COMMENT*

"TEXAS LAW MADE THIS MAD WOMAN SANE"[1]

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* This Comment was selected as the recipient of the Haynes and Boone LLP Award for the most outstanding paper on Texas state law.

1. Rick Casey, Editorial, *Mad Moms, Insane Law*, HOUS. CHRON., Dec. 19, 2004, at B1 (using this phrase to describe Andrea Yates and advocating for change in Texas insanity law).

I. INTRODUCTION

It is an all-too-familiar tale—a suburban housewife suffers a delusion in which she is ordered to kill her children. In 2001, a Houston, Texas mother killed her five small children "after conversations with Satan because it was the only way to guarantee heaven for them."[2] Two years later and over two hundred miles away, a Tyler, Texas woman stoned her three young sons after a deific delusion, killing two and maiming the third.[3] These are just two of the several cases that have recently come through the Texas criminal justice system involving mothers that kill.[4] The first of these women—Andrea Yates—was convicted and sentenced to life in prison, but she has successfully appealed that conviction and awaits a new trial.[5] Conversely, the second woman—Deanna Laney—was found not guilty by reason of insanity by a jury of her peers.[6]

These cases have left a chill in the hearts of many and have shed an eerie glow on the state of insanity law in Texas.[7] In the minds of activists and legislators, questions regarding the

2. *Id.*

3. *Id.*

4. *Id.* (commenting on several Texas mothers who have killed their children since Andrea Yates, including Lisa Diaz, Deanna Laney, and Dena Schlosser).

5. *See infra* Part IV.B.3 (chronicling the *Yates* trial and the events occurring post-conviction).

6. *See infra* Part IV.C.3 (detailing the disposition of the *Laney* case).

7. *See infra* notes 247–55 and accompanying text (contrasting the results in the *Laney* and *Yates* cases to highlight the problems with the Texas insanity defense).

defense resound yet remain unanswered.[8] Indeed, the divergent outcomes of the *Laney* and *Yates* cases suggest that the Texas insanity defense is not appropriately formulated to balance society's need for retribution while still protecting the mentally ill. In response, this Comment recommends that the Texas legislature should reformulate current law to incorporate factors from the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders: Text Revision (DSM-IV), which provides an assessment of the whole person, including physical, mental, and emotional wellbeing, to arrive at the most accurate determination of a person's state of mind at the time of the offense.

Part II of this Comment describes the evolution of the insanity defense from nineteenth-century England to modern America. Part III identifies special problems that plague the insanity defense. Part IV chronicles insanity jurisprudence in Texas and details the Andrea Yates and Deanna Laney cases. Finally, Part V comments on reform and proposes ways in which the DSM-IV can be incorporated to produce a more thorough and accurate insanity law.

II. THE INSANITY DEFENSE

In order to address the failings of the Texas insanity defense, it is first necessary to detail the evolution of insanity jurisprudence. The following discussion briefly traces the history of Anglo-American insanity law.

A. Theories of Punishment

The American criminal justice system requires a "reason" to punish a person for breaking the law.[9] Reasons identified by theorists and scholars include the following five major theories of punishment: "restraint, general deterrence, individual deterrence, rehabilitation, and desert."[10] Although American jurisdictions rely on each of these theories of punishment to varying degrees, "desert," or administering the punishment that criminals deserve, has moved to the forefront of modern

8. *See infra* text accompanying notes 259–63 (reporting the expectations of activists after the *Yates* and *Laney* cases and providing an overview of legislative activity).

9. *See, e.g.*, Michael L. Perlin, *"The Borderline Which Separated You from Me": The Insanity Defense, the Authoritarian Spirit, the Fear of Faking, and the Culture of Punishment*, 82 IOWA L. REV. 1375, 1383–84 (1997) (considering the role of punishment in American jurisprudence).

10. *Id.* at 1383.

American penal law,[11] a shift that likely stems from "public perceptions of rising crime rates and unpunished criminals."[12]

Criminal jurisprudence in America generally relies on the fact that individuals have free will; punishment is valid because individuals "have made a voluntary choice to break the law."[13] By contrast, some scholars rely upon "determinism" to explain human behavior, a theory which takes the view that an individual's actions are to some extent outside of his control and are influenced by social and biological factors.[14] Nevertheless, because of the American reliance on free will, it is logically incongruent to punish those who are not able to make a voluntary decision to break the law—thus mandating the insanity defense, which, as the next section details, has evolved in various directions over the past two hundred years.

B. From M'Naghten *to* Hinckley

1. M'Naghten*.* The basis of American insanity jurisprudence sprung from the infamous *M'Naghten* case, which established a narrow exception to criminal liability based on insanity.[15] While cultures throughout the world have recognized an exception to criminal liability for insane persons, English jurisprudence developed specific criteria for granting the exception from the *M'Naghten* case.[16] Because "insane individuals are incapable of understanding when their conduct violates a legal or moral standard, . . . they [are] therefore relieved of criminal liability for their actions."[17] In this way, the insanity defense accepts that most people act under free will but allows leeway for a person who is

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11. *Id.* at 1383–84. The Supreme Court's 1991 decision in *Harmelin v. Michigan*, affirming a life sentence without possibility of parole for a first possessory drug offense, demonstrates the current willingness of the judicial system to make an offender suffer for his actions. Harmelin v. Michigan, 501 U.S. 957, 961, 994, 996 (1991). In his concurring opinion, Justice Kennedy looked to the severity of the effects of drug trafficking in the United States to conclude that a life sentence for drug possession was the offender's just desert. *Id.* at 1003 (Kennedy, J., concurring in part & concurring in judgment).

12. Perlin, *supra* note 9, at 1384.

13. Matthew Jones, *Overcoming the Myth of Free Will in Criminal Law: The True Impact of the Genetic Revolution*, 52 DUKE L.J. 1031, 1031, 1033–34 (2003).

14. *See id.* at 1034.

15. *See* RICHARD MORAN, KNOWING RIGHT FROM WRONG: THE INSANITY DEFENSE OF DANIEL MCNAUGHTAN 1–2 (1981) (chronicling Daniel M'Naghten's saga). M'Naghten has been spelled several different ways. *Id.* at xi. This Comment uses the spelling "M'Naghten."

16. Jessie Manchester, *Beyond Accommodation: Reconstructing the Insanity Defense to Provide an Adequate Remedy for Postpartum Psychotic Women*, 93 J. CRIM. L. & CRIMINOLOGY 713, 725 (2003) (citing Finger v. State, 27 P.3d 66, 71–72 (Nev. 2001) (outlining the history of the insanity defense)).

17. *Finger*, 27 P.3d at 71.

incapable of making decisions based on acceptable moral and legal standards.[18]

The *M'Naghten* case arose in 1843 when Daniel M'Naghten shot Edward Drummond, the personal secretary to Tory Prime Minister Sir Robert Peel.[19] M'Naghten believed "that the Tories were his enemies," and with this belief, he shot Drummond, mistakenly thinking that the secretary was in fact the Prime Minister.[20] M'Naghten's counsel painted him as a man plagued with delusions; M'Naghten corroborated that image by testifying that "'[t]he Tories in my native city have compelled me to do this. They follow [and] persecute me wherever I go, and have entirely destroyed my peace of mind.'"[21] M'Naghten was acquitted and committed to an asylum for the remainder of his life.[22] The Queen and the public were outraged at the sentence, considering it inadequate punishment for the crime committed.[23] In response, the House of Lords fashioned what now is known as the *M'Naghten* test, which requires a defendant asserting the insanity defense to demonstrate that

> "at the time of the committing of the act," he or she was "labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act" . . . [or] he or she "did not know" that the act was wrong.[24]

Almost all American jurisdictions adopted this test, which focuses only on the actor's cognitive understanding at the time of the act.[25]

2. The Irresistible Impulse Test. Despite their initial embrace of the *M'Naghten* test, many states soon criticized the standard for its rigid and exclusive consideration of cognitive elements.[26] An Alabama court expressed an alternative view, recognizing that a person could have such a diseased mind that he would be unable to

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18. *See id.*

19. *See* Manchester, *supra* note 16, at 725–26.

20. *See id.* at 726 (relating that Drummond died five days later, and M'Naghten was charged with first-degree murder).

21. *See id.* (second alteration in original) (detailing M'Naghten's trial, including his counsel's depiction of M'Naghten as "'the victim of a fierce and fearful delusion'" (quoting *The Queen Against Daniel M'Naughton*, *in* 4 REPORTS OF STATE TRIALS 875 (John E.P. Wallis ed., 1892))).

22. *Id.*

23. *Id.* at 726–27.

24. *Id.* at 727 (quoting Daniel M'Naghten's Case, (1843) 8 Eng. Rep. 718, 722 (H.L.) (appeal taken from Eng.) (U.K.)).

25. *See id.* at 732.

