Dr. Arturo Rios meets with the Yateses, and notes that Andrea says some of the medications she has received in the hospital have helped her, although she still sometimes feels "overwhelmed." Andrea refuses to respond when Dr. Rios asks her if she "still manifests suicidal thoughts." Russell tells Dr. Rios that Andrea previously improved after taking Haldol, but Dr. Rios notes that this improvement was short-lived. ⁷¹ Dr. Rios recommends electroconvulsive therapy. Andrea opposes this, and Russell prefers to try medication first. Andrea agrees to

	bathe. ⁷²
Aug. 6, 1999	Andrea refuses to take her medication. ⁷³
Aug. 7, 1999	Andrea again refuses to take her medication. ⁷⁴
Aug. 9, 1999	Andrea is discharged from Memorial Spring Shadows Glen inpatient care and entered into day treatment at Memorial Hermann Behavioral Health Center. Upon discharge, Andrea has prescriptions for 150 mg of Wellbutrin twice daily, 75 mg of Effexor twice daily, 2 mg of Cogentin once daily, and 5 mg of Haldol once daily. ⁷⁵ Andrea's parents consider the bus unhealthy for Andrea and the children, and state that their own house is too small to accommodate the Yates family. As a result, Russell uses part of his \$80,000/year NASA salary to buy a three-bedroom, two-bath, home at 942 Beachcomber Lane. ⁷⁶
Aug. 10, 1999	Andrea begins daily outpatient care at Memorial Hermann Behavioral Health Center. She tells her therapist that her return home went well, despite some stress. She says that she regrets her suicide attempt, having been reminded that she is needed. Andrea also states that she would like to stop taking medication because it makes her feel like a weak person. ⁷⁷
Aug. 11, 1999	Dr. Starbranch decreases Andrea's Haldol prescription by half. ⁷⁸ Andrea expresses some guilt that her children are acting detached, since she had been gone for so long. ⁷⁹
Aug. 13, 1999	Russell and Andrea attend family therapy. Dr. Sonia Burlingame notes that Russell pressures Andrea to get discharged from the treatment program. Russell reports that Andrea is 90-95 % "back to normal" while Andrea's estimation is only 70-75 %. The Yateses tell Dr. Burlingame about their plan to ease Andrea's stress – Russell's mother will help with the children in the morning, and Russell will work half days. Yet, Dr. Burlingame notes that Andrea's stress level will still be high because she and Russell want to home school the children, and have more children. Russell tells Dr. Burlingame that Andrea still seems detached. ⁸⁰
Aug. 16, 1999	Andrea states during group therapy that Russell permits her a few hours per week to spend as she pleases. The group encourages her to assert herself. Andrea expresses a desire to learn how to enjoy herself again. Yet, Andrea later tells Dr. Starbranch that she wants to get off medications so she can have more children and home school her children again. Dr. Starbranch notes that Andrea's heart raced as she spoke, and prescribes Ativan, a sedative for anxiety. ⁸¹
Aug. 17, 1999	During group therapy, Andrea describes herself as "eager to please" but depressed as a child, and speaks of her father's depression. She says that she wants to be more communicative, but that Russell usually turns on the TV at home. ⁸²
Aug. 18, 1999	Dr. Starbranch warns the Yateses that giving birth again could

	trigger another psychotic episode in Andrea. According to Dr. Starbranch's notes, "[a]pparently [patient] & husband plan to have as many babies as nature will allow! This will surely guarantee future psychotic depression." ⁸³
Aug. 20, 1999	Andrea is discharged from outpatient care. She tells her therapy group that she is sorry to leave them because they supported her. She again expresses the desire to get off all medication, and admits that she has not taken the Ativan prescribed for her, even though she still feels anxious. Before leaving, Andrea schedules psychiatric and therapy appointments, and plans to receive a shot of Haldol on August 27. ⁸⁴
Oct. 14, 1999	Russell and Andrea meet with Dr. Starbranch and tell her that due to an insurance problem, Andrea is not receiving her Haldol and Cogentin. They report that Andrea is feeling better (no hallucinations or paranoia, good appetite, somewhat energetic), and ask if she can stop taking medication. Dr. Starbranch notes that Andrea is "doing OK," but puts her on the antipsychotic drug Zyprexa. ⁸⁵
mid-Nov. 1999	Andrea is doing well, so Dr. Starbranch halves her dosage of Zyprexa, but continues her dosages of Effexor and Wellbutrin. ⁸⁶
Dec. 14, 1999	Andrea reports that she is doing well. ⁸⁷ According to some sources, she prospers in the Beachcomber Lane home – swimming laps at dawn, baking and sewing, playing with her children, and fostering an environment for home schooling, which Russell encourages. ⁸⁸ At this point, Andrea admits to Russell that she had "failed" at their life in the bus. But she seems to believe that this new phase in their lives is a chance to succeed. Most important are the family's three nights of Bible study in the living room because Russell does not like any of the churches in their area. ⁸⁹
Dec. 1999	Dr. Starbranch takes Andrea off of Haldol but continues the other medications. ⁹⁰
Jan. 2000	Andrea has her last visit with Dr. Starbranch. Andrea admits that she has not been taking her medication since mid-November, but says that she's been doing well. ⁹¹
March 2000	Andrea becomes pregnant again. She is not taking any medications. ⁹² The news greatly alarms Dr. Starbranch, who had warned that Andrea's problems could be far more serious if they returned. ⁹³
Nov. 30, 2000	Mary is born. ⁹⁴
March 12, 2001	Andrea's father, Andrew Kennedy, dies. Andrea's condition soon begins to deteriorate. ⁹⁵
March 13-30, 2001	Andrea stops talking. She continually holds Mary but does not feed her; she refuses to drink liquids and she scratches and picks at her scalp. ⁹⁶
March 31, 2001	Andrea is admitted to Devereux Texas Treatment Network

	and begins taking anti-psychotic medication. ⁹⁷ Russell selects Devereux in part because it is covered by his insurance. Initially, Andrea refuses to leave the house to go to Devereux, so Russell and Andrea's brother have to "practically carry her in." ⁹⁸ Andrea also initially refuses to sign herself into the hospital, and Dr. Mohammad Saeed prepares to have her legally confined against her will. ⁹⁹ After Russell's pleading, however, Andrea enters voluntarily. ¹⁰⁰ Upon arriving at Devereux, Andrea apologizes to Noah for being "such a bad mother." ¹⁰¹
April 1, 2001	Andrea has her first appointment with Dr. Saeed. ¹⁰² He notes that she is "almost catatonic." ¹⁰³
April 2, 2001	Andrea meets with Dr. Saeed again. He prescribes Effexor, Wellbutrin, the antipsychotic Risperdal, and Cogentin. ¹⁰⁴
April 4, 2001	Andrea attends her first group therapy session at Devereux. ¹⁰⁵
April 5, 2001	Andrea talks to Dr. Saeed until he asks her if she thinks about suicide, at which point she stops talking. ¹⁰⁶
April 6, 2001	Dr. Saeed doubles Andrea's Risperdal dosage. ¹⁰⁷
April 8, 2001	Andrea eats solid food. ¹⁰⁸
April 9, 2001	Dr. Saeed notes that Andrea looks much better. ¹⁰⁹
April 10, 2001	Andrea paces in her room and refuses food. ¹¹⁰
April 11, 2001	Andrea eats well and maintains eye contact, but speaks only to having her needs met. ¹¹¹
April 12, 2001	Andrea is discharged from inpatient care and begins partial hospitalization at Devereux. Partial hospitalization requires that Andrea spend her days at the hospital, but enables her to go home at night. ¹¹²
April 13, 2001	Andrea attends one day of partial hospitalization at Devereux. After that, she refuses to go again, and Russell supports her decision not to go. ¹¹³
April 16, 2001	Russell calls Dr. Saeed, and they discuss Andrea's medication. Russell tells Dr. Saeed that Andrea is improving, but has trouble sleeping. Dr. Saeed encourages Andrea to come back to Devereux, but says that if she does not return, he will discharge her. Andrea does not go back. ¹¹⁴
April 18, 2001	Andrea is completely discharged from Devereux. Dr. Saeed feels that Russell can take care of her. ¹¹⁵
May 3, 2001	While Russell is at work, Noah sees Andrea fill the bathtub with water. Noah tells Russell's mother, Dora, who is visiting to help Andrea with the children. When Dora asks Andrea why she filled the tub, Andrea simply says, "just in case I need it." ¹¹⁶ Andrea later refuses to let her friend Debbie Holmes enter the house when Holmes attempts to bring over some food. ¹¹⁷
May 4, 2001	Russell brings Andrea back to Dr. Saeed because she is eating and drinking very little, and does not deny that she is suicidal. Andrea is readmitted to Devereux and begins taking Haldol after Russell refuses to consider electroshock therapy. ¹¹⁸

May 5, 2001	Andrea attends a group therapy meeting at Devereux but refuses to speak. ¹¹⁹
May 6, 2001	Dr. Saeed gives in to Russell's pleadings that he review Dr. Starbranch's medical records on Andrea. Andrea signs a consent form releasing the records. Dr. Saeed notes that Andrea was alert but did not answer any questions. ¹²⁰ His report states that Andrea was "up and about" but the nurses' reports indicated that she was "in bed" and "isolating." ¹²¹
May 8, 2001	Dr. Saeed does not see Andrea, but the hospital staff notes that she is "withdrawn." ¹²²
May 10, 2001	Staff members describe Andrea as "non-responsive," but Dr. Saeed reports that she is "doing a little better." He notes "no new info" on Dr. Starbranch's medical records. Russell and Andrea attend a family therapy meeting with a social worker, but Andrea does not speak. ¹²³
May 11, 2001	Andrea isolates herself at a group therapy meeting and leaves early to see Dr. Saeed. She denies having hallucinations. ¹²⁴
May 12, 2001	Russell and Andrea attend another family therapy meeting. Andrea says they have no issues to discuss. Russell says they have no issues to discuss as a couple. Another patient at the hospital watches Andrea visiting with her children and notes that "[e]veryone seemed happy but Andrea." ¹²⁵
May 14, 2001	Andrea is again discharged from Devereux, after telling Dr. Saeed that she is not suicidal. No one asks her if she is homicidal. Andrea tells Dr. Saeed that she wants to participate in partial hospitalization. Russell is stunned that his wife is being discharged. ¹²⁶
May 17, 2001	Dr. Saeed notes that Andrea seems "stable," but that she reports "depression." In therapy she says she has no issues to work on. ¹²⁷
May 18, 2001	In therapy, Andrea states that she looks forward to being with her family at the end of each day. She sleeps for the second half of the session. Dr. Saeed's notes indicate improvement. ¹²⁸
May 21, 2001	Andrea sits in one spot all day, and speaks in an emotionless tone. Dr. Saeed notes that she is eating and sleeping well, and taking her medication. Dr. Saeed and Andrea discuss the possibility of her discharge the following day. ¹²⁹
May 22, 2001	Andrea's posture is tense, and her affect is flat. She is discharged from partial hospitalization, three days before her planned release. "Patient not suicidal" is given as the reason for discharge. Dr. Saeed notes on his discharge summary report that Andrea was severely depressed until she tapered off of Wellbutrin and began taking Remeron. ¹³⁰
June 4, 2001	Dr. Saeed tapers Andrea off of Haldol over a period of three days. ¹³¹
June 6, 2001	Andrea stops taking Haldol. ¹³²
June 18, 2001	Andrea and Russell have a follow-up visit with Dr. Saeed. Russell reports that Andrea is not improving and asks that her

	anti-depressant be changed. ¹³³ Russell expresses an unusual amount of concern about Andrea; she is getting worse and is now having nightmares. ¹³⁴ Dr. Saeed allegedly writes in his notes that Andrea is doing well, and reduces her Effexor prescription by 150 milligrams in one day, despite Russell's research indicating that the anti-depressant should not be reduced by more than 75 milligrams over 3-4 days. ¹³⁵ Dr. Saeed refuses to put Andrea back on Haldol, irrespective of Russell's pleadings, claiming that Haldol is "bad medicine." Dr. Saeed tells Andrea to focus on "positive thoughts" and suggests that she see a psychologist. ¹³⁶
June 19, 2001	Andrea watches cartoons in the living room and later plays basketball with Russell and Noah. Then, without speaking, she gets into bed without changing her clothes, and sleeps until the next morning. ¹³⁷
June 20, 2001	Russell notices that Andrea seems nervous in the morning. He makes sure that she takes her anti-depressants, and leaves for work. Shortly thereafter, Andrea drowns the five children. ¹³⁸ Immediately, she dials 911 ¹³⁹ and then calls Russell. ¹⁴⁰ When the police arrive, she confesses. ¹⁴¹
June 21, 2001	Andrea is charged with murder. Judge Belinda Hill appoints attorney Bob Scott to represent her. Scott requests a gag order, but Judge Hill does not rule on his request. ¹⁴²
June 22, 2001	Attorney George Parnham volunteers to take over Andrea's case. ¹⁴³
June 25, 2001	Dr. Gerald Harris, a clinical psychologist, meets with Andrea and examines her to evaluate her competency to stand trial. He reports that she is having "overt psychosis," hallucinations, and delusions. It takes Andrea up to two minutes to respond to questions, and she tells Dr. Harris that she saw Satan on the walls of her jail cell. ¹⁴⁴
June 26, 2001	The Yates children's visitation takes place at the Clear Lake Church of Christ. ¹⁴⁵
June 27, 2001	The Yates children's funeral is held at the Clear Lake Church of Christ. ¹⁴⁶ Pastor Byron Fike of the Clear Lake Church of Christ officiates. Pastor Fike and Russell name the funeral service "From Tragedy to Triumph." Russell delivers his children's eulogies. ¹⁴⁷ Judge Hill issues the gag order. ¹⁴⁸
June 29, 2001	Dr. Harris meets with Andrea again. He notes little change in Andrea's condition although she has started taking Haldol. ¹⁴⁹
July 2, 2001	Andrea turns age 37. ¹⁵⁰
July 3, 2001	Dr. Saeed and Beverly Bedard, custodian of records at Devereux Texas Treatment Network (Andrea's former psychiatric residence), turn over Andrea's Devereux medical records to the prosecution and defense. Parnham requests a competency hearing for Andrea. ¹⁵¹
July 16, 2001	Dr. Melissa Ferguson, a psychiatrist from the Harris County jail, informs Russell that she is going to put Andrea back on

	the medications she was taking in 1999: Haldol, Wellbutrin, and Effexor. ¹⁵²
July 19, 2001	Dr. Steven Rubenzer meets with Andrea. She scores low on a test measuring her appreciation for what goes on in the court system. Dr. Rubenzer conducts a personality assessment that gives no indication Andrea is faking her illness. ¹⁵³
July 20, 2001	Dr. Rubenzer meets with Andrea again. She takes up to a minute to respond to his questions. ¹⁵⁴
July 25, 2001	Andrea is moved to a psychiatric unit. ¹⁵⁵ Dr. Rubenzer meets with Andrea. ¹⁵⁶
July 26, 2001	Methodist Hospital releases 92 pages of Andrea's medical records. ¹⁵⁷
July 30, 2001	Andrea is indicted for "intentionally and knowingly" causing the deaths of Noah and John, and then also indicted for causing the death of Mary. The charges on both indictments are for capital murder because they involved more than one person as well as a person less than six years old (Mary). ¹⁵⁸ According to the prosecutors, Andrea was not charged with the murders of Paul and Luke because their deaths would be discussed during the trial. However, some commentators claimed that the unmentioned indictments served as fallback charges in case Andrea was not convicted. ¹⁵⁹ On the same day, Andrea's attorneys filed a "notice of intent to offer evidence of the insanity defense," based upon the testimony of two psychiatrists claiming that Andrea was, at the time of the offense, "mentally insane" under Section 8.01 of the Texas Penal Code. ¹⁶⁰
Aug. 2, 2001	The Texas Court of Appeals denies the <i>Houston Chronicle's</i> request to throw out the gag order. ¹⁶¹ Dr. Rubenzer meets with Andrea. ¹⁶²
Aug. 3, 2001	Dr. Rubenzer meets with Andrea. She does "reasonably well" on an intelligence and memory test, although she has problems with attention and concentration. ¹⁶³
Aug. 8, 2001	Andrea is arraigned in the deaths of Noah, John, and Mary. ¹⁶⁴
Aug. 28, 2001	<i>The Dallas Morning News</i> reports that Dr. Saeed's telephone is disconnected. ¹⁶⁵
Aug. 31, 2001	Dr. Harris has a third meeting with Andrea. He administers an intelligence test, and determines that she is in the 81 st percentile. However, she scores poorly on several memory tests. ¹⁶⁶
Sept. 5, 2001	Russell interviews with Ed Bradley of <i>60 Minutes</i> for a show that is aired on December 9, 2001. ¹⁶⁷
Sept. 6, 2001	Russell turns age 37. ¹⁶⁸
Sept. 10, 2001	Dr. Rubenzer, the psychologist who found Andrea competent to stand trial, meets with Andrea without the defense's knowledge. ¹⁶⁹
Sept. 11, 2001	Jury selection is scheduled to begin, but is cancelled after the World Trade Center terrorist attacks. ¹⁷⁰

Sept. 17, 2001	Dr. Rubenzer again meets with Andrea without the defense's knowledge. ¹⁷¹
Sept. 19, 2001	Jury selection takes place to determine whether Andrea is competent to stand trial. ¹⁷² Judge Hill prohibits the State from using any information gained during the Sept. 10 and 17 meetings between Dr. Rubenzer and Andrea. ¹⁷³
Sept. 21, 2001	Drs. Harris and Rubenzer testify at Andrea's competency hearing. ¹⁷⁴
Sept. 22, 2001	A jury requires more than eight hours over a two-day period to decide that Andrea was sufficiently competent to stand trial for drowning her children. ¹⁷⁵
Jan. 7, 2002	Jury selection begins for a new jury that is to determine Andrea's level of culpability at the end of her murder trial. ¹⁷⁶
Feb. 18, 2002	Andrea's murder trial begins. Jurors hear the taped 911 call in which Andrea said that she was ill and that her children were with her. <i>Testimony of David Knapp, the Houston police officer who responded to Andrea's 911 call:</i> Testifies that Andrea answered the door breathing heavily, with wet hair and clothes, and told him twice that she had killed her children. ¹⁷⁷
Feb. 19, 2002	<i>Testimony of Dora Yates, Russell's mother:</i> Testifies that when she visited her son's family for several weeks last spring to help with the children, Andrea seemed troubled. ¹⁷⁸
Feb. 20, 2002	Judge Hill admits 29 photos of the dead children taken at the crime scene. <i>Testimony of Glen West, a Houston police crime scene unit officer:</i> Testifies that he walked across a soggy hallway, found Noah floating dead in the bathtub, and observed a trail of water spread from the bathroom to the bedroom. West's videotape of the crime scene was admitted into evidence. ¹⁷⁹
Feb. 21, 2002	<i>Testimony of Sgt. Eric Mehl:</i> Testifies about Andrea's June 20 confession and the jury hears a tape-recording of it. ¹⁸⁰ <i>Testimony of Dr. Patricia J. Moore, the medical examiner who autopsied John and Mary:</i> Testifies that the children's heads had small bruises, most likely caused from someone holding them under water. John clutched in his fist a long brown hair, which resembled one of his mother's. ¹⁸¹
Feb. 22, 2002	<i>Testimony of Dr. Harminder S. Narula, an assistant medical examiner who autopsied Noah:</i> Testifies that Noah's head, arms, and legs had recent bruising, most likely caused by someone holding him down. ¹⁸² The prosecution rests. ¹⁸³
Feb. 22-23, 2002	<i>Testimony of Dr. Melissa Ferguson, a psychiatrist at the Harris County Jail:</i> Testifies that Andrea exhibited signs of paranoia and delusions based on Dr. Ferguson's six days of interviews with Andrea in the Harris County Jail. According to Dr. Ferguson, Andrea insisted she was not mentally ill or depressed, and did not need medication. Dr. Ferguson also said that Andrea believed that drowning the children was "the right thing to do." Andrea acknowledged her guilt and

	claimed that she "deserved to be punished." ¹⁸⁴
Feb. 26, 2002	<i>Testimony of Dr. George Ringholz, a neuropsychologist from Baylor College of Medicine:</i> Testifies that Andrea met the legal definition of insanity when she drowned her children because she was "severely ill and in the course of an acute psychotic episode" and thus "did not know the actions she took on that day were wrong." ¹⁸⁵
Feb. 26-27, 2002	<i>Testimony of Dr. Eileen Starbranch, the psychiatrist who treated Andrea for five months following her two suicide attempts in 1999:</i> Testifies that Andrea was one of the "sickest patients [she'd] ever seen," and states that she had warned both Andrea and Russell against having more children. ¹⁸⁶
Feb. 27-28, 2002	<i>Testimony of Russell Yates, Andrea's husband:</i> Testifies that he never grasped the extent of his wife's illness. He claims he was told that her postpartum depression and other symptoms were treatable and that at no time did her behavior suggest she was a danger to their children. ¹⁸⁷
Feb. 28, 2002	<i>Testimony of Earline Wilcott, Andrea's longtime therapist:</i> Testifies that Russell Yates believed that a wife should submit to her husband and that Andrea was "being overwhelmed and trapped with no alternative." ¹⁸⁸ <i>Testimony of Debbie Holmes, Andrea's best friend for 16 years:</i> Testifies about the extent of Andrea's deteriorating mental condition in the months before the drowning. ¹⁸⁹
March 1, 2002	<i>Testimony of Dr. Steve Rosenblatt, psychiatrist:</i> Dr. Rosenblatt examined Andrea five days after the drownings, at which point she "was hallucinating and in a psychotic state." He says it would have taken Andrea "weeks" to become that sick, and that she was most likely "in the same state at the time of the killings." ¹⁹⁰ <i>Testimony of Jutta Karin Kennedy, Andrea's mother:</i> Testifies that Andrea was a "wonderful mother" who wanted to protect her children. ¹⁹¹ <i>Testimony of Dr. Phillip Resnick, psychiatrist, professor of psychiatry at Case Western University:</i> Testifies that Andrea believed she was saving her children from hell when she drowned them, and did not know the difference between right and wrong due to a combination of schizophrenia and severe depression. ¹⁹²
March 4, 2002	<i>Testimony of Ellen Allbritton, a psychiatrist who admitted Andrea to Devereux Texas Treatment Network on March 31, 2001:</i> Testifies that when she initially saw Andrea, she had "declined to the point of nonfunction, just there, a shell." Dr. Allbritton also said that the medical history Russell provided for his wife did not seem to fit Andrea's "nearly catatonic" condition. Dr. Allbritton noted that Andrea needed "in-patient stabilization" for her own and others' safety, and wondered why someone so obviously mentally ill had not been hospitalized sooner. ¹⁹³
March 6, 2002	<i>Testimony of Dr. Mohammad Saeed, a psychiatrist at Devereux:</i> Testifies that his written notes indicated that Andrea had no

	symptoms of psychosis two days before the drownings, although he had previously diagnosed Andrea as suffering from postpartum depression with possible psychotic features. ¹⁹⁴ <i>Testimony of Dr. Debra Osterman, a psychiatrist:</i> Testifies that she first saw life in Andrea's eyes on July 20, 2001, exactly one month after the drownings. By August 3, 2001, the psychosis had lifted. According to Dr. Osterman, it took longer for Andrea to come "out of a fog" than "has been typical of other psychotic patients [she has] treated." ¹⁹⁵
March 7, 2002	<i>Testimony of Dr. Lucy Puryear, a psychiatrist:</i> Testifies that on the day of the drownings, Andrea was incapable of determining if her actions were wrong. ¹⁹⁶ The defense rests. The prosecution begins calling rebuttal witnesses. ¹⁹⁷ <i>Testimony of Terry Arnold, the owner of a home schooling bookstore:</i> Testifies that upon first meeting the Yates family in February 2002, she perceived Andrea as a loving mother. However, Andrea's normal pleasantness changed when Arnold asked her about the prospect of having another child. Arnold says she was not aware that Andrea had been in a psychiatric hospital. ¹⁹⁸ <i>Testimony of Park Dietz, a psychiatrist:</i> Testifies that Andrea was aware of what she was doing on the day of the drownings. ¹⁹⁹
March 9, 2002	<i>Testimony of Michael Stephens, Harris County Deputy Sheriff:</i> Testifies that he overheard Andrea tell Dr. Melissa Ferguson, "I knew what I did was wrong," and that Andrea told Dr. Ferguson that she killed Mary because Russell did not want a girl. Defense lawyers question Stephens's accuracy and motive because he did not write down his recollections until after prosecutors contacted him on February 13, 2002. ²⁰⁰ <i>Testimony of Dr. Harry Wilson, a pediatric pathologist from Texas Tech University School of Medicine:</i> Testifies that four of the Yates children were still alive but unconscious when Andrea took them out of the bathtub and put them on the bed, because it would take up to seven minutes for their hearts to stop beating. He also testifies that the children fought their mother while she was drowning them. ²⁰¹
March 11, 2002	<i>Rebuttal testimony of Dr. Lucy Puryear, psychiatrist:</i> Testifies that at the time of the drownings, Andrea was incapable of determining if her actions were wrong. ²⁰² The defense rests. ²⁰³
March 12, 2002	Closing arguments are presented. ²⁰⁴ The case goes to the jury. The jury decides in less than four hours that Andrea did not meet the Texas standard for insanity. ²⁰⁵ The capital sentencing phase of the trial begins.
March 15, 2002	<i>Testimony of Jutta Karin Kennedy, Andrea's mother:</i> "I'm here pleading for her life. I've lost seven people in one year" (referring to the loss of her husband, five grandchildren, and the conviction of her daughter). ²⁰⁶
March 16, 2002	Closing arguments are presented. ²⁰⁷ After 40 minutes of deliberation, the jury declines imposing the death penalty at

	the sentencing phase of the trial. ²⁰⁸
March 18, 2002	Judge Hill formally sentences Andrea to life in prison. ²⁰⁹
April 3, 2002	Andrea's lawyers file a notice of appeal. ²¹⁰

1. Alan Bernstein & Miriam Garcia, *A Life Unraveled: Mother Depicted as Private, Caring and Burdened by Hidden Problems*, HOUS. CHRON., June 24, 2001, at A1 (noting that Andrea and Russell's non-denominational minister had "advertised himself in Houston as a wedding specialist – and as a gun dealer and massage therapist").

2. SUZY SPENCER, *BREAKING POINT* 130 (2002).

3. Timothy Roche, *The Yates Odyssey*, TIME, Jan. 28, 2002, at 45.

4. SPENCER, *supra* note 2, at 130.

5. Bernstein & Garcia, *supra* note 1.

6. SPENCER, *supra* note 2, at 131.

7. S.K. Bardwell et al., *Mom Details Drownings of Five Kids: Eldest Fled, Was Dragged Back to Tub*, HOUS. CHRON., June 22, 2001, at A1.

8. Roche, *supra* note 3, at 45-46.

9. SPENCER, *supra* note 2, at 131.

10. Roche, *supra* note 3, at 46.

11. SPENCER, *supra* note 2, at 132; Bernstein & Garcia, *supra* note 1. Prior to meeting Russell, it appears that Andrea did not have a substantial interest in religion. *See generally* Roche, *supra* note 3. Russell, however, had during his college years developed strong religious beliefs under the guidance of a traveling preacher, Michael Woroniecki. Woroniecki roamed the country with his wife, Rachel, and their family in a converted bus while teaching his own style of Christianity. *Id.* at 46; *see also* Lisa Teachey, *Lost in the Message? Cleric Says He's Not to Blame for Yates' Demons*, HOUS. CHRON., Apr. 5, 2002, at A1. Woroniecki acted as Russell's spiritual advisor for a time. Keith Morrison, *A Preacher Speaks Out: Spiritual Adviser to Andrea and Rusty Yates Talks About the Tragedy*, Dateline NBC, Mar. 20, 2002, available at <http://www.msnbc.com/news/726946.asp?0dm=-24GV&cp1=1>. As Andrea and Russell started their own family, however, the Woronieckis claim that Russell began to drift from his faith. Andrea, meanwhile, continued to send the Woronieckis "care packages and money" to fuel their mission trips, and sought spiritual guidance from them. *See* Teachey, *supra*; *see also* Associated Press, *Mental Decline of Yates Documented*, Feb. 27, 2002, available at http://www.courtvtv.com/trials/yates/030102_ap.html. Commentaries have noted the similarities between the lifestyles of the Yates and Woroniecki families. For example, both families had many children with biblical names who were home-schooled and also lived in converted buses for some time. While neither family belonged to a church, both studied the Bible devoutly. *See* Teachey, *supra*; *see also* Morrison, *supra*. The Woronieckis also strongly believe that wives should be subservient to their husbands, and Russell seemed to hold similar views. *See The Evil Inside, Good Morning America* (ABC television broadcast, Jan. 21, 2002), available at http://abcnews.go.com/sections/GMA/GoodMorningAmerica/GMA020122Yates_family_revelations.html; *see also* Morrison, *supra*; *Mental Decline of Yates Documented, supra*. Whereas Russell claims that the Woronieckis only somewhat influenced his family's lifestyle and religious beliefs, some in the media perceived that Russell was almost "obsessed with a desire for a family like Woroniecki's," Teachey, *supra*; *see also Mental Decline of Yates Documented, supra*.

12. SPENCER, *supra* note 2, at 133.

13. *Id.* at 132.

14. Roche, *supra* note 3, at 46.

15. SPENCER, *supra* note 2, at 133-34.

16. Roche, *supra* note 3, at 46.

17. SPENCER, *supra* note 2, at 134.

18. *See id.* at 135.

19. *Id.*

20. *Id.* at 136.

21. See *id.* at 138; see also Roche, *supra* note 3, at 46. While the Yates family was in Florida, Michael and Rachel Woroniecki took this opportunity to lecture Russell and Andrea about their marital relationship. Rachel recalls that "Andrea was having a remarkable conversion experience." Morrison, *supra* note 11. Yet Andrea later told therapists that she first realized that the Devil was inside of her during the trip. See *id.*

22. Roche, *supra* note 3, at 46.

23. SPENCER, *supra* note 2, at 140.

24. *Id.* at 141 (noting that Rachel also included a message for Andrea telling her to remember that Jesus "alone will save you – not doing 'right' or being 'right' but coming to know Him").

25. *Id.* at 142.

