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Cover Page Footnote

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NEWFOUND RELIGION: MOTHERS, GOD, AND INFANTICIDE

*Susan Ayres**

Infanticide dates back to ancient times—in Greek city-states, for instance, disabled newborns were left outside to die of exposure.¹ Other ancient cultures—including Muslim, Hindu, and Chinese cultures—practiced infanticide for varying reasons.² In the middle ages, infanticide was common in Western Europe and different methods of killing infants, such as overlaying a child (suffocation), were considered merely venial or minor sins.³ In the seventeenth century, the concern over infanticides of illegitimate children resulted in the 1624 English concealment law which provided that single women who concealed their pregnancies were presumptively guilty of infanticide unless they could prove the child was born dead.⁴ In the eighteenth and nineteenth centuries in England, infanticide was so common as to be considered an epidemic.⁵ In the United States, infanticide has been criminalized as murder and is not treated as a separate offense, as opposed to in England, where the Infanticide Acts of 1922 and 1938 treat infanticide as a lesser charge of manslaughter.⁶

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1. CHERYL MEYER & MICHELLE OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN: UNDERSTANDING THE ACTS OF MOMS FROM SUSAN SMITH TO THE “PROM MOM”* 3 (2001).

2. *Id.* at 4-6.

3. MEYER & OBERMAN, *supra* note 1, at 7-8; *see also* Kathryn L. Moseley, *The History of Infanticide in Western Society*, 1 *ISSUES L. & MED.* 345, 355-56 (1986).

4. Laura Gowing, *Secret Births and Infanticide in England*, 156 *PAST & PRESENT* 87, 90, 114 (1997).

5. George K. Behlmer, *Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England*, 34 *J. HIST. MED. & ALLIED SCI.* 403, 403-06 (1979).

6. Michelle Oberman, *A Brief History of Infanticide and the Law*, in *INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON WOMEN WHO KILL* 3, 9 (Margaret G. Spinelli ed., 2003) [hereinafter *INFANTICIDE*]; *see also* Christine Anne Gardner, *Postpartum Depression Defense: Are Mothers Getting Away with Murder?*, 24 *NEW ENG. L. REV.* 953, 957 (1990).

At the current time, news reports of infanticide appear almost daily in the United States.⁷ The actual incidence of infanticide is impossible to calculate because of reporting difficulties and problems in ascertaining the causes of death.⁸ Some estimate that one infant is killed every day in the United States;⁹ a jury in a recent Texas case was told that five-hundred women kill their children each year.¹⁰ This essay focuses on recent Texas cases involving postpartum psychosis and asks whether the mothers or their criminal trials can be seen as subverting traditional notions about motherhood and violence. Are there trial strategies that overcome traditional stereotypes that the infanticidal mother is mad or bad? Are there trial strategies that provide juries with a more complete story of the mother's actions?

Before considering these questions, it is important to distinguish postpartum blues, depression, and psychosis. Postpartum blues—characterized by crying, mood swings, and anxiety—affects up to eighty percent of women after childbirth and lasts a brief period of hours or days.¹¹ Postpartum depression—a more serious illness—affects about seven to seventeen percent of new mothers and typically lasts several months.¹² Postpartum depression has the same symptoms as clinical depression including “loss of interest in usually pleasurable activities, loss of appetite, sleep disturbance, fatigue . . . excessive guilt, and suicidal thoughts.”¹³

Postpartum psychosis is much more severe and rare than postpartum

7. For instance, in mid-October of 2005, a San Francisco mother heard voices telling her to throw her three children into the San Francisco Bay. All three children died. *San Francisco Mom Pleads Innocent to Murder*, MSNBC, Oct. 21, 2005, <http://www.msnbc.msn.com/id/9758632/>. In June of 2005, a mother pleaded guilty to three capital murder charges for helping her husband suffocate, stab, and decapitate their three young children. Lynn Brezosky, *Mother Gets Life for Killing Three Children*, FT. WORTH STAR-TELEGRAM, July 1, 2005, at B4. In January of 2006, a mother abandoned a newborn in a Dallas hospital toilet. Bill Miller & Melissa Sanchez, *Newborn Found in Toilet at Hospital*, FT. WORTH STAR-TELEGRAM, Jan. 7, 2006.

8. Mary Overpeck, *Epidemiology of Infanticide*, in INFANTICIDE, *supra* note 6, at 19.

9. *Id.*; see also Gardner, *supra* note 6, at 958-59 (listing infanticide statistics for the United States).

10. Glenna Whitley, *Insanely Guilty*, HOUS. PRESS, Jan. 20, 2005.

11. Sheri L. Bienstock, *Mothers Who Kill Their Children and Postpartum Psychosis*, 32 SW. U. L. REV. 451, 456 (2003) (citing Velma Dobson & Bruce Sales, *The Science of Infanticide and Mental Illness*, 6 PSYCHOL. PUB. POL'Y & L. 1098, 1104 (2000)); see also Katherine L. Wisner et al., *Postpartum Disorders: Phenomenology, Treatment Approaches, and Relationship to Infanticide*, in INFANTICIDE, *supra* note 6, at 38-39.

12. Bienstock, *supra* note 11, at 456-57; see also BROOKE SHIELDS, *DOWN CAME THE RAIN: MY JOURNEY THROUGH POSTPARTUM DEPRESSION* (2005).

13. Bienstock, *supra* note 11, at 456-57.

depression, affecting 0.2 percent of new mothers.¹⁴ The symptoms include “hallucinations or delusions, severe depression, and thought disorders.”¹⁵ Often, the hallucinations or delusions are commands to kill the child, or delusions that the child is possessed by the devil or evil spirits.¹⁶ Postpartum psychosis is a long-term and progressive illness that waxes and wanes—in other words, the symptoms disappear and then reappear more intensely.¹⁷ As experts comment, “[b]ecause moments of complete lucidity are followed by frightening psychosis . . . [t]he illness may go unrecognized and untreated. Out of shame, guilt, or a paranoid delusional system, the new mother may not share her bizarre thoughts and fears.”¹⁸ Moreover, women suffering from mental illness before pregnancy are at greater risk for postpartum depression or postpartum psychosis.¹⁹ And women with previous incidents of postpartum psychosis are at greater risk of recurrence with a subsequent pregnancy.²⁰ Some researchers believe that most cases of maternal infanticide involve postpartum psychosis or depression, although that claim is disputed.²¹ Of these three postpartum mental disorders, postpartum psychosis places children at the greatest risk of death and is considered a psychiatric emergency.²²

Over the past four years in Texas there have been four highly publicized cases of maternal infanticide involving postpartum psychosis. Andrea Yates drowned her five children in the bathtub;²³ Deanna Laney used rocks

14. *Id.* at 457.

15. *Id.*

16. *Id.* at 459-60.

17. *Id.* at 457-59.