26. Charles Fischette, Note, *Psychopathy and Responsibility*, 90 VA. L. REV. 1423, 1444 (2004) (summarizing the development of *M'Naghten* into the irresistible impulse test).

stop his actions regardless of whether he was cognitively aware of the wrongfulness of such acts.[27] The "irresistible impulse test," as it was called, expanded the *M'Naghten* test and permitted a defendant to maintain that "he suffered from a mental disease that made him unable to control his actions."[28] Although this test offered a substitute for the inflexible *M'Naghten* standard, it was ridiculed intensely by those who argued "that the inability to control impulses is best understood as a failing in rationality, rather than as a lack of control."[29] In addition, it was hard to distinguish between an "irresistible impulse" and a case in which the defendant "simply failed to resist a strong but defeasible desire."[30]

3. Durham v. United States. Yet another mutation of the *M'Naghten* test arose from the D.C. Circuit's 1954 decision in *Durham v. United States*.[31] The *Durham* court held that "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."[32]

The court considered both the *M'Naghten* test and the irresistible impulse test to be too narrow, commenting that the *M'Naghten* test "does not take sufficient account of psychic realities and scientific knowledge, and . . . that the 'irresistible impulse' test is also inadequate in that it gives no recognition to mental illness characterized by brooding and reflection."[33] Although the *Durham* test seemed to take a step forward by encompassing modern psychological knowledge with criminal law, some criticized that it "left psychiatrists in charge."[34] As a result, the D.C. Circuit eventually abandoned the test in 1972 and adopted the Model Penal Code's insanity test, discussed below.[35]

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27. *See* Manchester, *supra* note 16, at 732.

28. Fischette, *supra* note 26, at 1444.

29. *Id.* at 1444–45 (suggesting that the irresistible impulse test was met with criticism due to practical difficulties in its application).

30. *Id.* at 1445.

31. Durham v. United States, 214 F.2d 862, 874–76 (D.C. Cir. 1954) (illustrating the inadequacies of the *M'Naghten* and irresistible impulse tests and constructing a more expansive test for insanity).

32. *Durham*, 214 F.2d at 874–75.

33. *Id.* at 874.

34. Fischette, *supra* note 26, at 1448.

35. *Id.* at 1448–49; *see also* United States v. Brawner, 471 F.2d 969 (D.C. Cir. 1972) (overruling *Durham* because of the tendency of the psychiatric conclusions it required to "dominate[] the proceeding" at the expense of effective "communication between the experts and the jury").

4. Model Penal Code. In 1962, the American Law Institute (ALI) derived a test that fused components of the *M'Naghten* and irresistible impulse tests.[36] Under the ALI's Model Penal Code (MPC) approach, "[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 law."[37] The MPC's definition of insanity does "not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct."[38] And although jurisdictions were reluctant to adopt the radical *Durham* test, many implemented the more palatable MPC approach. In fact, almost all federal circuits followed this test by 1981.[39]

5. Guilty but Mentally Ill. Despite the popularity of the MPC test at the federal level, some state jurisdictions attempted to confront the plight of the mentally ill criminal defendant in other ways. In 1975, for example, Michigan introduced the "guilty but mentally ill" (GMI) verdict, which permitted a jury to return a guilty verdict while acknowledging the defendant's mental illness under medical—not legal—standards.[40] The GMI verdict was used in cases where the defendant's condition did not rise to the level of legal insanity, but, nevertheless, she was not entirely culpable.[41] The verdict did not adequately address the problem, however, because a defendant receiving a GMI verdict was not necessarily entitled to treatment for her mental illness.[42] Thus, the verdict was criticized as "'at best cosmetic, and, at worst, meretricious.'"[43]

6. Hinckley. One of the biggest changes in modern insanity jurisprudence came in 1981 when John Hinckley, Jr. attempted

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36. *See* Fischette, *supra* note 26, at 1445.

37. MODEL PENAL CODE § 4.01(1) (1962) (second alteration in original).

38. § 4.01(2). This Comment's use of the term "mental disease or defect" adopts this meaning.

39. Manchester, *supra* note 16, at 732–34 (noting that no circuit adopted the *Durham* test, other than the D.C. Circuit, which adhered to it for only 18 years, but that all federal circuits except one had adopted the MPC test within twenty years of its inception).

40. *See id.* at 734.

41. *See id.*

42. *Id.* at 734–35.

43. *See id.* (quoting MICHAEL L. PERLIN, THE JURISPRUDENCE OF THE INSANITY DEFENSE 95 (1994) (condemning the GMI verdict)).

to assassinate President Ronald Reagan.[44] Hinckley pled not guilty by reason of insanity to the charges against him and was acquitted.[45] Public outrage surrounded Hinckley's acquittal, and it led to remarkable changes in the way Americans viewed the insanity defense.[46] For instance, a poll taken by ABC News after the acquittal revealed that seventy-six percent of Americans did not believe justice was served, and ninety percent believed that Hinckley should not be set free—even if he were to recover from his mental illness.[47] Reflecting this mood, several American lawmakers expressed their vehement disapproval of the insanity defense. U.S. Attorney General William French Smith called for drastic reform "'to the doctrine that allows so many persons to commit crimes of violence, to use confusing procedures to their own advantage, and then to have the door opened for them to return to the society they victimized.'"[48] In addition, one congressman claimed that the insanity defense was a "'safe harbor for criminals who bamboozle a jury' into thinking they should not be held responsible."[49]

And although the MPC standard had been gaining recognition as a viable alternative to the outdated *M'Naghten* test,[50] Hinckley's acquittal stopped this progress dead in its tracks. In 1984 Congress enacted the Insanity Defense Reform Act (IDRA),[51] which diluted the two-tiered MPC standard and aligned insanity jurisprudence with the nineteenth-century *M'Naghten* test.[52] The IDRA reads:

> It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the

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44. United States v. Hinckley, 525 F. Supp. 1342, 1345 (D.D.C. 1981) (ruling on various pretrial motions in the *Hinckley* criminal case).

45. Manchester, *supra* note 16, at 735. An insanity acquittal does not result in immediate, or even necessarily eventual, freedom. *Id.* at 735 n.196. Rather, the acquitted individual is committed to a mental institute for up to a lifetime of treatment, and the length of confinement varies depending upon the pace of recovery. *See id.* For example, Hinckley is still confined to the same mental institution in Washington, D.C. where he has been for the last twenty-five years; however, he recently was given permission to visit his parents several times each year at their home in Williamsburg, Virginia. *Today* (NBC television broadcast Dec. 31, 2005).

46. Manchester, *supra* note 16, at 735.

47. *See id.* at 735–36.

48. Steven V. Roberts, *High U.S. Officials Express Outrage, Asking for New Law on Insanity Plea*, N.Y. TIMES, June 23, 1982, at B6 (quoting the Attorney General).

49. PERLIN, *supra* note 43, at 18 (internal quotation marks omitted) (relaying the opinions of Representative Myers).

50. *See supra* text accompanying note 39 (discussing the rapid acceptance of the MPC test).

51. 18 U.S.C. § 17 (2000); Manchester, *supra* note 16, at 736.

52. Manchester, *supra* note 16, at 736.

> acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.[53]

The IDRA eradicated the volitional component present in the MPC test, thereby establishing a purely cognitive assessment similar to the *M'Naghten* test.[54]

After the passage of the IDRA, many states changed their insanity laws. In fact,

> [t]welve states adopted a guilty but mentally ill verdict, seven states narrowed their existing insanity defense test, sixteen shifted the burden of proof to favor the government, twenty-five tightened release standards upon when an individual found not guilty by reason of insanity could be released from treatment and observation, and three adopted legislation to eradicate the insanity defense completely.[55]

The IDRA and the resulting state laws that mirrored the IDRA heightened the burden of proof in cases involving the insanity defense.[56] Before the adoption of the IDRA standard, "the burden of proof in all federal courts and about half of the state courts was on the *prosecution* to prove beyond a reasonable doubt a defendant's sanity."[57] Under IDRA, "[t]he *defendant* has the burden of proving the defense of insanity by clear and convincing evidence."[58] In state jurisdictions that already placed the burden on the defendant, generally a preponderance of evidence standard was required; IDRA's clear and convincing evidence standard increased that burden.[59]

The IDRA, like the *M'Naghten* test, reflects public sentiment concerning the legally insane. The public and political reactions to the *Hinckley* case were remarkably like the reactions to the *M'Naghten* case; both cases resulted in drastic change to insanity jurisprudence. The *M'Naghten* verdict was met with public resentment as well as disapproval by the Queen, and shortly thereafter, the House of Lords modified insanity jurisprudence,

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53. § 17(a).

54. Manchester, *supra* note 16, at 736.

55. *Id.* Note that these categories are not mutually exclusive, inasmuch as the same state could have taken more than one of these actions.

56. *See id.*

57. *Id.* (emphasis added).

58. § 17(b) (emphasis added).