26. Roche, *supra* note 3, at 46.

27. SPENCER, *supra* note 2, at 142-43. The correspondence with the Yateses, which the Woronieckis have since described as "sporadic," focused on faith and Christianity. See Teachey, *supra* note 11. According to at least one source, the communications also "bombarded" Andrea "with talk of Satan." *The Evil Inside*, *supra* note 11. However infrequent these letters may have been, they seemed to accentuate the "damnation and hell"-style preaching for which Michael Woroniecki was notorious. Andrea may also have been subjected to Woroniecki's trademark negative assessment of his followers' relationships with God. See Teachey, *supra* note 11. Even Russell Yates noted that "[the Woronieckis] tend to basically condemn everyone . . . They tell everyone they are going to hell." *Id.* According to some commentators, it is possible that such teachings would be particularly harmful to a "troubled and isolated mother" such as Andrea Yates. *The Evil Inside*, *supra* note 11. Researchers have identified social isolation and other factors associated with a lack of a role model as two major problems that plague new mothers. See Anna Lembke, *A Psychosocial Approach to Postpartum Depression*, 19 PSYCHIATRIC TIMES (June 2002), available at <http://www.psychiatrictimes.com/p020611.html> (focusing on social isolation in the context of the Yates case). Meanwhile, the Woronieckis equate loneliness and depression to an "alignment with Satan." *The Evil Inside*, *supra* note 11.

28. SPENCER, *supra* note 2, at 143.

29. Roche, *supra* note 3, at 46.

30. SPENCER, *supra* note 2, at 144.

31. Roche, *supra* note 3, at 46.

32. SPENCER, *supra* note 2, at 150-51.

33. *Id.* at 151 (noting that Texas law requires a patient's consent before the administration of psychotropic drugs, even if patients' mental impairments rendered them unable to understand their need for the drugs; a patient's refusal to consent could be overridden by a judge's order, but obtaining such an override typically takes at least one week); see generally TEX. HEALTH & SAFETY CODE ANN. § 576.025 (Vernon 2002) (Administration of Psychoactive Medication).

34. Roche, *supra* note 3, at 46. According to notes taken by a hospital psychiatrist and a social worker, Andrea was evasive about the reasons for her suicide and deflected questions, saying only that "I guess I was overwhelmed and depressed." Associated Press, *Depressed Mother Charged With Drowning Children*, June 21, 2001, available at http://www.courtstv.com/news/2001/0621/slainchildren_ap.html; see also *infra* Appendix 4: Portions of Prosecuting Psychiatrist Park Dietz's Testimony in the Andrea Yates Trial at 56-57 [hereinafter App. 4].

35. SPENCER, *supra* note 2, at 156.

36. *Id.* at 152-53.

37. *Id.* at 157.

38. *Id.* at 157-58.

39. *Id.* at 158.

40. *Id.* at 159.

41. *Id.*

42. *Id.* at 160.

43. Texas v. Yates: Hospital Discharge and Assessment Records, The Methodist Hospital Texas Medical Center Discharge Summary, James N. Flack, M.D., June 24, 1999, at 2, available at <http://www.courtstv.com/trials/yates/docs/discharge12.html>.

44. SPENCER, *supra* note 2, at 160.
45. Roche, *supra* note 3, at 47.
46. SPENCER, *supra* note 2, at 161.
47. Roche, *supra* note 3, at 47; Lee Hancock, *Yates Long Had Visions of Violence*, DALLAS MORNING NEWS, Sept. 2, 2001, at 1A.
48. *Infra* App. 4 at 79-80. Likewise, two weeks before the killings, Andrea believed that cartoon characters were talking to her. *Id.* at 80.
49. Gerald E. Harris, Psychological Report on Competency Status, Sept. 2, 2001 (on file with author) (noting that Andrea's "family history is positive for mental illness, with her father and two siblings reportedly having significant mental disorders"); Roche, *supra* note 3, at 47.
50. SPENCER, *supra* note 2, at 162; *see also* Roche, *supra* note 3, at 47. For Dietz's analysis of Andrea's second suicide attempt, *see infra* App. 4 at 57-58.
51. SPENCER, *supra* note 2, at 163. When Russell told Dr. Eileen Starbranch about Andrea's second suicide attempt, Dr. Starbranch insisted that Andrea be hospitalized again, this time at Memorial Spring Shadows Glen, a private facility in Houston. For Dietz's analysis of some of Andrea's statements at Memorial Spring Shadows Glen, *see infra* App. 4 at 59-60.
52. Texas v. Yates: Hospital Discharge and Assessment Records, Assessment Triage Summary, July 21, 1999, *available at* <http://www.courtstv.com/trials/yates/docs/discharge8.html>.
53. SPENCER, *supra* note 2, at 163.
54. Psychiatric Assessment of Andrea Yates, Lara Longo, M.D., July 22, 1999, at 2, *available at* <http://www.courtstv.com/trials/yates/docs/psychiatric3.html>.
55. SPENCER, *supra* note 2, at 163.
56. *Id.*
57. *Id.* at 164.
58. *Id.*
59. *Id.*
60. *Id.*
61. Hancock, *supra* note 47. In his March 7, 2002, testimony, Dr. Park Dietz admitted that the psychiatric records from Andrea's stay at Memorial Spring Shadows Glen indicated that she had experienced hallucinations in the past. *See infra* App. 4 at 59-60; *see also* Carol Christian, *Key to Yates' Defense Disputed*, HOUS. CHRON., Mar. 8, 2002, at A1. In a series of psychiatric assessments conducted by Drs. Arturo Rios and James Thompson, it is noted that Andrea put a knife to her throat after having visions over a period of several days of a person being stabbed and "an image of the knife," along with "a voice," telling her to get a knife. Andrea says that she had such visions about ten times, but later denies that estimate. Andrea also "indicates that she had her first 'vision' when her first baby was newborn and she states that she 'blew it off.'" Psychiatric Assessment of Andrea Yates, James P. Thompson, Ph.D., Aug. 2, 1999 (date assessment was dictated), at 1, *available at* <http://www.courtstv.com/trials/yates/docs/psychiatric6.html>.
62. SPENCER, *supra* note 2, at 164-65.
63. *Id.* at 165.
64. *Id.* at 166.
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.* at 168.
69. *Id.*
70. *Id.*
71. Psychiatric Assessment of Andrea Yates, Arturo Rios, M.D., Aug. 5, 1999, *available at* <http://www.courtstv.com/trials/yates/docs/psychiatric5.html>. Dr. Rios also notes that, "[a] lot of the documentation focuses on the patient's seclusiveness, guardedness, persistent depressed mood, poor eye contact, and isolation. [Andrea] tends to spend most of her time in her room if not discouraged to do so. At times she is hesitant to say whether she is suicidal. She refuses therapy and is resistant to taking her medications." *Id.*
72. SPENCER, *supra* note 2, at 169.

73. *Id.*

74. *Id.*

75. *Id.*

76. Bernstein & Garcia, *supra* note 1 (noting that the Beachcomber Lane house was smaller than the Yates family's former house, despite their "goal of moving into a larger house with their growing family").

77. SPENCER, *supra* note 2, at 169.

78. *Id.*

79. *Id.* at 170.

80. *Id.*

81. *Id.*

82. *Id.* at 170-71.

83. *Id.* at 171.

84. *Id.*; see also Texas v. Yates: Hospital Discharge and Assessment Records, Memorial Spring Shadows Glen – Discharge Summary, Eileen K. Starbranch, M.D., Aug. 20, 1999, available at <http://www.courtTV.com/trials/yates/docs/discharge1.html>.

85. SPENCER, *supra* note 2, at 173-74.

86. *Id.* at 174.

87. *Id.*

88. *Id.*; Roche, *supra* note 3, at 47. Andrea and the children even joined a home school support group that met at a nearby church, although they still did not formally affiliate themselves with any church. See SPENCER, *supra* note 2, at 174. According to Russell, Andrea would devote several hours each morning to a "normal curriculum," which incorporated a program that enabled all but the youngest child to contribute. See Bardwell et al., *supra* note 7.

89. See Roche, *supra* note 3, at 48. Again, the Woronieckis' views would come to impact heavily on the lives of Andrea and Russell. Michael Woroniecki's religious fervor seemed to captivate Andrea, and it concerned Russell and Andrea's parents. See Teachey, *supra* note 11; see also Roche, *supra* note 3, at 48. At the time, Russell seemed pleased by Andrea's involvement with the Scripture although he now feels certain that Andrea's mental illness - rather than the Woroniecki family - caused her delusions. Yet, he also believes that "[i]t's a delusion she probably wouldn't have had had she not met the Woronieckis." Teachey, *supra* note 11; see also 'Going to Hell': Yates' Spiritual Adviser Vehemently Warned Followers about Satan, Good Morning America (ABC television broadcast, Mar. 26, 2002), available at http://abcnews.go.com/sections/GMA/GoodMorningAmerica/GMA030226Yates_preacher.html. Dr. Lucy Puryear, a psychiatrist for the defense, contends that if Andrea had never met Michael Woroniecki, she would still have suffered from mental illness, but would not have drowned her children. The Woronieckis, however, deny any influence over Andrea. *Id.*

90. SPENCER, *supra* note 2, at 174.

91. *Id.*

92. *Id.* at 175; see also Teachey, *supra* note 11 (noting that Andrea explained her pregnancy to a former colleague by stating that "Rusty wanted the baby.").

93. See Jim Yardley, *Despair Plagued Mother Held in Children's Deaths*, N.Y. TIMES, Sept. 8, 2001, at A7; see also SPENCER, *supra* note 2, at 171 (noting Dr. Starbranch's concern over Andrea and Russell's desire to have more children). Andrea's mother, Jutta Karin, who all along believed that Russell prompted Andrea's breakdown, was also concerned over Andrea and Russell's decision to add to their family. Debbie Holmes, a friend and former nursing colleague of Andrea's, echoed this view, claiming that Andrea continually depicted Russell as manipulative and controlling and that Russell was the one who wanted the baby. Roche, *supra* note 3, at 48. Once pregnant, Andrea wished for a girl while Russell would repeat a continual "jocular" refrain - "Let's get enough boys for a basketball team, and then we can talk about girls." *Id.* Harris County Sheriff's Deputy Michael Stephens testified at Andrea's trial that he overheard a conversation between Andrea and prison psychiatrist Dr. Melissa Ferguson the day after the killings. According to Stephens, Andrea told Dr. Ferguson that she drowned baby Mary because Russell didn't want a girl. Rather, "he wanted another boy, for a basketball team." *Closing Arguments Begin in Andrea Yates Trial*, CNN.COM, Mar. 12, 2002, at http://www.courtTV.com/trials/yates/031102_cnn.html. A former neighbor recalled that the Yateses used to talk about having six children, but while "[Russell] wanted that many kids," the

neighbor didn't "remember that [Andrea] wanted that many." Bernstein & Garcia, *supra* note 1. Indeed, Russell would repeat this same wish for a basketball team at the funeral held for his children, which would also be his sole reference to Andrea during the ceremony. Associated Press, *Grieving Father Buries Five Children as Wife, Charged with Murder, Sits in Jail*, July 27, 2001, available at http://www.courtstv.com/news/2001/0627/yates_ap.html (noting that Russell's comment, "I told her I wanted a basketball team first, then we'd talk about girls," was his only mention of Andrea at the children's funeral). Russell did say, however, that after Andrea's depression following Mary's birth, the couple decided to have no more children. Bernstein & Garcia, *supra* note 1.

94. SPENCER, *supra* note 2, at 179.

95. Roche, *supra* note 3, at 48. The death of Andrea's father propelled her slip from mental balance and absorbed her more into the life of the Bible. See Interview by Lucy J. Puryear, M.D., with Rusty Yates (July 6, 2001) (Confidential summary and report sent to Mr. George Parnham) [hereinafter Puryear interview] (on file with author). According to Dr. Puryear's interview with Russell Yates, Russell reported that Andrea "just 'fell' after the death of her father in March." *Id.* Moreover, Russell did "remember that Andrea was doing one thing strange after the birth of Mary, which was reading her Bible for 30 minutes to an hour every day. This was unusual for her, as she did not usually read the Bible on her own." *Id.*

96. Puryear interview, *supra* note 95.

97. SPENCER, *supra* note 2, at 180.

98. Puryear interview, *supra* note 95.

99. Texas v. Yates: Hospital Discharge and Assessment Records, Letter to Judge Gladys B. Burwell from Jan Clemens, R.N., Devereux Texas Treatment Network (Apr. 2, 2001), available at <http://www.courtstv.com/trials/yates/docs/discharge3.html>; Texas v. Yates: Hospital Discharge and Assessment Records, Letter to the Honorable Gladys B. Burwell from Mohammed Saeed, M.D., Devereux Texas Treatment Network (Apr. 2, 2001), available at <http://www.courtstv.com/trials/yates/docs/discharge4.html>.

100. Roche, *supra* note 3, at 48.

101. Puryear interview, *supra* note 95.

102. SPENCER, *supra* note 2, at 182. Andrea was Dr. Saeed's patient at Devereux from Mar. 31, 2001 to June 18, 2001. State v. Yates, No. 88025 & 883590, Mohammed Saeed, M.D.'s Motion for Protection and Motion to Quash, at 1 (Dist. Ct., Harris County, Tex.) (Feb. 14, 2002); see also Texas v. Yates: Hospital Discharge and Assessment Records, Devereux Texas Treatment Network, Psychiatric Assessment, M. Saeed, M.D., Mar. 31, 2001, at 1, available at <http://www.courtstv.com/trials/yates/docs/discharge5.html> [hereinafter Psychiatric Assessment, M. Saeed, M.D.] (noting as an initial assessment that Andrea's "chief complaint" is that "I have been like this for a few months").

103. SPENCER, *supra* note 2, at 182; Psychiatric Assessment, M. Saeed, M.D., *supra* note 102, at 1.

104. SPENCER, *supra* note 2, at 182-83.

105. *Id.* at 184.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* Dr. Saeed's account of Andrea's condition appeared to be based entirely on Russell's description rather than from the psychiatrists who had treated Andrea in the past or from Andrea herself who, Dr. Saeed said, rarely spoke. See Roche, *supra* note 3, at 48-49. When Russell insisted that Dr. Saeed put Andrea on Haldol, a drug that had been helpful to her before, Dr. Saeed complied. However, Dr. Saeed discontinued the treatment shortly thereafter because, he said, Andrea's "flat face" seemed to be a side effect. *Id.* at 49.

110. SPENCER, *supra* note 2, at 184.

111. *Id.*

112. *Id.* at 185.

113. *Id.* Despite the fact that Andrea had attended only one day of partial hospital care – and did not see Dr. Saeed at all on that one day – Dr. Saeed's notes indicate that Andrea attended a "couple of days" of partial hospitalization. Dr. Saeed also commented that Andrea then began weekly outpatient appointments with him, although she did not see him at all from April 19 until May 4, 2001. *Id.* at 188. Later, Dr. Saeed would testify that, based on the little Andrea said, she did not seem

psychotic, never described the torment she was going through, and flatly denied experiencing hallucinations and delusions. Roche, *supra* note 3, at 49.

114. SPENCER, *supra* note 2, at 186.

115. *Id.*

116. Puryear interview, *supra* note 95.

117. Roche, *supra* note 3, at 49. According to Roche, Holmes indicated later that she thought Andrea had been re-possessed by the devil, an issue that both she and Andrea had talked about after Andrea's illness in 1999. *Id.*

118. SPENCER, *supra* note 2, at 187.

119. *Id.*

120. *Id.* at 188.

121. *Id.* at 189.

122. *Id.*

123. *Id.*

124. *Id.* at 190.

125. *Id.*

126. *Id.* at 190-91. According to Russell, the discharge seemed premature.

During that hospitalization they attended several family meetings. He said that Andrea just sat there and stared straight ahead and didn't say anything. He was amazed when she was discharged because she seemed only "65-75% functional" at discharge. She was able to do a few things around the house, but she was still "out of it."

Puryear interview, *supra* note 95.

127. See SPENCER, *supra* note 2, at 191 (noting that the topic of most group therapy sessions was alcohol addiction, which may explain why Andrea consistently reported that she had no issues to discuss).

128. *Id.* at 192.

129. *Id.*

130. *Id.*

131. *Id.* at 300; see also Carol Christian, *Judge Allows Yates Confession: Request to Omit Death Penalty Denied*, HOUS. CHRON., Dec. 5, 2001, at A1.

132. SPENCER, *supra* note 2, at 192.

133. *Id.* at 119-20.

134. Puryear interview, *supra* note 95 (noting Russell's comments that Andrea "did not say anything, she just sat there" when they both visited Dr. Saeed two days before the murders). Also, on June 18, Andrea "seemed 'agitated, unstable, and unsure of herself.'" *Id.*

135. SPENCER, *supra* note 2, at 119-20.

136. Roche, *supra* note 3, at 49.

137. *Id.* at 49-50.

138. *Id.* at 50; see also Paul Burka, *It's Crazy*, TEX. MONTHLY, July 2002, at 8 (noting that after Russell left, Andrea filled the tub to drown the children); Carol Christian, *Deciding Fate Takes Heavy Toll*, HOUS. CHRON., Mar. 10, 2002, at A1 (reporting the testimony of a pediatric pathologist who stated that four of the Yates children were still alive but unconscious when Andrea took them from the bathtub and put them in her bed).

139. Associated Press, *Mother Faces Jury for Drowning Five Kids*, Jan. 18, 2002, available at http://www.courttv.com/trials/yates/021802_ap.html; *infra* Appendix 2: Andrea Yates's 911 Call [hereinafter App. 2]. While often hesitating and breathing heavily, Andrea requested police and an ambulance. She also informed the dispatcher that she was "ill." *911 Tape Reveals Unemotional Andrea Yates*, CNN.COM, Jan. 6, 2002, at <http://www.cnn.com/2001/US/12/10/yates.911>. Andrea's tone was considered "unemotional" in the 911 tape. *911 Tape Reveals Unemotional Andrea Yates*, *supra*; *infra* App. 2.

140. Roche, *supra* note 3, at 44; *911 Tape Reveals Unemotional Andrea Yates*, *supra* note 139. Dateline NBC's interview with Russell Yates taped the following account: "Mr. R. YATES: She said, you know, like, 'You need to come home.' I said, 'Is anyone hurt?' And she said, 'Yes.' And I said—I said, 'Who?' And she said, 'The children.' And I sa—and she said, 'all of them,' and I—and I just—I mean, and

my heart just sunk, you know?" Bob McKeown & Dawn Fratangelo, *The Stranger Within: Suzy Spencer Discusses Andrea Yates' Life and Postpartum Depression*, Dateline NBC, Mar. 17, 2002 (NBC television broadcast).

141. See *infra* Appendix 3: Transcript of Andrea Yates's Confession [hereinafter App. 3]; Jim Yardley, *Texas Jury Convicts Mother Who Drowned Her Children*, N.Y. TIMES, Mar. 12, 2002, at A23.

142. SPENCER, *supra* note 2, at 49-52.

143. *Id.* at 52.

144. *Id.* at 221-22.

145. *Id.* at 58-59.

146. *Id.* at 52, 58.

147. *Id.* at 68-75.

148. *Id.* at 62.

149. *Id.* at 222.

150. *Id.* at 84.

151. *Id.*

152. *Id.* at 120.

153. *Id.* at 239-40.

154. *Id.* at 240.

155. *Houston Mom Moved to Psychiatric Unit*, UNITED PRESS INT'L, July 25, 2001; see also Lisa Teachey, *Yates' Lawyers Plan to Enter Insanity Plea*, HOUS. CHRON., July 31, 2001, at A1.

156. SPENCER, *supra* note 2, at 239.

157. Texas v. Yates: Hospital Discharge and Assessment Records, Affidavit, Jean S. Powell, July 26, 2001, available at <http://www.court tv.com/trials/yates/docs/discharge10.html>.

158. Andrea was indicted for "intentionally and knowingly" causing "the death of Noah Jacob Yates by drowning the complainant with a deadly weapon, namely water, and intentionally and knowingly" causing "the death of John Samuel Yates by drowning the complainant with a deadly weapon, namely water." Andrea was also indicted for "intentionally and knowingly" causing "the death of Mary Yates . . . an individual under six years of age, by drowning [her] with a deadly weapon, namely water." SPENCER, *supra* note 2, at 96.

159. *Id.*

160. State v. Yates, No. 88025, Notice of Intent to Offer Evidence of the Insanity Defense (Dist. Ct., Harris County, Tex.) (July 30, 2001).

161. *In re Houston Chronicle Pub. Co.*, 64 S.W.3d 103 (Tex. App. 2001).

162. SPENCER, *supra* note 2, at 239.

163. *Id.* at 240.

164. *Id.* at 104-07.

165. *Id.* at 148.

166. *Id.* at 222-23.

167. *Id.* at 203; *Excerpts From Yates' Television Interview*, HOUSTONCHRONICLE.COM, Dec. 10, 2001, at <http://www.chron.com/cs/CDA/story.hts/special/drownings/1165191>.

168. SPENCER, *supra* note 2, at 203.

169. *Id.* at 218-19.

170. *Id.* at 208.

171. *Id.* at 219.

172. *Id.* at 216-17.

173. *Id.* at 219.

174. Associated Press, *Doctor Says Mother Accused in Deaths of Five Children Mentally Stable to Stand Trial*, Sept. 21, 2001, available at http://www.court tv.com/news/2001/0921/yates_ap.html.

175. State v. Yates, No. 883590, General Orders of Court (Dist. Ct., Harris County, Tex.) (Sept. 22, 2001); see also 911 *Tape Reveals Unemotional Andrea Yates*, *supra* note 139. The jury's decision to determine Andrea's competency would take substantially more time than it would take another jury to convict her of murder. As would be expected, the defense contended that Andrea Yates was incompetent to stand trial. State v. Yates, No. 88025, Motion for Hearing on Incompetency to Stand

Trial (Dist. Ct., Harris County, Tex.) (July 3, 2001); State v. Yates, No. 88025, Order for Psychiatric Examination: Competency (Dist. Ct., Harris County, Tex.) (July 6, 2001).

176. State v. Yates, No. 88025, Order for Psychiatric Examination: Competency (Dist. Ct., Harris County, Tex.) (July 6, 2001).

177. Sam Leith, *Mother Who Drowned Five Children Pleads Insanity*, DAILY TELEGRAPH (London), Feb. 20, 2002, at 2D; see also Flynn McRoberts, *Texas Mother Says 'Not Guilty'*, CHI. TRIB., Feb. 19, 2002, at 8.

178. Dora Yates described how Andrea would sit in bed for hours scratching her head. She also said that Andrea appeared "almost catatonic" and "would stare into space." Margaret Downing, *Other-Worldly: A Loving Mother Drowned Her Children: It's Hard to Believe No One Could Stop Her*, HOUS. PRESS, Feb. 28, 2002, at 12.

179. *Admitting Video Tape Debated at Mom's Trial*, DESERET NEWS, Feb. 21, 2002, at A5.

180. On the tape, Andrea explained in a monotone voice that she intended to suffocate her children to death, and stated how she chased her oldest son, Noah, before drowning him in the same water she used to drown the other children. Andrea also told Mehl that she intended to drown the children when she filled the tub two months earlier, but she didn't go through with it. Mehl asked Andrea how long she'd had thoughts "about wanting, or not wanting to, but drowning [the] children." She replied that she'd had such thoughts since she "realized" that she had been a bad mother, given that the children were not "developing correctly." The only question Andrea asked Mehl was when her trial would take place. Downing, *supra* note 178, at 12; *infra* App. 3.

181. *Mum Tells How She Killed Five Kids*, EVENING TIMES (Glasgow), Feb. 22, 2002, at 11.

182. *The Nation in Brief*, ARK. DEMOCRAT-GAZETTE, Feb. 23, 2002, at A4.

183. State v. Yates, No. 883590, General Orders of Court (Dist. Ct., Harris County, Tex.) (Feb. 22, 2002).

184. *A Sampling of the Testimony*, DALLAS MORNING NEWS, Mar. 13, 2002, at 11A; Anne Belli Gesalman, *A Dark State of Mind*, NEWSWEEK, Mar. 4, 2002, at 32. According to Dr. Ferguson, "[o]f all the patients I've treated for major depression with psychotic features, [Andrea] was one of the sickest." *Id.*

185. *Yates Was Insane, Psychologist Testifies*, L.A. TIMES, Feb. 27, 2002, at A11. Dr. Ringholz conducted an extensive evaluation of Andrea, including a thorough analysis of her medical history, "neurological and psychological tests," and interviews. He testified that Andrea's schizophrenia impeded her awareness of her actions and that he believed she was evidencing schizophrenia at the time she drowned her children. According to Ringholz, the symptoms of schizophrenia include impaired functioning, hallucinations, delusions, incoherence, and isolation. Carol Christian, *Vision of Knife, Voice of Satan Haunted Yates, Doctor Testifies*, HOUS. CHRON., Feb. 26, 2002, at A1.

186. Associated Press, *Psychiatrist Says She Warned Yates*, Feb. 27, 2002, available at http://www.courtstv.com/trials/yates/022702-pm_ap.html. Dr. Starbranch said that the severity of Andrea's mental condition was troublesome. "If left to her own devices, she wouldn't have physically survived because she wasn't taking care of herself." *Id.* According to Dr. Starbranch, who has practiced for over twenty-five years and treated thousands of patients, Andrea "would rank up there with the five sickest patients I've ever seen." *Id.* About a year after Dr. Starbranch last saw Andrea on January 12, 2000, Russell informed her that Andrea was sick again after giving birth to a fifth child. Dr. Starbranch said that she made a note that Andrea needed to be admitted as soon as possible, but Andrea never returned. *Id.*

187. See Anne Belli Gesalman, *Clashing in Court: Husband and Best Friend at Odds Over Timing of Treatment for Andrea Yates*, NEWSWEEK, Mar. 1, 2002; see also Joel Anderson, *Andrea Yates' Best Friend Says She Saw What Husband Didn't*, NEWSWIRE, Mar. 1, 2002 (quoting Russell as saying, "At the time, I didn't think [Andrea] was dangerous; none of us did").

188. Megan K. Stack, *Religious Zeal Infused Yates' Lives, Testimony Shows*, L.A. TIMES, Mar. 1, 2002, at A16.

189. See *id.*; Gesalman, *supra* note 187. Debbie Holmes followed her sister's suggestion to document her interactions with Andrea "in case something bad happens." Stack, *supra* note 188. One time when Andrea was released from the hospital, Holmes said, Andrea "often paced through the house with no goal in mind . . . was dirty and smelled . . . wasn't eating or drinking . . . [and] looked like a cancer patient." Anderson, *supra* note 187.

190. *Psychiatrist: Yates Thought She Was Defeating Satan*, CNN.COM, Mar. 1, 2002, at <http://www.cnn.com/2002/LAW/03/01/yates.trial/index.html>. "She was out of contact with reality, did not know right from wrong, and in my opinion, clearly was within what's considered the legal definition of insanity," Dr. Steve Rosenblatt told reporters during a break in the trial. *Id.*

191. *Nation in Brief*, WASH. POST, Mar. 6, 2002, at A20.

192. *Psychiatrist: Yates Thought She Was Defeating Satan*, *supra* note 190. Although Andrea knew that killing her children was illegal, she felt that doing so was in their best interest because the state would execute her, Satan would be eliminated from the world, and the children would be saved. See Terri Langford, *Doctor: Yates Was Insane When She Killed*, DALLAS MORNING NEWS, Mar. 6, 2002, at 21A. In a taped interview admitted into evidence, Andrea told Dr. Phillip Resnick that she was frustrated by her children's lack of development. See Leon Harris, *Closing Arguments in Yates Murder Trial*, CNN Live Event, Mar. 12, 2002.

193. Associated Press, *Defense Addresses Psychosis Denial*, Mar. 5, 2002, available at http://www.courtstv.com/trials/yates/030502_ap.html; Associated Press, *Psychiatrist: Andrea Yates A Threat In Weeks Before Drowning of Her Five Children*, Mar. 4, 2002, available at http://www.courtstv.com/trials/yates/030402_ap.html. Under cross-examination, Dr. Ellen Allbritton told prosecutor Joe Owmy that Andrea denied having any suicidal or homicidal thoughts but, "I wouldn't have trusted her to walk across the street." See Pam Easton, *Psychiatrist Says Yates Was Threat Weeks Before Killing*, CHATTANOOGA TIMES, Mar. 5, 2002, at A2. Dr. Allbritton said that Andrea only agreed to be hospitalized after Dr. Allbritton filed an emergency detention order. *Id.*

194. See *Doctor Saw No Signs of Yates' Psychosis*, NEWSDAY, Mar. 5, 2002, at A15. According to Russell Yates, Andrea did not receive adequate medical care during her two extended stays at Devereux, where Dr. Saeed was a unit medical director. Dr. Saeed has been removed as an administrator, though he still treats patients at Devereux. *Id.*

195. *Psychiatrist Says Yates Was in a Psychotic 'Fog'*, DESERET NEWS, Mar. 6, 2002, at A2. Dr. Debra Osterman testified that less than three weeks after the drowning deaths, Andrea seemed puzzled by a prophecy she had previously said had drove her to kill. "She recalled mentioning something about [Satan telling her to kill her children], but wasn't sure how it fit in with anything." *Id.* Dr. Osterman considered this confusion an indication that Andrea was emerging from a psychotic state. *Id.*

196. *Doctor Says Mother Was 'Driven by Delusions'*, N.Y. TIMES, Mar. 7, 2002, at A25. In a videotaped interview played in court, Andrea discussed with Dr. Puryear how she tried to block thoughts of harming 7-year-old Noah. Andrea "also talked about feeling overwhelmed as her family continued to grow while living inside a converted bus and how she attempted suicide in 1999 hoping it would prevent her from harming her children." *Id.* "There's an extreme amount of shame and guilt about having thoughts about harming your children," Dr. Puryear said, explaining why women who have such thoughts keep silent: "They don't want anyone to know." *Id.* When Dr. Puryear asked Andrea to recall her thoughts and emotions on the day of the drownings, Andrea "cried, rocked in her chair, paused and eventually said: 'I don't remember.'" *Tapes Suggest Yates Emerged from Psychosis*, MILWAUKEE J.-SENTINEL, Mar. 8, 2002, at 10A. Dr. Puryear testified that Andrea "experienced voices and delusions after the birth of her first son, but said she told no one because she feared Satan would hear her and harm her children. She also worried that some of her doctors might be Satan or be influenced by Satan[.]" Andrea "believed that if she said [her concerns] out loud, Satan would hear them and make them happen." *Psychiatrist: Yates 'Driven by Delusions'*, NEWSDAY, Mar. 7, 2002, at A16. Dr. Puryear told jurors that Andrea suffers from a psychotic disorder, most likely schizophrenia, and major depression that worsens in the postpartum period. "She was pretty consistently pregnant and/or breast-feeding with few breaks in between" and being taken off Haldol on June 7, two weeks before the drownings, caused Andrea to become "overwhelmingly psychotic." Associated Press, *Videotapes Show Two Sides of Yates*, Mar. 7, 2002, available at http://www.courtstv.com/trials/yates/030702-a_ap.html.