18. Cheryl L. Meyer & Margaret G. Spinelli, *Medical and Legal Dilemmas of Postpartum Psychiatric Disorders*, in *INFANTICIDE*, *supra* note 6 at 169; *see also*, *The Today Show: Interview: Rusty Yates, Wife Serving Life in Prison for Drowning Her Five Children, Gives His Perspective on Deanna Laney, the Mother in Texas Who Bludgeoned Her Two Sons to Death* (NBC television broadcast May 13, 2003) (on file with author) (After Laney was charged, Yates’s husband appeared on *The Today Show* and commented about how he had not recognized his wife’s mental illness.); *Mom on Trial for Killing Two Sons with Rocks*, MSNBC, Mar. 30, 2004, <http://msnbc.msn.com/id/4625603/> (on file with author) (Laney’s husband also said he was unaware of his wife’s mental illness).

19. Wisner et al., *supra* note 11, at 39; *see also*, Deborah Sichel, *Neurohormonal Aspects of Postpartum Depression and Psychosis*, in *INFANTICIDE*, *supra* note 6, at 62.

20. *See* Wisner et al., *supra* note 11, at 39 (“40-70% of women with established bipolar disorder will have a recurrent episode”).

21. *See* ARLENE M. HUYSMAN, *A MOTHER’S TEARS* 41, 146 (1998) (“we can clearly surmise that one must be very ill to entertain and rationalize any thought process that justifies or precipitates violence directed at a child”) (citing research of Dr. Margaret Spinelli linking infanticide to mental illness and noting Dr. Phillip Resnick’s disagreement with her findings).

22. Meyer & Spinelli, *supra* note 18, at 169.

23. *Yates v. State*, 171 S.W.3d 215, 218. (Tex. App. 2005).

to crush her children, killing two and severely injuring one;²⁴ Lisa Diaz drowned her two children;²⁵ and Dena Schlosser sawed the arms off her toddler.²⁶ Yates, Laney, Diaz, and Schlosser were all tried for capital murder, although the prosecutors did not seek the death penalty in the Laney, Diaz, or Schlosser cases.²⁷ Yates was found guilty, but in January of 2005, her life sentence was reversed.²⁸ Laney and Diaz were found not guilty by reason of insanity.²⁹ Schlosser's trial ended in a mistrial after jurors deliberated four days.³⁰

This essay focuses on cultural constructions of infanticide and psychosis, especially cases in which the mother heard delusional commands to kill her children. Part I examines the background of the Yates, Laney, and Diaz cases. Part II explores whether these mothers can be seen paradoxically as feminist subjects of empowerment rather than as victims. This essay argues that psychotic mothers have been disempowered and silenced, so their acts cannot be seen as subversive feminist gestures. Part III, however, argues that the legal trials of Laney and Diaz demonstrate a possible subversion through trial strategy. These two trials more fully told the mother's story than did the Yates trial and more fully educated juries about postpartum psychosis. These differences made it more difficult for the juries—even Texas juries³¹—to mete out retributive punishment and much

24. Lee Hancock, *Mother Acquitted in Deaths: Laney Insane in 2 Sons' Killings Could Go to Mental Hospital*, DALLAS MORNING NEWS, Apr. 4, 2004, at 1A.

25. Whitley, *supra* note 10.

26. Jennifer Emily, *Attorney Takes on Tall Task: Lawyer Appointed to Defend Mom in Baby's Killing Aims to Change Views on Mental Illness*, DALLAS MORNING NEWS, Jan. 18, 2005, at 1B.

27. Yates, 171 S.W.3d at 215; Lee Hancock, *Death Penalty Out for Mother: Prosecutors in Children's Stoning Cases Allow a Deadline to Pass*, DALLAS MORNING NEWS, Dec. 19, 2003, at 3A; Whitley, *supra* note 10; *Woman Accused of Cutting Off Baby's Arms to Go on Trial*, ASSOCIATED PRESS, Nov. 11, 2005 (AP Alert, on file with author).

28. Yates, 171 S.W.3d at 222. Her petition for discretionary review was rejected by the Texas Court of Criminal Appeals, the court of final resort for criminal matters in Texas, on November 9, 2005, and the Harris County DA's office said it will either retry her or negotiate a plea bargain. See Pam Easton, *Texas Court Clears Way for New Yates Trial*, ABCNEWS, Nov. 9, 2005, <http://abcnews.go.com/US/wireStory?id=1298114&CMP=OTCRSSFeeds0312>.

29. Hancock, *Mother Acquitted in Deaths*, *supra* note 24; Whitley, *supra* note 10.

30. Julia Glick, *Mistrial in Case of Girl's Severed Arms*, ASSOCIATED PRESS, Feb. 26, 2006, available at <https://www.mworld.com/m/mw.asp?lp=GetStory&id=185741431>. Schlosser's trial occurred while this essay was in the final editing stages and is not included in the analysis.

31. See Deborah W. Denno, *Who Is Andrea Yates? A Short Story about Insanity*, 10 DUKE J. GENDER L. & POL'Y 1, 12 (2003); *id.* at 9-10 (discussing the harshness of Texas juries, especially in death penalty cases). Harris County is "one of the most punitive [jurisdictions] in the Western world." *Id.*

easier for the juries to react with compassion.³²

I. THE TRIALS OF YATES, LANEY, AND DIAZ

A. Background of the Yates case: The Voice of Satan

According to Yates's chilling confession, she had been married to "Rusty" Yates for eight years, and together they had five children—from the ages of seven years to six months.³³ On a morning in June of 2001, she fed her children breakfast, then filled the bathtub with water and drowned each child.³⁴ Afterward, she reported the incident to a 911 operator, then called Rusty at work. She said, "It's time," and told him to come home.³⁵

Yates suffered from postpartum psychosis and perhaps bipolar disease.³⁶ Three years before the murders, at which point she had four sons, she tried to commit suicide by overdosing on her father's sedatives.³⁷ After a short stay in the hospital, she again tried to commit suicide by slitting her throat with a steak knife.³⁸ She was psychotic and said she had "a vision in my mind—get a knife, get a knife. I had a vision of this person being stabbed."³⁹ Although her psychosis was successfully treated with injections of the antipsychotic drug Haldol, and although she was warned that having additional children would increase her risk of psychosis, Yates did not like taking medications and had plans to have as many children as possible.⁴⁰

After having four sons, Yates again became pregnant and delivered a daughter, Mary.⁴¹ She suffered another depression three months later when her father died, and spiraled into a psychotic condition in a matter of

32. See Susan Ayres, "[N]ot a story to pass on": *Constructing Mothers Who Kill*, 15 HASTINGS WOMEN'S L.J. 39 (2004) (arguing for the necessity of viewing infanticidal mothers with compassion); see also Michael L. Perlin, "She Breaks Just Like a Little Girl": *Neonaticide, the Insanity Defense, and the Irrelevance of "Ordinary Common Sense,"* 10 WM. & MARY J. WOMEN & L. 1, 31 (2003).

33. *Transcript of Andrea Yates' Police Interview*, HOUS. CHRON., Feb. 22, 2002, at 34A.

34. *Id.*

35. Timothy Roche, *The Yates Odyssey*, TIME, Jan. 28, 2002, at 42, 50.

36. The experts who testified came to differing diagnoses. See *infra* notes 53–55 and accompanying text.

37. SUZANNE O'MALLEY, "ARE YOU THERE ALONE?" THE UNSPEAKABLE CRIME OF ANDREA YATES 34 (2004).

38. *Id.* at 37.

39. *Id.* at 38. She had a previous knife vision after the birth of her first son, but did not tell anyone about this until after the murders. *Id.* at 81.