59. Manchester, *supra* note 16, at 737.

restricting the group of individuals who could successfully assert the defense.[60] Similarly, a year after Reagan's attempted assassination in 1981, the American public and top governmental officials expressed disgust at John Hinckley's acquittal.[61] In 1984, Congress responded to the *Hinckley* verdict by passing the IDRA.[62] Thus, these two instances demonstrate that public outrage towards the insanity defense tends to translate into stricter policy that ignores both psychological science and contemporary medicine in favor of merely keeping the mentally ill off the streets.[63]

7. *Modern Law.* Despite the attention paid to the insanity defense and the reforms that followed, defendants rarely assert the insanity defense.[64] Furthermore, in cases in which it is offered, it seldom results in acquittal. In fact, "the insanity defense is used in only about one percent of all felony cases, and is successful just about one-quarter of the time."[65] Interestingly, in cases in which a defendant uses the defense but is unsuccessful, the defendant is likely to serve a longer prison sentence than a person charged with a comparable crime who did not assert the insanity defense.[66]

Despite the low incidence of criminal defendants who claim insanity, a large number of offenders actually do suffer from mental illness.[67] Research shows that criminal defendants "often

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60. *See supra* text accompanying notes 22–25 (explaining Great Britain's widespread dissatisfaction with M'Naghten's acquittal and the consequent changes in Anglo-American insanity jurisprudence).

61. *See supra* text accompanying notes 44–49 (giving the background of the *Hinckley* case and commenting on the sentiments of American citizens and officials after Hinckley's acquittal).

62. *See supra* text accompanying note 51.

63. Beginning in the 1970s, the reduction of funding for mental health facilities in America led to a massive deinstitutionalization of mentally ill individuals, leaving a large number homeless. *See* H. Richard Lamb & Leona L. Bachrach, *Some Perspectives on Deinstitutionalization*, 52 PSYCHIATRIC SERVICES 1039, 1042 (2001). Ironically, many mentally ill individuals that come through the criminal justice system today were formerly confined to state mental hospitals. *Id.* Indeed, without any push for increased funding, the mentally ill will likely fall victim to society's desire to confine all criminals to its institution of choice: jail. *See id.*

64. Perlin, *supra* note 9, at 1404 ("[T]he public at large and the legal profession (especially legislators) dramatically and grossly overestimate both the frequency and the success rate of the insanity plea . . . .").

65. *Id.* at 1404–05 (pointing out that murder is not the only crime in which individuals plead insanity, and "individuals who plead insanity in murder cases are no more successful in being found [not guilty by reason of insanity] than persons charged with other crimes").

66. *Id.* at 1405.

67. *Id.* at 1391–92.

deny mental illness" despite the fact that it could be used as a mitigating factor at sentencing that would save them from death row or life in prison.[68] Moreover, for many of these offenders, "the act of incarceration may either exacerbate underlying psychiatric conditions or precipitate mental illness in vulnerable individuals."[69]

Nevertheless, the American public still seems to find the insanity defense problematic[70] despite the low incidence of insanity pleadings coupled with the high percentage of mentally ill defendants. Four explanations potentially explain why myths about the insanity defense remain:

> 1. The fear that defendants will 'beat the rap' through fakery . . . .
>
> 2. The sense among the legal community and the general public that there is something different about mental illness and organic illness, so that, while certain physiological disabilities may be seen as legitimately exculpatory, emotional handicaps are not.
>
> 3. The demand that a defendant conform to popular images of extreme craziness in order to be legitimately insane . . . .
>
> 4. A fear that the soft, exculpatory sciences of psychiatry and psychology . . . will somehow overwhelm the criminal justice system by thwarting the system's crime control component.[71]

Fakery, known scientifically as "malingering," is the fear that a clever defendant will be able to imitate insanity and is one of the biggest myths surrounding the insanity defense.[72] Some suggest that insanity has "been a tempting defense for criminals seeking to avoid criminal responsibility."[73] Analysis by these critics shows "that malingering . . . occurs in 16–18 percent of

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68. *Id.* at 1390–91.

69. *Id.* at 1391–92.

70. *See id.* at 1380.

71. *Id.* at 1407–08 (footnotes omitted).

72. *See id.* at 1407–10 (proffering that society has historically viewed the insanity defense as "'an easy way to escape punishment'" (quoting Diane Baldwin Bartley, State v. Field*: Wisconsin Focuses on Public Protection by Reviving Automatic Commitment Following a Successful Insanity Defense*, 1986 WIS. L. REV. 781, 784)).

73. Steve Rubenzer, *Malingering of Pyschiatric Disorders and Cognitive Impairment in Criminal Court Settings*, PROSECUTOR, Sept./Oct. 2004, at 40, 40 (2004). When weighing Rubenzer's arguments, note that he is not only writing for a group of prosecutors but is also employed as a forensic psychologist. *Id.*

persons who present as significantly impaired," which some say is "almost certainly an underestimation."[74]

However, other researchers indicate that this fear of malingering is unfounded.[75] For instance, Professor Perlin asserts that malingering has been an issue in only a "handful of cases," and that clinicians are particularly astute at catching it when it does occur.[76] Thus, it does not present the kind of threat that the myth suggests.[77]

In addition to an unfounded fear of malingering, there is "'generally greater hostility towards the mentally ill than towards people with other types of disease or handicap.'"[78] This hostility represents "resentment against the idea of a purely mental problem as an excuse for unacceptable behavior."[79] Unfortunately, regardless of advances in science explaining the biological and genetic causes of mental disease, many still see mental illness "'as simply another manifestation of a weak or corrupted character.'"[80] This idea has led to mistrust of the insanity defense in general and has helped to forward the notion that courts should hold the mentally ill liable regardless of their real or perceived problems.[81]

Another myth surrounding the insanity defense is that a person must be visibly "crazy" in order to be legally insane.[82] The image of insanity that permeates the media informs jurors' conception of how insanity will look; thus, a caricature emerges of wild eyes, disheveled appearance, and scattered speech.[83] In

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74. *See id.* (providing Rubenzer's opinion on malingering statistics).

75. *See, e.g.*, Perlin, *supra* note 9, at 1409.

76. *Id.*

77. *Id.* at 1410.

78. *Id.* at 1398 (quoting Claudia L. Cowan et al., *The Effects of Death Qualification on Juror's Predisposition to Convict and on the Quality of Deliberation*, 8 LAW & HUM. BEHAV. 53, 90 (1984) (addressing the attitudes of jurors towards the insanity defense)).

79. Cowan et al., *supra* note 78, at 90 (showing the differences in juror attitudes "where the defense of insanity was based on a physical disease or defect").

80. *Id.* (offering that although "[a] physical disorder may be seen as external to the person, creating a sort of necessity or duress," a mental illness is perceived as a flaw in a person's character).

81. Perlin, *supra* note 9, at 1398–1400. Not surprisingly, those who support the death penalty espouse these ideas most strongly. Kimberly Tibbetts, *Qualified to Convict:* State v. Griffin *and the Constitutionality of Death-Qualified Juries in Connecticut*, 22 QLR 359, 362 (2003) (reviewing some of the general prejudices of juries); *see also* Susan D. Rozelle, *The Utility of* Witt*: Understanding the Language of Death Qualification*, 54 BAYLOR L. REV. 677, 693–95 (2002) (emphasizing the differences between attitudes of jurors that support the death penalty and jurors who oppose it).

82. Perlin, *supra* note 9, at 1404.

83. *See id.*

reality, however, an offender may be legally insane while appearing completely "normal" on the outside.[84]

Lastly, some argue that the "soft" sciences of psychology and psychiatry will hinder crime control by exculpating the insane.[85] However, even when criminals avoid prison by successfully asserting the insanity defense, they are civilly committed for treatment, which takes an indefinite period of time.[86] In many cases the period of civil confinement is much longer than an alternative prison sentence.[87] In fact, studies examining the California criminal system show that those successfully using the insanity defense for nonviolent crimes spent nine times longer in custody than defendants who were convicted without claiming insanity.[88]

III. SPECIAL TOPICS IN INSANITY

In addition to the ever-changing nature of the insanity defense, several special topics muddle the defense to an even greater degree. Some of these special topics, including infanticide and filicide, postpartum depression, and religious delusions, have particular applicability to the *Yates* and *Laney* cases. These topics pose special considerations that add intricate layers to the already complex landscape of insanity issues.

A. Infanticide and Filicide

Infanticide is "the killing of a child up to one year old," and filicide is "the killing of a son or daughter older than one-year."[89] Anthropological studies suggest infanticide has occurred across the world for centuries.[90] Many cultures see infanticide as a

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84. *See* Lee Hancock, *Mother Held in 2 Boys' Killings*, DALLAS MORNING NEWS, May 11, 2003, at 1A (describing Deanna Laney, the Texas mother who stoned her children and was later found by a jury to be insane at the time of the killings, as a "normal" mother who waved at neighbors as she drove past in her Suburban and stating that she gave "no indication" of any mental issues to members of the community).

85. Perlin, *supra* note 9, at 1408.

86. *Id.* at 1405.

87. *Id.*

88. *Id.*

89. Manchester, *supra* note 16, at 724 (departing from Dr. Phillip Resnick's two subcategories of child murder, *see generally* Phillip J. Resnick, *Murder of the Newborn: A Psychiatric Review of Neonaticide*, 126 AM. J. PSYCHIATRY 1414, 1414 (1970), by subdividing the "filicide" category into infanticide and filicide, as defined in the text above).