197. Terri Langford, *Two Faces of the Mum Who Drowned Her Five Children*, DAILY TELEGRAPH (Sydney), Mar. 8, 2002, at 32.

198. Carol Christian, *Key to Yates' Defense Disputed; Prosecution Doctor Says He Saw No Proof of Hallucinations*, HOUS. CHRON., Mar. 8, 2002, at A1. In the months before Andrea drowned her children, Terry Arnold testified, she became friendly with Andrea at the Home Education Partnership bookstore. According to Arnold, when she asked Andrea if she was going to have more

children, "I felt like I hit a sore subject, there was a change in her demeanor very quickly. It was just sadness. I thought she was going to cry." Christian, *supra*; see also Terri Langford, *Doctor: Yates Knew Killing Was Wrong*, DALLAS MORNING NEWS, Mar. 8, 2002, at 35A.

199. *Mom Knew Actions Wrong, Witness Says*, DESERET NEWS, Mar. 8, 2002, at A8.

200. Terri Langford, *Yates Used Violent Force, Doctor Says*, DALLAS MORNING NEWS, Mar. 10, 2002, at 44A.

201. Mike von Fremd, *Andrea Yates Trial Closer to the Jury*, *Good Morning America* (ABC television broadcast, Mar. 11, 2002); see also Alan Bernstein & Leigh Hopper, *Acquittal Not Equal to Free for the Insane: Time in Hospital Could Have Been Life or Weeks*, HOUS. CHRON., Mar. 13, 2002, at A29.

202. *Defense Rests Case in Yates Murder Trial*, SEATTLE POST-INTELLIGENCER, Mar. 12, 2002, at A3.

203. *Closing Arguments to Start in Yates Trial*, SUN-SENTINEL, Mar. 12, 2002, at 3A.

204. *Closing Arguments Today in Andrea Yates Trial*, *CBS Morning News* (CBS television broadcast, Mar. 12, 2002).

205. *State v. Yates*, No. 883590, General Orders of Court (Dist. Ct., Harris County, Tex.) (Mar. 12, 2002). One of many issues in the Yates case was Andrea's attorneys' inability to explain to the jury the consequences of Andrea being found "not guilty by reason of insanity" because of the state's "unique" provision requiring that a defendant not be automatically released from the trial court's jurisdiction when acquitted under the insanity defense. See *State v. Yates*, No. 88025, Motion to Declare Article 46.03, Section 1(e) of the Texas Code of Criminal Procedure Unconstitutional (Dist. Ct., Harris County, Tex.) (Oct. 30, 2001) (declaring article 46.03, section 1(e) of the Texas Code of Criminal Procedure unconstitutional because "[t]he Statute precludes a juror in a case in which the insanity defense is raised from knowing that the trial court continues to maintain jurisdiction over the defendant after a finding of not guilty by reason of insanity"). Indeed, the trial court has the "continuing jurisdiction to impose involuntary commitment for a defendant acquitted by reason of insanity" as well as "maintain jurisdiction to involuntarily commit an acquitted defendant to the state mental hospital for the rest of the defendant's natural life." *Id.* at 2; see also Mike von Fremd, *Andrea Yates Convicted of Murder in Connection With the Deaths of Her Five Children*, *World News Tonight* (ABC television broadcast, Mar. 12, 2002).

206. Pam Easton, *Yates' Mother Begs For Daughter's Life*, CHATTANOOGA TIMES, Mar. 15, 2002, at A6.

207. Maher, *supra* note 204. George Parnham (Andrea's defense attorney): "The bell tolls for all of us, but we are a part of this system, and we are a part of mankind." Kaylynn Williford (Assistant D.A.): "This crime is a crime of the ultimate betrayal. The ultimate betrayal of a mother of her children. Those children never had a chance." Matt Bean, *Time to Think About It: Texas Mother Gets Life in Prison*, COURT TV.COM, Mar. 15, 2002, at http://www.court tv.com/trials/yates/031502_ctv.html. Williford described the steps Andrea took in preparing to drown the children and said it took about three minutes for Paul to lose consciousness. "I would ask that you take at least three minutes of silence, and sit there in silence and realize, realize how long it takes for a child to lose voluntary control of their body." *Jury to Decide Whether Andrea Yates Faces the Death Penalty*, CNN.COM, Mar. 13, 2002, available at http://www.court tv.com/trials/yates/031302_cnn.html.

208. *State v. Yates*, No. 883590, General Orders of Court (Dist. Ct., Harris County, Tex.) (Mar. 15, 2002).

209. *Id.* Under the capital felony statute, a life sentence is 40 years in the institutional division of the Texas Department of Criminal Justice before that defendant is entitled to be eligible for parole. TEX. CODE CRIM. PROC. ANN., art. 37.071, § 2(e)(2)(B) (Vernon 2002); see also Pam Easton, *Yates Gets Life Term: Kin Criticize Husband*, ADVOCATE, Mar. 19, 2002, at 2A.

210. *State v. Yates*, No. 883590, General Orders of Court (Dist. Ct., Harris County, Tex.) (Apr. 3, 2002).

APPENDIX 2

TRANSCRIPT OF ANDREA YATES'S 911 CALL* JUNE 20, 2001

911: What's your name?

YATES: Andrea Yates.

911: What's the problem?

YATES: Um, I just need them to come.

911: Is your husband there?

YATES: No.

911: Well what's the problem?

YATES: I need them to come.

911: I need to know why we're coming ma'am. Is he there standing next to you?

YATES: Pardon me.

911: Are you having a disturbance? Are you ill? Or what?

YATES: Yes, I'm ill.

911: Do you need an ambulance?

YATES: No, I need a police officer. Yeah, send an ambulance.

911: What's the problem?

YATES: Um. . . .

911: Is someone burglarizing your house? I mean what is it?

YATES: (Heavy breathing)

911: What kind of medical problem do you have ma'am?

911: Hello?

YATES: I just need a police officer.

911: Are you at (address), right?

YATES: Yes.

911: Are you there alone?

YATES: Yes.

911: Andrea Yates?

YATES: Yes.

911: Is your husband there with you?

YATES: No.

911: Okay, well why do you need the police ma'am?

YATES: I just need them to be here.

911: For what?

YATES: I just need them to come.

911: You sure you're alone?

YATES: No, my sister's here.

* 911 Tape Reveals Unemotional Andrea Yates, CNN.com/U.S., Jan. 6, 2002, at <http://www.cnn.com/2001/US/12/10/Yates.911>.

APPENDIX 3

TRANSCRIPT OF ANDREA YATES'S CONFESSION* JUNE 20, 2001

The following is the transcript of Andrea Yates's interview with Houston Police Sgt. Eric Mehl:

MEHL: This is Sergeant Mehl. I'm with H.P.D. Homicide. The date is June 20th, 2001. It's 1:06 in the afternoon. I'm located in an interview room at 1200 Travis, within the homicide division. With me in the room is Andrea Yates, a white female, D.O.B. 7-2-64. Andrea, can you tell me your full and complete name?

YATES: Andrea Yates.

MEHL: And how old are you?

YATES: 36.

MEHL: And what's your home address?

YATES: 942 Beachcomber, Houston, Texas 77062.

MEHL: OK, and you and I have been talking for awhile, right?

YATES: Yes.

MEHL: You understood your rights?

YATES: Yes.

MEHL: OK, I'm going to read them to you again for the purposes of this tape recording, OK?

YATES: OK.

MEHL: You have the right to remain silent and not make any statement at all and that any statement you make may be used against you and probably will be used against you at your trial. Do you understand that?

YATES: Yes.

MEHL: Any statement you make may be used as evidence against you in court. Do you understand that?

YATES: Yes.

MEHL: You have the right to have a lawyer present to advise you prior to and during any questioning. Do you understand that?

YATES: Yes.

MEHL: If you are unable to employ a lawyer you have the right to have a lawyer appointed to advise you prior to and during any questioning. Do you understand that?

YATES: Yes.

MEHL: And you have the right to terminate this interview at any time. Do you understand that?

* HoustonChronicle.com (Feb. 21, 2002), at <http://www.chron.com/cs/CDA/story.hts/special/drownings/1266294>.

YATES: Yes.

MEHL: Are you willing to waive those rights that I've just read to you and continue to take to me about this?

YATES: Yes.

MEHL: OK, an incident happened at your house this morning, right?

YATES: Yes.

MEHL: And that's at 942 Beachcomber?

YATES: Yes.

MEHL: What part of town is that in?

YATES: Clear Lake.

MEHL: OK, and the incident we're about to discuss, um, resulted in the deaths of your five children, is that correct?

YATES: Yes.

MEHL: OK. Now I think you told me earlier, you're married.

YATES: Yes.

MEHL: What's your husband's name?

YATES: Rusty.

MEHL: And how long have you been married?

YATES: Eight years.

MEHL: And, I think you described to me, you and Rusty have a pretty good relationship?

YATES: Yes.

MEHL: Rusty a good father?

YATES: He's a good father, a good husband.

MEHL: OK, and where does Rusty work?

YATES: NASA.

MEHL: And he's been there 16 years, I think you told me?

MEHL: And, you stay at home with. . .

YATES: Yes.

MEHL: The children, is that correct?

YATES: Yes.

MEHL: OK, and before, we went into a little bit about your education?

YATES: Yes.

MEHL: Um, you have a college degree?

YATES: Yes.

MEHL: And where is that from?

YATES: University of Texas School of Nursing

MEHL: And what year did you graduate?

YATES: 1986.

MEHL: And you went to high school here in Houston, right?

YATES: Yes.

MEHL: Where?

YATES: Milby.

MEHL: And what year did you graduate?

YATES: 1982.

MEHL: And at one time you were employed as a nurse at M.D. Anderson?

YATES: Yes.

MEHL: OK. What year did you stop working at M.D. Anderson?

YATES: 1994.

MEHL: OK, and why did you stop working there?

YATES: I had Noah.

MEHL: OK, Noah, your oldest child?

YATES: Yes

MEHL: OK, and if you could, just go ahead and, and name your children and give me their ages.

YATES: Noah, 7 years old. John, 5 years old. Paul, 3 years old. Luke, 2 years old. Mary, 6 months old.

MEHL: OK, and we also talked earlier, um, you've been treated for depression. Is that right?

YATES: Yes.

MEHL: And who's your current doctor?

YATES: Dr. Saeed.

MEHL: And the last time you saw him?

YATES: Two, two days ago.

MEHL: OK, this morning, um, what time was it that you got out of bed this morning?

YATES: About 8:10.

MEHL: OK, and who in your household was awake at that time?

YATES: Um, my husband, Mary, Luke and Paul.

MEHL: OK, and what time does Rusty leave for work?

YATES: He left about nine.

MEHL: And, by the time Rusty left, were all of your children awake at that time?

YATES: Yes

MEHL: OK. What was going on in the household at that time? Were they eating breakfast. . .

YATES: Yes.

MEHL: Or what?

YATES: Yes.

MEHL: What were they having?

YATES: Cereal.

MEHL: Is that what you had as well?

YATES: Yes.

MEHL: Um, after Rusty left, you filled the bathtub with water, is that correct?

YATES: Yes.

MEHL: How many bathtubs are in your home?

YATES: One.

MEHL: OK, so it's just the, uh, the master bath I guess you would call it?

YATES: Yes.

MEHL: OK, is it a regular sized bathtub or is it a big one?

YATES: Regular sized.

MEHL: How far did you fill it?

YATES: About three inches from the top.

MEHL: About three inches from the top, um, after you drew the bath water, what was your intent? What were you about to do?

YATES: Drown the children.

MEHL: OK. Why were you going to drown your children?

15 SECONDS OF SILENCE

MEHL: Was it, was it in reference to, or was it because the children had done something?

YATES: No.

MEHL: You were not mad at the children?

YATES: No.

MEHL: OK, um, you had thought of this prior to this day?

YATES: Yes.

MEHL: Um, how long have you been having thoughts about wanting, or not wanting to, but drowning your children?

YATES: Probably since I realized I have not been a good mother to them.

MEHL: What makes you say that?

YATES: They weren't developing correctly.

MEHL: Behavioral problems?

YATES: Yes.

MEHL: Learning problems?

YATES: Yes.

MEHL: So after you drew the bath water, what happened?

YATES: I put Paul in.

MEHL: And how old is Paul?

YATES: Paul is 3.

MEHL: OK, and when you put Paul in the bath water, was he face down or face up?

YATES: He was face down.

MEHL: And he struggled with you?

YATES: Yes.

MEHL: How long do you think that struggle happened?

YATES: A couple of minutes.

MEHL: And you were able to forcibly hold him under the water?

YATES: Yes.

MEHL: By the time you brought him out of the water, had he stopped struggling?

YATES: Yes.

MEHL: There was no more movement?

YATES: No

MEHL: And, after you brought him out of the water, what did you do?

YATES: I laid him on the bed.

MEHL: Face up or face down?

YATES: Face up.

MEHL: Did you cover him?

YATES: Yes.

MEHL: Did you cover his entire body?

YATES: Yes.

MEHL: With what?

YATES: A sheet.

MEHL: OK, so after you put Paul on the bed and covered him, then what happened?

YATES: I put Luke in.

MEHL: OK, how old is Luke?

YATES: He's 2.

MEHL: OK, and was he face down in the water or face up?

YATES: Face down.

MEHL: Did he struggle?

YATES: Yes.

MEHL: How long do you think that struggle lasted?

YATES: Just a couple minutes.

MEHL: OK, and when you brought Luke out of the water, um, was he, any movement at all?

YATES: No.

MEHL: What happened to Luke then?

YATES: I put him on the bed.

MEHL: Um, did you cover him with the same sheet that you'd used to cover Paul?

YATES: Yes.

MEHL: OK, so Paul and Luke are on the bed, then what happens?

YATES: I put John in.

MEHL: OK, and how old is John.

YATES: John is 5.

MEHL: OK. How did you get John to come into the bathroom?

YATES: I called him in.

MEHL: OK, and, and he came in. . .

YATES: Yes.

MEHL: Um, did you say anything to him?

YATES: I told him to get in the tub.

MEHL: OK, and did he?

YATES: No.

MEHL: Um, what did he do?

YATES: I put him in.

MEHL: Did you pick him up, how? Under the arms?

YATES: Yes.

MEHL: And did he go into the water face down or face up?

YATES: Face down.

MEHL: OK. Did he struggle with you violently?

YATES: Yes.

MEHL: Did that struggle last longer than with the younger children?

YATES: A little bit, yeah.

MEHL: OK, but still you were able to hold John under the water?

YATES: Yes.

MEHL: And eventually he stopped struggling?

YATES: Yes.

MEHL: OK, when you brought John out of the water, was there any movement at all from him?

YATES: No.

MEHL: What happened then?

YATES: I put him on the bed.

MEHL: Did you then cover him along with Paul and Luke?

YATES: Yes.

MEHL: OK, and then what happened?

YATES: I put Mary in.

MEHL: Did you actually have to go out into the other room to get Mary?

YATES: No, she was in there already.

MEHL: Was Mary in the bathroom with you when Paul, Luke and John all went in the water?

YATES: Yes.

MEHL: OK, what was she doing?

YATES: She was crying.

MEHL: OK, was she, was she sitting in a chair, one of those . . .

YATES: She was sitting down.

MEHL: On the floor?

YATES: Um-hmm.

MEHL: OK, um, so you picked Mary up?

YATES: Um-hmm.

MEHL: She go into the water face down or face up?

YATES: Face down.

MEHL: OK, she was able to struggle with you?

YATES: Yes.

MEHL: Because she's only six months old, right?

YATES: Um-hmm.

MEHL: But she struggled and how, how long do you think she was able to struggle for?

YATES: A couple of minutes.

MEHL: OK, and after Mary had died, um, what did you do with her body?

YATES: I left it in there and called Noah in.

MEHL: OK, did Noah come immediately?

YATES: Yes.

MEHL: And, when Noah walked in the bathroom, did he see Mary in the tub?

YATES: Yes.

MEHL: What did he say?

YATES: He said, 'What happened to Mary?'"

MEHL: And what did you say?

YATES: I didn't say anything. I just put him in.

MEHL: Did he try to run from you?

YATES: Yes.

MEHL: Did he get out of the bathroom or were you able to catch him?

YATES: I got him.

MEHL: OK, and Noah is 7, is that correct?

YATES: Yes.

MEHL: Did Noah put up the biggest struggle of all?

YATES: Yes.

MEHL: OK, did he go in the water face down or face up?

YATES: He was face down.

MEHL: Um, when you were struggling with Noah, did you have to, did he try to flip over and come up for air at any time?

YATES: Yes.

MEHL: Did he ever make it out of the water long enough to get a gasp of air or anything?

YATES: Yes.

MEHL: How many times?

YATES: A couple times.

MEHL: But you forced him back down into the water?

YATES: Yes.

MEHL: How long do you think that struggle lasted?

YATES: Maybe three minutes.

MEHL: OK, and after Noah was dead, when you brought him out of the water, was there any sign of life from him.

YATES: No.

MEHL: What did you do with his body?

YATES: I left it there.

MEHL: OK, so Mary and Noah were left in the bathtub?

YATES: I took Mary out.

MEHL: After John, excuse me, after Noah was dead?

YATES: Yes.

MEHL: OK, what did you do with Mary's body?

YATES: Put her on the bed.

MEHL: Did you cover her?

YATES: Yes.

MEHL: And you left Noah's body in the tub?

YATES: Yes.

MEHL: OK, then what did you do?

YATES: I called the police.

MEHL: OK, did you call 911?

YATES: Yes.

MEHL: What did you tell the, the dispatch clerk that answered the phone?

YATES: Needed a police officer.

MEHL: Did that clerk ask you why you needed the police?

YATES: Yes.

MEHL: And what did you say?

YATES: I didn't really say anything. I just said I needed a police officer.

MEHL: OK, and you called your husband?

YATES: Yes.

MEHL: After you called the police?

YATES: Yes.

MEHL: What did you tell your husband?

YATES: I told him to come home.

MEHL: Did you say why?

YATES: I said it was time.

MEHL: Did he ask you what you meant by that?

YATES: Yes, I didn't say it well.

MEHL: What did he say when you said it was time, what did, what did he say?

YATES: He asked me what was wrong.

MEHL: And you, how did you respond to that?

YATES: I just said it was time.

MEHL: Did he agree to come home?

YATES: Yes.

MEHL: Who got to your house first?

YATES: The police.

MEHL: OK, what did you tell the first officer that got there?

YATES: That, that I had drowned the children.

MEHL: OK, did you tell him why or, or go into it with him in any way?

YATES: No.

MEHL: Did you talk to your husband when your husband got there?

YATES: No.

MEHL: OK, did the officer put you in a police car, I take it?

YATES: No.

MEHL: He did not?

YATES: He set me on the couch.

MEHL: Oh, he set you on the couch?

YATES: Yes.

MEHL: What happened when Rusty got there?

YATES: He was crying.

MEHL: OK, did he come in the house?

YATES: No.

MEHL: OK, so the officer kept him out?

YATES: Yes.

MEHL: OK, you had told me earlier that, that you'd been having these thoughts about hurting your children for up to two years. Is that, is that about right?

YATES: Yes.

MEHL: OK, is there anything that happened two years ago that, that made you, that you believe led you to have these thoughts?

YATES: I realized that it was time to be punished.

MEHL: And what do you need to be punished for?

YATES: For not being a good mother.

MEHL: How did you see drowning your five children as a way to be punished? Did you want the criminal justice system to punish you or did you . . .

YATES: Yes.

MEHL: OK, we were also talking earlier and there was one other time when you filled the tub with water and were going to do this and did not do it. Is that correct?

YATES: Yes.

MEHL: How long ago was that?

YATES: It was two months ago.

MEHL: OK, were all the children at home at that time?

YATES: Yes, Rusty was there too.

MEHL: Rusty was there too? Do you think Rusty would have stopped you?

YATES: Yes.

MEHL: So, you filled the tub with water that time. What is it within yourself that stopped you from, from doing it that time?

YATES: Just didn't do it that time.

MEHL: OK, Noah, what's his date of birth?

YATES: Feb. 26, '94.

MEHL: And John's?

YATES: Dec. 15, '95.

MEHL: And Paul?

YATES: Sept. 13, '97?

MEHL: OK, and Luke?

YATES: His is Feb. 15, '99.

MEHL: And Mary?

YATES: Nov. 30, 2000.

MEHL: OK, after all your children were dead, did you let the water out of the tub or did you . . .

YATES: I left it in.

MEHL: OK, so when the first officer got there, Noah was still in the tub?

YATES: Yes.

MEHL: And the other children were on the bed?

YATES: Yes.

MEHL: Were they still covered?

YATES: Yes.

MEHL: OK, it's now 1:23 in the afternoon and I'm going to stop the tape.

APPENDIX 4

PORTIONS OF PROSECUTING PSYCHIATRIST PARK DIETZ'S TESTIMONY IN THE ANDREA YATES TRIAL* MARCH 7, 2002

DIRECT EXAMINATION BY MR. OWMBY:

1

1 March 7, 2002
2 DR. PARK DIETZ
3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. OWMBY::

6 Q Good afternoon, Doctor.

7 A Good afternoon.

8 Q Will you state your name and your
9 profession for the jury?

10 A I'm Dr. Park Dietz, and I'm a forensic
11 psychiatrist.

12 Q And, Dr. Dietz, will you tell the jury,
13 and we may have heard this before, what it means to
14 say that you are a forensic psychiatrist?

15 A It means I'm a psychiatrist who
16 specializes in the field of forensic psychiatry,
17 which basically means psychiatry applied to matters
18 that are in dispute, typically in court, but any
19 time people disagree because the purpose of forensic
20 psychiatry is to try to find the truth about
21 matters --

22 MR. PARNHAM: Your Honor, we object to
23 that at this time. If I may, Doctor.

24 It's nonresponsive to the question asked
25 by Mr. Owmbly, and we would object.

2

1 THE COURT: Doctor, let's try to answer
2 the question that's asked of you.
3 And, Mr. Owmbly, continue in question and
4 answer.

5 Q (BY MR. OWMBY) Doctor, you were
6 explaining an aspect of what forensic psychiatry
7 was, but I couldn't exactly hear what you were
8 saying.

9 Would you continue to explain to the
10 jury what it is to be a forensic psychiatrist?

11 A It's an area of psychiatry. Some people
12 get special training in it and some don't. But the

13 purpose of it is to help find the truth about
14 matters that are in dispute.

15 Q Now, would you tell the jury your
16 educational background that qualifies you to be,
17 among other things, a forensic psychiatrist?

18 A My education began in college at Cornell
19 University in Ithaca, New York, where I earned a
20 degree in biology and psychology.

21 I then entered medical school; and in
22 1975, received the M.D. degree from Johns Hopkins
23 University School of Medicine in Baltimore. In the
24 same year, I received a master's degree in public
25 health, also from Johns Hopkins and have completed

3

1 the course work for PhD in sociology, also with
2 Johns Hopkins. And later, as the deadline
3 approached, I submitted a dissertation and was
4 awarded the PhD. So, that was my basic education.

5 Q All right. And -- excuse me -- what
6 training did you have after your basic education?

7 A Then -- in medicine, one has to enter a
8 residency, if one wants to take up a specialty. I
9 entered a residency in psychiatry and spent two
10 years as assistant resident in psychiatry at the
11 Johns Hopkins Hospital in Baltimore, and then I
12 spent a third year as resident and chief fellow in
13 forensic psychiatry at the hospital at the
14 University of Pennsylvania in Philadelphia.

15 And it was during that year I did a
16 fellowship in forensic psychiatry. That was unusual
17 at the time, and I finished that in 1978.

18 Q What kind of work -- what positions have
19 you held since you completed your training?

20 A Well, my first job after fellowship was as
21 an assistant professor of psychiatry at the Harvard
22 Medical School in Boston; and my assignment was at
23 the McClain [sic] Hospital, which is a private hospital in
24 the suburbs. But through them I was assigned to a
25 maximum security institution for the criminally

4

1 insane called the Bridgewater State Hospital. And
 2 for two years, I worked there trying, without much
 3 success, to improve the quality of care and to turn
 4 it into a Harvard teaching hospital. There was a
 5 whole group of us who commuted to this very
 6 scandalous, awful place.
 7 And then I spent my third year at
 8 Harvard, primarily involved in research -- no, got
 9 that wrong.
 10 My third year, I was primarily
 11 commuting back and forth to Washington, D.C. because
 12 I was asked by the US Justice Department to be in
 13 charge of the evaluation of John Hinckley after the
 14 assassination attempt of President Reagan.
 15 And then my fourth year, I spent
 16 doing research on mentally disordered offenders
 17 doing a study of defendants who had killed, or
 18 nearly killed, their victims and looking at the
 19 details of their criminal behavior and their mental
 20 problems.
 24 A Then I received an offer from the
 25 University of Virginia to become head of its medical

5

1 program on psychiatry and law and accepted a
 2 position there, initially, as an associate professor
 3 and then later as professor of law and professor of
 4 behavioral medicine and psychiatry.
 5 MR. PARNHAM: Your Honor, may we proceed
 6 in question and answer format as opposed to the
 7 format in which we are proceeding?
 8 Q (By Mr. Owmbly) I think you answered the
 9 questions -- excuse me -- that I asked regarding
 10 positions that you held since completing training.
 11 And what was the last position that you
 12 mentioned?
 13 A The second position was at the University
 14 of Virginia where --
 15 Q Go ahead. I'm sorry.
 16 A -- where my responsibilities -- well, as
 17 an associate professor and professor were as medical
 18 director of the Forensic Psychiatry Clinic, medical
 19 director of the Institute of Law of Psychiatry and
 20 Public Policy. And I taught a course load in the
 21 law school co-teaching courses on law and
 22 psychiatry, psychiatry and criminal law, psychiatry
 23 and civil law, law and medicine, law and public
 24 health. And I taught a seminar of my own called
 25 crimes of violence.

6

1 In the medical school, I was
 2 responsible for the forensic psychiatry fellowship
 3 program for training medical students, residents and
 4 various nursing and social work students.
 5 Our institute did the training for
 6 all the people in Virginia who were certified by the
 7 state to evaluate people for competence or insanity.
 8 We consulted with the state on the laws on these and
 9 similar issues regarding the mentally ill.
 10 And during those years at Virginia, I
 11 also engaged in a program of research on violent
 12 crime, including a project for the US Department of
 13 Justice that was the first study of threats and
 14 stalking and that led to general recognition of
 15 stalking as a problem.
 16 Q Did you have experience working with the
 17 Federal Bureau of Investigation?
 18 A Yes, I had first done some informal
 19 consulting with the FBI starting in 1979, but in the
 20 early 1980s, they made me officially a consultant to
 21 what was then the behavioral science unit at the FBI
 22 academy in Quantico.
 23 And from 1982 up to the present, I
 24 have been the forensic psychiatrist for the various
 25 successors to that unit. It's part of the critical

7

1 incident response group of the National Center for
 2 the Analysis of Violent Crime, but this particular
 3 unit has changed hands.
 4 Today it's the Profiling and
 5 Behavioral Assessment Unit. And with them, I have
 6 done research, trained for many years. Agents
 7 coming through and specialists in profiling and I
 8 consult with them on open cases so that they will
 9 sometimes bring the unsolved cases to provide a
 10 formal or informal opinion.
 11 Q All right. Do you do that frequently,
 12 like once -- at least once a year or how frequently
 13 do you consult?
 14 A It really varies. I think the contract
 15 has me down for ten days a year or something less.
 16 They don't always use it up and sometimes they use
 17 more.
 18 Q Have you published any scholarly writing?
 19 A Yes.
 20 Q And would you tell us a few of them that
 21 might be relevant, especially those that might be
 22 relevant to your testimony here today?
 23 A Well, nearly all my publications, of which
 24 there are about 100, somewhat over a hundred, have
 25 been about violent behavior, injurious behavior or

8

1 both. So, I have tended to look at the extremes of
2 human behavior and the horrible things people do to
3 others and to himself.

4 I have written quite a bit about
5 homicide and about mentally ill offenders, about how
6 to do forensic evaluation and evaluate criminal
7 insanity and topics related to that.

8 Q How long have you been examining criminal
9 defendants for purposes of sanity evaluations?

10 A Well, the first one I ever attended was as
11 a freshman in medical school and that would have
12 been in 1970 or '71, but I begin doing it
13 myself prior to trial in 1977 and have done it ever
14 since.

15 Q How many criminal defendants do you think
16 you've examined for the purposes of sanity or some
17 related to forensic -- in the forensic area in the
18 criminal field

19 A I stopped counting at a thousand, and that
20 was in 1979 or '80. So, thousands.

11

2 Q All right. You worked on the Menendez
3 brothers case?

4 A On the retrial, yes.

5 Q And you didn't work on the original
6 O.J. Simpson case; is that correct?

7 A Correct. I turned it down when I was
8 approached for the criminal matter.

9 Q Right, but I understand you worked on the
10 civil matter?

11 A Yes, I did.

12 Q And there was a case -- and I probably
13 can't pronounce the name -- in Hawaii?

14 A Uyesugi. Mr. Uyesugi shot and killed
15 seven co-workers at the Xerox facility in Honolulu.

16 Q And did you also testify or assist the
17 State in that case?

18 A I was a defense expert testifying that he
19 was insane.

20 Q You worked on the -- Dr. Resnick, I think
21 mentioned, that you worked together with him on the
22 Ted Kaczynski case; is that right?

23 A Yes, in fact, I brought him into it.

14

18 Q Doctor, you are consulting and now
19 testifying with the District Attorney's Office of
20 Harris County for a fee. And would you tell the
21 jury the fee that you charge?