40. *Id.* at 41.

41. See *id.* at 44.

weeks.⁴² “She picked at spots on her scalp until they bled. . . she held baby Mary in her arms nonstop, terrified to put her down. She stopped eating, drinking, and speaking, and was plagued by hallucinations She slept only an hour or two at night. She didn’t eat. She didn’t speak.”⁴³

Again, Yates was hospitalized in a very depressive state and was experiencing auditory hallucinations.⁴⁴ She was released ten days later, and then re-hospitalized.⁴⁵ Her doctor was reluctant to treat her with the Haldol injections and ordered her to taper off the anti-psychotic medicine.⁴⁶ Within a matter of weeks she sank back into a psychotic state and drowned her children.⁴⁷

When she was interviewed by psychiatrists in jail, Yates told doctors that she was Satan.⁴⁸ She said she had to kill the children in order to save them because she was a bad mother.⁴⁹ She thought she was doing the right thing because by killing her children who were damned by her bad mothering—she was ensuring their lives in eternity at the expense of her own damnation.⁵⁰ Andrea thought that taking her children’s lives would be a good thing, because, as she told another psychiatrist, “if the State of Texas executed [her], they would kill Satan because Satan was within [her].”⁵¹ While in jail, she continued to have auditory hallucinations of Satan’s voice “over the intercom system in her cell” as she had in the past from television cartoons and movies.⁵² She was convinced that “Satan is in me” and that she could prove it by shaving her head to reveal the numbers 666 and “the mark of the beast.”⁵³

Although the defense witnesses, including the nationally-known Dr. Phillip Resnick, testified that Yates was severely mentally ill, psychotic, and did not know that what she was doing was wrong,⁵⁴ the state’s expert witness, Dr. Park Dietz, rebutted the insanity defense. He testified that “Yates didn’t do things . . . he would have expected a loving mother to do if she believed she was saving her children from hell. ‘She doesn’t tell

42. *Id.* at 44-45.

43. *Id.* at 45.

44. *Id.* at 46-47.

45. *Id.* at 51-53.

46. *Id.* at 57.

47. *See id.* at 1-8.

48. *Id.* at 75.

49. *Id.* at 77.

50. *Id.* at 157.

51. *Id.* at 153-54.

52. *Id.* at 76.

53. *Id.* at 77.

54. Ayres, *supra* note 32, at 101-02; O’MALLEY, *supra* note 37, at 157.

them they'll be with Jesus or God,' he said. 'She doesn't offer words of comfort.'"⁵⁵ Although experts testified about Yates's mental state, no videotapes were made of interviews occurring during the first weeks after her arrest.⁵⁶ The jury deliberated for three-and-a-half hours before deciding that Yates was guilty of capital murder.⁵⁷ After the punishment phase of trial, the jury deliberated for thirty-five minutes before deciding that Yates would not be a future threat to society and recommended a life sentence.⁵⁸

Ultimately, the court of appeals reversed Yates's conviction on the grounds that Dr. Dietz gave false testimony; he described a *Law & Order* episode in which a mother with postpartum depression drowned her children in a bathtub.⁵⁹ Such a show never aired; thus, the appellate court held that the trial court abused its discretion in failing to grant Yates's motion for a mistrial because the testimony "suggest[ed] to the jury that [Yates] patterned her actions after that *Law & Order* episode."⁶⁰ Significantly, the jury was informed that the testimony was incorrect after the guilt-innocence phase of trial, but before the punishment stage.⁶¹ After the jury learned the testimony was incorrect, it recommended a life sentence. In analyzing whether the false testimony affected the jury verdict, the court of appeals concluded that "there is a reasonable likelihood that Dr. Dietz's false testimony could have affected the judgment of the jury" on the question of guilt, especially since Dr. Dietz "was the only mental health expert who testified that appellant knew right from wrong."⁶² The Texas Court of Criminal Appeals refused the petition for discretionary review of the appellate court's decision, so Yates will be retried unless a plea bargain is reached.⁶³

55. Carol Christian, *Yates Knew Drownings Were Wrong, Expert Says*, HOUS. CHRON., Mar. 9, 2002, at 1A. For an in-depth analysis of Dietz's testimony, see Denno, *supra* note 31.

56. See Lee Hancock, *Driven by a VOICE*. . . , DALLAS MORNING NEWS, Apr. 18, 2004, at 1H ("Ms. Yates was not subjected to any videotaped interview until weeks after her crime.").

57. Ruth Rendon, *Jury's Decision Fails to Surprise Acquaintances*, HOUS. CHRON., Mar. 13, 2002, at A29.

58. O'MALLEY, *supra* note 37, at 210.

59. *Yates v. State*, 171 S.W.3d 215, 221-22 (Tex. App. 2005). Ironically, the same day that the appellate court handed down its decision, *Law & Order* aired an episode involving a postpartum psychosis defense by a "wife accused of killing a young mother and stealing her infant." *Rohan's Riffs*, NEW JERSEY RECORD, Nov. 13, 2005, at E04.

60. *Yates*, 171 S.W.3d at 215, 221-22.

61. *Id.* at 219-20.

62. *Id.* at 222.

63. See *supra* note 28; see also Anne Marie Kilday, *Yates Brought to Houston for Her Retrial*, HOUS. CHRON., Jan. 7, 2006, at B6 (indicating that there is also a possibility of a

B. Background of the *Laney* case: The Voice of God

While Andrea Yates was initially convicted, Deanna Laney was found not guilty by reason of insanity.⁶⁴ She killed two of her three sons and seriously injured the third on the night before Mother's Day in 2003, in the small town of New Chapel Hill, located outside of Tyler, Texas.⁶⁵ After waking them up in the middle of the night, Laney killed her sons by hitting them with heavy rocks. She then called 911 and stated, "I just killed my boys. I did what I was told to do."⁶⁶ The operator asked, "And who told you to do that?" Laney responded, "God."⁶⁷ Her six and eight-year-old sons were found dead. Her toddler was found with a massive skull fracture; he survived, but he sustained permanent brain damage and permanent loss of vision.⁶⁸

Like Yates, thirty-eight year old Deanna Laney home-schooled her children, and like Yates, was considered a model mother.⁶⁹ During her trial, all five experts testified that Laney was legally insane.⁷⁰ Laney believed that God was testing her by commanding her to kill her sons.⁷¹ After she was arrested, she told psychiatrists that she had delusions that everyday events were messages from God—for instance, she considered her baby's abnormal bowel movements as God's message "that [Laney] was not properly 'digesting' God's word."⁷² On another occasion, she heard God in the kitchen giving her a recipe for a potato casserole.⁷³ Shortly before the murders she saw everyday objects—such as toys her

plea bargain).

64. *Laney's Pastor Focuses on Healing*, HOUS. CHRON., Apr. 5, 2004, at A12.

65. *Id.*

66. *Good Morning America: Mother Charged with Murdering Sons: Woman Claims God Told Her to Stone Children* (ABC television broadcast Mar. 30, 2004) (on file with author).

67. *Id.*

68. A fund has been set up to help with his care: The Aaron Laney Tragedy Fund, Box 1079, Tyler, TX 75710. See *Aaron Laney's Prognosis*, DALLAS MORNING NEWS, Apr. 5, 2004, 4A.