90. *Id.* at 723.

viable means of population control, and the practice was excused in societies where it made "adaptive sense for it to occur."[91]

In 1970, forensic psychiatrist Phillip Resnick classified infanticide cases according to the age of the child at death.[92] Resnick used the term "neonaticide" to classify the killing of a child "just after birth or very close to the time of birth."[93] Critics say that Resnick's methodology is archaic and inappropriate because it does not take into account whether the child is killed by the mother or the father.[94] Still, these classifications are helpful because cases of women who kill their children differ based on the age of the child when killed.[95] For instance,

> those who kill their infants within 24 hr [sic] of birth, tend to be young, unmarried women with no history of mental illness who deny or conceal their pregnancy, fearing disapproval or rejection by their family. When confronted with the child at childbirth, they see killing and concealment of the infant as the only way to continue their denial of the pregnancy.[96]

In contrast to those women who commit neonaticide, those who commit infanticide or filicide are likely to be older, married, and have a pronounced record of mental illness.[97] Many of these women are psychotic or depressed and are under significant stress.[98] Finally, women who commit infanticide or filicide generally believe that by killing their children they are easing the child's suffering.[99] Because the motivations of these persons differ so widely, courts should take the circumstances

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91. *See id.* at 723–24 (internal quotation marks omitted).

92. *See generally* Resnick, *supra* note 89, at 1414–15, 1417–19 (distinguishing types of child murders by age and characteristics). Resnick was the first to classify child killing by age. Manchester, *supra* note 16, at 724.

93. Manchester, *supra* note 16, at 724; *see also* Resnick, *supra* note 89, at 1414.

94. CHERYL L. MEYER ET AL., MOTHERS WHO KILL THEIR CHILDREN: UNDERSTANDING THE ACTS OF MOMS FROM SUSAN SMITH TO THE "PROM MOM" 20 (2001) (criticizing Resnick's methodology and the fact that his research was "not specifically focused on women").

95. Manchester, *supra* note 16, at 724.

96. Velma Dobson & Bruce Sales, *The Science of Infanticide and Mental Illness*, 6 PSYCHOL. PUB. POL'Y & L. 1098, 1104 (2000) (describing the traits of women who commit neonaticide); *see also* Michelle Oberman, *Understanding Infanticide in Context: Mothers Who Kill, 1870–1930 and Today*, 92 J. CRIM. L. & CRIMINOLOGY 707, 709–10 (2002) (explaining that women who commit neonaticide, who tend to share many similar traits, differ markedly from those who kill older children; the former have an average age of nineteen, are unwed, "isolated from family and friends," have a fragile or no relationship with the father of their infant, and are in a situation of "[f]inancial insecurity").

97. Dobson & Sales, *supra* note 96, at 1104.

98. *Id.*

99. *Id.*

surrounding the killing into account when assessing punishment because these women possess distinct levels of culpability.[100]

Furthermore, instead of judging infanticide as a doctrine completely divorced from insanity, the theories Resnick developed should be used in a holistic assessment of a person's state of mind. Using the DSM-IV to address differences in infanticide cases could separate the culpable—usually mothers who commit neonaticide—from the insane—mentally-ill mothers who kill their older children.

B. Postpartum Psychosis

Another special issue that often comes up in insanity-defense cases is postpartum depression and, more specifically, postpartum psychosis.[101] Although postpartum psychosis could be a defense in and of itself, a better solution is to rework the insanity defense so that it provides adequate remedies for women with postpartum psychosis.[102]

In the fourth century B.C., Hippocrates documented a woman experiencing depressive symptoms associated with childbirth.[103] "Hippocrates described a 'severe case of insomnia and restlessness that began on the sixth day in a woman who bore twins.'"[104] Although depression after childbirth has been recognized for a long time, it has been documented only recently as a disorder.[105] Postpartum mood disorders are separated into three distinct categories: postpartum blues, postpartum depression, and postpartum psychosis.[106]

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100. Manchester, *supra* note 16, at 724.

101. *See, e.g.*, Sheri L. Bienstock, *Mothers Who Kill Their Children and Postpartum Psychosis*, 32 SW. U. L. REV. 451, 456–66 (2003) (explaining the medical basis for postpartum depression and describing typical characteristics of women who kill their children); Connie Huang, Note, *It's a Hormonal Thing: Premenstrual Syndrome and Postpartum Psychosis as Criminal Defense*, 11 S. CAL. REV. L. & WOMEN'S STUD. 345, 353–62 (2002) (detailing how postpartum disorders fit into the law and providing examples of women experiencing the disorder); Sandy Meng Shan Liu, Comment, *Postpartum Psychosis: A Legitimate Defense for Negating Criminal Responsibility?*, 4 SCHOLAR 339, 352–58, 361 (2002) (discussing postpartum depression and postpartum psychosis as a defense in infanticide cases); *see also* Manchester, *supra* note 16, at 718–21.

102. *See infra* Part V.B (proposing that the insanity defense should include factors from the DSM-IV to provide a defense relevant to the ever-changing body of psychiatric knowledge).

103. Manchester, *supra* note 16, at 719 (giving a historical overview of child killing).

104. *Id.* at 719 (quoting SHARON L. ROAN, POSTPARTUM DEPRESSION: EVERY WOMAN'S GUIDE TO DIAGNOSIS, TREATMENT & PREVENTION 24 (1997)).

105. *Id.*

106. Dobson & Sales, *supra* note 96, at 1104 (examining the science of mental illness and infanticide).

The postpartum blues occur in roughly twenty-five to eighty-five percent of women.[107] Common symptoms of postpartum blues are "irritability, diminished appetite, crying, mood swings, anxiety, and disorientation" that occur within "the first two weeks after giving birth."[108]

Postpartum depression is less common than postpartum blues, occurring in only seven to seventeen percent of postpartum women.[109] "Postpartum depression is a clinical depression occurring during the weeks and months following childbirth," and it can include "loss of interest in usually pleasurable activities, loss of appetite, sleep disturbance, fatigue, difficulties in making decisions, excessive guilt, and suicidal thoughts."[110]

The most extreme of the three categories of postpartum mood disorders is postpartum psychosis.[111] Postpartum psychosis occurs in only a minute percentage of women, affecting less than one half of one percent of childbearing women.[112] Women afflicted with postpartum psychosis suffer psychotic episodes in which they experience "hallucinations or delusions, severe depression, and thought disorder."[113] These symptoms characteristically appear within two weeks of giving birth and frequently lead to hospitalization.[114]

Although the causes of these postpartum mood disorders remain unknown, factors such as "having to care for children, along with the house, marriage, and paid employment can greatly contribute to the stress of new motherhood and drastically increase the chances that a woman would experience some form of postpartum depression."[115] Additionally, "hormonal shifts relating to 'pregnancy, childbirth, menstruation, and menopause'" could contribute to the onset of postpartum depression.[116]

As discussed above, postpartum disorders affect a large percentage of childbearing women and can have serious implications in the most extreme cases. For women whose actions bring them within the purview of the criminal justice system

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107. Manchester, *supra* note 16, at 719.

108. *Id.*

109. Dobson & Sales, *supra* note 96, at 1105.

110. *Id.*

111. *See* Manchester, *supra* note 16, at 720.

112. *Id.*

113. Dobson & Sales, *supra* note 96, at 1106.

114. Manchester, *supra* note 16, at 720.

115. *Id.* at 721 (citing VERTA TAYLOR, ROCK-A-BY-BABY: FEMINISM, SELF-HELP, AND POSTPARTUM DEPRESSION 43 (1996)).

116. *Id.* at 722 (quoting TAYLOR, *supra* note 115, at 29).

while suffering from these mental disorders, a reworked insanity defense could provide adequate protection for them while balancing society's need to keep the truly culpable behind bars.[117]

C. Religious-Based Delusions

Religious-based delusions have been seen in some of the most publicized insanity defense cases, such as the *Yates*[118] and *Laney* trials.[119] Historically, devotees of certain religions tried to placate deities through human sacrifice.[120] Unfortunately, this primitive practice continues within some isolated religious organizations, and also—more distressingly—with individuals who feel compelled by God to kill.[121]

The "deific decree doctrine" provides a theory by which the legal system can deal with killings that result from religious-based delusions.[122] This doctrine exonerates the defendant based on the understanding that any commandment from God to kill is necessarily a delusion and cannot be a true command from God, regardless of how the defendant perceives the situation.[123] Although this doctrine seems attractive as a defense, it "is rarely claimed, and when claimed, is rarely successful."[124] "Apparently, there are few devoted mothers or affectionate fathers who either hear God's command to sacrifice their children, or who respond obediently if they do."[125]

There are several reasons why deific decree delusions vary from other delusions. They differ "not because God actually has greater moral authority to decide who shall live and who shall die, but because the person who believes in God lacks any basis

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117. *See infra* Part V (suggesting reform to the insanity defense due to conflicting verdicts in the *Yates* and *Laney* cases).

118. *See infra* text accompanying notes 161–62, 169–70 (describing Andrea Yates's hallucinations before killing her five young children).

119. *See infra* notes 204–07 and accompanying text (recounting Laney's history of delusions before stoning her children).