22 A Yeah, I'm charging the Harris County DAs

23 Office my standard government fee which is \$500 an
24 hour.

25 Q Doctor, did there come a time when the --

15

1 as is obvious, the Harris County District Attorney's
2 Office asked you to conduct an evaluation within the
3 framework of the prosecution of Andrea Pia Yates?

4 A Yes.

5 Q One of the things that you -- and I want
6 to get back to that in a moment. One of the things
7 you plan to do during that evaluation was videotape
8 and interview with Andrea Pia Yates; is that
9 correct?

20

21 Q Now, you have done work with parents who
22 kill their children?

23 A Yes.

24 Q Which we learned in testimony here is
25 referred to as infanticide, as a general term?

21

1 A Yes.

2 Q What is your work in that area?

3 A Well, anyone who sees large numbers of
4 homicide defendants will see the occasional --

5 MR. PARNHAM: Judge, I don't think that's
6 responsive.

7 THE COURT: Sustained.

8 Q (By Mr. Owmbly) What has been your work in
9 the area of parents who kill their children?

10 A I have seen the usual proportion in the
11 course of my early career, and then I have been
12 invited to see an usually high proportion because
13 I'm often asked to consult on such cases.

14 And in addition to the ones that you
15 mentioned previously, like Susan Smith, I have been
16 involved in cases in, perhaps, 15 or 20 states of
17 mothers killing their children.

18 Q Have you done any work in relation to --
19 well, drownings, in particular?

20 A Yes. My early research was on drowning
21 and the variety of ways in which drowning occurs
22 with a focus on how to prevent drownings. That was
23 published in the American Journal of Public Health
24 in the 1970s.

26

1 A Yes.

2 Q And slide 4 shows your contact date, July
3 6, 2001, which was, as you testified, 16 days after
4 the homicides. You requested all records and
5 examinations -- and the word we use is ASAP, as soon
6 as possible -- and you were notified September 26,
7 2001, that the Court has signed the order
8 authorizing the examination?

9 A That's right.

10 Q Can you list for the jury -- and I assume
11 that you might need your slides to refresh your
12 memory -- sources of information that you eventually
13 reviewed to help form your opinion in this case?

14 A Yes, I would need my slides to refresh my
15 recollection.

16 Q I will show you a series of slides that
17 has been marked for identification as State's
18 Exhibit No. 229. I'm going to give them to you now
19 just to help you refresh your recollection as the
20 sources of information.

21 And, Doctor, as to the sources of
22 information that you reviewed in connection with
23 your evaluation in this case, would you tell us what
24 interviews that you reviewed or were made aware of
25 in connection with your evaluation?

27

1 A Well, I conducted four interviews myself.
2 I interviewed the defendant, Andrea Pia Yates, for
3 two days in November of 2001. That was on
4 November 6th and 7th. And I also interviewed two
5 of her then treating doctors, Dr. Ferguson and
6 Dr. Osterman.

7 Q Did you request an interview with Russell
8 Yates?

9 A I did.

10 Q And were you able to interview Russell
11 Yates?

12 A No, he refused to see me.

13 Q Did you request an interview with Dora
14 Yates?

15 A Yes, I did.

16 Q Were you able to interview Dora Yates?

17 A No, she refused to see me, too.

18 Q Did you have the opportunity to interview
19 Mr. and Ms. Robert Holmes? That would be Robert
20 Holmes and Debbie Holmes?

21 A Yes, they were very gracious and allowed
22 me to interview them in their home.

23 Q Do you remember the date that you
24 interviewed them?

25 A That was the 8th of November, 2001.

28

1 Q Now, the interviews that you conducted,
2 were they just videotape interviews or did you also
3 record them?

4 A Well, the interview with the defendant,
5 Andrea Yates, was recorded in its entirety on both
6 videotape and audiotape, except for one time when I
7 forgot to turn it on and I missed some of them on
8 one of the tapes. I missed some on one of the
9 tapes.

10 Q All right. You don't know if that -- you
11 don't recall if it was on the audio or video?

12 A I think I forgot to start the audiotape.

13 Mrs. Yates then reminded me that I had forgotten.

14 Then I got it started, but I had to get the

15 transcript off the video for that one, that portion.

16 It was a few minutes.

29

7 assistant in my office initially transcribed it from
8 audiotape. I then went over the transcript and
9 corrected from memory what I knew were errors. And
10 then I listened to one particular important segment
11 and tried to get it absolutely accurate, but I never
12 did that level of accuracy with the early parts that
13 were about her life history. And I'm sure there are
14 typos and other inaccuracies.

30

4 Q Did you review videotaped interviews by
5 others?

6 A Yes, I did.

7 Q And would you tell the jury what
8 videotaped interviews conducted by others that you
9 reviewed?

10 A I received and reviewed a videotape of an
11 interview done by Channel 13 of Russell Yates on
12 June 21st, the day after the homicides. I reviewed
13 a videotape of Dr. Resnick's examination for -- I
14 guess 15 minutes of the examination were recorded on
15 July 14th, 2001. I also received and reviewed
16 portions of the examination by Dr. Puryear on
17 7-27-01 where she had recorded a segment of her exam
18 of the defendant. And, likewise, another segment of
19 exam by Dr. Puryear on 8-10-01.

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19 A. Well, it's really a matter of what's the
20 method used here. What's the method used here. And
21 the method that I used here, as elsewhere, is to try
22 to understand the entire story; that includes the

23 life story of Andrea Kennedy, then Andrea Yates, so
 24 that I understand what the history of her life is;
 25 then with special attention to the things that

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1 surround the crimes and how they came to be. So,
 2 for crimes of this kind, that means paying special
 3 attention to the marriage and the children and the
 4 family. And then to focus even more closely on
 5 mental state.

10 Q. (By Mr. Owmbly) Now, the aspect that you
 11 focused on is kind of the context of Andrea Yates as
 12 a person from as far back as you can look at that
 13 until the day of the offense; is that correct?

14 A. Correct, yes.

15 Q. I believe you said that your focus is on
 16 the marriage and the relationships she has. How
 17 does that relate to your findings as far as your
 18 evaluation?

19 A. Well, all human behavior, and that
 20 includes criminal behavior, arises from the
 21 interaction between a person and a context, the
 22 environment, both the person and the environment
 23 matter. So to understand the crime, we need to look
 24 at both the person and the context in which criminal
 25 conduct occurs.

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1 Q. Now, you are looking at the person and the
 2 context. How do you fit -- and I supposes that
 3 you -- that the illness, if there is an illness, it
 4 is made a part of that contextual picture also; is
 5 that correct?

6 A. Well, if there is an illness, it's part of
 7 the person, but it interacts with the environment.
 8 And, so, I'm always looking for whether there is an
 9 illness; and if there is, what, if any, relationship
 10 did it have to the crimes.

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5 Q. (By Mr. Owmbly) These would be your
 6 findings; is that correct?

7 A. That's correct.

8 Q. What were your findings as to the illness
 9 of Andrea Pia Yates?

10 A. Well, that's actually somewhat of a
 11 confusing issue in this case because the signs and
 12 symptoms that she's exhibited are found in more than
 13 one condition. All of the treating doctors, prior
 14 to the crimes, have diagnosed her with a serious
 15 depression, usually calling it major depression,
 16 sometimes saying with psychotic features, sometimes

17 saying postpartum.

18 My own impression as opposed to
 19 diagnosis, when I met with Mrs. Yates, was that she
 20 was suffering from schizophrenia; and the reason I
 21 had that impression, despite having heard all the
 22 other doctors diagnose her with depression, was that
 23 despite being on appropriate doses of antipsychotic
 24 medication, she was still showing what are called
 25 the negative symptoms of schizophrenia, of being

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1 rather passive and her mood being flat. We call it
 2 flat affect [sic]. So she impressed me as more
 3 schizophrenic.

4 There is a diagnosis given in the DSM
 5 call schizoaffective disorder that is supposed to be
 6 given when a person has both those conditions -- or
 7 has the features of both schizophrenia and major
 8 depression. And, so, I considered as part of the
 9 deferential diagnosis all three of those, that it
 10 was major depression with psychotic features, it was
 11 schizophrenia or that it was schizoaffective
 12 disorder.

13 I don't happen to like the conception
 14 of schizoaffective disorder and don't use it other
 15 than for Court because -- I use it in Court only
 16 because it's in the book. I don't really believe in
 17 it as a separate condition, and the researchers I
 18 speak to about it don't believe in it either.

53

25 Q. You consider it, what you have kind of

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1 referred to as contextual factors from 1999; is that
 2 correct?

3 A. Yes, because the question is has mental
 4 disease impacted her life where she is, what's
 5 happening, what's the context.

6 Q. All right. And what were your findings
 7 relative to those?

8 A. Well, I thought that there were
 9 significant parts of what was going on in the
 10 context of Andrea Yates' life that help explain her
 11 decline and how it came to this. And, so, what I
 12 have put in my findings here are the ones I believe
 13 to be significant.

14 Q. All right. And what was the first -- not
 15 necessarily the first significant thing, but what do
 16 you list first to explain to the jury as a
 17 significant contextual factor?

18 A. I think it's unescapable that living in a

19 bus with a family; three children and a newborn and
 20 a husband is a big stressor for someone. That's a
 21 significant part of a woman's context at that point
 22 in time. So, I believe that that can't go
 23 unnoticed, that in 1999, as she gets sicker to the
 24 point everyone notices it, that plays a part in it.
 25 Q. All right. As a stressor. And the word

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16 Q. Did you have a finding related to home
 17 schooling?
 18 A. Yes, I thought that the fact that she was
 19 home schooling in that circumstance, living in the
 20 bus with the children, was another enormous
 21 stressor. It's tough for anybody to raise multiple,
 22 small children. To be home schooling them, too,
 23 is -- is an awful lot to ask. To be home schooling
 24 them in a bus is, I think, something anyone would
 25 find quite stressful.

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1 Q. All right. What was your next finding?
 2 A. Well, it's in that context that she's
 3 feeling depressed and overwhelmed; and she describes
 4 her feelings at that time in various ways, depending
 5 on when she's interviewed. But what she told me in
 6 November was that she felt depressed and overwhelmed
 7 at that time and that she asked her husband for
 8 help. His attitude was that she needed some rest;
 9 and he suggested that if she talk to her mother or
 10 if she talked to her friend, Debbie, about it, that
 11 that would make it better.
 12 And to try to get her some rest, he
 13 took her over to her mother's house which is where
 14 she took the overdose of Trazodone, with her
 15 father's medication, which in that context to take
 16 an overdose of sleeping pills when you are feeling
 17 tired, aren't sleeping, and are told to go take a
 18 rest, has more than one meaning. And when her mom
 19 goes in to get her to wake her up to breast feed,
 20 she said she couldn't because she had taken an
 21 overdose of sleeping pills, and that's when she gets
 22 hospitalized; first at Ben Taub in the emergency
 23 room and then at Methodist.
 24 Q. Doctor, she was -- as you've noted, Andrea
 25 Yates was treated at Ben Taub and admitted to the

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1 Methodist Hospital in June, kind of a -- that's what
 2 happens, you go to the emergency room and then she's
 3 admitted to Methodist Hospital; is that correct?
 4 A. Yes.

5 Q. What was the next significant finding that
 6 you made in this contextual situation?
 7 A. Well, then she's discharged from the
 8 hospital, from Methodist, and she has a prescription
 9 for Zyprexa. Dr. Flack had been treating her there.
 10 She's given a prescription for an antipsychotic
 11 medication and she flushes it down the toilet
 12 without taking it. And she would later say that she
 13 didn't want to take it.

14 And the most consistent story she's
 15 indicated is that she didn't think she was
 16 psychotic, didn't want to be thought of that way and
 17 resented someone calling her that.

18 Q. Now, next -- the next significant factor,
 19 I believe that you found, was an incident with her
 20 husband and a knife?

21 A. Yes. That incident, which also occurs in
 22 1999, has been described in quite a variety of ways
 23 in different records. What all accounts agree on is
 24 that she took a kitchen knife into the bathroom and
 25 that her husband took it from her. Sometimes it's

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1 described as if she had had it to her throat,
 2 sometimes it's described as if she actually nicked
 3 herself and sometimes it's described with varying
 4 degrees of intent, but everyone agrees that a knife
 5 was taken from her.

6 Q. What did you -- what was the significance
 7 of this finding? Why is this finding significant
 8 rather than some other finding?

9 A. Well, on a couple of levels it's
 10 significant. First, it is sometimes said that --
 11 that's even been described as a suicide attempt.
 12 What she has said repeatedly is that she intended to
 13 cut herself, intended to kill herself. And so, of
 14 course, that's a significant part of her psychiatric
 15 history.

16 The context in which it's happening
 17 is, she asked for help, gets admitted and a week
 18 away from the stressors, only with an overdose, and
 19 now she's discharged again back to the same
 20 environment, the same circumstance.

21 Once again, when she's at her
 22 mother's house, there's a dramatic incident that
 23 leads to hospitalization. And in this case, the
 24 dramatic incident was with the knife rather than the
 25 pills, so she's upped the ante.

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1 Q. You said upped the ante?

2 A. Yes. I can't know -- no one can know
 3 whether this is conscious or unconscious, but as a
 4 psychiatrist, I can't help but notice that she got

5 help the first time only with an overdose. She
6 didn't get enough help, so now she's going to do
7 something more, which can get her more help. And,
8 in fact, this time it not only got her hospitalized,
9 it got her a house.

10 Q. All right. And she was admitted to Spring
11 Shadows Glen. And at some point during that time
12 was when Russell Yates purchased the house. They
13 were intending to move out of the bus; is that
14 correct?

15 A. Yes.

16 Q. What was the next significant event during
17 this period of admission to Spring Shadows Glen
18 Hospital or the next significant finding that you
19 made?

20 A. Well, I think not on this chart, but
21 around this time is when Dr. Thompson's report was
22 written. And Dr. Thompson's report is the only
23 thing in the entire record prior to the crime that
24 suggests that Mrs. Yates ever had, ever gave some
25 basis for saying she had hallucinations.

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1 Q. The only report prior to the crime?

2 A. The only thing written by a mental health
3 professional -- well, let me phrase it differently.

4 There is some suggestive nursing
5 notes in which the point as to when she might be
6 hearing voices, where she checked boxes without
7 giving data, but the only person who gives any data
8 consistent with the possibility of hallucinations is
9 Dr. Thompson's report in 1999, and that report
10 struck me as exceedingly important.

11 MR. PARNHAM: Your Honor, may I ask
12 question and answer at this time?

13 THE COURT: Yes, sir.

14 Q. (By Mr. Owmbly) That report struck you as
15 important, and would you tell the jury why?

16 A. Because it suggested the possibility of an
17 important symptom that isn't documented anywhere
18 else with any data; that is, I make a big
19 distinction between suspecting something and
20 actually being able to give an example of why you
21 think it's true.

22 And there are examples in that
23 report, which I learned only recently, he didn't
24 write.

25 Q. And by "he didn't write," you mean --

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1 A. Dr. Thompson.

2 Q. All right. And you are talking about the
3 fact that some of the things in that report were
4 actually observations by an assistant?

5 A. Yes.

6 Q. You note on the chart that ECT was
7 recommended by Dr. Thompson and Dr. Rios?

8 A. Yes. Dr. Thompson recommended it based on
9 the full evaluation that he had. Dr. Rios is a
10 specialist, a psychiatrist who has experience with
11 ECT who saw her specifically to evaluate whether or
12 not the electroshock treatment would be appropriate
13 for her. They both recommended it.

14 Q. But she did not receive electroshock?

15 A. No, both she and her husband refused it.

16 Q. What was the significance of your finding
17 there?

18 A. Well, I think it was a very appropriate
19 treatment to recommend and consider and tragic that
20 it wasn't provided. Because, although we still
21 don't know what effect it would have had, it may
22 have had a dramatic effect on her.

23 Q. And I believe the next finding concerns a
24 move into the house?

25 A. Yes. It's after that discharge that the

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1 family moves from the bus into the house. The house
2 had been purchased by her husband while she was in
3 the hospital. She had never seen it. She had no
4 say in the decision of which house. But she's
5 discharged from the hospital and goes home to this
6 house, which, of course, removes the great stressor
7 of living in the confined spaces of the bus, but
8 it's a new stressor of a new environment with the
9 change and the move.

10 Q. As you said, any move, even a good one,
11 can stress?

12 A. Yes.

13 Q. You found it significant that Andrea
14 Yates, as you put it, secretly went off medication;
15 is that correct?

16 A. Yes, she had been followed by
17 Dr. Starbranch after the discharge from Spring
18 Shadows Glen. Dr. Starbranch had put her on Haldol
19 and was continuing to treat her with antidepressants
20 and Haldol, but then Mrs. Yates, unbeknownst to
21 anyone, stopped taking all the medication in
22 November of 1999 and kept going to Dr. Starbranch
23 for some months after that, finally revealing in
24 January of 2000 to Dr. Starbranch that she had
25 stopped her medication.

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1 Q. Now, there were other factors leading from
2 1999 into 2000 related to medical advice she had
3 been given as opposed to behaviors that she took
4 Can you discuss some of those findings with the

5 jury?

6 A. Well, Dr. Starbranch had considered that
7 Mrs. Yates suffered a postpartum depression. And¹¹
8 she was not the only one who thought that might be
9 the right diagnosis, but the lesson that Dr.
10 Starbranch attempted to teach Mr. and Mrs. Yates was
11 that because she had had a postpartum depression, it
12 was important for her not in the future to be
13 pregnant because of the high risk of recurrence.

14 Dr. Starbranch wrote in the chart if
15 she becomes pregnant again, it virtually guarantees
16 a reoccurrence. And both Mr. and Mrs. Yates had
17 been talking about wanting to have more children,
18 wanting to have as many children as they could. And
19 you can see in the hospital records the frustration
20 of the staff in trying to educate them and getting
21 nowhere on that.

22 MR. PARNHAM: Your Honor, I request
23 question and answer --

24 THE COURT: Let's proceed in question and
25 answer.

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1 MR. PARNHAM: -- as opposed to narration.

2 Q. (By Mr. Owmbly) You mentioned that the
3 hospital charts reflect there were, you said
4 frustration on the part of the hospital staff in
5 trying to educate them about this danger of
6 reoccurrence due to pregnancy. What makes you say
7 that the records reflect frustration?

8 A. Well, it's the use of explanation points,
9 the repetition of it in the nursing notes.
10 Dr. Starbranch's note on this is very strongly
11 worded.

12 But there were multiple efforts by
13 the staff, not just in Spring Shadows, but elsewhere
14 to educate Mrs. Yates and Mr. Yates on the
15 importance of staying on medications and on the
16 importance of not having another pregnancy; and if
17 she did, despite that advice, that she should be
18 medicated during and after the pregnancy.

19 Q. Now, did she follow the advice regarding
20 medication during and after pregnancy?

21 A. No. Against advice she got pregnant --

22 MR. PARNHAM: Objection. He's answered
23 the question.

24 THE COURT: Sustained.

25 Q. (By Mr. Owmbly) Did she get pregnant

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1 against medical advice?

2 A. Yes.

3 Q. And what was significant as far as your
4 contextual findings about that?

5 A. Well, it's one of the repeated examples of
6 Mrs. Yates not following the advice of her doctors
7 and thinking she knows best and maintaining control.
8 She's the one deciding what to do. She will not
9 take the medicine unless she wants it. She will get
10 pregnant when she wants to. She's not taking the
11 medicine during pregnancy.

12 Q. Mary, the fifth child, was born in
13 November and we are into 2000 now. And I think
14 you've explained, that good or bad, a pregnancy like
15 that acts as a stressor?

16 A. Yes.

17 Q. Again, she failed to -- well, let me ask
18 you this. After the baby was born, did she go back
19 to the doctor or did you find records indicating she
20 went back to the doctor to find out how to medicate
21 and treat herself for her own problems after the
22 baby was born?

23 A. No, she didn't.

24 Q. Did she abandon any of the other
25 stressors? For example, did she stop home

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1 schooling?

2 A. She was continuing to home school even
3 with another newborn.

4 Q. And Mary, the last child, was born late in
5 the year 2000. Her father had some problems early
6 in 2001. Did that have an impact on her life?

7 A. Yes, it had a big impact. Parental
8 illness, injury and death usually do. And in
9 Mrs. Yates' case, it had a particularly big impact.
10 Her father fell in January and declined badly until
11 he died on March 12th. She was very affected by
12 that.

13 Q. All right. Well, I don't want to use the
14 word led to, but I guess the next significant event
15 was the admission to Devereux Hospital; is that
16 correct?

17 A. Yes.

18 Q. And would you explain to the jury the
19 context that -- the significance that you attached
20 to this contextual factor?

21 A. Well, there are -- there's more than one
22 version of how well she did between November and
23 March. There are different versions of this that
24 are discrepant, but everyone agrees she got
25 extremely depressed after her father's death and was

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1 functioning so poorly that she needed to be admitted
2 again; and that's what led to the first Devereux
3 admission.

4 Q. All right. She was released from

5 Devereux, and what was the next significant event
6 that you found?

7 A. Well, first of all, it's not clear how
8 improved she was the first time she was released
9 from Devereux, but what gets her back into the
10 hospital, back to Devereux, is the incident in which
11 she's filled the bathtub with water. While Dora
12 Yates is there, Rusty comes home; and they don't
13 know what to make of that. She doesn't give a
14 reasonable account of why she did that, and they
15 take her back the next day or the day after.

16 Q. You state that after this happened she was
17 admitted to Devereux; is that right?

18 A. Yes.

19 Q. Now, I believe while at Devereux, again,
20 ECT, electroconvulsive therapy, was recommended?

21 A. It was recommended by Dr. Saeed.

22 Q. What happened in relation to that advice?

23 A. It was -- the advice was rejected. She
24 never got ECT.

25 Q. All right. Now, Doctor, one of the things

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1 you mentioned a little earlier -- and take me back
2 to slide 26 -- was ECT recommended by Drs. Thompson
3 and Rios.

4 And you mentioned, also, this report
5 contains the first evidence that there may be some
6 psychosis. Is that -- would that be a fair thing to
7 say, or how did you describe it?

8 A. Well, it's the first time there is a
9 description of what could have been a hallucination.

10 Q. And why do you say what could have been a
11 hallucination?

12 A. Because there is more than one type of
13 symptom that can account for a patient saying
14 something like I had a vision. And the three most
15 common things that account for somebody saying that
16 are that they are talking about a thought that came
17 into their head where they pictured something,
18 that's imaginary, that's imagination. That's not
19 psychosis. Might be abnormal, but it's never
20 psychosis to have a thought pop into your head.

21 The second possibility is that it is
22 true that they are hearing something, but they are
23 mistaken about what they are hearing. That's a
24 distortion. That's called an illusion. That's like
25 if the wind blows at night and you hear your name

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1 called. That's not a hallucination, that's an
2 illusion and that's not psychotic. Normal people
3 can get that.

4 And then, third, is a true

5 hallucination in which you hear something when there
6 is nothing there to hear and it sounds as though
7 it's coming from the outside world through your ears
8 and you are positive you heard it because you had a
9 very realistic experience.

10 Q. I suppose it's important for the therapist
11 to make a diligent attempt to understand what he's
12 hearing from the patient?

13 A. Only if you want to know what symptom it
14 really is. If you want to know what symptom it
15 really is, you have to explore that detail with the
16 patient, and here there was a description that
17 didn't settle the question.

18 Q. So, from the descriptions that you read,
19 mainly summarizing Dr. Thompson's report, could not
20 settle for you whether these were psychotic
21 hallucinations, illusions, thoughts with
22 imagination, or something else that was not
23 psychotic?

24 A. Right. The thing that sounded most likely
25 was obsessional intrusive thoughts, but I couldn't

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1 be sure which because the other questions had not
2 been asked.

3 Q. Did you explore the issue with Andrea
4 Yates during your interview with her?

5 A. Yes.

6 Q. And did you make an excerpt of that
7 portion of the interview?

8 A. I hope so.

9 Q. Yeah, you did.

.....

24 Q (By Mr. Owmbly) Doctor, we mentioned that
25 you had four tapes that comprise the entire

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1 interview of Andrea Yates; is that correct?

2 A. Yes.

3 Q. And out of that, you prepared six excerpts
4 which you call Excerpt A through G and which I have
5 labeled State's Exhibits 231 through 237.

6 What I would like to do now -- we've
7 provided the Defense with the transcript of the tape
8 and they have had a copy of the entire videotape.

9 MR. OWMBY: What I would like to do now is
10 offer the excerpts into evidence, State's
11 Exhibit No. 231 through 237.

12 MR. PARNHAM: We have no objections to
13 that, Your Honor.

14 THE COURT: As I understand it, is that
15 the excerpts on one exhibit?

16 MR. OWMBY: No, Your Honor. They are all

17 separate.
 18 THE COURT: 231 through 237?
 19 MR. OWMBY: Yes.
 20 THE COURT: No objections?
 21 MR. PARNHAM: No, that's fine, Judge.
 22 THE COURT: All right.
 23 Q (By Mr. Owmbly) What we were talking about
 24 last was the thoughts that -- you gathered
 25 information about those thoughts of Andrea Yates

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1 from Dr. Thompson's report; is that correct?
 2 A. That was one source.
 3 Q. That was one source. And you -- I think
 4 the last you had told the jury was that your best
 5 classification of them was this obsessional
 6 intrusive thought; is that correct?
 7 A. That's what the data in Dr. Thompson's
 8 report seemed to me to be saying that, although he
 9 drew a different conclusion, he said they were
 10 hallucinations.
 11 Q. But based on the data he was recording,
 12 this appears to be obsessional thoughts to you?
 13 A. That's what it looked like to me because
 14 there was no evidence of hallucination prior to the
 15 crime.
 16 Q. And when you said prior to the crime, you
 17 mean throughout this history, no evidence other than
 18 this and you've talked about some isolated entries
 19 without supporting data of hallucination?
 20 A. There were suspicious things I regarded as
 21 suspicions of hallucination. The one person that
 22 said he thought she had them was Dr. Thompson based
 23 on the comments about vision of a knife or image of
 24 a knife that happened in '99.
 25 Q. And did you ask her about these thoughts

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1 when you interviewed her in November?
 2 A. Yes.
 3 Q. Of 2001?
 4 A. Yes, I did.
 5 Q. And is that what's contained, basically,
 6 in what you call Excerpt A and we labeled State's
 7 Exhibit 231?
 8 A. Yes.
 9 MR. OWMBY: And we asked to publish that
 10 to the jury at this time. Thank you.
 11 (Video played for the jury.)
 12 Q. (By Mr. Owmbly) Except for the very, very
 13 end, would you explain to the jury the significance
 14 of what you found from that part of your interview?
 15 A. Well, first, let me say I had a far better
 16 quality tape than this. The color is off and the

17 sound is bad on this.
 18 What happened there is that she
 19 talked about the thoughts that she had about a knife
 20 and said that -- or agreed when I said it is really
 21 more thoughts and fear you had and she said it was.
 22 She didn't give me a description there of anything
 23 that's remotely hallucination.
 24 Q. So she told you there was a thought and a
 25 fear --

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1 A. Yes.
 2 Q. -- that she had. And, mentally, she is
 3 reflecting back on a -- something that happened in
 4 1999?
 5 A. That's right.
 6 Q. That's how she characterized it when you
 7 interviewed her?
 8 A. Yes.
 9 Q. You also mentioned among the contextual
 10 factors that in 2001 she had filled a bathtub with
 11 water?
 12 A. Correct.
 13 Q. Now, did you find in your review of the
 14 material any explanations that would help you kind
 15 of explain the significance of filling the bathtub
 16 with water?
 17 A. There were several contradictory
 18 explanations that I saw at various points, all of
 19 which were given after her arrest. There is no
 20 explanation before the arrest except what she tells
 21 Rusty and Dora, which is, I might need it.
 22 After her arrest, there are a variety
 23 of different explanations. Sometimes she told
 24 doctors that she was thinking of drowning the
 25 children then. Sometimes she said she thought she

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1 might drown the children then. Sometimes she said
 2 that she might need it because they might have their
 3 water cut off by the utility company; and at those
 4 times, she said that she wasn't thinking of drowning
 5 the children then.
 6 Q. Now, what explanation did she give you?
 7 A. It was the utility company truck
 8 explanation rather than drowning the children.

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.....
 3 Q. (By Mr. Owmbly) One of the things I want
 4 to ask you about before I ask you to explain your
 5 findings in relation to the excerpt, you just used a
 6 phenomenon known as thought blocking, and there was

7 a long pause at the first.

8 Can you explain what thought blocking
9 is and whether that was an example of thought
10 blocking?

11 A. Well, thought blocking is when an
12 individual, due to a psychosis, has interference
13 with their thoughts and doesn't have the ability to
14 follow a train of thought and has the thoughts
15 interrupted, so that they are lost and they won't
16 remember where you left off. This is certainly not
17 an example of thought blocking.

18 What it does seem to be an example
19 of, and what I would have called it, had you asked
20 me, is speech latency, a very long interval, like 25
21 seconds or more, before she answered. But she
22 ultimately answered exactly the question that is
23 asked. It's not as though she forgot the question.
24 It was not that her thought was blocked. It could
25 be that she's thinking of an answer, but I think

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1 it's because she's still depressed at this time that
2 I'm seeing her. And her depression has often led to
3 long pauses before answering.

4 However, she doesn't give long pauses
5 on all questions. It's on the significant
6 questions, and that was an example of a significant
7 question.

8 Q. And would you explain how this excerpt,
9 how this portion of your interview fits in with your
10 finding?

11 A. Well, one of the theories that's been
12 proposed is that Mrs. Yates had worked herself up to
13 almost drown the children that day in May, but what
14 she's telling me in this interview directly
15 contradicts that theory. It also illustrates that
16 there is some confusion on her part. I think she's
17 confused during the excerpt that was just shown and
18 she is confused because of her illness and because
19 we are talking about very difficult things for any
20 mother to talk about.

21 But it makes it such that I would not
22 be able to say that she filled the tub in May to
23 kill the children. She's telling me in a seemingly
24 honest moment, another not very sensible reason for
25 filling the tub, that didn't involve killing the

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1 children, while recalling that she wouldn't have
2 thought to kill them while there were witnesses.

3 Q. All right. And I assume that the fact
4 she's telling you that she wouldn't have filled the
5 tub while there were people there, is that
6 significant to any finding?