69. Anne Belli Gesalman, *Andrea Yates Redux*, NEWSWEEK WEB EXCLUSIVE, May 17, 2003 (on file with author); see also, Lee Hancock, *Laney Told of Devil and Wanting to Die*, DALLAS MORNING NEWS, Apr. 9, 2004, at 1A (During her psychiatric examinations, Laney revealed that she had suffered from mental illness three years before the murders, but this was not diagnosed or recognized by her friends or family.).

70. *Tyler Mother Thought She Was Chosen by God*, NBC5.COM, Mar. 30, 2004 (on file with author).

71. Lee Hancock, *Laney Recounts Killings on Tape: She Says She Didn't Want to Kill Her Sons, But God Was Testing Her*, DALLAS MORNING NEWS, Apr. 1, 2004, 2d ed., at 5A.

72. *Tyler Mother Thought She Was Chosen by God*, supra note 71.

73. Lee Hancock, *Laney Said Dead Sons Would Return Alive*, DALLAS MORNING NEWS, Apr. 2, 2004, at 3A.

sons were playing with—as messages from God regarding how to accomplish the test she had been given.⁷⁴ When her eldest son Joshua mentioned “that something in his Bible notebook was ‘a test,’” she thought this meant that “she was resisting God’s test that would make her one of the two chosen witnesses [along with Andrea Yates] for the ‘end of days’ foretold in the . . . Book of Revelation.”⁷⁵

After Laney was arrested, she believed that Satan was present in her jail cell.⁷⁶ This delusion was based on the fact that she smelled sulfur in her cell.⁷⁷ During her first month in jail she did not believe that she was sick, and she refused to take any medication.⁷⁸ During this time in jail she came to believe that her son Joshua would “be ‘raised up’ from the dead on his ninth birthday, but began wondering if something was wrong with her when that didn’t happen.”⁷⁹

Both the state and defense made videotapes of psychiatric interviews with Laney.⁸⁰ The state argued that she was not insane, but that her actions showed she “was deceitful, secretive, methodical and aware she was committing a crime,”⁸¹ because she hid her plans from her husband, hid her son’s body, and called 911.⁸² At the end of Laney’s trial, the jury, which had viewed hours of videotapes depicting Laney in a psychotic state, deliberated seven hours before deciding that she was not guilty by reason of insanity.⁸³

C. Background of the Diaz case: The Voice of Doom

In September 2004, Lisa Ann Diaz drowned her two daughters and then attempted suicide by stabbing herself in the neck and chest more than twenty times.⁸⁴ When her husband Angel arrived home from work that

74. Hancock, *Laney Recounts Killings on Tape*, *supra* note 71.

75. *Id.*

76. Hancock, *Laney Told of Devil and Wanting to Die*, *supra* note 69.

77. *Id.*

78. *Id.*

79. Hancock, *Laney Recounts Killings on Tape*, *supra* note 71.

80. See Hancock, *Driven by a VOICE*. . . , *supra* note 56.

81. Lee Hancock, *Jurors Are Expected to Get Laney Case Today*, DALLAS MORNING NEWS, Apr. 3, 2004, 2d ed., at 3A.

82. Hancock, *Laney Recounts Killings on Tape*, *supra* note 71; see also, Lee Hancock, *Mother Acquitted in Deaths*, DALLAS MORNING NEWS, Apr. 4, 2004, 2d ed., at 1A (During closing arguments the prosecutor compared Laney to a terrorist who follows God’s command, but who cannot be excused from accountability.).

83. *Laney’s Pastor Focuses on Healing*, *supra* note 64.

84. Henry Tatum, *No Death Penalty: Collin County DA Made Right Choice in the Diaz Case*, DALLAS MORNING NEWS, Jan. 24, 2004, at 6B; Tim Wyatt, *Mother Had History of Anxiety*, DALLAS MORNING NEWS, Feb. 3, 2004, at 2B.

evening, he found the girls' bodies covered with a blanket and called 911.⁸⁵ Diaz, who was thirty-three, was tried for capital murder; the prosecutors elected not to seek the death penalty.⁸⁶ Six experts testified that Diaz was suffering from severe psychotic delusions when she killed her daughters.⁸⁷ The prosecution, however, argued that she was legally sane at the time because (1) she had told the jailer that she was ashamed,⁸⁸ (2) she was "calm, alert and relatively cooperative" in the emergency room,⁸⁹ and (3) she was simply miserable and "unhappy with her station in life" so she "killed her daughters out of spite."⁹⁰

Before the drownings, Diaz was concerned that evil spirits were taking over her house. She heard voices "that she and her daughters were going to die a slow and painful death."⁹¹ In 2002 and 2003, Diaz went to doctors over ninety times complaining that she had various diseases such as worms, mad cow disease, seizures, and multiple sclerosis.⁹² She tried to rid her house of germs, constantly cleaning and spraying Lysol around the house.⁹³ She threw away items such as hairbrushes and pillows that could not be washed and made her children drink concoctions of Chinese herbs.⁹⁴ She also used remedies suggested by the Kabbalah to get rid of the evil spirits, such as red thread bracelets and sage.⁹⁵

Like Laney, Diaz's delusions worsened immediately before the murders. Diaz had become so delusional that she drank her urine.⁹⁶ Finally, when the family dog would not come to her⁹⁷ and she saw two crows land on her lawn, Diaz took it as a sign that she and her daughters must die that day.⁹⁸ That afternoon, she picked up the girls from school, told them they needed a bath, and then Diaz sprinkled sage on each daughter before drowning her.⁹⁹ She then tried to kill herself with a knife.¹⁰⁰ After she was in jail,

85. Wyatt, *Mother Had History of Anxiety*, *supra* note 84.

86. Tim Wyatt, *Prosecutors Call Mother Resentful*, DALLAS MORNING NEWS, Aug. 4, 2004, at 1B.

87. Tim Wyatt, *Deliberations to Resume Today*, DALLAS MORNING NEWS, Aug 12, 2004, at 1B.

88. *Id.*

89. Wyatt, *Mother Had History of Anxiety*, *supra* note 84.

90. Wyatt, *Prosecutors Call Mother Resentful*, *supra* note 86.

91. Whitley, *supra* note 10.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

Diaz told psychiatrists that she had heard the “voice of doom,” and that she “felt [she] had to save [her girls]” from suffering and evil spirits.¹⁰¹ At trial, the jury watched videotaped excerpts of various psychiatrists interviewing Diaz, and then deliberated for approximately twelve hours before finding her not guilty by reason of insanity.¹⁰² Although the state initially elected to try Diaz for the murder of one child, after the verdict the state dismissed the case against her for murdering the other child.¹⁰³

II. SUBVERSIVE POTENTIAL OF PSYCHOTIC INFANTICIDAL MOTHERS

Should we view an infanticidal mother, like Yates, Laney, or Diaz as a subject of empowerment, rather than as a victim of her circumstances? In recent books, Brenda Morrissey and Patricia Pearson argue that society depicts female killers as lacking in agency, and that in the case of mentally ill women, their illness denies them agency because it suggests they are irrational actors.¹⁰⁴ Pearson describes society’s view of female killers as “passive and rather deranged little robots who imperil themselves on cue.”¹⁰⁵ Morrissey argues that we should consider violent crimes by women as empowering because we should emphasize female agency and reinforce the humanity of women who kill.¹⁰⁶ In other words, because patriarchy situates women as outside of representation, or as “other,” women who kill their children are generally viewed as monsters who acted irrationally, when they should instead be viewed as subversive agents.¹⁰⁷