120. Grant H. Morris & Ansar Haroun, *"God Told Me to Kill": Religion or Delusion?*, 38 SAN DIEGO L. REV. 973, 976 (2001).

121. *Id.* at 976–77 & nn.8–9 (enumerating instances of religiously encouraged killings, including the killings performed by "the Thugs" in India and the Aztecs in present-day Mexico, the slaying of nine-year-old Matthew Cecchi by Brandon Wilson in 1998, and the starvation of Zechariah Mayer by his parents).

122. *See id.* at 1002–04, 1018–19.

123. *Id.* at 1003 (offering that this doctrine (1) could have developed from a plain reading of *Rex v. Arnold*, a pre-*M'Naghten* case, which used the phrase "visitation of God" to describe such delusions; or (2) could be an extension of the "Judeo-Christian belief that God would not order a person to kill another").

124. *Id.* at 1008 (footnote omitted).

125. *Id.*

to refuse God's command."[126] Because the decree comes from God, the person may lose the "'ability to distinguish the morality or immorality of [the] act, even though the person may be aware the act is contrary to law.'"[127] Deific delusions should not be considered in a light all their own; rather, revising the insanity defense to include those suffering from deific delusions will provide an adequate legal remedy.[128]

Andrea Yates and Deanna Laney both suffered deific delusions. Yates claimed that Satan commanded her to kill her children.[129] Laney claimed that "God wanted her to 'get her house in order'" by killing her young sons.[130]

Although one could argue that deific delusions are a unique mental condition, they should be viewed as merely another component separating the sane from the insane.[131] Thus, instead of asserting that a defendant had a deific delusion, defense counsel should argue that a person who has a deific delusion is, in fact, "insane." Under a reworked version of the insanity defense, a defendant who committed a crime after experiencing deific delusions would have effective protection.[132]

IV. THE INSANITY DEFENSE IN TEXAS

A. Overview

Cases like *Yates* and *Laney* have recently sparked debate in Texas over the insanity defense.[133] Texas insanity jurisprudence mirrors that of the eighteenth-century *M'Naghten* test and is also similar to the IDRA.[134] Section 8.01 of the Texas Penal Code classifies a defendant as insane if "at the time of the conduct

126. *Id.* at 1017.

127. *Id.* at 1018 (quoting People v. Serravo, 823 P.2d 128, 136 (Colo. 1992) (acknowledging that different types of delusions have varying effects on the insanity defense)).

128. *See infra* Part V (suggesting that the recommended reforms to the insanity defense will address both postpartum psychosis and deific decree delusions).

129. *See infra* text accompanying note 161 (exposing the deific delusions that Andrea Yates had in the years prior to her crime).

130. *See infra* text accompanying notes 204–07 (illustrating the deific delusions that Laney claimed to experience for some time prior to stoning her three children).

131. *See supra* text accompanying note 128.

132. *See infra* Part V (suggesting that all components of mental illness should be viewed through the template of an insanity defense).

133. *See infra* Part V.A (describing society's response to the *Yates* and *Laney* cases).

134. *See supra* notes 19–25, 51–54 and accompanying text (discussing the *M'Naghten* test and IDRA and noting that the two impose similar standards for determining insanity).

charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong."[135] However, similar to the MPC standard, Texas's definition of insanity "does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct."[136] Lastly, insanity is an affirmative defense against the prosecution;[137] the defendant carries the burden of proof and must prove insanity by a preponderance of the evidence.[138]

Insanity and incompetency, with respect to standing trial, are terms that must not be confused. Although both expressions concern the mental state of the defendant, they communicate two distinct issues. Insanity relates to the mental state of the defendant at the time of the offense,[139] while competency refers to the defendant's mental state at the time of trial.[140]

In order to plead insanity, the defendant must give notice to the court of his intent to raise the defense.[141] If the defendant provides notice, "the court may, on its own motion or motion by the defendant, his counsel, or the prosecuting attorney, appoint disinterested [mental health] experts" to examine the defendant.[142] Although expert testimony may be offered regarding the defense, Texas does not require such testimony to establish insanity.[143] Instead, a showing of insanity may be based on the testimony of lay persons in conjunction with the surrounding facts and circumstances of the case.[144] But the defendant's "general reputation,"[145] nervousness at the time of the crime,[146] loss of memory regarding the crime,[147] and poor planning or execution of the crime[148] do not alone prove insanity.

An expert may find the defendant mentally deficient, but this determination does not confirm that the defendant is legally

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135. TEX. PEN. CODE ANN. § 8.01(a) (Vernon 2003).

136. § 8.01(b).

137. § 8.01(a).

138. Smetana v. State, 991 S.W.2d 42, 44, 46–47 (Tex. App.—Tyler 1998, pet. ref'd) (finding the jury conviction proper because the defendant did not meet his burden in establishing his insanity at the time he killed his mother).

139. Graham v. State, 566 S.W.2d 941, 954 (Tex. Crim. App. 1978).

140. *Id.*

141. TEX. CODE CRIM. PROC. ANN. art. 46.03 § 2(a) (Vernon 1979).

142. § 3(a).

143. Pacheco v. State, 757 S.W.2d 729, 733, 736 (Tex. Crim. App. 1988).

144. *Id.* at 736.

145. Fuller v. State, 423 S.W.2d 924, 926 (Tex. Crim. App. 1968).

146. Jeffley v. State, 938 S.W.2d 514, 515 (Tex. App.—Texarkana 1997, no pet.).

147. *Id.*

148. Martin v. State, 605 S.W.2d 259, 260 (Tex. Crim. App. 1980).

insane.[149] A finding of insanity requires a jury to weigh not only mental elements but also other elements concerning the circumstances of the actor's conduct.[150] Only the assessment of these elements by the jury will determine if the defendant was truly "insane."[151] The Texas criteria for insanity is similar to both the strict *M'Naghten* standard and the IDRA because Texas's test does not contain the volitional prong of an "irresistible impulse."[152]

B. Andrea Yates

1. The Crime. In June of 2001, Andrea Yates, a thirty-seven-year-old Houstonian, killed her five young children.[153] Yates, who previously worked as a nurse at the University of Texas M.D. Anderson Cancer Center, was a stay-at-home mother at the time of the offense.[154] Russell Yates, her husband, worked as a computer engineer at NASA's Johnson Space Center.[155] In addition to caring for the children, Yates had undertaken the daunting task of home-schooling her five children, all of whom were under the age of eight.[156]

On June 20, 2001, Yates took her children from breakfast to a bathtub in the family home, drowning them one-by-one: "seven-year-old Noah, five-year-old John, three-year-old Paul, two-year-old Luke, and six-month-old Mary."[157] Yates placed John, Paul, Luke, and Mary in a bed and covered each child with a sheet; she left Noah, the oldest and last child to die, alone in the bathtub.[158]

2. The History. Although heartwrenching, the facts of the Yates case are hardly unfathomable considering Yates's history

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149. Graham v. State, 566 S.W.2d 941, 949–50 (Tex. Crim. App. 1978).

150. *Id.* at 951–52.

151. Bigby v. State, 892 S.W.2d 864, 877 (Tex. Crim. App. 1994) ("The issue of insanity is not strictly medical; it also invokes both legal and ethical considerations."); *Graham*, 566 S.W.2d at 952.

152. *See supra* note 54 and accompanying text (discussing the cognitive bases of both the *M'Naghten* test and the federal standard established after Hinckley's acquittal).

153. Christine Michalopoulos, *Filling in the Holes of the Insanity Defense: The Andrea Yates Case and the Need for a New Prong*, 10 VA. J. SOC. POL'Y & L. 383, 384 (2003).

154. *Id.*

155. *Id.*

156. Michelle Oberman, *"Lady Madonna, Children at Your Feet": Tragedies at the Intersection of Motherhood, Mental Illness and the Law*, 10 WM. & MARY J. WOMEN & L. 33, 39 (2003).

157. Michalopoulos, *supra* note 153, at 384.

158. *Id.*

of mental illness. Yates showed signs of severe mental illness long before June 2001.[159] Her illness started as early as 1994 "after the birth of her first child."[160] Soon after Noah was born, Yates experienced hallucinations in which Satan instructed her to kill her child;[161] she even saw the image of a knife.[162] Twice in 1999, Yates attempted suicide.[163] The first attempt occurred after the birth of her third child, Paul, and during her subsequent hospitalization doctors diagnosed Yates with severe depression accompanied by postpartum psychotic features.[164] In response to her second suicide attempt, doctors again hospitalized her and prescribed the antipsychotic medication Haldol, which often is given to combat schizophrenia.[165] It was at this time that a psychiatrist, Eileen Starbranch, warned Yates and her husband Russell against having additional children due to the possibility of triggering another psychotic episode.[166] Yet, Mary was conceived and born after this warning.[167] In 2001, Yates "was hospitalized two more times" because of her mental illness: in March, shortly "after the death of her father, and again in May" just prior to the killings.[168]

Upon arriving at prison after the tragic deaths of her five children, Yates's scalp was mangled with cuts as a result of her scratching her head, which she believed would uncover the "666" that Satan had etched onto her.[169] In discussions with a jail psychiatrist, she explained that cartoons had been speaking to her and to the children the day before the tragedy.[170] Yates told another counselor she "believed that teddy bears were coming out of the jail cell walls."[171] Furthermore, testimony at trial painted a

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159. *Id.* at 385.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.* (detailing Yates's two suicide attempts, the first in June and the second in July).