7 A. If she were charged with a crime that day,
8 it would be, but she didn't.

9 Q. Continuing on, did there -- did you notice
10 in the record whether Dr. Saeed ever advised that
11 someone should be with Andrea Yates?

12 A. Yes. In April of 2001, Dr. Saeed
13 recommended that someone be with her.

14 Q. And what did you find significant about
15 that?

16 A. I think that's exactly right. When you
17 have a mother who is this severely impaired,
18 somebody has to be with her at all times. It's not
19 safe to leave her alone with the children.

20 Q. And you say you found in the records that
21 he told Mr. Yates that?

22 A. Yes, since it's Mr. Yates who would be the
23 only one who could control it. Mrs. Yates wasn't in
24 a position to ensure that happened.

25 Q. Now, you've mentioned that, that what you

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1 described or what your best estimate as to the
2 proper description of obsessional thoughts in '99
3 was, as close to any description of hallucination or
4 delusions to an M.D.; is that correct?

5 A. That wasn't to an M.D., but, literally,
6 the only description of something that someone might
7 mistake for a hallucination prior to the crime was
8 the knife talk in '99 to Dr. Thompson's assistant.

9 And some things that I haven't mentioned yet about
10 the television characters talking to her, that were
11 known only to Mrs. Yates and Mr. Yates in 2001. No
12 doctor was told about that.

13 Q. All right.

14 A. That could be taken as a hallucination,
15 again inaccurately, but it could be.

16 Q. But other doctors asked her about whether
17 she was having hallucinations?

18 A. Every doctor asked her constantly whether
19 she had hallucinations and she always said no or
20 didn't answer, when she was close to mute.

21 Q. And you mentioned that there were two
22 delusions known, as you put it, known only to Mr.
23 and Mrs. Yates and they were kept secret from
24 everyone else. Would you explain what you meant by
25 that?

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1 A. As far as I can tell from all sources
2 combined, Mrs. Yates had a belief from the time she
3 was hospitalized at Spring Shadows Glen in 1999,
4 that there might be or were cameras in the ceilings
5 of several rooms in the home that she moved into.
6 It started while she was still in the hospital at

7 Spring Shadows Glen. But when they moved into the
8 home, she thought it then. And throughout the time,
9 moving into that home in '99 until the time of the
10 crime, she continued to think there might be or were
11 cameras there.
12 She told me that she spoke to Rusty
13 Yates about that, told him of her concerns about
14 there being cameras there, but it's never conveyed
15 to any of the doctors. Even though she saw multiple
16 doctors over those years, none of them was ever told
17 about this. Likewise, in the two weeks before the
18 homicide, when Mrs. Yates thinks the cartoon
19 characters are talking to her family, talking to
20 her, making comments about her, which is a symptom I
21 have called the delusion of reference. There are
22 other names people might want to apply to it, but
23 it's a series [sic] symptom, whatever it is, that delusion
24 she mentioned to Rusty Yates, she told me Rusty
25 Yates told her that she was just imagining things

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1 and he did not tell Dr. Saeed about that symptom.
2 So those are the only two psychotic
3 symptoms documented anywhere or known anywhere prior
4 to the homicide, and the only people who knew them
5 were Mr. and Mrs. Yates. No doctors knew about
6 either of those.
7 Q. Now, Rusty, Russell Yates, Mr. Yates did
8 mention according to a note by Dr. Saeed that I
9 believe the note was -- seems like, she seems a
10 little paranoid. Do you recall that?
11 A. Sure. And many people over the year
12 noticed she was paranoid, but being paranoid isn't a
13 psychotic symptom.
14 MR. PARNHAM: Judge, that's not
15 responsive.
16 THE COURT: Sustained.
17 Q. (By Mr. Owmbly) Is being paranoid a
18 psychotic symptom?
19 A. Not in and of itself. People get paranoid
20 because they smoke grass or had too much to drink or
21 are withdrawing from alcohol or had had that
22 personality or had bad experiences or a host of
23 things. Psychosis can make people paranoid. That's
24 not the only thing that does.
25 Q. Now, you noted that -- or Dr. Saeed told

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1 Mr. Yates that someone must be with his wife, but
2 she was left alone; was that correct?
3 A. Yes. And, of course, the significance of
4 that is that it gives her the opportunity to commit
5 the crimes.
6 MR. OWMBY: Your Honor, may we approach?

7 THE COURT: Yes, sir.
8 (Bench conference.)
9 MR. OWMBY: I didn't notice what time you
10 said when you said an hour. I'm at a kind of a
11 breaking point.
12 THE COURT: 6:30.
13 (In the jury's presence)
14 Q. (By Mr. Owmbly) Doctor, as far as your
15 findings that you have expressed as significant, as
16 far as your testimony here today to the jury that
17 would conclude the contextual findings through 2001,
18 at least the ones you've listed here?
19 A. Yes, I think those are the major
20 situational issues.
21 Q. Now, I think the next area of analysis
22 that you embarked on was an evaluation of her
23 knowledge of the wrongfulness of the act; is that
24 correct?
25 A. Correct.

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1 Q. And you kind of divided your analysis
2 relative to the offense, and would you explain to
3 the jury how you did that?
4 A. Well, I divided the offense into three
5 phases. The phase before it happened; that is, the
6 prehomicide phase; the phase while it's happening;
7 that is, the homicide phase; and the time period
8 afterwards, the posthomicide phase. And I do that
9 in part to break it down into more manageable sizes,
10 but also because that time sequence often matters if
11 they are trying to analyze what she thought at
12 particular times or if you are trying to look at how
13 to prevent such things, breaking it down into the
14 three phases has proved very helpful.
15 Q. Now, you also made an excerpt from your
16 interview which contains major portions of what she
17 told you about the prehomicide phases; is that
18 correct? Would that be Excerpt C?
19 A. Yes, that's right.
20 Q. All right. And let me do a little
21 housekeeping here. Doctor, I'm going to show you
22 some points from your evaluation that include the
23 prehomicide phase through what you call the
24 posthomicide phase. I'm going to ask you to look at
25 these and see do they contain the significant points

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1 of your testimony here today and would they aid you
2 in your presentation to the jury?
3 A. Yes. These are what I regard as the most
4 significant points bearing on the question of
5 knowledge of wrongfulness.

6 MR. OWMBY: Your Honor, we are going to
 7 offer State's Exhibit 238 and I'll show counsel
 8 what we are actually offering because there is
 9 one --
 10 MR. PARNHAM: State's Exhibit 238,
 11 consisting of four pages, Your Honor, we have
 12 no objections.
 13 THE COURT: State's 238 is admitted
 14 without objection.
 15 Q. (By Mr. Owmbly) Now, Doctor, the excerpt
 16 that you made to kind of talk about, the portion of
 17 your interview that concerns the prehomicide phase
 18 that is fairly lengthy, do you think it would be
 19 better to go through some of these points or show
 20 that excerpt now, then go over these points?
 21 A. It's better to show the excerpt.
 22 Q. And that would be State's Exhibit Excerpt
 23 C, 233, Excerpt C, 233, and I have a transcript with
 24 that also. I'll tender the copy to counsel.
 25 MR. ODOM: We have a copy. Thank you.

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22 (Video played for the jury.)
 23 Q. (By Mr. Owmbly) Now, this was your -- the
 24 portion of your interview in which you explored with
 25 Andrea Yates the prehomicide phase; is that correct?

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1 A. Yes. It's not the only part of the
 2 interview that covered that, but it was the main
 3 consecutive sequence that covered it.
 4 Q. Would you explain to the jury the
 5 significance of this interview in relation to the
 6 knowledge of wrongfulness, at least in the
 7 prehomicide phase of your evaluation?
 8 A. Well, the first point is that Mrs. Yates
 9 indicates that at that time before the homicide she
 10 had the idea of killing her children and she
 11 attributed the origin of that idea to Satan. So, of
 12 course, the idea comes from her mind, but she's
 13 mistakenly thinking Satan put it there. The fact
 14 that she regards it as coming from Satan is the
 15 first indication of her knowing that this is wrong.
 16 Because she recognizes even the idea of killing your
 17 children is an evil idea that comes from Satan. She
 18 doesn't think this is a good idea that comes from
 19 God. She thinks it's an evil idea that comes from
 20 Satan and she thought it was Satan who was somehow
 21 urging or encouraging or recommending that she do
 22 this. So she knows already it's a bad idea.
 23 Q. Now, you found that she concealed these
 24 thoughts?
 25 A. Yes. She did talk to at least Debbie

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1 Holmes, and I think also Rusty about concerns for
 2 the presence of Satan, the influence of Satan, just
 3 as she had prior conversations with Rusty and with
 4 Michael Warnike [sic] about her spiritual concerns about
 5 the devil and Satan and demons. The Warnike
 6 writings are filled with that talk. It's not that
 7 she kept a secret her belief there were demons and
 8 that Satan was trying to do things to people here on
 9 earth. What she concealed was the thought of
 10 harming her children and the plan to drown them.
 11 That part she didn't share.
 12 Q. Why do you find that significant in this
 13 prehomicide phase of the evaluation?
 14 A. Well, ordinarily, when someone keeps a
 15 criminal plan secret, they do it because they know
 16 it's wrong. That's why you keep it secret, hide it
 17 from other people.
 18 She has offered another explanation
 19 of why she didn't share this plan to kill the
 20 children. The explanation she offered was that if
 21 she talked about it, it would happen. If it's true
 22 --

23 MR. PARNHAM: Judge, we object and ask for
 24 question and answer at this time. I thought we
 25 were going to get a question.

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1 THE COURT: I think he was still answering
 2 the question.
 3 Q. (By Mr. Owmbly) You were saying if what
 4 was true?
 5 A. If it's true that she believed that
 6 killing the children would save them, then why would
 7 she not want it to happen. She would want to talk
 8 about it so it came true and the children would be
 9 saved. So, I concluded at that point that she's
 10 keeping it secret, she knows that other people are
 11 going to stop her, that it's wrong, that it's a bad
 12 idea; and she admits as such. She admits that she
 13 knows people will stop her.
 14 Q. Now, we've heard kind of two different
 15 ways, I think, in your testimony of looking at this.
 16 We've heard a theory called rationality within
 17 irrationality and we've also heard a theory that I
 18 can't describe, but it is sort of like we have these
 19 delusions -- and you might have heard it during Dr.
 20 Puryear's testimony. We have these delusions and we
 21 cannot put logic on it.
 22 And it appears to me that's what you
 23 are saying, that she has this, and you are not
 24 calling it a delusion, I understand, but you are
 25 saying she has this thought to harm her children but

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1 she doesn't follow the logic of that thought, which
2 is to tell people that I'm going to save the
3 children because they might be -- can you explain
4 that to me, if you understand that question?

5 A. Well, it's an area of great confusion and
6 I don't know that I can make more sense of it than
7 anyone else has. It is true when a patient is
8 psychotic and has disordered thinking that there can
9 be logical parts and illogical parts and
10 contradictory parts. So, we can't always apply
11 logic to it, that's true. There is no one rule to
12 say it must be logical or must be all illogical. It
13 can be a mixture.

14 Q. But in this case you are -- it appears you
15 are applying some logic to this thought. Why do
16 you?

17 A. Because at this point in time when she's
18 concealing thoughts which we are saying goes on for
19 a month, it is a plan to drown the children, when
20 she has an opportunity, when she's psychologically
21 ready. She already knows that she's not going to do
22 it when there are other people there. She admits
23 that that's because they would stop her. And that
24 reflects her awareness that other people wouldn't
25 want her doing this.

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1 Q. And your last point was that she waited
2 for an opportunity when no one was home, which is --
3

4 A. The ultimate avoidance of witnesses to her
5 and here she admits that she waited because she knew
6 they wouldn't let her do this.

7 Q. You also talked with her about the concept
8 of the seven deadly sins and her thought about the
9 seven deadly sins. Could you explain the
10 significance of that?

11 A. Well, she was interpreting the movie *Seven*
12 and, obviously, thinking more than is healthy to
13 think about sins and what they are. She wasn't
14 correct about what the seven deadly sins are.
15 Murder isn't even one of them. But she believed it
16 was, and that's the important thing.

17 She thought that killing the children
18 was sinful. That's another piece of evidence that
19 she knew it was wrong. If you know it's a sin, then
20 you know it's wrong. Just as if you know Satan
21 wants such things to happen or believe that, you
22 know it's wrong.

23 Q. She also mentioned -- and I can't remember
24 if it's in this tape or the other tape -- that she
25 was not raising the children properly?

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1 A. Correct. The explanation that she gave to
2 the police and something she's always said to
3 everyone is that she wasn't raising the children
4 properly, so that they would not grow up to be
5 rebellious. She wasn't able to give them enough
6 attention. She wasn't able to take care of them
7 well enough; and that if they continued to have
8 inadequate supervision and inadequate guidance, they
9 could become further rebellious, disobedient, get in
10 trouble, might become a burden on society.

11 She said that from the day of her
12 arrest on. She's always acknowledged that. That's
13 not delusional material. She's carrying it too far
14 and being so guilt ridden about it. That's because
15 she's depressed, but it's true if she stays that
16 depressed and dysfunctional, she's not going to be
17 an adequate mother. She can't adequately home
18 school them. The children will become increasingly
19 problematic and not going to be well-disciplined. I
20 mean, she's not wrong about that.

21 Q. And, obviously, as you said, it's not a
22 delusion. She is sick and can't do what --

23 A. It's because --

24 Q. -- what she ordinarily would?

25 A. Yes, because she's sick. She can't be an

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1 adequate mother. She's recognizing that and feeling
2 terrible about that. She's feeling very guilty
3 about it and she feels so guilty about it because
4 she's so depressed.

5 Q. You also, I believe, in the next -- the
6 next conclusion you reach finding in this
7 pre-homicide phase, you say she may have believed her
8 children were being tormented. What did you mean?

9 A. She describes rather consistently since
10 June 21st when she first said that Satan was
11 tormenting her.

12 Q. Right. This would be June 21st after the
13 homicide?

14 A. The day after the homicides was the first
15 time she said Satan tormented her, and since then
16 she's been consistent in saying she felt tormented
17 by Satan. Sometimes she has said that the children
18 might be Satan's next target, might be tormented by
19 Satan. Sometimes she said that they were going to
20 go to hell if they continued in this course. Other
21 times that doesn't occur to her and she doesn't
22 mention anything about them going to hell.

23 There is contradictory information in
24 different interviews about whether she thought the
25 children were actually in danger from Satan.

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1 Sometimes she says yes and sometimes she doesn't.
 2 But giving that idea the benefit of the doubt, even
 3 assuming that not just since June 21st, but even on
 4 the day of the crime she believed that the children
 5 were in danger from Satan, of being tormented or
 6 ruined or going to hell, she didn't do the other
 7 things you would expect someone to do if they had
 8 that delusion.

9 MR. PARNHAM: Go ahead.

10 A. That is other non-lethal ways of
 11 protecting the children.

12 Q. (By Mr. Owmbly) So, in your experience,
 13 you would expect someone with this delusion to try
 14 some non-lethal way to resolve this problem?

15 A. Well, I do expect people with delusions of
 16 imminent harm where somebody is going to get hurt,
 17 especially a loved one, to act as if that were true
 18 and to take steps to try to protect the one they
 19 love; and that can be calling the police, calling
 20 the FBI, calling a priest or a minister, pastor,
 21 sending the children away to a safe place. That
 22 doesn't involve killing them, take oneself away from
 23 the children, even suicide, but these are
 24 alternatives that are non-lethal to the children
 25 that, that I expect a person with that delusion to

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1 at least consider.

2 Q. You have the same type of, kind of
 3 interpretation on the belief that Satan was in her.
 4 Would you explain the significance of your findings
 5 around that?

6 A. Well, her answer to the question has to do
 7 with the -- with both the timing and her actions.
 8 From June 21st, the day after the homicides, until
 9 some later time that, I don't remember the exact
 10 date, she maintained that Satan was in her in a very
 11 direct way, and even said at times in June of 2001
 12 or July that she was Satan.

13 Now, there is no time prior to the
 14 homicides that she said that she was Satan. But
 15 even if she thought that before and during the
 16 killings, if she thought she were Satan, why doesn't
 17 she do the things you would expect someone to do who
 18 believed they were Satan or that Satan was in her;
 19 and she doesn't.

20 Q. Which is?

21 A. Pardon?

22 Q. What would you expect the person to do
 23 with this type of thought that they were?

24 A. I would expect if someone feared that
 25 Satan was invading them or in them or controlling

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1 them or influencing them, I would expect them to
 2 seek counsel from whomever they believe could give
 3 good spiritual guidance in her case, Rusty Yates and
 4 Michael Warnike or one could hope some sensible
 5 religious leader who could guide her.

6 Q. Perhaps her friend Debbie Holmes?

7 A. Yes. And she did talk to Debbie about her
 8 concerns about Satan and asked Debbie to pray for
 9 her, but she never took it to the extreme of saying
 10 Satan is taking over or she had become Satan.

11 Q. Now, you said they never did that until
 12 June 21st, and I'm assuming that you are saying
 13 because of this thought, shows up in Dr. Ferguson's
 14 interviews on June 21st; is that correct?

15 A. Yes, and because there is a dramatic
 16 difference between everything we know about Andrea
 17 Yates up to and through June 20, 2001, and
 18 everything we know from June 21st, 2001, through Dr.
 19 Ferguson's eyes for six weeks or more thereafter.

20 Q. All right. And I want to ask you a few --
 21 why do you say that?

22 A. I say it from the data. We have data from
 23 many doctors from 1999 to 2001, but not on the day
 24 of the homicides. From the day of the homicides, we
 25 have observations from Rusty and Dora, which is

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1 nothing much out of the usual. We have the
 2 observations from the police that's already been
 3 shared and heard here, what she said to the police.
 4 And there isn't psychotic material there.

5 There's nothing there about Satan
 6 being in her or Governor Bush executing Satan.
 7 There is nothing there about saving the children
 8 from burning in hell, none of it is there. But then
 9 a number of things happen. We are getting a little
 10 ahead of ourselves chronologically, but a number of
 11 things happen after the homicides, which is that
 12 she's arrested.

13 MR. PARNHAM: May we have a question and
 14 answer at this time?

15 THE COURT: Sustained.

16 Q. (By Mr. Owmbly) All right. And you were
 17 about to say there were a number of factors that
 18 happened after the homicides. And perhaps we will
 19 take that up in the posthomicide phase, but I guess
 20 what you are saying that there are some intervening
 21 factors that change the character of her illness.
 22 Would that be fair to say at this time?

23 A. Well, there are intervening factors that
 24 certainly might have changed the severity of her
 25 symptoms.

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1 Q. The severity of her symptoms?

2 A. And the available evidence show a dramatic
3 change in the severity of her symptoms.

4 Q. The next point of analysis for you is the
5 homicide phase, is that correct, I believe?

10 (Court called for a recess and

11 testimony adjourned for the day)

12 -----

13 March 8, 2002

14 DIRECT EXAMINATION CONT'D

15 BY MR. OWMBY:

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3 Q. And I'm trying to remember, I think we had
4 completed the pre-homicide phase, we had talked
5 about, give me the last slide. I think we had
6 talked about the idea that Andrea Yates may have
7 believed the children were being tormented by Satan.
8 But she did not try any nonlethal ways of protecting
9 them, is that correct? I believe that's where we
10 left off. I'm not sure.

11 A. That's right.

12 Q. Would you explain to the jury the
13 significance of this, and we will start there?

14 A. Well, Mrs. Yates had given various
15 accounts of what she was thinking before the
16 homicides about the danger to the children.
17 Sometimes she said that the danger was that they
18 were developed poorly, have trouble learning, being
19 disobedient, might get in trouble with the law and
20 be a burden on society, but at other times she
21 described worse fates for them, that included being
22 tormented by Satan or the risk of burning in hell.
23 With knowing that, after her arrest, she talked
24 about that whole variety of things. Before the
25 arrest, there weren't any comments, excuse me, of

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1 that kind about burning in hell or being tormented
2 by Satan. Pardon me.

3 Before her arrest, she had expressed
4 concerns about the children having trouble
5 developmentally and their lagging behind. She had
6 not like [sic] the comparison between the progress the
7 Holmes children were making and the progress of her
8 own children, she saw that Debbie's children were
9 reading and more advanced, on a more advanced level

10 than hers, but there were no comments about risks to
11 the children from Satan until after her arrest.

12 In the very first interview, after
13 her arrest, she talked about the children developing
14 poorly.

15 MR. PARNHAM: Your Honor, may we have
16 question and answer please. I'm sorry, Doctor.

17 THE COURT: Sustained.

18 Q (By Mr. Owmbly) You were about to explain
19 after the arrest she began to talk about the
20 children developing poorly?

21 A. Yes. In that first statement to the
22 police the concern she expressed, she was a bad
23 mother, the children would develop poorly and might
24 get in trouble, and she thought she should be
25 punished for that. It's only the next day that she

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1 begins talking about torment and burning in hell and
2 the need to save the children. That doesn't tell us
3 what she was thinking at the time of the crimes, it
4 is just significant that there were no statements
5 until June 21st, the day after the crime, that
6 talked about burning in hell or torment by Satan.

7 Q. And those statements, you first see those
8 in the interview with Melissa Ferguson, I believe?

9 A. Correct.

10 Q. And that was one of your findings prepared
11 on knowledge of wrongfulness, she did not believe
12 she was raising the children properly. I'm at the
13 wrong place, may have believed Satan was in her.
14 Did not seek help for this problem. I believe you
15 discussed some of that when you were testifying
16 yesterday?

17 A. Yes, I did.

18 Q. Maybe you can reiterate that just briefly?

19 A. If she, in fact, believed that Satan was
20 in her or that she was Satan, depending how troubled
21 she was by that idea, I would expect her to seek
22 some assistance for herself by talking to people
23 about the problem, including spiritual leaders.

24 Q. The next -- and I guess it is just a
25 conception construct. The next phase of your

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1 analysis is to look at the homicide phase, is
2 that --

9 THE COURT: You may proceed, Mr. Owmbly.

10 MR. OWMBY: I will in just a moment, Your
11 Honor.

12 Q (By Mr. Owmbly) Doctor, we were about to
13 discuss what we've called as a kind of analytical, a

14 contextual homicide phase of your analysis, your
15 evaluation in the knowledge of wrongfulness. And I
16 believe at this point we might want to play an
17 excerpt, Excerpt D. And would you tell us what that
18 refers to?

19 A. Well, Excerpt D is a segment of my
20 examination of Mrs. Yates in which she gives the
21 longest description about the day of the offense and
22 the commission of the offense, and of course, what
23 I'm looking for there has to do with --

24 MR. PARNHAM: Judge, that's not
25 responsive.

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1 THE COURT: Sustained.

2 Q. (By Mr. Owmbly) And when you did the
3 interview that is reflected in Excerpt D, what were
4 you trying to accomplish? What were your objectives
5 in that portion of the interview?

6 A. To determine her recollection of the
7 offense, whether she was confused about the day of
8 the offense, the way she becomes confused after
9 she's in jail, and to see whether in her telling of
10 the offense she gives an indication of whether she
11 knew it was wrong or what she was thinking at the
12 time.

13 Q. All right. Excerpt D has been admitted as
14 State's Exhibit No. 234 and I would like to publish
15 that to the jury now.

16 And Your Honor, we have a transcript
17 to go along with that.

18 THE COURT: Deputy Bittner.
19 (Video played for jury.)

20 Q. (By Mr. Owmbly) Doctor, this was the part
21 of your interview that, that focused on the homicide
22 phase of your analysis; is that correct?

23 A. Yes. There were some other questions at
24 other times that did, but this is one segment that
25 is all about that.

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1 Q. All right. And could you explain to the
2 jury how this, this segment and the other things you
3 said fit into your analysis of the homicide phase of
4 this?

5 A. Well, this, taken in conjunction with all
6 the other evidence that I had access to, gave me a
7 series of findings about Mrs. Yates' mental state
8 during this phase. And those are illustrated in one
9 of the slides.

10 Q. I think 36. And what was the first
11 finding that, at least displayed on this slide that
12 --

13 A. They are not necessarily just from the

14 slide. The first was that she knew she would be
15 arrested and put in jail, that is something she said
16 in that portion of the interview. And it's
17 something she said on other occasions after her
18 arrest as well.

19 Secondly, she said that she knew what
20 she was doing was illegal. And that's something she
21 has told other people too, at various times, from
22 the time of her arrest on.

23 I don't think I have shown that
24 segment of the video yet, but in another excerpt
25 that's available I think there is a portion where

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1 she says that she knew that society would judge her
2 actions as bad. She certainly did say that in my
3 interview of her. I ask her how she thought society
4 would judge her actions and she said bad and I asked
5 her how she thought Rusty would judge her actions
6 and she said bad and I asked her how God would judge
7 her actions and she said bad.

8 And then the next point does not come
9 from this, from my interview of her, but from other
10 sources, particularly Dr. Rosenblatt saying that
11 Mrs. Yates said that she knew it was wrong to kill
12 the children.

13 Q. And I don't recall, that was either in a
14 report from Dr. Rosenblatt that you received or in
15 testimony by Dr. Rosenblatt?

16 A. Correct.

17 Q. Can we continue with the next slide.
18 Other findings that you had concern for what
19 happened, for example, you say she may have covered
20 each body between the homicides?

21 A. Well, Mrs. Yates reported, excuse me, to
22 the police, I think in my interview, too, that she
23 had covered each child as she laid the child on the
24 bed. And what I don't know for sure is whether she
25 covered the whole face and head of each child as she

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1 placed the four on the bed, as she put them on the
2 bed -- I do know that when all four children's
3 bodies were on the bed, they were totally covered;
4 and it's my understanding from her statements that
5 she covered each as she put them on the bed.

6 If that's true, that she covered each
7 over their head and face as she put them on the bed,
8 there is the possibility that she's doing that so
9 that the children who are still alive don't discover
10 the preceding homicide, but I don't know for a fact
11 that that's so.

12 Q. All right. And next you have a question
13 about whether she may have believed she was saving

14 the children from torment. Would you explain what
15 you mean by that?

16 A. Well, this is another one where I don't
17 know for sure it's so. Mrs. Yates, after her
18 arrest, talks about believing the children were in
19 danger from Satan, believing they could be tormented
20 by Satan, believing they could burn in hell. And as
21 she tells me this, that she was thinking that before
22 and during killing them, I'm inclined to believe
23 her, I think she's trying to be forthcoming. At the
24 same time, I have to be skeptical both because
25 that's my job and, also, because her behavior, as

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1 she kills them, doesn't do the things I would expect
2 a mother with that belief to do.

3 Q. And what would that be, Doctor?

4 A. I would expect her to try to comfort the
5 children, telling them they are going to be with
6 Jesus or be with God, but she does not offer words
7 of comfort to the children.

8 Q. Now, Doctor, there are two other segments
9 and they relate to, and I'm thinking we should play
10 them at this time, Segment E and F of the interview,
11 where she talks about Satan and whether she believes
12 Satan was in her and it was a little of that in the
13 other interview also where she talked about the
14 presence of Satan?

15 A. Yes.

16 Q. And, also, and I'm not -- I believe in F
17 she will talk about the police interview and her
18 interaction with the police?

19 A. That's right, because I asked her that.

20 Q. Can we play both of those now?

21 A. It's up to the Judge.

22 Q. Would it be appropriate for your testimony
23 now, if the Judge agrees?

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11 (Video played for the jury.)

16 A. Those segments that were just played go
17 right to the heart of the issue of her knowledge of
18 wrongfulness. If one believes what she's saying in
19 that interview was the way she believed and felt at
20 the time, then this is complicated because there are
21 factors weighing on each side. On the one hand, she
22 knows that it's sinful and that, and she attributes
23 the idea to Satan and she knows it's illegal, and
24 she knows it will be judged as bad by society and by
25 God, but on the other hand she believes that this

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1 saves the children from torment or from having their
2 souls go to Satan. And that therefore it's the
3 right thing for the children.

4 Q. Perhaps you can talk to us a little bit
5 about the -- I guess my question is this, how her
6 explanation changes over time. We've heard talk
7 about memory alterations and that -- can you explain
8 to us a little bit about the effects on your
9 findings of changed memory or the changing memory in
10 the versions that Andrea Yates gives?

11 A. Yes, I think there are many possibilities
12 for what changes occurred and for how they occurred,
13 but one particular source of change that's dramatic
14 and has an obvious effect is the difference in Mrs.
15 Yates' mental state between the day of the crime and
16 the day after the crime and the period that follows.

17 Q. And what factors account for that in your
18 analysis?

19 A. Well, first you have to look at what's the
20 difference before you can see what might account for
21 it.

22 Q. What are the differences?

23 A. The dramatic difference is that according
24 to Dr. Ferguson's notes on June 21st and many
25 observations by Dr. Ferguson and Dr. Osterman and

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1 some other interviewers in the weeks that followed,
2 there was a period at the jail that Mrs. Yates was,
3 what could be described as grossly psychotic.

4 That's a period in which she is either hearing
5 growls and voices or at least having what's called
6 an illusion and when she hears a noise, she
7 misinterprets it as a growl or a voice.

8 There is a period when she is seeing
9 things in the flaws in the cinder blocks at the
10 jail, which are, I think, illusions where it is just
11 random patterns in the, in the structure, but she
12 sees teddy bears and ducks and marching soldiers,
13 which she thinks they are satanic. She talks about
14 a prophecy. She talks about being Satan and
15 Governor Bush executing her and a host of other
16 things that are very sick, psychotic thoughts and
17 her memory for that period of time is impaired.

18 And in all the interviews that
19 occurred from August on, when people asked her what
20 she remembers about a prophecy, she's puzzled. She
21 recognizes talking to Dr. Ferguson about it or that
22 someone told her that she did, but she can't recall
23 what that prophecy is.

24 I think that's a good example of a
25 tracking device to look at whether she was very

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1 sick. She was very sick at a time when she said
2 such things that she now can't even remember because
3 it was a period of psychosis and she's now confused
4 as she tries to recall it. And we know she was in
5 that state from June 21st for some period
6 thereafter. The question is was she in that state
7 on June 20th when she did these crimes.