Poststructuralist feminists have argued that women’s hysteria, as well as their association with death— either as murderers or otherwise—can be a source of female empowerment.¹⁰⁸ Thus, it is important to ask whether the subversive potential of the infanticidal mother is similar to (1) hysterics or

100. See Hancock, *Driven by a VOICE*. . . , *supra* note 56.

101. *Id.*

102. Tim Wyatt, *Insanity Led Mom to Kill Jury Says*, DALLAS MORNING NEWS, Aug. 13, 2004, at 1A.

103. *Id.*

104. See Tracy L. Conn, *When Women Kill: Questions of Agency and Subjectivity by Belinda Morrissey*, 27 HARV. WOMEN’S L.J. 285 (2004) (reviewing BELINDA MORRISSEY, *WHEN WOMEN KILL: QUESTIONS OF AGENCY AND SUBJECTIVITY* 21, 23, 24 (2003) and PATRICIA PEARSON, *WHEN SHE WAS BAD: VIOLENT WOMEN & THE MYTH OF INNOCENCE* 7, (1997)).

105. PEARSON, *supra* note 104, at 23.

106. MORRISSEY, *supra* note 104, at 29.

107. PEARSON, *supra* note 104, at 73, 76 (arguing that we should view infanticide as an example “of female aggression” and also claiming that “when feminists have pondered infanticide at all, they have tended to construe it as a masculine conspiracy to make good women do bad things”).

108. See *infra*, notes 110-117 and accompanying text.

(2) the association of women with death. It is all the more important to ask these questions because, as Morrissey points out, when a mother kills her children, feminists often ignore her case, perhaps due “to our psychological make-up: early dependence on mother figures makes us especially vulnerable to the fear that an evil mother in human form can elicit.”¹⁰⁹

First, should we view the psychotic mother as subversive in the sense that feminist writers have valorized the hysteric? French poststructural feminists have argued that patriarchy has situated women as outside representation—as the “Dark Continent,” or as “lack.”¹¹⁰ Consequently, these writers have considered women’s hysteria as subverting patriarchy. For example, Hélène Cixous sees the hysteric as a revolutionary in the sense that she is “the typical woman in all her force” because she “resists the system” not by directly contesting patriarchy, but she makes her protest known indirectly through her hysteria.¹¹¹

Can we argue that the psychotic mother, like the hysteric, makes her protest known indirectly—a protest, for instance, to the difficulties of mothering, to her oppression within the patriarchy, and to her own loss of self and speech? While some might believe that Yates, Laney, and Diaz indirectly protested their overwhelming super-mom responsibilities, such as home-schooling children—and in Yates’s case, being almost always pregnant or breastfeeding—these mothers do not come across as figures of empowerment. Although these responsibilities of mothering factored into their mental state, these psychotic mothers were not empowered, they were silenced. We can view them as subjects of empowerment only if we completely ignore the reality of their mental illnesses.¹¹² Catherine Clément makes this point in response to Cixous’s argument. Unlike Cixous, Clément does not see the hysteric as revolutionary because “[s]he loses all effectiveness . . . because she herself is the place where everything is turned back against her; she is paralyzed by it, physically or otherwise, and thus loses her impact.”¹¹³

109. MORRISSEY, *supra* note 104, at 23. Morrissey notes, “Female violence remains intrinsically shocking, even to many feminist legal theorists.” *Id.*

110. See LUCE IRIGARAY, *THIS SEX WHICH IS NOT ONE* 30 (Cornell University Press 1985) (1977).

111. Helene Cixous & Catherine Clement, *Exchange*, in *THE NEWLY BORN WOMAN* 154 (Univ. of Minn. 1993) (1975). Irigaray likewise sees the hysteric as a possible method of subversion—in other words, she does not see the hysteric as a revolutionary, but wants to take the hysteric’s response and recast it as a mimesis that allows women’s speech. See Dianne Chisholm, *Irigaray’s Hysteria*, in *ENGAGING WITH IRIGARAY* 263, 268 (Carolyn Burke et al., eds. 1994).

112. MARTA CAMINERO-SANTANGELO, *THE MADWOMAN CAN’T SPEAK: OR, WHY INSANITY IS NOT SUBVERSIVE* 2-4 (Shari Benstock & Celeste Schenck eds., 1998).

113. Cixous & Clement, *supra* note 111, at 155.

In addition to discussing the subversive possibility of the hysteric, some feminist writers also privilege the association between woman and death.¹¹⁴ Can we look at women's murders as subversive or empowering? Often, society considers mothers who kill to be either mad or bad—crazy or evil.¹¹⁵ Arguably, however, we should consider these murders as empowering or as examples of supreme sacrifice similar to Julia Kristeva's discussion of the Madonna in her role as *mater dolorosa*.¹¹⁶ As Maria Aristodemou has suggested: "The murderous mother is portrayed alternatively as the ultimate other, the barbaric and uncivilized woman who, in rejecting motherhood threatens to undermine society's fundamental structures, and on the other hand as the ultimate mother, the heroic martyr whose sacrifice of her most precious possession, points out the failures and oppressiveness of those structures."¹¹⁷

While Morrissey and Pearson assert that we should be cautious about imposing stereotypes that deny women's agency, psychosis should be viewed as an exception to their theories. The examples of famous women murderers that Morrissey presents do not include psychotic infanticidal mothers or any women who committed murders as a result of delusional mental illness. And while Pearson addresses infanticide in the context of postpartum psychosis and bi-polar disease, she does not argue that women suffering from mental illness should be seen as acting out their aggression.¹¹⁸ Rather, Pearson points out that "[i]nfanticide, like any act of violence, is profoundly idiosyncratic."¹¹⁹ A psychotic mother does not kill her children with purposeful agency, so she should not be considered a rational agent with full criminal responsibility for her crime.¹²⁰

114. See *infra*, notes 116-117 and accompanying text.

115. See Ayres, *supra* note 32, at 55-61 (discussing the mad/bad dichotomy).

116. Julia Kristeva, *Stabat Mater*, in THE KRISTEVA READER 160 (Toril Moi ed., 1986); see also Laura Dawkins, *From Madonna to Medea: Maternal Infanticide in African American Women's Literature of the Harlem Renaissance*, 15 LITERATURE INTERPRETATION THEORY 223, 226 (2004) (describing the *mater dolorosa* as "the mother who renounces the fleshly tie to her son and relinquishes him into the world (and death)").

117. MARIA ARISTODEMOU, LAW & LITERATURE: JOURNEYS FROM HER TO ETERNITY 222 (2000).

118. See generally PEARSON, *supra* note 104.

119. *Id.* at 91. She impliedly suggests that mothers who are not mentally ill and who kill their children should be held accountable for acting out of their aggression when she recounts the comments of a trial judge in a case of neonaticide where a young mother's claim that the child was born dead was rejected. The trial judge told the mother that "This . . . was no miscarriage . . . It was no abortion. It was no baptism. This was purely and simply an act of selfish and reckless manslaughter." *Id.* at 90.