164. *Id.*

165. *Id.*

166. *Id.*

167. Carol Christian, *Yates' Husband Testifies*, HOUS. CHRON., Feb. 28, 2002, at 1A. Starbranch's warning came on August 18, 1999, and Mary was born more than one year later on November 30, 2000. *Id.*

168. Michalopoulos, *supra* note 153, at 385.

169. *Id.* at 386. The number "666" is said to be "the mark of the Antichrist." Susan Ayres, *"[N]ot a Story to Pass on": Constructing Mothers Who Kill*, 15 HASTINGS WOMEN'S L.J. 39, 106 (2004) (internal quotation marks omitted) (describing Yates's strange behavior when she went to jail).

170. Michalopoulos, *supra* note 153, at 386.

171. *Id.*

picture of Yates as catatonic—constantly trembling, staring into space, and patting her foot—in the days prior to the killings.[172]

3. The Trial. The State charged Yates with capital murder, and she responded with a plea of not guilty by reason of insanity.[173] The defense offered a "barrage of experts," but ultimately, the prosecution swayed the jury.[174]

The only mental health expert relied on by the prosecution was Dr. Park Dietz[175]—a forensic psychiatrist known for testifying in the "Unabomber" and Jeffrey Dahmer cases.[176] Dietz portrayed Yates as a malingerer who was using the deaths of her children as a means of escape to a new life.[177] Out of six experts who testified at Yates's trial, Dietz was "the only one to say she knew right from wrong."[178] Dietz, who previously worked as a consultant on the popular NBC television series *Law & Order*, described an episode of the show depicting a mother drowning her children and then successfully pleading insanity.[179] This testimony suggested Yates was a manipulative woman who consciously killed her children, thinking she could get away with it, a suggestion the prosecution echoed in its closing argument.[180]

The defense relied on a variety of experts, including doctors who treated Yates before the crime and a jail psychiatrist who visited with Yates after she entered prison.[181] These experts detailed the intense psychosis Yates suffered and how she truly believed that she was "send[ing] her children to God."[182]

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172. *Id.*

173. *Id.* at 384.

174. *Id.* at 388.

175. *Id.* at 386.

176. Michael Graczyk, *Yates' Conviction Is Overturned*, FORT WORTH STAR-TELEGRAM, Jan. 7, 2005, at A1. Dietz is openly opposed to the insanity plea and made this known in several famous cases. Richard E. Vatz, Editorial, *Yates Deserves a New Trial, Then Prison*, BALT. SUN, Jan. 12, 2005, at 19A.

177. Michalopoulos, *supra* note 153, at 386–87.

178. Graczyk, *supra* note 176; *see also* Adam Liptak, *New Trial for a Mother Who Drowned 5 Children*, N.Y. TIMES, Jan. 7, 2005, at A16 (quoting Fordham University law professor Deborah Denno as saying, "[h]e is a hired gun in the worst sense").

179. Graczyk, *supra* note 176.

180. *See id.* ("[D]uring closing arguments, a prosecutor referred to the Dietz testimony to suggest that Yates learned from the TV show a way to escape responsibility for her actions."); *see also* Michalopoulos, *supra* note 153, at 386–87 (detailing the evidence Dietz used to support his assertion that Yates knew right from wrong and was attempting to manipulate the system).

181. Michalopoulos, *supra* note 153, at 387–88 (noting the mental health experts that testified for the defense, some of whom were "eminent scholars on the subject").

182. *Id.* at 388.

Nevertheless, after less than four hours of deliberation, the jury convicted Yates to life in prison, without "parole for at least forty years," for the premeditated murders of her five children.[183] Thus, while the jury rejected the death penalty, it also rejected Yates's insanity defense. Yates's attorney appealed her case, and in January of 2005, an appellate court overturned the conviction and ordered a new trial, based on the faulty testimony of Dr. Dietz.[184] The Texas First Court of Appeals found that Dietz's testimony concerning the *Law & Order* episode was used to impeach Yates and was based on false information, for "no such episode existed."[185] The appellate court reasoned that "'there is a reasonable likelihood that Dr. Dietz's false testimony could have affected the judgment of the jury'"[186] and "'that Dr. Dietz's false testimony affected the substantial rights of [Yates].'"[187]

The prosecution in the case sought reinstatement of the conviction from the Texas Court of Criminal Appeals[188] and remarked that the testimony about *Law & Order* "had no bearing on Dietz's" contentions concerning Yates's awareness of right and wrong.[189] However, on November 9, 2005, Texas's highest criminal court refused to disturb the reversal of Yates's conviction.[190] Immediately thereafter prosecutors announced that

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183. *Id.* at 384–85.

184. Edward Wyatt, *Even for an Expert, Blurred TV Images Became a False Reality*, N.Y. TIMES, Jan. 8, 2005, at B7.

185. Graczyk, *supra* note 176 (discussing the details of the case and the impact of the erroneous testimony); *see also* Wyatt, *supra* note 184 (noting that the episode Dr. Dietz described never aired, but that two episodes involving mothers who kill aired "in the five months before the Yates children were killed").

186. Graczyk, *supra* note 176.

187. Bruce Nichols, *Yates' Conviction in Kids' Deaths Voided*, MIAMI HERALD, Jan. 7, 2005, at 3A; *see also* Editorial, *Set the Bar Higher: False Witness Rightly Cancels Yates Conviction*, DALLAS MORNING NEWS, Jan. 7, 2005, at 18A (criticizing the prosecution in the *Yates* case for "paying a famous psychiatrist $50,000 and letting him make up an episode of a television show to illustrate his point").

188. Graczyk, *supra* note 176.

189. Andrew Tilghman, *Prosecutors Appeal Yates Order: They Say False Testimony Had No Bearing on Verdict*, HOUS. CHRON., Jan. 22, 2005, at B3. One juror in the *Yates* case reported that Dietz's testimony "convinced him to change his mind from finding Yates to be insane to voting to convict her." Ruth Rendon, *Yates' Jurors Speak Out About Flawed Testimony*, HOUS. CHRON., Jan. 13, 2005, at B5. However, other jurors, such as Kenneth L. Blanchard, replied that "Dietz's testimony played no role in determining Yates' fate." *Id.* Blanchard further stated that in the jury room, "[t]he opinion of the other jurors appeared consistent with [his own belief] that [Dr. Dietz's testimony] had no bearing" on the decision. *Id. Contra* Wyatt, *supra* note 184 (citing Professor Stanley A. Goldman, who stated that "[p]erhaps it is not surprising that the jury appeared to believe Dr. Dietz" given that "courtroom television shows had become increasingly prosecutor friendly, a factor that could well have an effect on juries").

190. Anne Marie Kilday, *Yates Dreads Going to Trial Again, Her Lawyer Says*, HOUS. CHRON., Nov. 13, 2005, at B3.

the State would retry Yates.[191] Yates's attorneys anticipate that a new trial may result in Yates's placement in an alternative facility, but currently they are not pursuing release on bail.[192] And in a pretrial appearance on January 9, 2006, Yates again entered a plea of not guilty by reason of insanity for her children's killings.[193] Yates's attorney George Parnham exudes confidence: "Even with the archaic definition of insanity that we have in Texas, I fully expect that Andrea will be acquitted."[194]

C. Deanna Laney

1. The Crime. In May of 2003, on Mother's Day weekend, Deanna Laney killed two of her young sons and severely wounded the third.[195] Laney, a thirty-eight-year-old housewife from New Chapel Hill in east Texas, left her husband sleeping while she slipped outside to kill her children.[196]

Laney called 911 and told the dispatcher that she had killed her sons with rocks after God ordered her to do so.[197] A deputy quickly proceeded to the Laney household and found Laney outside of her home wearing blood-stained pajamas.[198] When the deputy asked Laney why she killed her sons, she replied, "'I had to.'"[199] Joshua and Luke were found dead, dressed "in their

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191. *Id.*

192. Graczyk, *supra* note 176 (quoting defense attorney George Parnham: "Andrea is where she needs to be right now . . . ."); Liptak, *supra* note 178 (discussing the strategy of the prosecution and defense after the Court of Appeals' reversal); Tilghman, *supra* note 189. Yates is "beginning to accept that she's been severely mentally ill for years" and is "interested in the efforts of the Yates Children Memorial Fund for Women's Mental Health Education," which was set up by the Mental Health Association of Greater Houston. Anne Belli, *Progress is Seen in Yates: A Friend Says the Mother Hopes Some Good Came out of 'Tragedy*,*'* HOUS. CHRON., Jan. 9, 2005, at A1 (detailing improvements in Yates's psychiatric state).