8 And there, the evidence we have about
9 her state comes from what she did from the
10 observations made of her that day primarily by law
11 enforcement and from what she now says about that
12 day. And we don't find nearly as much evidence of
13 that kind of extreme sickness or gross psychosis on
14 June 20th as we have for the period beginning June
15 21st. That's not to say she wasn't sick on June
16 20th because she still had the beliefs about the
17 cameras and had recently thought the television was
18 speaking to her.

19 Q. Right. I guess she was, one way to put
20 it, she was sicker in a different way on June 21st.
21 As you've described it, she was apparently grossly
22 psychotic as she begins to talk about these
23 prophecies and that kind of thing and Governor Bush
24 executing Satan?

25 A. There seems to be new delusions and

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1 disorganized thinking on June 21st.

2 Q. That was not as readily apparent prior to
3 that?

4 A. It wasn't apparent at all prior to that.

5 Q. Wasn't apparent at all. I guess my
6 question was what could possibly account for this
7 change between June 20th and June 21st?

8 A. Of course, the biggest of all factors is
9 that there came a time on June 20th when Mrs. Yates
10 had killed all five of her children, and even when
11 those deaths are at the mother's own hands, it is an
12 enormous stress, or to lose a child, to lose five
13 children in one day, to realize one has killed them
14 oneself is a stressor beyond any of our ability to
15 imagine. And on top of that, she is arrested and
16 handcuffed and there are strangers in her home. She
17 is separated from her family. She's taken to an
18 unfamiliar place. And she finds herself in a jail,
19 and as I understand it, naked, on suicide watch.
20 That's a very dramatic set of stressors for any
21 human being, so it would not be surprising that she
22 would escape that through her vulnerability to
23 mental illness by becoming more psychotic.

24 Q. One of the findings that you do conclude
25 with a question is that she may have believed that

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1 Satan was in her. Put up slide 37 again. I believe
2 that's correct. May have believed that Satan was in
3 her or that she was Satan. Would you explain what
4 you mean by that finding?

5 A. Well, before the homicides, the best
6 evidence of Mrs. Yates' belief about Satan or her
7 conversation with Debbie Holmes, because she
8 consulted her friend, asking her to pray for her and
9 expressing concerns about Satan and about demons.
10 Just as she and Rusty had talked to the Warnikes
11 about demons and Satan before, but with real concern
12 on Mrs. Yates' part before the homicide. She
13 doesn't at that point to my knowledge tell anyone
14 that she thinks that she is Satan, but there is some
15 worry.

16 Mrs. Yates, after the crimes, talks
17 to many people about her belief that Satan was
18 nearby, or present, or even in her. She's
19 inconsistent in her later statements about why she
20 says this. And it's only on the 21st and later that
21 there is any talk about her being Satan and
22 execution of Satan and Governor Bush needing to
23 execute Satan and so on. So I think there is some
24 uncertainty as to what she believed when.

25 My opinion based on all that I know

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1 is that she did have concerns about the presence of
2 Satan and Satan putting these thoughts in her mind
3 before she did the crime, but that she doesn't
4 believe that Satan is -- that she is Satan and that
5 Satan will be executed until the 21st.

6 Q. And I believe, excuse me, the first time
7 that we have evidence that she expresses that is to,
8 well, to Dr. Ferguson or near the time of that
9 interview; is that correct?

10 A. Correct.

11 Q. Would you -- would you explain to the jury
12 what your focus was looking at the posthomicide, how
13 that phase played into your analysis?

14 A. Well, one of the reasons, the reasons for
15 looking at the posthomicide phase are that it may
16 still offer clues as to a defendant's knowledge of
17 wrongfulness at the time of the crime. It can also
18 show us whether they change after a crime, and for
19 other purposes, it helps look at how to prevent
20 future crimes of this sort.

21 Q. All right. And I believe your Excerpt G
22 is an interview where, you and I know there are
23 other places where you may have asked similar
24 questions or questions that bear on the posthomicide
25 phase, but I think you selected an excerpt, kind of

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1 an illustration of the posthomicide analysis that
 2 you did?
 3 A. I tried to choose the portion of my exam
 4 that dealt mostly with that particular issue.

20 (Video played for the jury.)
 21 Q (By Mr. Owmbly) All right. And we were
 22 talking about her belief that Satan was in her, in a
 23 formation after her, and I believe the words she
 24 used was after her arrest?
 25 A. Yes.

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1 Q. Doctor, I believe we talked about -- we
 2 were about to talk about the posthomicide phase of
 3 your analysis; is that correct?

4 A. Yes.

5 Q. And would you explain what some of your
 6 findings were concerning posthomicide phase?

7 A. Well, the first point is that after all of
 8 the children had been killed, she then covered the
 9 faces of all of the bodies in the bed. And I
 10 interpret that as an indication of her feeling guilt
 11 or shame. And the reason I say that is that that's
 12 how we conventionally interpret the covering of a
 13 face at a crime scene, as the killer's feeling guilt
 14 or is ashamed.

15 The second point is that afterwards
 16 the first contact she made was to 911 and she asked
 17 for the police as she told me because that's who you
 18 call when you've done something wrong. And she
 19 thought she had done something wrong.
 20 The third point is that she told
 21 Sergeant Mehl that she wanted to be punished and she
 22 was prepared to go to hell for what she had done,
 23 which indicates that she knows that what she's done
 24 is wrong.

25 Fourth point is that she told

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1 Sergeant Mehl she wanted to be punished and he asked
 2 her whether she wanted to be punished by the
 3 criminal justice system and she said yes; and after
 4 the interview concluded, during the questioning by
 5 him, when he gave her a chance to ask questions was
 6 when will my trial be, and that again, she knows
 7 this is illegal and going to the criminal justice
 8 system.

9 Now, at some point after her arrest,
 10 she believed her execution would kill Satan, but the

11 first time that's ever mentioned is the next day,
 12 June 21st, when she is, I believe, in a
 13 significantly worse mental state.

14 Q. And again that is the interview with Dr.
 15 Ferguson?

16 A. Yes.

17 Q. On the next morning?

18 A. Correct.

19 Q. Doctor, you have covered your, the
 20 materials you reviewed, your findings, and the
 21 findings on the knowledge of wrongfulness, divided
 22 into the three phases, the prehomicide phase, the
 23 homicide phase, and the posthomicide phase. As a
 24 result of your analysis, were you able to form an
 25 opinion relative to the sanity, sanity under the

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1 Penal Code, under 8.01, of Mrs. Yates at the time of
 2 this offense?

3 A. Well, I don't offer an opinion on the
 4 ultimate issue of sanity, but I do have opinions on
 5 the defendant's knowledge of wrongfulness at the
 6 time of the offense.

7 Q. I'm going to show you what's been marked
 8 for identification as State's Exhibit No. 239. And
 9 do you recognize what that is?

10 A. Yes. This is a summary of my opinions in
 11 this case.

12 Q. All right.

13 MR. OWMBY: Your Honor, we would offer
 14 State's Exhibit No. 239.

15 MR. PARNHAM: For the purpose of
 16 admissibility, Your Honor, we have no
 17 objections.

18 THE COURT: State's 239 is admitted
 19 without objection.

20 Q. (BY MR. OWMBY) Doctor, would you tell the
 21 jury your opinion, as you put it so correctly, on
 22 your evaluation of her knowledge of wrongfulness at
 23 the time of this offense?

24 A. My first opinion with reasonable medical
 25 certainty is that at the time of drowning each of

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1 the children, Mrs. Yates knew that her actions were
 2 wrong in the eyes of the law. In other words, that
 3 she knew it was illegal.

4 My second opinion with reasonable
 5 medical certainty is that at the time of drowning
 6 each child, Mrs. Yates knew that her actions were
 7 wrong in the eyes of society.

8 And my third opinion with reasonable
 9 medical certainty is that at the time of drowning
 10 each child, Mrs. Yates knew that her actions were

11 wrong in the eyes of God.

12 And my fourth opinion is that at the
13 time of drowning each child, Mrs. Yates may have
14 believed that the killings were in the best interest
15 of the children and that the ends, that is saving
16 the children, justified the means, which was to
17 wrongly and illegally kill them.

18 Q All right. Now, as to this fourth
19 opinion, you say that she may have believed, would
20 you explain to the jury a little bit why you phrased
21 it that way?

22 A I'm phrasing it that way because of what I
23 think can and can't be proved and how certain I can
24 be about what she was thinking on that particular
25 point. If I give her the benefit of the doubt and

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1 assume that she really believed that she was saving
2 the children from burning in hell, which is
3 something she's not been entirely consistent in
4 saying, then it would be true that she believed this
5 was in the best interest of the children, even
6 though she knew it was illegally wrong in the eyes
7 of God and wrong in the eyes of the law.

8 Q In other words, she may have believed that
9 because it was in her opinion that they would be
10 better off, even though it was illegal, she should
11 kill them?

12 A Yes.

13 MR. OWMBY: Pass this witness.

14 -----

15 March 9, 2002

16 DR. PARK DIETZ
17 DIRECT EXAMINATION CONT'D

18 BY MR. OWMBY::

19 Q Good afternoon, Dr. Dietz.

20 A Good afternoon.

21 Q One of the things I wanted to ask you
22 about was your report which is marked for
23 identification as State's Exhibit No. A.

24 I'm going to hand it to you just so
25 you can identify it as your report.

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4 A Yes, this is my report and transcript of
5 my examinations.

6 Q All right. Now, Doctor, did you submit
7 your report to a process called the peer review?

8 A Yes, I did.

9 Q Would you explain to the jury what peer

10 review is?

11 A Peer review has more than one meaning, but
12 the relevant meaning is to provide an opportunity
13 for one's peers to review one's work --

14 MR. PARNHAM: We object. That's
15 bolstering.

16 THE COURT: Excuse me?

17 MR. PARNHAM: Object on the grounds of
18 bolstering and hearsay.

19 THE COURT: Overruled as to that question.

20 Q (By Mr. Owmbly) You were explaining what
21 peer review was.

22 A In this context, the process of submitting
23 one's work for review by peers to give an
24 independent opinion of the quality of work.

25 Q And how did you go about doing that

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1 process in this case?

2 MR. PARNHAM: Judge, again, we would
3 object. If -- and I presume that the Doctor
4 will testify relative to opinions generated
5 within his peer group.

6 THE COURT: We haven't heard that,
7 Mr. Parnham. We will take one question at a
8 time. If you have an objection to this
9 question --

10 MR. PARNHAM: I have an objection. My
11 objection is to bolstering and hearsay and
12 denial of confrontation.

13 THE COURT: I think at this time he's
14 explaining what a peer review process is.
15 That objection is overruled.

16 Q (By Mr. Owmbly) What was the process that
17 you undertook for peer review in the case of your
18 report in this case?

19 A I submitted a draft copy.

20 MR. PARNHAM: May we approach the bench,
21 Judge?

22 THE COURT: Yes, sir.
23 (Bench conference)
24 (Jury's presence)

25 Q (By Mr. Owmbly) What was the process of

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1 peer review that you undertook, Doctor?

2 A I submitted a draft copy of my report to
3 three colleagues, two forensic psychiatrists and one
4 forensic neuropsychologist and asked them to give me
5 a written opinion about their comments and
6 critiques.

7 Q Then what did you do?

8 A I reviewed their comments and revised the
9 report in accordance with what I thought were good

10 suggestions.

11 Q All right. Now, yesterday, Doctor -- and ..
12 I formed the question wrong. I mistakenly asked
13 your opinion on sanity.

14 Do you recall that question and do
15 you remember what you answered?

16 A Yes.

17 Q And what did you answer -- well, what did
18 you answer?

19 A I answered that I was not offering an
20 opinion on the ultimate issue of sanity, but rather
21 opinions as to the defendant's knowledge of
22 wrongfulness at the time of the crime.

23 Q And why did you answer my question that
24 way?

25 A For two reasons. The first is that I was

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1 familiar with the holding of the Texas Court of
2 Criminal Appeals in the case of Graham V State in
3 1978 in which it was held that an expert should not
4 invade the province of the jury by offering an
5 opinion on the ultimate issue but rather provide a
6 factual basis for the jury to reach its conclusions.

7 And, secondly, because in forensic
8 psychiatry, it's been the consensus of opinion among
9 the leading figures as well as legal scholars to
10 this issue that it's inadvisable for experts to
11 offer an opinion on the ultimate issue, but rather
12 they should address the underlying analysis, the
13 data, their findings and their opinions regarding
14 the elements of the legal test.

15 Q Doctor, do you have an opinion on sanity?

16 A Do I personally? Yes, but I don't believe
17 I should volunteer it.

18 Q All right. Doctor -- well, let me ask you
19 this, then. I'm going to show you, again,
20 Section 8 -- thank you. You can sit down.

21 I'm going to show you -- or it's on
22 the board there -- that, again, the Section 8.01,
23 the legal defense of insanity.

24 Let me ask you this first. How many
25 elements -- and, obviously, when we use the word

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1 "elements," we mean kind of issues, questions -- how
2 many elements are there to this test of insanity?

3 A Well, the real forensic psychiatric
4 elements, there are two. The first is whether the
5 defendant has a severe mental disease or defect.
6 The second is whether the defendant knew that the
7 conduct was wrong.

8 Q All right. Now, Doctor, I believe you
9 stated as to the first element that you diagnose --

10 your differential diagnosis included three potential
11 diagnosis; and you said all of them were severe
12 mental diseases; is that correct?

13 A Any one of them would be, yes.

14 Q Any one of them would be a severe mental
15 disease.

16 So, your opinion on the first
17 element, I assume, is that the actor had a severe
18 mental disease or defect?

19 A Yes.

20 Q What symptoms of mental disease did she
21 have at the time of drowning the children?

22 A Well, the ones she certainly had were
23 continuing symptoms of depression. And there were
24 two psychotic symptoms that I believe she had prior
25 to the killings and during the killings -- or at

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1 least recently had had.

2 One was the continuing belief that
3 she had had for two years that there were cameras
4 hidden in the house, and I believe that to be a
5 delusion because to my knowledge there are no
6 cameras hidden in the house.

7 And, secondly, she had recently
8 believed that the television was speaking to her and
9 giving messages to her and to her family. Now, that
10 particular one wasn't happening on the day of the
11 offense because she didn't have the television or
12 radio turned on that morning.

13 Q All right. Now, those are certainly
14 symptoms that could be classified as psychotic
15 symptoms; is that correct?

16 A That's right.

17 Q And I think later on in your testimony you
18 use the phrase that you believed she was more
19 psychotic on June 21st, particularly when she was
20 talking to Dr. Ferguson, did you not?

21 A Yes, I did.

22 Q And what did you mean by, at that time,
23 using the phrase "more psychotic"?

24 A Well, on the 21st in the conversation
25 documented by Dr. Ferguson, Mrs. Yates showed some

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1 disorganization of her thoughts and she had other
2 delusions, new delusions, that she was Satan and
3 needed to be executed and -- about whatever it was
4 about the prophecy and other content that had never
5 been mentioned anywhere before.

6 Q Right. I believe you testified that --
7 before to that and that your -- that what you were
8 observing new at that time were her beliefs about
9 Satan and the prophecy and the other things that you

10 mention; is that correct?

11 A Correct.

12 Q What is the second element, and as you put
13 it from a forensic standpoint, in this test under
14 8.01?

15 A The second element here is whether the
16 defendant knew that her conduct was wrong.

17 Q And do you have an opinion on the second
18 element whether her conduct was wrong?

19 A Yes, I do.

20 Q And what is your opinion on that, Doctor?

21 A For each of the reasons that I gave
22 yesterday, I believe that the defendant did know
23 that her conduct was wrong.

24 Q All right. But, Doctor, you also
25 testified that she may have thought that she was

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1 sending the children to heaven.

2 And how does this enter into your
3 opinion on the second element of this test that she
4 knew her conduct was wrong?

5 A Well, it doesn't go to whether she knew
6 her conduct was wrong. I think it goes to motive.

7 Her motive for doing what she knew
8 was wrong may have been to send the children to
9 heaven, but in order for it to apply here, she would
10 have to not know her conduct was wrong; and I don't
11 think that's true. I think she did know the conduct
12 was wrong.

13 Secondly, for it to apply here, that
14 belief that she is sending the children to heaven
15 has to be the result of a severe mental disease.
16 And even though she had a severe mental disease, I
17 don't think that's what made her believe in heaven
18 and I don't think it's appropriate to say that
19 someone is psychotic if they believe in heaven or
20 believe in hell.

21 Q All right.

22 MR. OWMBY: We will pass the witness at
23 this time.

24 THE COURT: Mr. Parnham?

25 MR. PARNHAM: Yes, Judge. May I have a

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1 moment?

2 CROSS-EXAMINATION

3 BY MR. PARNHAM:

4 Q Good afternoon, Dr. Dietz.

5 A Good afternoon.

6 Q Doctor, we have met. I think yesterday
7 was our first day, and I saw you in the hallway. I

8 have questions on cross-examination of you, and I

9 would like at this time to put that chart back on
10 the board, the last chart.

11 It's my understanding that you have

12 indicated that -- that the -- that Mrs. Yates

13 suffered from a severe mental disease or defect, but
14 that -- on the 20th of June, but that as a result of

15 that, she -- there was no nexus between the severe
16 mental disease and/or defect and knowing that her

17 conduct was wrong. And I want to break that down
18 just a little bit further with you.

19 You have testified that the disease

20 that she suffered from, in your opinion, was either

21 major depressive disorder, schizo affective disorder
22 or schizophrenia; was that correct?

23 A Yes.

24 Q And it is also my memory that you
25 testified that -- something along the lines of in

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1 all probability her mental disease was
2 schizophrenia?

3 A It would be my judgment that that's the
4 most likely, yes.

5 Q Okay. Now, the definition of insanity
6 calls for a nexus, does it not; that is, as a result
7 of?

8 A Yes, a connection.

9 Q Okay. And I take it that you relied upon
10 various and sundry reports, as you testified to,

11 concerning the nature of her mental illness in
12 determining that in all probability her mental

13 illness was schizophrenia? For instance, you

14 indicated that you had reviewed Dr. George
15 Ringholz' -- his report?

16 A Yes, I did.

17 Q Okay. I take it that you also reviewed,
18 as you've indicated, the various and a sundry

19 doctors' reports that had been submitted by various
20 doctors that have been involved in the mental

21 history, so to speak, of Andrea Yates; that is,
22 Dr. Flack?

23 You reviewed his report, did you not?

24 A Well, not report, but certainly what he
25 wrote in the medical records at Methodist.

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1 Q Right. And I apologize. The word
2 "report" is incorrect, but at least his medical
3 records?

4 A Yes.

5 Q You reviewed the medical records of
6 Dr. Starbranch?

7 A Yes.

8 Q And medical records of Doctors Thompson
9 and --
10 A Saeed.
11 Q --Saeed. Pardon me.
12 A Yes, sir.
13 Q And the Devereux medical records?
14 A Yes.
15 Q Did you -- on the issue of mental illness,
16 before we get into the area of wrongfulness.
17 In arriving at the -- at your
18 conclusion that in all probability of the three
19 disorders that you have mentioned, schizophrenia was
20 the disorder -- did you have occasion to talk, for
21 instance, with Dr. Starbranch?
22 A No, I did not.
23 Q Did you talk to Dr. Flack?
24 A No.
25 Q Dr. Thompson or Dr. Saeed?

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1 A No.
2 Q Either one?
3 So we are clear, let me separate the
4 two. Did you have an occasion before you testified
5 yesterday to talk to Dr. Saeed?
6 A No.
7 Q But you did talk to Dr. Ferguson?
8 A Yes, and Dr. Osterman.
9 Q And Dr. Osterman. And I believe you've
10 indicated that you talked to Dr. Puryear?
11 A Not about the issues in the case.
12 Q Okay. You sat in, I think, during her
13 testimony, however?
14 A A portion of it I did, yes.
15 Q All right. And did you sit in during the
16 testimony about her reviewing Dr. Ringholz' report
17 and her opinion relative to schizophrenia?
18 A Yes, I did.
19 Q And you did or did not sit in during
20 Dr. Resnick's testimony?
21 A I did not sit in. I wasn't here, but I
22 have reviewed a transcript of one afternoon of his
23 testimony, I think, on March 3rd.
24 Q Okay. So, I guess where we are, kind of
25 bottom line, is that everybody agrees -- when I say

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1 "everybody," the people that I have mentioned, to
2 include yourself -- agree that we have a severe
3 mental illness. It's just the severity on July --
4 pardon me, June 20th that we may come into some
5 impasse about. Would that be a fair assumption?
6 A I think it is fair to say that everyone
7 agrees there is a severe mental disease --

8 Q Okay.
9 A -- that the specifics of which disease
10 really don't matter, but that there is disagreement
11 about severity on June 20th and which symptoms she
12 had on June 20th.
13 Q All right. Now, when we talk about the
14 types of mental illness that, I take it, does not
15 matter, is it fair to say that in terms of major
16 depression, that that is a mood disorder?
17 A Yes.
18 Q Okay. When we get into the area of
19 schizophrenia, that is a thought disorder; am I
20 right?
21 A That would be the primary classification,
22 yes.
23 Q Okay. Now, we are talking in terms of --
24 in essence, a thought disorder that is present and
25 now we are talking about the severity of that

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1 thought disorder as it relates to the activities on
2 June the 20th?
3 A Well, yes, in an abstract sense. But not
4 all people with schizophrenia have the symptom known
5 as thought disorder.
6 Q Okay.
7 A People with, for example, paranoid
8 schizophrenia have delusions but perfectly intact
9 logical thinking.
10 Q All right. Now, in the area of severity,
11 you acknowledge that -- we talk about the
12 combination, that is, the nexus between the mental
13 illness and whether or not she knew that her conduct
14 was wrong on that particular day, on the 20th,
15 according to the definition?
16 A Would you state it again, please?
17 Q Sure. Again -- and I know this is old hat
18 with you and my questions of you, but we are talking
19 about, basically, as a result of a nexus, are we
20 not, between the severity of the mental illness and
21 her actions on June the 20th?
22 A I mean, is that the question on the floor?
23 Q Yes, sir.
24 A Yes, it is.
25 Q Now, would you also agree with me that the

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1 definition on the board talks about the knowledge as
2 to the wrongfulness of the conduct through the
3 mind's eye of the actor?
4 In other words, we look as to what
5 and how she perceived her actions to be relative to
6 wrongfulness through her mind's eye on June the

7 20th?

8 A Well, it's certainly her mental state that
9 matters with respect to her knowledge of
10 wrongfulness.

11 Q And that's according to the definition,
12 right, sir?

13 A Yes, but I would not agree that it is a
14 matter of her subjective morality.

15 Q I didn't use the term morality, did I?

16 A Not yet.

17 Q Well -- and, Doctor, I guarantee you I
18 won't use it.

19 The issue of -- and we may take that
20 off -- in getting into the area of wrongfulness, I
21 believe that you discussed with the prosecution the
22 issue concerning, the issue of the best interest of
23 the children, how this may have been an issue in her
24 mind; that is, to save her children from eternal
25 torment in hell, but that doesn't necessarily

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1 correlate with her determination on the 20th as to
2 the wrongfulness.

3 May we put on slide No. 36,

4 Dr. Dietz? Thank you.

5 We have a list of questions or issues
6 that you've indicated that were important in a
7 contextual sense in a determination that she knew
8 that her actions were wrong on that day. And this
9 is part of the slide presentation that was made on
10 direct examination, correct?

11 A That's almost right. These aren't
12 contextual issues. These were my findings with
13 respect to her knowledge of wrongfulness during the
14 homicide. There was another slide with some other
15 ones, too.

16 Q This would be slide No. 36. Are you aware
17 of slide --

18 A Thirty.

19 Q Thirty-six?

20 A 37 would have more from that same topic.

21 Q And I'll get to 37 in a moment.

22 The No. 5 is that you relied upon in
23 order to make a determination that she knew it was
24 wrong to kill the children, the report of
25 Dr. Rosenblatt and Michael Stephens?

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1 A I don't remember if it was a report of
2 Dr. Rosenblatt or something else from him.

3 Q Okay.

4 A But I did not mention Michael Stephens in
5 my testimony yesterday.

6 Q And I understand why you didn't, Doctor,

7 but my question of you is that what was admitted
8 into evidence through the prosecution is the various
9 areas of the homicidal phase; and on the board is
10 the two sources, apparently, of information that you
11 relied upon in order to make a determination that
12 she knew that it was wrong to kill the children.

13 One is whatever information you
14 received from Dr. Rosenblatt and, two, a Deputy
15 Michael Stephens?

16 A Everything on this slide and the next one
17 is about her knowing it was wrong to kill the
18 children as she did it.

19 Q And Dr. Dietz --

20 A But those were the two sources that I
21 understood to be saying that she said close to the
22 time of doing it that while she did it she knew it
23 was wrong.

24 Q Did you interview Dr. Rosenblatt?

25 A No, I interviewed neither of those

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1 gentlemen.

2 Q Did you talk to Michael Stephens?

3 A Only to say hello in the hallway.

4 Q I'm sorry?

5 A Only to say hello in the hallway.

6 Q That was the deputy that preceded you?

7 A I believe so, yes.

8 Q Did you look at a report that Michael
9 Stephens had furnished the District Attorney's
10 Office on February 13th?

11 A I have not seen that report.

12 Q And who was it that told you the content
13 of Michael Stephens' report that would permit you to
14 include, along with a Dr. Rosenblatt, his name and
15 information relative to this particular issue?

16 A It was told to me by the prosecutors at a
17 time when I believed his testimony was preceding
18 mine such that I would be able to then have a
19 transcript of it and I made up the slides when that
20 was the plan, timing for reasons unknown to me, the
21 order of witnesses changed; and that's why I did not
22 mention it in my testimony yesterday.

23 Q Okay.

24 A And I have not seen a transcript of his
25 testimony.

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1 Q Right. And I take it that, that you were
2 told that Michael Stephens either participated in an
3 interview or overheard Mrs. Yates telling
4 Dr. Ferguson that she knew what she was doing was
5 wrong?

6 A I was told that he was outside the door

7 within earshot on the 21st of June and that he heard
 8 a voice presumed to be Dr. Ferguson interviewing
 9 Mrs. Yates and that there was a series of questions
 10 about whether she knew it was wrong at the time of
 11 drowning each children -- each child, excuse me, and
 12 Mrs. Yates had said yes, she knew it was wrong, but
 13 I have --
 14 Q I'm sorry?
 15 A I don't have a reliable source for that,
 16 which is why I did not bring it up.
 17 Q Well, who prepared this chart?
 18 A I prepared it when believing that I would
 19 have a reliable source by the time it was shown in
 20 this courtroom.
 21 Q Okay. And I take it that if Michael
 22 Stephens could be determined to be an unreliable
 23 source, his name really doesn't matter to you in
 24 determining whether or not a circumstance was in
 25 supporting -- knowing it was wrong to kill the

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1 children?
 2 A I would delete his name from the slide and
 3 not make it a basis for anything if he didn't say
 4 what I was told or if he isn't reliable.
 5 Q Now, you spent a lot time talking to
 6 Dr. Ferguson?
 7 A Pardon me?
 8 Q Did you spend a long time talking with
 9 Dr. Ferguson?
 10 A I don't know whether it was a long time
 11 but --
 12 Q Relatively speaking, a few minutes?
 13 A I couldn't tell you if it was half an hour
 14 or what it was.
 15 Q You obviously read her notes?
 16 A Yes.
 17 Q And her notes were helpful to you, were
 18 they not, in formulating an opinion relative to the
 19 type of mental illness that Andrea Yates was
 20 suffering from?
 21 A Yes, as a matter of fact, it was some of
 22 the first informative information about serious
 23 mental illness known of the prehomocidal records
 24 conveyed, anything like the same severity of
 25 symptoms or detail about what she was thinking.

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1 Q And I think you used the terminology
 2 yesterday grossly psychotic?
 3 A That's right.
 4 Q And I think Mr. Owmbly mentioned that and
 5 that related to her activities on June 21st?
 6 A Well, that whole period from June 21st

7 until sometime in July couldn't tell you when it
 8 peaked within that period without looking again at
 9 the records, but within those weeks she had brand
 10 new symptoms, like thinking she had the mark of the
 11 beast and other profound bad symptoms.
 12 Q Now, Mr. Owmbly asked you a question
 13 concerning your testimony about her appearance; that
 14 is, the way she presented herself on June the 21st
 15 as being more psychotic. And I presume that that
 16 related to her activities on the 20th when you used
 17 the phrase "more psychotic"?
 18 A More than the 20th, yes.
 19 Q And, obviously, my next question would
 20 include the presumption that it would be
 21 acknowledged that she was psychotic to some degree
 22 on the 20th?
 23 A Yes, I think she had been psychotic for at
 24 least two years.
 25 Q Okay.

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1 A With the continuing belief there were
 2 cameras now, that may have been the only symptoms of
 3 psychosis.
 4 Q Now, Dr. Dietz, you expressed to this jury
 5 a reluctance to -- to venture into the area of the
 6 ultimate issue because that's within the province of
 7 the jury?
 8 A That is the jury's realm and it's not for
 9 me to volunteer unless you invite me to give it or
 10 the Judge does.
 11 Q And would it be fair to say that -- that
 12 what you testified about is, is opinions based on
 13 information presented to you on the issues that
 14 you're called upon to talk about?
 15 A Yes, and sometimes information collected
 16 by me.
 17 Q Sure. But I guess what is germane to my
 18 question is what you're discussing and the
 19 information that you're providing the jury, is your
 20 opinion as to what, for instance, the evidence that
 21 you looked at being collected by you or by others,
 22 what that evidence shows?
 23 A Well, the opinions that I express are that
 24 they are opinions. And what I try to do, though it
 25 isn't for me to judge, is to give the basis for it

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1 by revealing my sources, laying out my findings and
 2 explaining why I come to these opinions.
 3 Q I'm sorry?
 4 A But the opinions are opinions.
 5 Q And I guess that a one-word answer to that
 6 would be -- or maybe three words, it's my opinion

7 and that's what you're expressing to this jury?

8 A Sometimes I'm expressing opinions and
9 sometimes I'm trying to correctly provide facts.

10 Q Sure. Now, do you know, for instance --
11 and if we may put 36 back on.

12 Do you know, for instance, with
13 Dr. Rosenblatt if Dr. Rosenblatt would tell you that
14 the expression of wrongfulness by Mrs. Yates, he did
15 not consider to be reliable, would that have any
16 impact on judging -- or, for instance, putting him
17 in conjunction with Sheriff Stephens?