120. See CAMINERO-SANTANGELO, *supra* note 112, at 181-82 (concluding her book-length study with the claim that feminists do more to improve women's lives by privileging sanity and agency than by privileging madness).

Additionally, her action should not be seen as an example of heroic sacrifice unless we accept the reality of her delusions—for instance, Yates thought she must kill her children to save them from eternal damnation. We are unlikely to consider such killings heroic.

Thus, the idea that a psychotic infanticidal mother is a subversive woman is very troubling. First, the hysteric does not have actual subversive potential because mental illness, including hysteria and psychosis, silences these mothers.¹²¹ Second, it is doubtful that any feminist would consider infanticide by a psychotic mother to be a liberatory act of heroism. Despite these problems in viewing acts of infanticide by psychotic mothers as subversive, the strategies in the recent criminal trials of Laney and Diaz demonstrate subversive potential, as discussed in the following section.

III. SUBVERSIVE POTENTIAL OF RECENT TRIALS

Often criminal trials of infanticidal mothers are an opportunity for spectacle that further silences women. Media and legal discourse portray the mother as a monster.¹²² The trial of such women has been described as the mad “woman’s capitulation to the narrative of others.”¹²³ The mother’s voice is silenced and society views her not with compassion, but with antipathy and a desire for revenge. For instance, the prosecutor in the Laney case stated, “I did what the law requires me to do . . . For the rest of my life, I’ll remember Aaron, I’ll remember Joshua, I’ll remember Luke. I’ll never forget what happened to them on that day.”¹²⁴ After Laney was found not guilty by reason of insanity, many people randomly interviewed in Tyler, Texas, near her home town, thought she deserved the death penalty. A local restaurant hostess stated that she would have voted for the death penalty “[f]or those kids. They didn’t have a chance at life. She did. She was their guidance. She did them wrong.”¹²⁵ Likewise, a fifty-two-year-old man believed, “She should get the chair,” and said the reason she didn’t was that the jury wasn’t “firm enough.”¹²⁶

121. See CAMINERO-SANTANGELO, *supra* note 112, at 4; *see also*, Ayres, *supra* note 32, at 57-58.

122. *See, e.g.*, Ayres, *supra* note 32, at 56-59.

123. CAMINERO-SANTANGELO, *supra* note 112, at 16.

124. Lee Hancock, *Mother Acquitted in Deaths*, DALLAS MORNING NEWS, Apr. 4, 2004, at 1A.

125. Kyra Phillips & Art Harris, *Family Supportive of Laney*, CNN.COM, May 13, 2003, <http://edition.cnn.com/TRANSCRIPTS/0305/13/lo1.08.html>.

126. *Laney’s Pastor Focuses on Healing*, *supra* note 64. Similar reactions were voiced in the Yates case in support of her conviction. *See* Ayres, *supra* note 32, at 108.

Despite the typical silencing of these mothers during trial—primarily the failure to convey the circumstances that could cause a mother to kill her children—and despite the belief that these mothers are monsters who must be punished, the two most recent Texas infanticide cases involving psychotic mothers, Laney and Diaz, demonstrate a subversive potential both in giving mothers a voice and in moving from retribution to compassion. Unlike most Western societies that mandate lesser sentences for infanticide, the United States prosecutes infanticidal mothers under general murder statutes.¹²⁷ A psychotic mother who raises the insanity defense has the burden of proof to convince the jury that she was legally insane at the time of the murders. The test for insanity in Texas and in a majority of states is the narrow *M’Naghten* test, which requires that the defendant show that she was laboring under such a defect of reason from a disease of the mind as not to know the nature and quality of her act, or if she did know it, not to know it was wrong.¹²⁸ As codified in Texas, the defendant must satisfy only the second prong: that at the time of the offense, as a result of severe mental disease or defect, she did not know that what she was doing was wrong.¹²⁹ While the insanity defense succeeds in only a fraction of one percent of all criminal cases, the defense succeeds in one-half to one-third of all infanticide cases.¹³⁰

When a mother raises the insanity defense, the prosecutor and jury use a rational perspective to judge the mother’s actions, even though postpartum depression is a prominent cognitive impairment.¹³¹ An example of this

127. Meyer & Spinelli, *supra* note 18, at 170.

128. See Denno, *supra* note 31, at 12 (discussing strict standards of *M’Naghten* test and contrasting it with the American Law Institute standard).

129. TEX. PENAL CODE ANN. § 8.01 (Vernon 2005). The majority of jurisdictions adopting the *M’Naghten* test require only the second prong because it is seen as the equivalent of the first prong. See WAYNE R. LAFAYE, CRIMINAL LAW § 7.2(b)(3) (4th ed. 2003). The Supreme Court granted writ of certiorari in *Clark v. Arizona* to determine whether the state’s adoption of only the second prong of the *M’Naghten* test violates due process. 126 S. Ct. 797 (2005).

130. Perlin, *supra* note 32, at 13-15. Others claim that half the mothers who raise the defense of postpartum psychosis are found not guilty by reason of insanity, one-fourth receive light sentences, and the other fourth receive long sentences. See Meyer & Spinelli, *supra* note 18, at 174. In Texas, the insanity defense is raised in less than one percent of all felony cases, and results in a “not guilty by reason of insanity” verdict in twenty-six percent of the cases. See Whitley, *supra* note 10, at 6. The success rate of the defense in infanticidal cases in Texas is not documented.

131. Meyer & Spinelli, *supra* note 18, at 176 (“The test of *M’Naghten* used to determine culpability is a test of cognitive (ability to know) capacity. By definition, a diagnosis of postpartum psychosis assumes impaired cognitive abilities. Therefore, the very factor (namely, cognition) used to determine culpability is pathognomonic for the illness itself.”); see also Jessie Manchester, *Beyond Accommodation: Reconstructing the Insanity Defense to Provide an Adequate Remedy for Postpartum Psychotic Women*, 93 J. CRIM. L. &

disconnect between a rational perspective and a cognitively impaired perspective can be seen in a 1986 Texas case involving a father who killed his young daughter because he thought she was possessed by the devil.¹³² The state's expert opined that although the father was psychotic, he knew his act was wrong because he dumped her body over a fence along the highway.¹³³ According to the state, his actions showed he knew it was illegal to drive around with a dead body.¹³⁴ The jury convicted him, apparently overlooking other possible explanations for his actions, such as not wanting a dead devil-possessed body in his car.¹³⁵ The Texas Court of Criminal Appeals affirmed the verdict as it was supported by a "strong logical basis."¹³⁶ This reasoning demonstrates the problem with testing the defendant's sanity from the perspective of a sane and rational juror: a psychotic person suffers prominent cognitive impairment and is not thinking rationally.