193. *Yates Again Pleads Innocent in Kids' Deaths*, USA TODAY, Jan. 10, 2006, at 3A. At the time of this Comment's publication, Yates's retrial is set to begin March 20, 2006, although attorneys for the defense and prosecution are negotiating a possible plea agreement. *Id.*; Dale Lezon, *Yates Plea Deal Could Be Possible: Lawyer Says She's Terrified of Another Trial*, HOUS. CHRON., Jan. 10, 2006, at B1.

194. Kilday, *supra* note 190.

195. *On Tape, Mom Describes Sons' Stoning*, HOUS. CHRON., Apr. 1, 2004, at A21. Using large rocks, Laney crushed the heads of eight-year-old Joshua, six-year-old Luke, and fourteen-month-old Aaron. *Id.* While Aaron survived with massive head injuries, both Joshua and Luke died. *Id.*

196. Lee Hancock, *"I Can't Understand," Father Says of Slayings*, DALLAS MORNING NEWS, Mar. 31, 2004, at 1A.

197. *Id.*

198. Peggy O'Hare, *Mom Charged in Killing Two Sons, Injuring Third*, HOUS. CHRON., May 11, 2003, at 30A (describing what the deputy saw at the Laney home).

199. *Id.*

underwear in the front yard of the residence," with large rocks on top of them.[200] The youngest child, Aaron, was found in his crib, alive, with a pillow over his face.[201]

2. *The History*. Those who knew Laney were shocked by this gruesome crime. One neighbor of Laney described her as "'[e]xtra sweet. Extra nice.'"[202] The pastor of Laney's church said that there was "'absolutely no indication—no indication prior to this—that there were any problems. This was a good family.'"[203]

Although Laney seemed perfectly normal to those around her and did not have a documented history of mental illness, after the deaths psychiatrists concluded that she had suffered delusions and hallucinations for at least three years.[204] Laney stated that God wanted her to "'get her house in order'" for the end of the world, "which included killing her children."[205] She later told a psychiatrist that God was demanding that she kill the boys in progressively more violent ways, ranging from stabbing to strangulation.[206] Laney was convinced that her disobedience in following this command caused God's displeasure with her.[207]

3. The Trial. Although the State charged Laney with two counts of capital murder and one count of serious injury to a child,[208] prosecutor Matt Bingham did not press for the death penalty.[209] Prosecutors did, though, hire Dr. Park Dietz, the same psychiatrist who testified for the State in the *Yates* case, to evaluate Laney.[210] But in Laney's case Dietz opined that she

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200. *Id.*

201. *Id.* Laney later told psychiatrists that she felt "she had 'done wrong' by [Aaron]" and that he "just 'wouldn't die.'" John Springer, *Jury Accepts Insanity Defense for Mother Who Killed Sons*, COURTTV.COM, Apr. 5, 2004, http://www.courttv.com/trials/laney/040304_verdict_ctv.html.

202. Hancock, *supra* note 84.

203. *Id.*

204. Lee Hancock, *Driven by a Voice . . .*, DALLAS MORNING NEWS, Apr. 18, 2004, at 1H.

205. *Mom Who Said She Killed on God's Orders Acquitted: Jury Rules She Was Insane When She Bludgeoned Her 3 Children*, CNN.COM, Apr. 6, 2004, http://www.cnn.com/2004/LAW/04/03/children.slain/index.html [hereinafter *Mom Who Said*].

206. John Springer, *In Interview, Mother Details Delusions that Spurred Her to Kill Sons*, CNN.COM, Apr. 1, 2004, http://www.cnn.com/2004/LAW/04/01/laney/index.html (recounting the deific delusions in which God told Laney several times to kill her children prior to her crime).

207. *Id.*

208. Hancock, *supra* note 196.

209. *Mom Who Said*, *supra* note 205.

210. Hancock, *supra* note 204.

presented "'a textbook case' of insanity."[211] And "after six and a half hours of deliberations," the jury found "that Laney was not guilty by reason of insanity."[212] Laney was committed by the sentencing judge to a state mental hospital, where she may live for the rest of her life.[213] Laney's treatment costs are $462 per day, some of which her family may have to pay,[214] because unlike free mental health services in a prison setting, families of patients are expected to contribute financially to state mental health hospitals in Texas.[215]

D. Yates v. Laney

How can the justice system treat two similarly situated women so differently? How can Yates, with a documented history of mental illness, be sentenced as a cold-blooded murderer, while Laney, with no history of mental illness, be absolved from guilt by a finding of insanity? Regardless of why the State dealt these women such differing fates, their disparate treatment ultimately proves the ineffectiveness and inherent unfairness of the insanity defense in Texas.

1. The Similarities. The similarities between Yates and Laney are rather striking. Both women were deeply religious[216] Texas housewives who firmly believed in home-schooling.[217] Both had multiple children.[218] In addition, both of their husbands initially supported them after their heinous crimes.[219] Further,

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211. *Id.*

212. Springer, *supra* note 201. Sources differ as to Laney's reaction to the verdict. *Compare Mom Who Said*, *supra* note 205 (stating that "Laney's face quivered" as the verdict was read, but she did not cry), *with* Springer, *supra* note 201 (describing the moments after the jury's announcement: "Laney . . . burst into tears and was visibly shaking for more than 30 minutes . . . .").

213. Lisa Falkenberg, *Husband May Foot Bill for Murderer's Treatment*, HOUS. CHRON., May 1, 2004, at 32A.

214. *Id.*

215. *Id.*

216. Hancock, *supra* note 204. "Yates' family was very religious and followed the teachings of the traveling Evangelist preacher, Michel Woroniecki, who holds apocalyptic views about the end of our consumerist society and the dangers of sinful mothers." Renata Salecl, *The Real of Crime: Psychoanalysis and Infanticide*, 24 CARDOZO L. REV. 2467, 2467 (2003). Deanna Laney was described as a "quiet, religious woman" who "sang with her two sisters in a family gospel group." Hancock, *supra* note 84.

217. Editorial, *Hard to Draw Conclusions in Similar Murder Trials*, HOUS. CHRON., Apr. 6, 2004, at A20.

218. *Id.*

219. *Compare* John Springer, *Kids Drowned, Mother Faces Execution*, COURTTV.COM, Jan. 9, 2002, http://www.courttv.com/trials/yates/background.html (detailing Russell Yates's early response to the tragedy: blaming the medical community for the murders of his children), *and* Graczyk, *supra* note 176 (describing Russell Yates's positive reaction to

Yates and Laney each admitted to having religious-based delusions centered on killing their children prior to their crimes.[220]

2. The Differences. With so many similarities between Andrea Yates and Deanna Laney, it is difficult to imagine that the two would realize different fates—but that is exactly what happened. Yates's jurors found her guilty of capital murder, while Laney's jurors concluded that she was insane.[221] Although the similarities in the cases are numerous, the differences in their crimes may offer insight into the verdicts.

The mental health of the defendants is the most glaring difference in the two cases. Yates had an extensive and documented history of mental illness.[222] She had been hospitalized on several occasions, which resulted in a prescription of antipsychotic medication.[223] On the other hand, Laney had no known history of mental illness.[224]

Mental illness still carries with it a stigma;[225] in fact, Americans are "especially punitive toward the mentally disabled, 'the most despised and feared group in society.'"[226] These

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the appellate decision reversing his wife's conviction, despite his then-recent filing for divorce), *with* Springer, *supra* note 201 ("Keith Laney . . . testified that he still loves his wife of 19 years . . . ."). Keith Laney, like Russell Yates, subsequently filed for divorce for what he termed "personality conflicts," and he has asked the court to determine how best to divide the marital estate. *Dad Sues for Custody*, TORONTO SUN, May 8, 2004, at 31 (disclosing Keith Laney's plans to divorce his wife); *see also* Falkenberg, *supra* note 213.

220. *See supra* text accompanying notes 161–62, 204–07 (recognizing that Yates had delusions about Satan and that Laney had visions of God prior to killing their children); *see also* Ellen Byers, *Mentally Ill Criminal Offenders and the Strict Liability Effect: Is There Hope for a Just Jurisprudence in an Era of Responsibility/Consequences Talk?*, 57 ARK. L. REV. 447, 463–64 (2004) (distinguishing the delusions in the *Yates* and *Laney* cases).

221. Hancock, *supra* note 204.

222. *See* discussion *supra* Part IV.B.2 (chronicling Yates's seven-year history of mental illness).

223. *See supra* text accompanying notes 165, 168.

224. *See supra* notes 204–07 and accompanying text (observing that although Laney had no previously reported instances of mental illness, she later reported having delusions prior to her crime).

225. *See, e.g.*, Michael G. Silver, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History*, 72 GEO. WASH. L. REV. 862, 865–66 (2004) (describing the early twentieth-century rise of eugenics—a "scientific" categorization of people from "normal" to "socially inadequate"—and finding that "[a]s a result of widespread intellectual acceptance of eugenics thought, proponents of social policy reform influenced state legislatures to pass sterilization laws directed at the mentally retarded, *mentally ill*, epileptic, and criminal populations" (internal quotation marks omitted) (emphasis added)).