18 A I mean, if he reversed his testimony.

19 Q That's not my question. My question is if
20 the information relayed to you on the issue of
21 Dr. Rosenblatt's opinion or at least what he -- on
22 the issue of wrongfulness, if Dr. Rosenblatt would
23 indicate to you that based on the circumstances he
24 didn't necessarily consider that reliable, would
25 that impact you at all? Would that impact that

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1 particular issue as far as you are concerned?

2 A If he gave me a reason -- basis that he
3 didn't think that's what she said or what she meant
4 or that that wasn't a reliable finding at the time,
5 that would impact that. I would strike that line
6 off.

7 Q Okay. Now, Dr. Dietz, the areas relative
8 to you mentioning transcripts, I take it that -- I
9 think you mentioned earlier in direct examination
10 that your fee is \$400 or \$500 an hour?

11 A Five hundred, that's right.

12 Q And that is the normal charge that you
13 make when you testify for the Government?

14 A That was the normal charge at the time I
15 accepted this case.

16 Q Did you not testify that that is the
17 standard fee arrangement when you testify for
18 Governmental entity?

19 A Yes, at that time it was; and then I don't
20 raise rates during a case.

21 Q So, it's still \$500 an hour?

22 A Yes.

23 Q Now, I take it that this is for in court
24 time as well as preparation?

25 A It's for anything I do on the case.

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1 Q Does that particular hourly rate include
2 the time that you have to spend, for instance, in
3 Houston when you are not in the courtroom; that is,
4 overnight or staying in a hotel or whatever?

5 A Well, I limit it to ten hours billed in a
6 day, but it does include waiting time because I'm

7 still away from both my practices and can't be doing
8 that while I'm here.

9 Q Sure. And are you able, Doctor, to tell
10 us how many hours you have put in in this case to
11 include the very minute that we are speaking today?

12 A I don't have a way to tell you the number
13 of hours, but I readily volunteer that it's quite a
14 few; it's been a great amount of time.

15 Q Right.

16 A And if you keep me here long enough, it
17 will make up for my Enron losses.

18 Q No further questions, Your Honor.

19 I think we all -- well, not all of

20 us. You have made a number of trips to Houston,
21 have you not?

22 A This is the --

23 Q On this case?

24 A This is the second trip on this case.

25 Q And you have spent probably, here on this

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1 case, how many days?

2 A The earlier trip, I believe, would have
3 been three days in Houston because I spent two with
4 the defendant and there was probably another travel
5 day. And then this time, I flew in Tuesday evening,
6 I think, and have been here ever since.

7 Q Okay. Now, you put together a fairly
8 lengthy report?

9 A Quite lengthy, yes.

10 Q And I take it that it took some time to
11 put that report together?

12 A Yes.

13 Q And that would be in the area of \$500 an
14 hour?

15 A Yes.

16 Q You're -- were you a consultant for the
17 District Attorney's Office?

18 A On this case?

19 Q In this case?

20 A I still am, unless you mean the
21 distinction between consulting and testifying
22 expert.

23 Q Well, I guess -- let me kind of
24 characterize it in this fashion. If the DA's Office
25 needed questions answered relative to the defense of

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1 insanity, are there no -- at least the notice
2 submitted by the Defense that we were going forward
3 on the insanity defense, you would be the person
4 they would pick up the phone and call?

5 A Well, they were free to; they didn't do

6 much it of because they were worried about the
7 money.
8 Q But they did do some?
9 A Yes.
10 Q Would that be fair?
11 A Yes.
12 Q And I take it, do you recall when the
13 District Attorney's Office noticed that they were
14 going to seek the death penalty in this case?
15 A No, I don't know when that would have
16 been. That was, of course --
17 Q I'm sorry?
18 A I was not consulted on that issue.
19 Q All right. You're aware that you were
20 consulted after the notice was entered by the
21 District Attorney's Office to seek the death
22 penalty?
23 A I assume so, yes.
24 Q Right. As a matter of fact, when they
25 contacted you, you were aware that the State was

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1 seeking the death penalty in Andrea Yates'?
2 A I think so.
3 Q Now, Doctor, they contacted you first or
4 did you contact them?
5 A What do you mean?
6 Q Was there -- was there any communication
7 between your office and their office, initially?
8 A No, of course not.
9 Q Just asking. You have, do you not,
10 Doctor, a -- you've testified to on direct
11 examination, you're into a lot of areas, are you
12 not -- I think you testified that three percent of
13 your time is spent in the entertainment area
14 providing information relative to, I guess, security
15 for want of a better phrase?
16 A And other things.
17 Q Approximately three percent. And
18 60 percent of your time is spent dealing with threat
19 assessment?
20 A Yes.
21 Q And that's the name of your company Threat
22 Assessment, Inc.?
23 A That firm is named Threat Assessment
24 Group, Inc.
25 Q And then the remainder -- the remainder

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1 percent of your time is spent consulting with and
2 testifying in cases around the country?
3 A And heading a group of 29 other people who
4 do that, too. So, there is some administrative
5 burden there.

6 Q When is the last time you treated a
7 patient?
8 A Many, many years ago. I stopped treating
9 patients in 1981 or 1982.
10 Q Okay. And are you -- are you -- would you
11 consider yourself to be, for instance, an expert in
12 the area of postpartum depression?
13 A Well, any well-trained psychiatrist who
14 stays current and reads about it has expertise on
15 the issue, but I'm certainly not a specialist in
16 that and would not claim unusually strong knowledge.
17 Q When is the last time, Doctor, that you
18 have treated a female patient who was experiencing
19 postpartum depression?
20 A It would have been in 1977 with a patient
21 I had hospitalized.
22 Q Okay.
23 A I have evaluated people since then, of
24 course, with that condition.
25 Q All right. And in the area of postpartum

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1 psychosis, do you remember the last time you treated
2 an individual, a woman for postpartum with psychotic
3 features, postpartum depression with psychotic
4 features?
5 A I'm not sure that I have treated one, but
6 I have evaluated one.
7 Q The group that I think you mentioned that
8 you, I guess, head, is that a group known as Park
9 Dietz & Associates?
10 A Yes.
11 Q Now, in the area of threat assessment,
12 that is a different company?
13 A Yes, with some overlapping consultants,
14 but it's a separate company.
15 Q Okay. And with threat assessment, I take
16 it that -- and the focus of the company is to
17 provide information to corporations that are
18 interested in workplace problems dealing with
19 employees that might go off the deep end and hurt
20 somebody?
21 A Well, not just corporations, schools
22 universities, individuals, and not just employees.
23 It's anyone who is making threats, domestic
24 violence, intruding in the workplace, bomb threats,
25 terrorism; it's a broad spectrum.

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1 Q There is an overlapping in those
2 responsibilities which is the group known as Park
3 Dietz & Associates?
4 A Cases come to one or the other, but there
5 are some experts who do work for both firms.

6 Q Okay.
 7 MR. PARNHAM: May we have this marked for
 8 identification? May I approach the witness,
 9 Your Honor?
 10 THE COURT: Yes, sir.
 11 Q (By Mr. Parnham) Dr. Dietz, I'm going to
 12 show you what's been marked as Defendant's 34; and I
 13 ask you, sir, take a look and see if you recognize
 14 that?
 15 A Yes, sir, it's a brochure.
 16 Q That is a brochure, is it not, relative to
 17 your company, Park Dietz & Associates?
 18 A Yes. We prepared this at the beginning of
 19 January, 2001, I think.
 20 Q Okay. And the brochure, does it not,
 21 Dr. Dietz, among other things, have a description of
 22 your company, who you are, an educational background
 23 and a list of the types of cases that you've been
 24 involved in and, also, with some of the individuals
 25 connected with your organization and the lists of

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1 the areas, major areas of expertise?
 2 A Yes, for the 17 experts we had at that
 3 time.
 4 Q Okay. Has that number increased or
 5 decreased?
 6 A It's increased since then.
 7 Q I think the list of experts are on the
 8 back page, are they not?
 9 A Yes.
 10 MR. PARNHAM: Now, I tender to the
 11 prosecution and ask it be admitted into
 12 evidence.
 13 MR. OWMBY: May we approach?
 14 THE COURT: Yes, sir.
 15 (Bench conference)
 16 MR. OWMBY: What is the relevance of this?
 17 MR. PARNHAM: Well, Judge, it
 18 basically shows he's a professional testifier.
 19 THE COURT: What's the relevance of this?
 20 MR. ODOM: It shows he's a professional
 21 testifier.
 22 THE COURT: Any objections?
 23 MR. OWMBY: Well, I'm trying to figure out
 24 the basis of relevance. There is a lot of
 25 information in there that's hearsay. I guess

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1 the relevance is not the -- you offering it for
 2 the truth of the contents.
 3 MR. ODOM: We are offering it.
 4 THE COURT: I think he's testified he
 5 testifies a lot. So, is there an objection or

6 no?
 7 MR. OWMBY: No.
 8 (Jury's presence)
 9 THE COURT: Defendant's 34 is admitted
 10 without objection.
 11 Q (By Mr. Parnham) Dr. Dietz, I'm going to
 12 show you what's been admitted as Defendant's Exhibit
 13 34. The document that we have here -- basically,
 14 it's what we previously talked about earlier --
 15 contains general information relative to the areas
 16 of expertise, things of that fashion.
 17 Now, was this brochure, if you know,
 18 sent to various members of the Houston legal
 19 community before you arrived for this case, if
 20 you're aware?
 21 A Well, probably. There was a mail-in to
 22 prosecutors and a mail-in to defense attorneys,
 23 criminal defense attorneys, and there was a mail-in
 24 to lawyers involved in premises liability for
 25 violent crime, maybe also elder lawyers.

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1 Q Elders?
 2 A Those that represent elder abuse victims.
 3 Q I was going to tell you I didn't get one,
 4 but you did send one to Mr. Odom, my younger
 5 counterpart?
 6 A It could be. If he belongs to the
 7 National Association of Criminal Defense Lawyers,
 8 then he got one.
 9 Q Okay. Now, the areas that are contained
 10 there in -- I think areas of expertise is contained
 11 on Pages 6 and 7. You mentioned that on direct
 12 examination that one of the areas that you were, I
 13 think, involved in or experienced in was in the area
 14 of drownings. Do you recall the question the
 15 prosecutor asked you?
 16 A Yes.
 17 Q And that basically dealt with, or deals
 18 with, drownings; for instance, swimming pools,
 19 apartments, other types of entity; would that be a
 20 fair characterization?
 21 A Anywhere it happens. My research was done
 22 through the State of Maryland, through the
 23 waterways; many of them were natural waterways.
 24 Q If the inference is like your predecessor
 25 that, when you sat in for Dr. Wilson's testimony,

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1 when he testified relative to drownings, per se,
 2 that's not the area of expertise you are talking
 3 about; am I right?

4 A I no longer would be qualified about the
5 pathology.

6 Q And tell us in this area -- if you would,
7 just take a look -- is there any area of major
8 expertise that is specified as women's mental
9 health?

10 A No, there wouldn't be.

11 Q Is there an area here that specifies your
12 area or your colleagues' area in the area of, for
13 instance, postpartum depression?

14 A It's not a forensic area, nor is women's
15 mental health.

16 Q All right.

17 A We are forensic psychiatrists and
18 psychologists, pathologists, criminal experts and we
19 have a couple of forensic social workers, but we
20 don't have any diagnosis; otherwise, we would have
21 to list every diagnosis in the DSM.

22 Q I take it as a forensic specialist you --
23 and I think you've indicated you aren't an expert in
24 the postpartum area or in women's mental health, you
25 don't hold yourself out as an expert?

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1 A What I said, I'm not a specialist in those
2 areas, but any psychiatrist has expertise beyond
3 that of a layman about that; and any of us are
4 incapable of reading up on it, per se, if I did
5 postpartum depression and postpartum psychosis in
6 connection with this case.

7 Q I take it that you read up on that area
8 before you interviewed Andrea Yates?

9 A Some of it, and I kept reading about it.

10 Q Did you talk to Dr. Puryear before you
11 interviewed Mrs. Yates?

12 A No.

13 Q You sat in during Dr. Puryear's testimony?

14 A Yes.

15 Q You heard her testimony in regard to her
16 area of expertise in this field?

17 A Yes, she's a specialist in that area.

18 Q My question is, you heard her testimony
19 about the area of expertise in the area of women's
20 mental health and postpartum depression?

21 A Yes.

22 Q The -- in the area of -- of determination
23 relative -- determinations relative to wrongfulness,
24 you mentioned that you did not talk to Dora Yates?

25 A I tried to.

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1 Q Yeah. Now, Dora Yates is the
2 mother-in-law of Andrea and the mother of Rusty?

3 A Yes.

4 Q You did not talk with her?

5 A Correct.

6 Q And she refused to talk with you?

7 A Yes.

8 Q You didn't actually pick up the phone and
9 try to make contact, you, I take it, went through
10 the District Attorney's Office in an effort to visit
11 with her?

12 A Correct.

13 Q And the same thing with Rusty?

14 A That's right, wouldn't be appropriate for
15 me to contact them directly.

16 Q Now, do you know why Dora Yates didn't
17 want to talk with you?

18 A Well, I have heard what she said about it,
19 but I don't really know why.

20 Q So, if she said because the State is
21 seeking the death penalty and, in fact, didn't want
22 to assist the prosecution in convicting her
23 daughter-in-law, you don't know whether that's true
24 or not, but you know that's something that was said?

25 A That one I believe.

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1 Q Okay. Dr. Dietz, this testimony that you
2 mentioned that you reviewed, how do you go about
3 doing it?

4 A For which?

5 Q For any of the witnesses that testify in
6 this court case in front of this jury, how did you
7 go about finding out what they testified about?

8 A Well, with the ones that I rely on for
9 anything, I had a transcript or I personally
10 observed it.

11 Q And let me ask you this question: Now, is
12 that transcript -- you know what a daily copy is?

13 A Yes.

14 Q And tell the ladies and gentlemen of this
15 jury what a daily copy is.

16 A A daily copy is an immediate transcript
17 that's riddled with errors, every couple of lines at
18 least there are errors, sometimes undecipherable
19 ones as opposed to a completed transcript that gets
20 90 percent of the words right or even better,
21 depending on who is doing it.

22 Q In other words, if this young woman in
23 front of me does a good job on it, but what happens
24 is that there's a transcript made of the testimony
25 and then that transcript is recorded, transcribed

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1 and given to you outside so that you, basically,
2 know the relevant portions or the relevant witnesses
3 that you would like to hear but can't?

4 A Well, I wasn't being given daily that way,
5 but it could be done that way.
6 Q Okay. But it certainly assisted you in
7 being able to prepare your little charts up here and
8 testify in front of this jury?
9 A Well --
10 Q To some degree?
11 A Actually, the only transcript I received
12 from this trial that I relied on for anything -- and
13 I'm not even sure it makes it into any of my
14 slides -- was the afternoon in which Dr. Resnick
15 gave his primary opinions and I had a very good
16 transcript of that.
17 Q Okay. Now, did you pay for that yourself?
18 A No.
19 Q Do you know how that was transcribed and
20 do you know who paid for it?
21 A I assume the D.A.'s Office, but I don't
22 know. I asked for it. I said that the most
23 important transcript they could get me during the
24 trial would be Dr. Resnick's about knowledge of
25 wrongfulness.

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1 Q Okay. Did they -- were you told or did
2 you read the transcript about what Dr. Rosenblatt
3 said?
4 A I don't recall which way that happened.
5 Q Okay. Would you keep the daily copy or
6 would you give it back to the prosecutor?
7 A Actually, before I got here, I was being
8 emailed whatever I received. So, there wouldn't be
9 anything to give back. I did get one daily while I
10 was here that I assumed was an extra copy for me.
11 Q So, it might have been word of mouth about
12 what Dr. Rosenblatt testified to as opposed to a
13 daily copy, much like Deputy Stephens or might have
14 been a daily copy presented to you by the
15 prosecution?
16 A For his testimony, I couldn't, as I sit
17 here, tell you which it was.
18 Q The charts that were put today -- and I
19 take it, were they done in conjunction with the
20 Tri-coastal Company?
21 A Actually, originally, I prepared all the
22 content. I did them on our standard power point
23 background, which is gray with stripes; and then
24 when I emailed them to the D.A.'s Office, they said
25 that Tri-coastal wanted to improve the quality of

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1 them. I was skeptical and we have our way of doing
2 it, but they made them prettier, but they did not
3 change the content.

4 Q All right.
5 A Just the colors and layout.
6 Q And that wasn't an out-of-pocket cost to
7 you to prepare those slides?
8 A No.
9 Q Strike that. To prepare the slides or to
10 have Tri-coastal the company in the courtroom today
11 with the charts, et cetera, with the screen, to have
12 them paid for what they do?
13 A That's right.
14 Q And I presumed that you would assume that
15 that was done at the -- paid by the State, if you
16 know?
17 A I can only assume.
18 Q Okay. When will you submit your final
19 bill, do you know, to the District Attorney's
20 Office?
21 A The first of April.
22 Q You have any approximation, Dr. Dietz, as
23 to how much you are going to bill the State for the
24 work done in this case?
25 A Well, I'm sure it's going to be quite a

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1 bit because I have been here four or five days
2 already on this trip.
3 Q Not to include the consultation, et
4 cetera; am I right?
5 A That's right.
6 Q Give me an approximation. Do you have a
7 figure in mind?
8 A Well, I estimated the time being that it
9 would be -- it would be \$50,000 by the time trial
10 was over, if there was a contested insanity trial,
11 and confident that it will hit that.
12 Q Okay. Probably perhaps go over?
13 A Could well.
14 Q Now, you are a consultant, are you not, on
15 the television program known as Law and Order?
16 A Two of them.
17 Q Okay. Did either one of those deal with
18 postpartum depression or women's mental health?
19 A As a matter of fact, there was a show of a
20 woman with postpartum depression who drowned her
21 children in the bathtub and was found insane and it
22 was aired shortly before this crime occurred.
23 Q The companies that you hire out to -- I
24 take it, some of the corporations would include, for
25 instance, Xerox Corporation?

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1 A Pardon me?
2 Q Are you a consultant or consult for Xerox
3 Corporation?

4 A We did one matter for them many years ago,
5 but no longer have any relationship.

6 Q Is that the matter relative to the Uyesugi
7 case?

8 A Uyesugi. A competitor of my firm tried to
9 help them on that one and didn't do too well. I was
10 working on the criminal case later for the defense
11 attorney.

12 Q And in that particular case, you testified
13 as a defense expert, did you not?

14 A That's right.

15 Q And that case involved a fellow that
16 planned in a meticulous fashion and did a lot of
17 preparation in order to have a firearm and ended up
18 killing seven employees of Xerox in a short
19 synopsis?

20 A Well, I don't recall any meticulousness to
21 his planning, but he indeed did kill seven
22 co-workers at Xerox.

23 Q Okay, Doctor --

24 A And there may have been a lot of planning,
25 I just don't recall.

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1 Q I'm sorry?

2 A There may have been a lot of planning, I
3 just don't recall. I know he bore his grudge for
4 nine years.

5 Q Right. And let's talk about the planning,
6 if we may. Do you recall, Dr. Dietz, the testimony
7 in that case?

8 A Not very well, but I may be able to
9 recollect it as we go.

10 Q All right.

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6 Q (By Mr. Parnham) Dr. Dietz, before the
7 break, I was asking you a question on the person who
8 is named -- I still can't pronounce it -- in Hawaii?

9 A Mr. Uyesugi.

10 Q Uyesugi. And we were talking about the
11 areas of preparation that, for instance, he went
12 through in order to carry out the killing of seven
13 people, I believe?

14 A You had asked about it, but I don't recall
15 this many years later what the preparation was.

16 Q Okay. That was back in 2000, do you
17 recall?

18 A I don't know when it was.

19 MR. PARNHAM: May I approach the witness,
20 Your Honor?

21 THE COURT: Yes, sir.

22 Q (By Mr. Parnham) I'm going to show you,
23 Dr. Dietz, what purports to be a copy of your

24 testimony in that trial; and it reflects the date of
25 May 30, 2000. And this is the case in Hawaii that

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1 the prosecutor asked you about on direct examination
2 relative to testifying for the Defense in this case
3 and what you might do just to guide you to that area
4 that I was making inquiry on.

5 You may refresh your memory,
6 Dr. Dietz, with pages -- well, with the entire
7 thing, if you care to.

8 But my question, specifically, would
9 relate to the areas of preparation beginning on page
10 14 through -- just the area relative to the
11 preparation that was undertaken in that fashion, and
12 I'll ask you a few questions about that.

13 A Thank you.

14 Q Sure.

15 A Yes.

16 Q You're ready. You may hold on to that.

17 Doctor, in the area of preparation --
18 and I'll start on Page 14 -- you mentioned that
19 there had been an upset going on between this
20 individual and Xerox or certain employees with that
21 particular company for a number of years?

22 A Yes.

23 Q In essence, we get to the level of
24 preparation where he got his gun, a Glock, from his
25 car and he had a number of rounds in the chamber?

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1 A Only one in the chamber.

2 Q And he had 15 in the magazine that was
3 inserted into the firearm?

4 A Correct.

5 Q He had selected a good brand of ammunition
6 in order to carry out what he needed to do?

7 A Particularly effective for his purposes,
8 yes.

9 Q Right. He mentioned to you that he had
10 slept well the night before and he was determined to
11 do what he was going to do the next day?

12 A Yes.

13 Q There were certain decisions that he made
14 the next day on who he would shoot and who he would
15 not shoot?

16 A Yes.

17 Q And he proceeded then to carry out in a
18 rather methodical fashion the shooting of the
19 individuals and was later tried, and I believe you
20 testified for the Defense?

21 A That's correct.

22 Q And he was convicted, was he not, and I
23 believe sentenced to life?

24 A I think that's right.
25 Q Now, let me talk to you a little bit about

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1 the area of what appears, in your mind, to be -- and
2 I -- let me rephrase that.
3 The area of planning. I take it that
4 planning or taking steps to effectuate an outcome is
5 not in and of itself definitive as to whether or not
6 a person is psychotic.
7 In other words, a psychotic
8 individual can do things that will end up with an
9 ultimate outcome; correct?
10 A It depends on which symptoms they have.
11 The general statement you make is correct. Someone
12 can have delusions and yet plan methodically.
13 Someone who is extremely thought disordered cannot.
14 Q Now, someone with an extreme thought
15 disorder cannot do the process that we've discussed
16 with the individual in Hawaii; that is, plan out
17 various steps of activity?
18 A Correct. And here I'm referring to a
19 symptom known as formal thought disorder, a disorder
20 in the form of thinking where people are quite
21 confused and incoherent when they speak, scrambled
22 thoughts.
23 Q So that we understand because a person has
24 a -- for instance, a plan does not necessarily mean
25 that the individual is not suffering from some type

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1 of mental illness; am I accurate?
2 A That's true.
3 Q Within that general -- all right.
4 Now, in the area of deliberateness, I
5 believe that there are some areas -- are you
6 familiar with the testimony of the individual that
7 preceded you, not the Sheriff's deputy, but
8 Dr. Wilson?
9 A I did observe Dr. Wilson's testimony.
10 Q Okay. And would it be accurate that if
11 Dr. Wilson interpreted certain things correctly, or
12 accurately, that were up to speculation, that in and
13 of itself, based on how we perceive the
14 deliberateness or the steps taken, would not
15 necessarily be indicative of the mental state or the
16 psychosis, if any, of the individual on a particular
17 day in question?
18 A Well, Dr. Wilson's testimony about
19 deliberate actions and decisive actions does not
20 tell us whether the defendant had a mental disease.
21 Q Okay.
22 A But it does go to the question of whether
23 she was so grossly impaired as to be unable to use

24 her frontal lobes properly. What he described
25 requires functional frontal lobes.

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1 Q Sure. And you looked at the offense
2 report, did you not?
3 A Yes.
4 Q Now, there was an issue, Dr. Dietz,
5 concerning -- and you sat in during the testimony of
6 Dr. Puryear?
7 A Yes, a portion of her testimony.
8 Q Okay. What portion of the offense report
9 would you consider important; all of it, Doctor, or
10 would there be certain specific areas -- and I would
11 include like the tape-recorded statement of Andrea
12 Yates?
13 A Let me answer you in two different ways;
14 first generic and then specific to this case.
15 Generically, I think it's important
16 for forensic evaluators to attempt to get the entire
17 offense report in every case. I have been in
18 situations where one couldn't, and it's not always
19 up to the evaluator.
20 Q All right.
21 A But the -- but they should always seek it
22 all. In this particular case, what turned out to be
23 the important elements in the offense report, I
24 think, are most importantly the description of what
25 the defendant said in both the unrecorded and the

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1 recorded interview.
2 Q Sure.
3 A Second most important would be her -- the
4 observation of her behavior and occasional comments
5 at the scene, such as pointing out where the clean
6 glasses were.
7 Q Sure.
8 A And where the car keys were hanging and
9 other things that showed she was attentive,
10 understood the surroundings, was oriented.
11 Thirdly, it would be the description
12 of the scene as it is found, the position of the
13 children, the footprints leading out to the kitchen,
14 the covering of the faces.
15 Next in importance would be the
16 photographs of those things, if you consider them
17 part of the offense, or the investigative package,
18 and that crime scene video. Then I suppose would be
19 the proximal witness interviews with Russell Yates
20 and Dora Yates.
21 And I can't recall offhand whether
22 any of the neighborhood canvass interviews were very
23 important at that point. There were some that

24 described the behavior of the defendant and her
25 husband recently, particularly in relation to a

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1 birthday party that one of the neighbors had for
2 their kids; that was of some importance. But there
3 were also some irrelevant neighborhood canvasses
4 that wouldn't matter one way or the other.

5 Q Okay. Let's talk about the availability
6 of the offense report. Now, that's in the
7 possession of the State and that's how you saw it?

8 A They made me a copy of it.

9 Q All right. Now, do you know whether or
10 not that offense report was made available to
11 Dr. Puryear or any defense expert?

12 A Yes, I do.

13 Q And would you tell us whether or not
14 Dr. Puryear or any defense expert was given the
15 opportunity to read the offense report?

16 A Yes, they were given the opportunity to
17 come to the D.A.'s Office and view it, but they
18 wouldn't be able to take a copy.

19 Q Who told you that?

20 A D.A.'s office told me that it's their
21 policy that defense attorneys and their experts are
22 free to come and personally review materials and
23 take notes, but can't copy it.

24 Q Did they tell you that I, I had to go to
25 the District Attorney's Office and copy verbatim,

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1 word for word, in hand, the offense report because
2 the experts in this case weren't permitted to read
3 the offense report earlier? Did they tell you that?

4 A No, but they led me to believe you would
5 have to copy it by hand rather than Xerox it.

6 Q Right.

7 A Seems like a strange policy.

8 Q Did they tell you I did that, that I went
9 up there and verbatim copied word for word, and
10 provided that information to our experts?

11 A I don't know anything about that.

12 Q Would that make any difference, Doctor, in
13 the issue relative to the information available to
14 the Defense experts as opposed to you having direct
15 access to the offense report?

16 A If you copied every word, then the words
17 would be the same. The photographs, I suppose,
18 couldn't be copied that way, nor the video.

19 Q Sure. You mentioned the importance of
20 items in the offense report. Did you see the area,
21 Dr. Dietz, that dealt with -- and let's do this.

22 Let's go to the second phase that

23 Dr. Dietz referred to earlier known as the homicide

24 phase.

25 Now, this is the second phase that

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1 you were talking about; and this is right after the
2 phase that was put on the board, 36, relative to
3 Dr. Rosenblatt's and Dr. -- not Dr., but Deputy
4 Sheriff Stephens?

5 A Second slide of the same case.

6 Q Slide of the same case. Sorry.

7 If you would, Doctor, you mentioned

8 in -- as a question, may have covered each body
9 between homicides to conceal the previous homicides
10 from surviving children?

11 A Yes.

12 Q Now, did you know that -- and in No. 2,
13 may have believed she was saving the children from
14 torment or hell, but did not try to comfort them
15 during the homicides?

16 Did you know, Doctor, that Mary had
17 been placed in the bathroom with her bottle during
18 the drownings of the other children?

19 A Yes.

20 Q Now, I take it that -- that that's a fact
21 that could be interpreted in a number of ways; would
22 that be fair?

23 A Yes.

24 Q It could be interpreted as a lure for the
25 children to come in, correct?

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1 A I don't see that. I understood Mary was
2 screaming; and, usually, the other kids would rather
3 mommy handle that.

4 Q Okay. Or it could be interpreted as
5 Andrea Yates, in the way of a loving mother, wanted
6 to make sure that Mary didn't fall off and hurt
7 herself?

8 A Feasible. Didn't fall off?

9 Q Fall away?

10 A Or crawl away.

11 Q And hurt herself?

12 A I think that --

13 Q Is that feasible?

14 A Sure.

15 Q May have believed she was saving the
16 children from torment or hell but did not try to
17 comfort them during the homicides.

18 Now, is it fair to say that that
19 is -- and you have a question mark there -- is a
20 conclusion or an opinion that you have reached a --
21 basically in a logical fashion; that is, placing
22 some type of logic of your own on the actions of
23 Andrea Yates on that day on the 20th?

24 A Or looking for consistent behavior.
25 Q All right. Now, Doctor, do you remember

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1 in researching the offense report about how the
2 children were positioned in the bed?
3 A Yes.
4 Q And their heads were placed on the
5 pillows, were they not?
6 A Yes.
7 Q And Mary's body was placed -- pardon me --
8 was placed in the bed with her head resting on her
9 older brother's shoulder?
10 A Yes.
11 Q And her hands were -- were cupped by her
12 older brother's hands?
13 A Cupped, is that the word you said?
14 Q That's what I said.
15 A Yes.
16 Q And the officers, their observation of
17 that, gave them an impression when they arrived that
18 it was as if the bodies had been posed, correct?
19 A Correct. I think one of them called it a
20 staged scene.
21 Q A staged scene. And that it appeared that
22 the older brother was taking care of the younger
23 sister?
24 A Nurturing. I don't remember what his word
25 was, but that's the impression.