Another problem with the *M'Naghten* test is that there will almost always be some evidence that suggests the defendant knew that his or her actions were wrong.¹³⁷ Whether it is disposing of the body, calling 911, or confessing in a cold and calm manner, some evidence will exist that suggests the defendant knew his or her actions were legally wrong. As the prosecutor in the *Laney* case argued to the jury, "The fact that somebody is psychotic does not mean that they're insane."¹³⁸

Furthermore, judging the delusional mother's actions from a rational perspective is a serious problem, especially in cases in which a psychotic mother hears the voice of God, Satan, or doom, commanding her to kill her children. She believes that her actions are morally right even if she knows they are legally wrong. However, the *M'Naghten* test does not specify legal

CRIMINOLOGY 713, 739 (2003) (criticizing the *M'Naghten* test as antiquated because it "fails to account for irrational impulses and delusions that are common characteristics of many mental illnesses").

132. *Schuessler v. State*, 719 S.W.2d 320, 322 (Tex. Crim. App. 1986).

133. *Id.*

134. *Id.* at 326-28.

135. *Id.* at 328-30.

136. *Id.* at 330. In another case affirming the murder conviction of a severely depressed mother who shot her two sons, the appellate court listed evidence that a jury might consider in determining whether a defendant knew her act was wrong: this evidence included her demeanor before and after the act, attempts to evade police, attempts to conceal evidence, and expressions of regret or fear of the consequences. *Torres v. State*, 976 S.W.2d 345, 347-48 (Tex. App. 1998). In this case, the mother's conviction was affirmed because she had taken steps to commit the crime including placing a pillow over her son's chest before she shot him—possibly to muffle the shot. *Id.* at 347.

137. See *Torres*, 976 S.W.2d at 347-48 (listing evidence that may be considered).

138. Hancock, *Jurors Are Expected to Get Laney Case Today*, *supra* note 81.

or moral wrongdoing, and in many jurisdictions, the prosecutor and jury focus on whether the mother knew what she was doing was *legally* wrong, not whether she knew what she was doing was *morally* wrong.¹³⁹ The psychotic mother does not doubt that, for instance, she is a bad mother or that her children might be possessed; rather, she is certain about her delusional beliefs.¹⁴⁰ Her certainty compels her to act—for instance, although Yates said that she knew her acts were a sin and were illegal, she believed they were necessary to save her children. Because she kept her beliefs a secret, the state’s expert, Dr. Dietz, concluded that this showed she was aware “that it’s wrong, that it’s a bad idea.”¹⁴¹ Furthermore, she believed that by being punished by the state, she would be saved from Satan.¹⁴² Despite Yates’s delusional beliefs, including her belief that she was doing the morally right thing, the jury was not persuaded that she was insane. Rather, the jury found that Yates was sane and guilty because she called 911, because she seemed calm when she confessed, because she covered the children’s bodies with a sheet, and probably also because of Dr. Dietz’s opinion.¹⁴³

Thus, the Yates jury focused not on Yates’s delusion that her acts were morally necessary to save her children, but rather on her rational acts, to support the conclusion that she was not insane. Ironically, Yates suffered more severe mental illness than did Laney or Diaz.¹⁴⁴ In a few jurisdictions, such as Washington, courts compensate for the failure of the

139. Renata Salecl, *The Real of Crime: Psychoanalysis and Infanticide*, 24 CARDOZO L. REV. 2467, 2476 (2003).

140. *Id.* at 2474, 2478.

141. Denno, *supra* note 31, at 45 (“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.”). Denno also notes that mothers suffering from postpartum psychosis rarely tell others about their thoughts. *Id.* This secrecy also characterized the Laney case. Laney kept her plans a secret because she believed she should be like the Virgin Mary, who kept secret her virgin pregnancy. Hancock, *Driven by a VOICE*. . . , *supra* note 56. Interestingly, Dietz did not similarly rely on Laney’s secrecy to conclude that Laney was sane. *Id.*

142. Salecl, *supra* note 139, at 2473; *see also* Meyer & Spinilli, *supra* note 18, at 176 (pointing out that Yates’s conviction was based on her mental state *after* the murders).

143. *See Yates*, 171 S.W.3d at 218; Ayres, *supra* note 32, at 102; Denno, *supra* note 31, at 5-6, 17 (arguing that Dietz’s testimony greatly influenced the jury verdict); Lisa Teachey, *Jurors Say They Believed Yates Knew Right From Wrong*, HOUS. CHRON., Mar. 18, 2002, at 1A (one juror said Yates’s confession showed “that [she] was ‘thinking pretty clearly’ and that she ‘didn’t sound psychotic’” and another juror said her decision to call 911 showed she knew what she’d done was wrong).

144. *See Hancock, Driven by a VOICE*. . . , *supra* note 56. Dr. Dietz commented that “Yates had a more obvious and arguably worse mental illness than Ms. Laney” and that although “[m]y personal view is that it would be better if the law would have acquitted both Yates and Laney . . . that’s just a personal opinion. It’s for the lawmakers to decide what the law will be.” *Id.*

M’Naghten test to define “wrong” by applying the deific decree exception. This exception provides that if a defendant can prove that he or she had an insane delusion that God commanded the criminal act, the defendant is not guilty by reason of insanity.¹⁴⁵ Texas and the great majority of jurisdictions do not allow the deific decree exception.

Although the Yates jury disregarded strong evidence of her insanity and found her guilty, a subversion of the *M’Naghten* test occurred in the trials of Laney and Diaz. Both trials shifted from a purely rational analysis of the insanity test to a more psychologically persuasive and informative analysis. Just as in the Yates case, in both the Laney and Diaz cases there was evidence showing that the mother knew her actions were wrong from a rational perspective. For instance, like Yates, Laney called 911, and Diaz covered her daughters’ bodies. All three women kept their plans a secret. However, the juries in the Laney and Diaz cases must have used a broader psychological analysis to determine whether the mother knew her acts were wrong, and must not have limited the analysis to whether the mother’s acts were legally wrong. For instance, a broader analysis would focus on the mother’s belief that while her actions were legally wrong, she believed they were morally right in being necessary to save her children. The mother’s psychotic certainty in the rightness of her acts would prevail. Similarly, this certainty explains why a mother would call 911 and confess so calmly and matter-of-factly; she is confessing to what she believed she was commanded to do.

Thus, the Laney and Diaz cases can be seen as a subversion of the traditional analysis of the *M’Naghten* test on the basis of what a rational person would do. Of course, the different verdicts can also be attributed to the fact that Yates heard the commands of Satan, whereas Laney heard the commands of God.¹⁴⁶ Although it should not make a difference in determining sanity whether a mother hears the voice of God or of Satan commanding her to kill her children, perhaps it makes a practical difference to juries because both the mother and general society “know” that the voice

145. See Christopher Hawthorne, “Deific Decree”: *The Short, Happy Life of a Pseudo-Doctrine*, 33 LOY. L.A. L. REV. 1755, 1755, 1799-1808 (2000). Hawthorne points out that the deific decree exception applies only to commands by God and argues that this does not make sense, rather that the exception should apply to all command hallucinations. *Id.* at 1758, 1808.

146. Hancock, *Driven by a VOICE*. . . , *supra* note 56 (pointing out differences between two cases regarding God/devil); *Good Morning America: Deanna Laney Mother Who Stoned Children Found Not Guilty*, (ABC television broadcast Apr. 5, 2004) (on file with author) (interviewing attorney F.R. “Buck” Files, Jr., who pointed out differences between two cases). Of course, the difference between Yates and Laney is not that clear cut, because Laney had olfactory hallucinations that Satan was present both after she was arrested and four years before the murders. See *supra* notes 104–121 and accompanying text.

of God is good and right, and the voice of Satan is bad and wrong. As Dr. Phillip Resnick commented: “My opinion was in both [the cases of Yates and Laney] they were legally insane. But Ms. Laney met the classic standard in that she was doing God’s work, and she did not question that it was right.”¹⁴⁷ Dr. Park Dietz, who concluded that Yates was legally sane, commented: “Andrea Yates knew at the time of the killing that God would judge her actions as bad.”¹⁴⁸ However, even if Yates knew this, she still had the delusional belief that it was the right thing to do to save her children from hell.

Another explanation for the different verdicts might be the agreement by all of the psychiatrists in the Laney and Diaz cases that the mothers were legally insane, whereas the psychiatrists did not agree on sanity in Yates’s case.¹⁴⁹ Moreover, the different verdicts could also be explained by the fact that only Yates’s jury was a death-qualified Harris County jury, and these juries are known to give harsher sentences and to be less likely to acquit on the basis of insanity.¹⁵⁰ That is not to say that Harris County death-qualified juries always convict infanticidal mothers who are mentally ill. In the case of Evonne Rodriguez, a schizophrenic mother suffering from hallucinations who killed her daughter, a Harris County jury found her not guilty by reason of insanity.¹⁵¹ Although Harris County is known for its severe sentences, Smith County, where Laney was tried, is also a harsh county: “Smith County has sent more people to death row in recent decades than some of the state’s largest urban counties.”¹⁵² Ultimately, it is impossible to determine what factors will influence a jury in infanticide

147. Hancock, *Driven by a VOICE*. . . , *supra* note 56.

148. *Id.*

149. *Id.* Denno also argues that the defense case was weakened by the defense’s own experts, who could not agree on whether she knew her acts were legal or not. Denno, *supra* note 31, at 47–49.

150. See *NBC News: Today* (NBC television broadcast Apr. 5, 2004) (interview of George Parnham, Yates’s attorney, who commented on death-qualified juries); see also, Denno, *supra* note 31, at 47–49.

151. *Mother Who Killed Baby with Rosary Found Not Guilty by Reason of Insanity*, DALLAS MORNING NEWS, Mar. 11, 1998, at 16A. It should also be noted that Rodriguez’s trial was after the Susan Smith case, which Perlin argues caused juries to reject the insanity defense nationwide. Perlin, *supra* note 32, at 20–21. But during the same time as the Rodriguez trial, another Harris County infanticide case in which the insanity defense was raised, resulted in a conviction and fifty year sentence. *Harris v. State*, No. 14-94-01127-CR, 1997 WL 445803 (Tex. App. Aug. 7, 1997) (not designated for publication); see Ayres, *supra* note 32, at 90–91. In another case, Juana Leija, a psychotic mother in Houston who killed her children, received ten years probation when she pleaded no contest to murder and attempted murder charges. See Ayres, *supra* note 32, at 86–88.

152. Lee Hancock, *Doctor Backs Insanity Finding: Jury May Still Decide Fate of Tyler-Area Mom in Stoning of Children*, DALLAS MORNING NEWS, Jan. 17, 2004, at 3A.

cases, and perhaps Dr. Resnick is right that “at a gut level, a jury either forgives or doesn’t forgive a woman.”¹⁵³

Despite the difficulty in ascertaining what factors influenced the different verdicts, one important trial strategy—presenting a persuasive and informative psychological view of the mother’s actions, for instance, by showing videotapes of the psychiatric interviews made shortly after arrest—likely influenced the Laney and Diaz juries in their not guilty by reason of insanity verdicts.

In the Yates case, there were no videotaped interviews recorded shortly after her arrest and the jury did not observe her in a psychotic state. The first videotaped interview was made over three weeks after the drownings.¹⁵⁴ The jury saw videotapes made by defense witnesses Dr. Phillip Resnick and Dr. Lucy Puryear about three and five weeks after the drownings, and videotapes made by the state’s witness, Dr. Park Dietz, about four months after the drownings.¹⁵⁵ In contrast, lawyers for Diaz and Laney told more of the mother’s story—and gave the silenced mother a voice even though she did not testify—by playing hours and hours of psychiatric interviews conducted a short time after the murders. This was a crucial trial strategy because the jury was able to *observe* a psychotic state. As Dr. Dietz commented about the Laney case: “Ms. Laney’s lead defense lawyer arranged for extensive videotaped psychological interviews of Ms. Laney within 48 hours of her boys’ deaths and that was ‘one of the great moves’ of the case.”¹⁵⁶ In effect, the Laney and Diaz trials effectively told a different story than did the Yates trial.

Educating the jury about the delusional reality of the psychotic mother by showing videotapes of her in a psychotic state has the effect of raising a jury’s compassion for the mother. The subversion is a narrative one—and a very powerful one. It gives the mother a voice—even though she does not testify—and the jury is visually presented with her story and her mental state. Observing the mother in a state of psychosis—not just hearing experts describe the psychosis—makes it easier for the jury to reject the prosecutor’s arguments that a mother was legally sane and must pay for her acts.¹⁵⁷

153. Hancock, *Driven by a VOICE*. . . , *supra* note 56.

154. O’MALLEY, *supra* note 37, at 2, 11, 80.

155. *Id.* at 149, 170, 182.

156. *Id.*

157. Although it is also possible that the jurors in the Laney and Diaz cases were reacting to national backlash after the Yates verdict, this theory is not borne out by a juror’s comments that in *Laney*, the initial split was eight in favor of conviction, and that “[a]mong their earliest hurdles was getting beyond the fact that in the other trial, Ms. Yates had been sent to prison for life.” Hancock, *Driven by a VOICE*. . . , *supra* note 56. This juror said

IV. CONCLUSION

How should society and the criminal justice system react to cases of infanticide in which the mother hears the voice of God or Satan commanding her to kill her child? While it is unlikely that psychotic mothers who kill their children should be seen as figures of empowerment that subvert our stereotypes of women who kill as mad or bad, recent trials deploy strategic moves that provide these mothers with a fuller voice. In contrast with the Yates trial, the Laney and Diaz trials can be seen as subversions resulting in greater justice for the psychotic mother who kills her children.

Trial strategies that present a psychologically informative and persuasive view of the mother and of her delusional certainty that her acts were morally right allow juries to consider her sanity not just by discrete rational acts, but by a more complex set of factors. Likewise, trial strategies that include extensive videotaped documentation of the mother's mental state provide juries with compelling "behavioral evidence," so that as Dr. Park Dietz commented, "the truth can come out."¹⁵⁸ These trial strategies subvert conventional views of infanticidal mothers as mad or bad and give them a voice that can be heard with greater compassion and justice.

that the four in favor of finding Ms. Laney not guilty by reason of insanity "were helped by the unanimity of psychiatric testimony . . . and people were also swayed by Ms. Laney's chilling calmness during her call to 911 and her husband's trial testimony that he still loved his wife." *Id.* Although this juror does not comment on the videotapes, the defense lawyers viewed the tapes as crucial trial strategy.

158. *Id.*