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1 Q Okay. Now, if we are -- and I noticed,
2 that doesn't appear in your charts, does it?
3 A I don't see the relationship between that
4 and knowledge of wrongfulness.
5 Q Do you see the relationship between that
6 and comforting those children?
7 A Not really since they -- I think that's to
8 comfort herself. The children were already
9 unconscious and dying when she put them in that
10 position.
11 Q So, it would be your testimony that
12 placing that baby girl with that head -- that little
13 girl's head on the shoulder of John, would be an act
14 of comforting Andrea Yates, who had just drowned
15 those children?
16 A She was the only conscious one in the
17 room.
18 Q But if it were the other way around, what
19 does that say about her mental state at the time it
20 was taking place, Doctor?
21 A If what were the other way around?
22 Q Is it an important factor?
23 A I don't understand what you mean by the

24 other way around.
25 Q It doesn't appear -- and I -- I guess what

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1 I want to be able to develop here is that it appears
2 that this was some act of love on the part of Andrea
3 Yates, for whatever reason; would you agree with me?
4 A It could be seen that way.
5 Q Okay. And if it is an act of love on her
6 part, you have acknowledged that she -- that it
7 could be that she wants the best interest of those
8 children to send them to Heaven.
9 A There is certainly some sense in that she
10 thought it was in the best interest of the
11 children --
12 Q That's not my question. My question,
13 Doctor, is that you have acknowledged in the last
14 slide --
15 A That she may have believed --
16 Q -- that she may have believed that it was
17 in the best interest of those children?
18 A Yes.
19 Q And my question is, isn't trying to put --
20 isn't that an act of love, what could be considered
21 to be an act of love, on Andrea Pia Yates' part, in
22 wrapping that baby around the hands -- and cupping
23 those hands in the hands of her older brother?
24 A Yes, that could be.
25 Q Okay. And the last question I have of you

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1 on that part is that, that what I just described is
2 not part of your slides?
3 A Correct.
4 Q Let's go to the area of posthomicide.
5 That will be No. 19, Page 19.
6 Covered the faces of all the bodies
7 in bed indicating guilt and shame. Now, this is
8 posthomicide?
9 A Yes.
10 Q Where is there on the slide, taking Mary's
11 body -- putting Mary's body's head on John's
12 shoulder and cupping the hands?
13 A Not on the slide because it doesn't bear
14 on whether she knew it was wrong.
15 Q Okay. The areas that dealt with
16 information and statements that you relied upon --
17 could you put up State's 10. I'll just ask you
18 about it.
19 You mentioned that you did request to
20 talk to Dora Yates, but you were unable to?
21 A That's right.
22 Q And I asked you that question as to
23 whether or not -- that's all right -- whether or not

24 you made the effort, and you indicated that you did.
25 Did you talk to Randy Yates?

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1 A Pardon me?
2 Q Did you talk to Randy Yates?
3 A No.
4 Q Do you know who Randy Yates is?
5 A No.
6 Q As a matter of fact, if you saw him in the
7 hallway, you would not be able to identify him?
8 A That's right.
9 Q If I told you that he is the brother of
10 Russell Yates, you wouldn't -- I mean, obviously,
11 you don't know who he is and you wouldn't be able to
12 say yea or nay?
13 A Correct.
14 Q Had he told you, Dr. Dietz, that he had
15 been over at that house after the second Devereux
16 hospitalization and that Andrea appeared to be
17 totally disconnected with reality, would that be
18 something that you would want to incorporate into
19 your premeditation phase?
20 MR. OWMBY: I object to the form of the
21 question. That's not the testimony. Assumes
22 facts not in evidence; and, therefore, calls
23 for speculation on the part of this witness.
24 THE COURT: Mr. Parnham?
25 MR. PARNHAM: Ma'am?

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1 THE COURT: That's sustained.
2 Q (By Mr. Parnham) Would it be important
3 for you to try to get whatever -- and this testimony
4 is available -- whatever information you could out
5 of Randy Yates relative to her activities in close
6 proximity to the drownings of the children?
7 A Observations of anyone about her specific
8 behaviors as opposed to their conclusions could be
9 quite relevant.
10 I had some, of course, from what
11 Russell Yates told to other people and from Debbie
12 Holmes, but more would be interesting, particularly
13 if it was different from what I had.
14 Q Okay. Now, with Dora Yates -- obviously,
15 you mentioned that you tried to contact her and
16 tried through the District Attorney's Office to
17 visit with her.
18 Dora Yates -- would it be something
19 of importance to you to learn about Dora Yates'
20 observations of her daughter-in-law on the 19th of
21 June?
22 A Yes, that's why I wanted to interview her,
23 though I did have other sources from people who did

24 interview her.
25 Q Okay. Did you know, Dr. Dietz, that Dora

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1 Yates on the 19th had watched Andrea Yates with the
2 baby on her hip in the afternoon hours, less than 24
3 hours prior to drowning the children, stare
4 transfixed for 30 to 45 minutes at a cartoon?
5 A Not that particular one, but it's
6 consistent with other things I knew.
7 Q Did you know that on the 19th of June, the
8 day before she drowned those kids -- again, with the
9 baby at her hip -- she stared for 30 to 45 minutes
10 at a cartoon? Did you know that factor?
11 A I didn't know that factor, no.
12 Q Okay. You mentioned that -- I think on
13 direct -- let me go back for a minute on that.
14 Scratch that.
15 Did you know that on that day, the
16 19th, that Andrea Pia Yates was scratching her head
17 in an area that was commensurate with where she
18 later told Dr. Ferguson the 666 was?
19 A I knew that there were fresh scratches
20 there when she got to the jail, but I don't know
21 just when she was scratching.
22 Q Okay. Did you know that Dora had viewed
23 that?
24 A No.
25 Q The information concerning Debbie

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1 Holmes -- and I think on direct examination there
2 was an inquiry made concerning her journal, and I
3 think you indicated that it really wasn't a journal,
4 it was -- because it wasn't made contemporaneous
5 with, it was made after the fact.
6 Do you recall whether or not Debbie
7 Holmes told you that she had constructed this
8 ten-page document after the drownings?
9 A Debbie Holmes didn't even tell me that it
10 existed.
11 Q And who told you that -- because I believe
12 your testimony was that this journal of sorts had
13 been created after the drownings and, therefore,
14 lacked the indicators and reliability?
15 A It was my conclusion that it was created
16 later, based on my own analysis of it.
17 Q Okay. The day after?
18 A No. I said it was my conclusion that it
19 was created after the drownings, based on my own
20 analysis of the document.
21 Q All right. So, if the -- and, therefore,
22 would impact the weight to be given to that
23 particular document by a person such as yourself?

24 A Well, yes, but, in fairness, not because
25 of any distrust of Debbie Holmes.

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1 Q I understand that.

2 A It's just that when one tries to go back
3 and get dates correct of various events, that's hard
4 to matter -- how accurate one tends to be.

5 Q And that's because an individual's memory
6 kind of blurs after -- depending on one's age, I
7 take it?

8 A Depending on many things.

9 Q And for many reasons. Kind of blurs
10 between the activity and when that recordation is
11 made; am I correct?

12 A Memory is one of the factors that can
13 influence the reliability and validity of
14 information put down later.

15 Q Sure. A person can be -- for instance, if
16 I'm writing something down three weeks from now
17 about what you testified to on the stand, that's
18 going to be less reliable as far as credibility is
19 concerned. Not that I'm trying to lie or anything,
20 but less reliable than jotting it down
21 contemporaneous with your testimony today?

22 A That would be one factor, yes.

23 Q The further off you go from the event
24 itself, the less weight you could give to the
25 content of the writing; would that be fair?

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1 A That depends on who is preparing it. Some
2 people are careful observers who have occasion to
3 repeatedly rehearse the information and have it
4 vividly in mind. Other people won't remember the
5 next day.

6 Q How about Deputy Stephens?

7 A I have no idea.

8 Q Okay. Now, if Debbie Holmes told you and
9 testified in front of this jury -- you didn't get a
10 copy of her daily copy, did you -- of her testimony?

11 A Of Debbie Holmes? No, I didn't.

12 Q If she testified in front of this jury
13 that the journal, with a couple of exceptions, was
14 created by her or handwritten by her because her
15 sister told her I know you're worried, you better
16 start writing it down, would that be consistent with
17 your observations or at least opinion that that was
18 created after the fact?

19 A Yes.

20 Q If Debbie Holmes testified that she wrote
21 most of that journal contemporaneous with that day
22 prior to the drownings, or those days prior to the
23 drownings, would that be inconsistent with your

24 evaluation of her journal or her -- the document
25 that was prepared and presented to you?

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1 A Let me make sure I understand. If her
2 testimony was that some early entries were made
3 after the fact but then she began to make relatively
4 contemporaneous entries prior to the drownings? If
5 that's what she testified to, I believe her; and
6 that would be consistent with what I observed.

7 Q You found Debbie Holmes to be a credible
8 person, I take it?

9 A Yes, she is obviously the defendant's best
10 friend but she is -- and a caring person, but I
11 found her to be credible and a careful observer.

12 Q Okay. And the journal issue itself -- the
13 last question on that point. The information
14 contained therein, if, in fact, Debbie Holmes said
15 she did it when she did it, you have no reason to
16 disbelieve her?

17 A That's right.

18 Q Who -- is there any -- how did you arrive
19 at the conclusion that it was done after June the
20 20th?

21 A Really, just an inference based on the
22 sounder conclusion that the earlier entries where
23 the dates were changed were not made on the dates
24 originally written. I haven't seen this for a bit.
25 So, I don't recall what else there may have been,

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1 but I remember the big thing where some dates were
2 scratched out and I think there was a marginal note
3 saying something about uncertainty about the date.

4 Q The date itself was scratched out, but the
5 content was not; is that right?

6 A That's right.

7 Q All right. Now, if you would like to take
8 a look at that. It's not in evidence, but if you
9 would like to take a look at it, I'll be glad to
10 show it to you. I have no further questions on that
11 issue. Okay.

12 You testified on direct examination
13 that you saw a video of Dr. Puryear's interview with
14 the defendant, Andrea Pia Yates. And I believe
15 Mr. Owmbly asked you a question about that being a
16 blouse or something that I brought Mrs. Yates. Do
17 you recall that?

18 A Well, there were three of her videos that
19 I saw; the one in February of 2002, Mr. Owmbly asked
20 me if that's the one with the sweater that you
21 brought.

22 Q Sweater, right. And I think you mentioned
23 that that video of Andrea Yates that included

24 Dr. Puryear's interview of her, that that was taken
25 in Dr. Ferguson's office?

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1 A Yes, I think it was.
2 Q And do you recall that testimony?
3 A Yes.
4 Q And who told you that that was taken in
5 Dr. Ferguson's office?
6 A I thought I recognized it, from having
7 been in Dr. Ferguson's office.
8 Q And where is Dr. Ferguson's office
9 located?
10 A At the jail.
11 Q Do you recall what floor?
12 A No.
13 Q Okay. It's not on the first floor, is it?
14 A No.
15 Q Do you recall getting on the elevator and
16 going up to the third floor in that wonderful
17 facility over there?
18 A I recall an elevator, but I couldn't tell
19 you what floor.
20 Q And you had to get on the elevator to get
21 up?
22 A Or walk the stairs, but I never did that.
23 Q You don't know -- and this is, I guess --
24 well, it may be an unfair question. Do you know a
25 captain with the sheriff's department by the name of

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1 Lanny Hitchcock who offices on the first floor of
2 the building?
3 A I don't think so.
4 Q Okay. Do you have any idea as to whether
5 or not -- you don't know where that interview really
6 occurred, do you?
7 A No.
8 Q And if the question suggested to you some
9 type of, oh, collusion between Dr. Ferguson and the
10 Defense, did you notice any of that in the video
11 that was shot with Dr. Puryear on the 4th of
12 February?
13 A Collusion? No, I noticed some
14 differences. She -- somehow or other she had a more
15 comfortable chair that day. I thought they had a
16 rule about the hygiene of the chairs and the inmates
17 had to sit in plastic, hard chairs. Not that I
18 believe that's a good idea, it's just that she was
19 in a more comfortable circumstance.
20 Q As a matter of fact, I think when you
21 interviewed her, she was up in a room and the chairs
22 were creaking.
23 Do you know what day Dr. Puryear was

24 down there interviewing Andrea Yates on February the
25 4th?

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1 A What day of the week it was?
2 Q Yes.
3 A No.
4 Q If it were the weekend, you don't know
5 that to be a fact or not?
6 A I don't know.
7 Q And if that were done in Captain
8 Hitchcock's office because of the lack of personnel
9 up on the second floor, you don't know that to be a
10 factor?
11 A Correct.
12 Q And if, in fact, Dr. Ferguson didn't even
13 know about the February 4th interview with
14 Dr. Puryear, when it occurred, you don't know that
15 to be a fact or not?
16 A I don't know one way or the other.
17 Q Okay. You -- in certain of the areas
18 concerning the actions, particularly regarding the
19 doctors and Mrs. Yates and Mr. Yates, you mentioned
20 that a contextual factor in 1999 -- and may we turn
21 to Page 13. That would be -- I don't know what
22 number that is.
23 A Contextual factor in 1999 was
24 obviously living in a bus with her husband, newborn
25 and three other children, began home schooling; and

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1 then you go to an area now feeling depressed and
2 overwhelmed, asked her husband for help, got medical
3 attention only upon taking an overdose.
4 Do you remember testifying relative
5 to, basically, taking an overdose because she was
6 seeking help and she wasn't getting it? Do you
7 remember testifying --
8 A I remember believing that, and I'm not
9 sure what I said here. But I think that the
10 overdose is an effort to get help and to get rest
11 and to get away from this intolerable situation.
12 Q Right. And then she takes a knife and she
13 is caught -- stopped from cutting her throat by her
14 husband, and then they buy a new house. Do you
15 remember that line of testimony?
16 A Yes, where I pointed out that that's been
17 characterized as a suicide attempt, it's at least a
18 suicide threat.
19 Q And this was a way for Andrea Yates, who I
20 take it is some type of a control-type person?
21 A Controlled, did you say?
22 Q A controlling type of individual, was that
23 the gist of your testimony?

24 A Andrea Yates controlling? No, just the
25 opposite. Controlled.

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1 Q Got it. That this was her way of getting
2 a new house?
3 A No.
4 Q Or getting into a better set of
5 circumstances?
6 A Escaping an intolerable situation.
7 Q Okay.
8 A I believe that most human behavior, even
9 the simplest, has multiple motivations at the same
10 time. And when people have an illness, they may
11 have various thoughts that they are putting around
12 it, but there are still underlying multiple
13 motivations and it's difficult -- I would hope for
14 any psychiatrist to read these facts and not realize
15 that escaping this awful situation of trying to home
16 school all these kids in a bus when you're already
17 depressed and sick is more than anyone can handle.
18 Q Sure.
19 A So, escaping that is a big part of it.
20 Q And I think you used the term stressors?
21 A Those are stressors, yes.
22 Q Much like the stressor of drowning your
23 five children on the 20th. That was certainly a
24 stressor, a live stressor that basically put her
25 over the edge?

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1 A The drownings certainly did, yes.
2 Q Sure. And putting that in the context in
3 which it was testified about, this issue of drowning
4 the children -- before we go back to the contextual
5 factors -- I take it, is put in the category of a
6 stressor that puts a psychotic individual into a
7 more psychotic state of mind, based on your
8 testimony?
9 A The facts available to me, everything I've
10 seen, are consistent with the view that she had a
11 delusion about cameras, she was withdrawn --
12 Q That's not my question.
13 A -- poorly functional --
14 Q I understand. I understand, but that's
15 not my question. My question was, you testified on
16 direct examination that the drowning of those
17 children was the, I guess, ultimate stressor that
18 really pushed her into a psychotic state?
19 A Realizing she had drowned her five
20 children threw her into a worse state.
21 Q And that acknowledges, first of all, it
22 seems to me, that she's in a psychotic state at the
23 time, correct?

24 A As defined by believing there are cameras
25 in the ceiling.

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1 Q And the factors that you have enumerated
2 here that we are going through, dictate to you that
3 this was simply a stressor as opposed to being an
4 act of a psychotic that did not know in her mind's
5 eye what she was doing was wrong?
6 A I didn't understand the question.
7 Q All right. Let's go to the area of the
8 ECT on contextual factors.
9 Oh, before we go there -- I'm sorry.
10 I mean, could, Dr. Dietz, the taking of the overdose
11 and the knife to the throat -- could that be,
12 Doctor, interpreted by medical experts as being an
13 alternative to hurting her children?
14 A Yes, it's one of the things that she has
15 said. At times, she says that she was thinking of
16 harming the children. At times, she says she had
17 thoughts of harming the children and was afraid she
18 might do it. At times, she doesn't -- she downplays
19 that. And I think it's quite reasonable to believe
20 that that was one of the motivations for those two
21 actions, but it's not the only motivation.
22 Q And the other motivations are motivations
23 that you have determined are incorporated in those
24 actions. I mean, she never told any doctor that, "I
25 wanted a new house"?

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1 A Not at all. No, no, I do not mean to
2 suggest that this is intentional manipulation.
3 Q Okay.
4 A It is just one of the factors that goes
5 into this. Escape from this situation, it seems to
6 me, is something she couldn't admit to herself she
7 needed. She couldn't say to people, I can't stand
8 this, get me out of here. She thinks she has to
9 accept passively her fate in this marriage with
10 these kids and the home schooling and the cult with
11 Warnike and all the rest. She doesn't have to --
12 but she doesn't have the skill to be able to say,
13 I'm out of here, get me a babysitter and a new
14 house.
15 Q Right, right. And you know, from our
16 view, that appears to be -- it's absolutely mind
17 boggling that this family was living in that bus?
18 A Yes.
19 Q I mean, I think we would all say that,
20 right?
21 A Certainly when they didn't have to. It's
22 not necessary.
23 Q Sure. And it -- if you -- if you go into

24 the mind's eye of the person of Andrea Yates, as she
25 views it, is it absolutely illogical to believe in

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1 her illness that she didn't want to say those things
2 because she was afraid Satan would make them come
3 true? You have heard that, have you not?

4 A Yes, I have heard that. What was your
5 question?

6 Q Yes. Has she told you that -- did she
7 tell you that on the tapes?

8 A Yes.

9 Q Let's go to the bottom before I pass the
10 witness.

11 Now, Doctor, you see the area
12 relative to the ECT being recommended by
13 Drs. Thompson and Rios?

14 A Yes.

15 Q Now, ECT is electroshock therapy. I don't
16 know -- what does ECT stand for? I call it
17 electroshock therapy.

18 A Yes. It was originally called ECT
19 because, originally, it was associated with
20 convulsions and that stood for electroconvulsive
21 therapy. The methods used over the last 30 or 40
22 years hasn't involved convulsions, but it has
23 involved sending electrical impulses through the
24 brain or a part of the brain.

25 Q And it's a pretty drastic step in mental

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1 health?

2 A Well, it's gotten a terrible reputation
3 thanks to One Flew Over a Coo Coo's Nest where they
4 gave it to the wrong patient. But the treatment
5 itself can be done very safely and is quite
6 effective with the correct patients.

7 Q All right. And it basically -- well, you
8 know much more about this than I do, but it's kind
9 of a -- you don't give somebody ECT as an
10 alternative to taking a dose of medication. It
11 requires hospitalization and supervision and things
12 of that nature, does it not?

13 A Actually, outpatient ECT can be given,
14 but, certainly, Mrs. Yates at that time should have
15 been hospitalized and ECT would have been indicated,
16 as these doctors thought. The way she presented at
17 the time, it was a very reasonable suggestion; and
18 it could have dramatically improved her within two
19 to three weeks.

20 Q Is ECT -- is that a procedure that can be
21 recommended for a person that is psychotic?

22 A It can be recommended for someone who is
23 psychotic, but that's not the primary original

24 reason. It was because she was massively depressed
25 and withdrawn, nearly mute, with many depressed

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1 features that it would have been done, psychosis or
2 not.

3 Q Is it something that can be done for
4 individuals that are schizophrenic?

5 A Yes. Although, it's no longer thought to
6 be one of the earlier treatments one would choose
7 for schizophrenia.

8 Q Now, I have two last questions, Doctor.

9 Your last issue here -- next to the last issue is
10 Mr. and Mrs. Yates refused. Now, you have not
11 talked to Dr. Thompson, have you?

12 A No, I'm relying on the medical records.

13 Q You don't know what condition Mrs. Yates
14 was in at the time that ECT was recommended to

15 Dr. Thompson -- to Mr. Yates and/or Mrs. Yates, do
16 you?

17 A Only what the medical records say.

18 Q And you don't know if she actively was
19 even able to participate in the decision concerning
20 ECT?

21 A That's right, but there is a statement
22 about their both refusing.

23 Q And at the end -- my last question of you,
24 Doctor, is, when you were asked to give an
25 evaluation in this case, as part of the parameters,

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1 the issue of future dangerousness was not one of
2 those parameters?

3 A You are correct.

4 MR. PARNHAM: Thank you, Dr. Dietz. I
5 have no further questions of you.

6 THE COURT: Mr. Owmbly?

7 REDIRECT EXAMINATION

8 BY MR. OWMBLY::

9 Q Doctor, you talked about the -- the
10 Uyesugi case -- I'm pronouncing it wrong?

11 A Uyesugi.

12 Q Uyesugi case. Was the standard in
13 Texas -- was the standard in Hawaii the same as the
14 standard in Texas, as far as legal sanity?

15 A No, there's a different legal test known
16 as the American Law Institute or Model Penal Code
17 Test that asks whether the defendant appreciated the
18 wrongfulness of the conduct.

19 Q And I am assuming because it's a different
20 test -- and, actually, I believe that we had
21 testimony that talks about substantial capacity
22 rather than absolutely does or does not --

23 substantial capacity to appreciate the wrongfulness?
 24 A Excuse me a second. I'm confused. I'm
 25 not sure what the standard is in Hawaii, come to

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1 think of it, but I think it is different wording.
 2 Q Oh, it is different?
 3 A I think you had a question about Texas.
 4 What was that one?
 5 Q I think it's getting really late in the
 6 day.
 7 A I think I gave the wrong answer about
 8 Hawaii.
 9 Q All I was really asking, is the standard
 10 different than the Texas standard?
 11 A I think that's correct, yes.
 12 Q And you were explaining that it's the
 13 American -- the AIL standard?
 14 A That's what I'm now unsure of.
 15 Q Okay. But it was different than the Texas
 16 standard?
 17 A Yes.
 18 Q You also talked a little bit with
 19 Mr. Parnham about Dr. Wilson's testimony, which you
 20 observed; is that correct?
 21 A Yes.
 22 Q And you have done some work in the -- in
 23 what he described as looking at organized behaviors
 24 around a crime scene; is that correct?
 25 A Quite a bit, actually.

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1 Q Would you explain what you mean by that?
 2 A As a field of study?
 3 Q Right.
 4 A Well, one of the -- one of the areas that
 5 I spent a portion of my career in is what's known as
 6 crime scene analysis, which is a technique developed
 7 by the FBI. In the unit that I have consulted for
 8 analyzing crime scenes to look at the behavior of
 9 the offender, done originally for the purposes of
 10 helping to solve unsolved crimes. And one of the
 11 early findings in that line of work was that it was
 12 helpful to distinguish between organized crime
 13 scenes and disorganized crime scenes. And although
 14 the decision of which, a crime scene isn't always
 15 easy, this is an easy one to say it was an organized
 16 crime scene.
 17 MR. PARNHAM: Well, I was going to enter
 18 an objection. Nonresponsiveness.
 19 Q (By Mr. Owmbly) You also mentioned the
 20 frontal lobes problem that Dr. Puryear referred to
 21 in her testimony and I had a -- kind of a confusing
 22 discussion with her about that.

23 Would you explain how this frontal
 24 lobe problem may or may not have impacted on the
 25 findings that you made or findings that anyone else

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1 made?
 2 A Well, Dr. Puryear relied on the findings
 3 of Dr. Ringholz of some impairment in the function
 4 of frontal lobes; and I saw his test findings about
 5 that regarding what kinds of tasks Mrs. Yates is
 6 slower at or doesn't do as well at. Those test
 7 findings were made in December of -- excuse me -- in
 8 December of 2001 and January of 2002. I had already
 9 examined her before that.
 10 And at the time I examined her, she
 11 certainly had the capacity for abstract thinking,
 12 knowing the difference between right and wrong and
 13 other executive functions that the frontal lobe was
 14 involved with. She also, obviously, had those kinds
 15 of functions in the videotape made by Dr. Puryear in
 16 February, 2002.
 17 If she had intact frontal lobe
 18 functioning before and after that testing, it makes
 19 no sense to me to say that testing shows anything so
 20 significant that it would have impacted her the day
 21 of the crime. And the particular behaviors --
 22 MR. PARNHAM: Judge -- I'm sorry,
 23 Doctor -- object as to responsiveness.
 24 THE COURT: Let's proceed in question and
 25 answer.

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1 Q (By Mr. Owmbly) Your conclusion about the
 2 frontal lobe problem, is it reflected in the
 3 behaviors that you observed through the -- your
 4 examination the day of the crime?
 5 A On the day of the crime, the behaviors
 6 that the defendant engaged in and what she told me
 7 later she engaged in, showed that her frontal lobes
 8 were working just fine that day. She had other
 9 problems; and there are areas where the experts are
 10 disagreeing about how serious the problems were, but
 11 it wasn't a problem in being able to carry out an
 12 organized plan, series of actions.
 13 Q Doctor, you were asked about the
 14 posing -- the posing -- the way the children were
 15 put in the bed. What does it say about the way Noah
 16 was left in the tub, as far as that issue that
 17 Mr. Parnham raised with you?
 18 A You mean, what is my interpretation of his
 19 being left in the tub?
 20 Q Yes.
 21 A I think he was too heavy for her to lift
 22 at 50 pounds. Nurses know not to lift heavy weights

23 or they risk back injury.
 24 MR. OWMBY: Thank you. We have no further
 25 questions.

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1 THE COURT: Anything else, Mr. Parnham?
 2 MR. PARNHAM: Yes, I do. Just a couple.
 3 RECROSS-EXAMINATION
 4 BY MR. PARNHAM::
 5 Q Now, Doctor, have you seen the
 6 information -- you've seen Dr. Ringholz' report?
 7 Have you seen all of the background and all the
 8 various tests that he conducted over the times that
 9 he spent with her?
 10 A No, I haven't and I wouldn't even be
 11 qualified to analyze some of the neuropsychological
 12 data that he relied on.
 13 Q You're aware that he is the chief of the
 14 neuropsychological department at Baylor College of
 15 Medicine here in Houston?
 16 A Yes, indeed.
 17 Q And the tapes that you -- the excerpts
 18 from the tape, I take it that the ones that were
 19 played to this jury are the ones you selected to
 20 emphasize the point that you were making in your
 21 presentation to this jury?
 22 A From my examination, yes, that's right.
 23 Q All right. And, obviously, that -- those
 24 excerpts are just a portion of the entirety of the
 25 tape recordings, the interviews of Mrs. Yates?

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1 A That was, perhaps, a total of less than
 2 half an hour of six to eight hours of videotape of
 3 mine.
 4 Q All right. So if -- if other portions are
 5 subsequently played to this jury -- I take it you
 6 are going back to California tonight.
 7 We wouldn't have a -- there is not a
 8 problem with other portions being played by the
 9 Defense, for instance, or the prosecution later on
 10 during the course of, say, Monday's testimony?
 11 A Not a problem for me.
 12 Q Okay. And the -- you mentioned the
 13 standard in Hawaii. I think you -- you did testify
 14 that it's basically up to the jury to determine the
 15 insanity, to place the evidence against the law in
 16 the State of Texas and make a determination as to
 17 whether or not Andrea Yates was able to, for
 18 instance, appreciate the wrongfulness of her act on
 19 June the 20th?
 20 A Well, they wouldn't be asked that because
 21 this is Texas.
 22 Q All right. As a matter of fact, they are

23 not asked any issue. They are asked to make the
 24 determination on the law as it applies to the facts
 25 in this case; and that's why you, as an expert, will

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1 not refrain and will not give an opinion on the
 2 issue of legal insanity; isn't that correct?
 3 A That's why I won't volunteer an opinion.
 4 It's for the jury to decide legal insanity based on
 5 everything and the instruction the Judge gives them.
 6 Q Okay. Did you -- Doctor, you mentioned
 7 the issue of abstract thought as it relates to
 8 frontal lobe problems; and you saw no evidence of a
 9 problem in Andrea Pia Yates from the date of
 10 February the 4th and the date that you saw her in
 11 November?
 12 A I wouldn't say no problem.
 13 Q All right.
 14 A But she certainly did have the capacity
 15 for abstract thought; understood right, wrong, God,
 16 Satan, who she was. She could think abstractly.
 17 Q Right. And that's your evaluation of her
 18 frontal lobe capabilities on those times?
 19 A Well, I put it in an overly simplistic
 20 way, but having spoke to her as long as I did, I saw
 21 the capacity for abstract thinking.
 22 I'm not saying that she would have
 23 done well on the SATs that day. I'm saying that
 24 more than normal abstract thinking capacity, more
 25 than average.

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1 Q Are you an advocate or did you tell
 2 Dr. Ferguson that you thought it's important, I
 3 think the term was crucial, to get in there as
 4 quickly as possible and interview and videotape a
 5 patient if there is a question on mental illness?
 6 A A lot of things in your question, but what
 7 is certainly so is that I believe that everyone
 8 doing forensic evaluations should videotape all
 9 interaction with defendants, even if that is never
 10 turned over to opposing counsel, to preserve the
 11 behavioral record before other people interfere with
 12 it and change it.
 13 Q Now, you saw her in November; that was the
 14 first time?
 15 A Correct.
 16 MR. PARNHAM: I pass the witness. Thank
 17 you.
 18 FURTHER REDIRECT EXAMINATION
 19 BY MR. OWMBY::
 20 Q Let me help the Defense attorney out here.
 21 Doctor, I believe you have other commitments and
 22 whatever interpretation they put on whatever

23 excerpts from these two days of tapes, we do not
24 plan to bring you back to offer your interpretation,
25 however valuable it might be, on those excerpts; is

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1 that correct?

2 A I hope you don't plan to bring me back.

3 MR. OWMBY: I appreciate that. We have no
4 further questions.

5 THE COURT: Mr. Parnham?

6 MR. PARNHAM: I don't have anything
7 further. Thank you, Dr. Dietz.

8 (End of requested testimony)
9

* Testimony of Park Dietz, M.D., Andrea Yates trial, March 7, 2002 (on file with the author).