226. Michael L. Perlin, *"Big Ideas, Images and Distorted Facts": The Insanity Defense, Genetics, and the "Political World," in* GENETICS AND CRIMINALITY: THE POTENTIAL MISUSE OF SCIENTIFIC INFORMATION IN COURT 37, 55 (Jeffrey R. Botkin et al.

prejudices possibly tainted the jurors' deliberations in the *Yates* trial. Conversely, without a history of pronounced mental illness, Laney was not as susceptible to the potential ill-effects of her jurors' prejudices.

The different pictures illustrated by the testimonies of families and friends of the two women constitute the second notable difference between the cases. For instance, Yates's mother-in-law testified that Yates was behaving strangely a few days before the killings.[227] Those close to Laney, however, generally described her behavior in glowing terms. Her husband, Keith Laney, said she woke up "happy every day," and the day of the killings was no exception—she had eagerly called his parents "to invite [them] to a steak cook-out on Mother's Day."[228] One neighbor emphasized the total unexpectedness of Laney's actions with these words: "You're not gonna find anybody who can explain it . . . . [S]he was 100 percent, far as I knew."[229] Given this positive testimony, jurors likely felt more sympathetic towards the warm personality of Laney, as portrayed by her family and friends at trial.

The third major difference is independent of the women or even the facts of the cases: The behavior of the prosecutors was markedly different. Chuck Rosenthal, the District Attorney in Harris County during the *Yates* case, was unrelenting in his pursuit of Yates. Rosenthal said that "the case cried out for the death penalty" because "'[f]ive dead children . . . were . . . killed by the person that they loved most in this world.'"[230] By contrast, "Smith County District Attorney Matt Bingham said that . . . his only duty was to present the evidence, prove that Laney committed the killings and then let jurors decide whether the defense met its burden under the insanity statute."[231] Bingham did not seek the death penalty against Laney,[232] and he "had no quarrel with the verdict" in the case.[233] Rosenthal, the more zealous prosecutor, obtained his desired outcome—Yates's conviction—while Bingham's circumspect prosecution resulted in Laney's acquittal. Thus, it is likely that the actions and

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eds., 1999).

227. Michalopoulos, *supra* note 153, at 386.

228. Hancock, *supra* note 196.

229. Hancock, *supra* note 84.

230. Springer, *supra* note 219 (reporting Rosenthal's characterization of the case).

231. Springer, *supra* note 201.

232. State's Notice of Intent Not to Seek the Death Penalty paras. 6–9, State v. Laney, No. 114-1412-03 (114th Dist. Ct. Tex. Dec. 19, 2003), http://www.courttv.com/trials/laney/docs/intent.html (last visited Jan. 12, 2006).

233. Springer, *supra* note 201.

strategies of the prosecutors significantly contributed to the outcomes of the cases.

The fourth difference between the cases concerned the jury composition. The *Yates* jury consisted of eight women and four men; it "took less than four hours" to find Andrea Yates guilty of capital murder.[234] The Laney jury was composed of eight men and four women and took almost seven hours to decide that Laney was legally insane.[235] Perhaps the gender composition of the juries explains the contrasting jury decisions.

Historically, the English legal system acknowledged differences in the way male and female jurors approach cases. While once generally prohibiting female participation in the system, the courts eventually concluded that certain determinations required female juries.[236] As early as the 1600s in the U.S. colonies, an all-female jury was formed in a case where a man's perspective may have been inappropriate.[237] Specifically, "women's substantive knowledge was enlisted to consider crimes against women or women specific crimes such as infanticide."[238] Research indicates that in some gender-specific crimes, female jurors are harsher on female perpetrators than are male jurors.[239]

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234. Matt Bean, *Time to Think About It: Texas Mother Gets Life in Prison*, COURTTV.COM, Mar. 15, 2002, http://www.courttv.com/trials/yates/031502_ctv.html (discussing the length of time the jury took to find Yates guilty and later decide her sentence).

235. Springer, *supra* note 201.

236. Gretchen Ritter, *Jury Service and Women's Citizenship Before and After the Nineteenth Amendment*, 20 LAW & HIST. REV. 479, 493 (2002) (referring to the English "matrons'" jury).

237. *Id.* at 494 (describing a Virginia all-female jury selected to determine the fate of a young woman whose "morals" were at issue); *see also* Marina Angel, *Susan Glaspell's* Trifles *and* A Jury of Her Peers*: Woman Abuse in a Literary and Legal Context*, 45 BUFF. L. REV. 779, 825 (1997) ("Attitudes towards women's jury service continue to be shaped by divergent views of reality, by divergent theories of sameness and difference[] . . . .").

238. Ritter, *supra* note 236, at 494. Despite the focus of this Comment, the definition of "infanticide" is not gender specific; however, articles on infanticide tend to emphasize mothers who commit this crime. *See supra* text accompanying notes 92–100 (detailing the crimes of neonaticide, infanticide, and filicide). Early feminists such as Elizabeth Cady Stanton argued that there are "essential gender differences that make a woman better equipped to understand another woman." Ritter, *supra* note 236, at 496; *see also* Angel, *supra* note 237, at 824–28 (indicating that attorneys often play the "gender elimination game" when composing juries in order to get the perceived unfavorable gender off the jury, a practice which the U.S. Supreme Court declared unconstitutional in *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994)).

239. William Savitt, *Villainous Verdicts?: Rethinking the Nineteenth-Century French Jury*, 96 COLUM. L. REV. 1019, 1039 n.131 (1996) (discussing the nineteenth-century all-male French jury, describing the popular notion that female defendants fare better in court, and attributing the differences to distinguishable factual situations rather than a profemale bias). Although the idea that male jurors are more lenient on female defendants has not been proven outright, this idea is worth mentioning when examining the differences in the *Yates* and *Laney* cases. *Id.* at 1038–39 & n.131; *see also* Francine Banner, *Rewriting History: The Use of Feminist Narratives to Deconstruct the Myth of the*

Thus, the majority-female composition of the *Yates* jury probably contributed to her conviction.

The effect of media coverage of these cases constitutes the fifth difference in the *Yates* and *Laney* cases. The *Yates* case was publicized extensively.[240] This exposure could have affected the subsequent perceptions of Laney's jurors on postpartum depression and religious delusions because the ample publicity surrounding the *Yates* trial likely introduced them to these concepts.[241]

The context of the delusions Yates and Laney experienced prior to killing their children is the sixth difference. "Laney claimed to be obeying God, while Yates, in attempting to defy Satan, knew God would condemn her . . . ."[242] Because of this difference, it stands to reason that the juries in these cases saw the two women in a different light. Laney's attorney told the jury, "'The dilemma [Laney] faced is a terrible one for a mother . . . . Does she follow what she believes to be God's will, or does she turn her back on God?'"[243] Faced with a mother following God's order, the *Laney* jurors acquitted her, while the *Yates* jurors, faced with a woman plagued by images of Satan, sentenced her to life in prison.[244]

The last vital difference in these cases is the courtroom behavior of the two women. A stoic Yates seldom showed emotion during her trial.[245] Laney, on the other hand, cried as she sat in the courtroom listening to the graphic descriptions of her crime.[246] The *Yates* jury probably had little sympathy for a woman who

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Capital Defendant, 26 N.Y.U. REV. L. & SOC. CHANGE 569, 581 (2000–2001) (indicating that in rape trials, female jurors are more likely than male jurors to assign blame to rape victims as a matter of self-protection, for finding fault with the victim "allows a juror to avoid the conclusion that the attack could happen to anyone"); Robert García, *Rape, Lies and Videotape*, 25 LOY. L.A. L. REV. 711, 734 n.87 (1992) (relating that female jurors are more likely than male jurors to find a male defendant guilty in rape trials). Although the gender research on nineteenth-century juries and the research on modern rape trials are not direct corollaries to infanticide cases, the information gained from these articles can be used to further examine the factors that influenced the juries in the *Yates* and *Laney* cases.

240. Valerie P. Hans & Alayna Jehle, *Avoid Bald Men and People with Green Socks? Other Ways to Improve the Voir Dire Process in Jury Selection*, 78 CHI.-KENT L. REV. 1179, 1198 n.110 (2003) (listing several high-profile cases, including *Yates*, that required special voir dire procedures).

241. *See id.* at 1181.

242. Byers, *supra* note 220, at 463–64 (comparing Yates's and Laney's delusions).

243. *Mom Who Said*, *supra* note 205 (quoting Laney's lawyer Buck Files).

244. Hancock, *supra* note 204.

245. Byers, *supra* note 220, at 463–64.

246. *Id.*

seemed to have no remorse, while the *Laney* jurors could sympathize with a visibly upset mother.

All of these differences suggest plausible explanations for the dissimilar jury determinations in the two cases, hinting that the results of the cases might be rational. However, the most distressing difference is that Yates's behavior reflects the legal definition of insanity in Texas: She truly did not know right from wrong.[247] "[I]t is clear that Andrea Yates, as much if not more than Deanna Laney, was a woman living in a nightmarish world of hallucination and fear, whose perceptions were profoundly distorted by severe mental illness."[248]

Although Laney was deemed "insane," it seems that she understood her actions were contrary to state law.[249] According to Dr. Park Dietz, the prosecutions' star witness in both cases, Laney debated the killings and "certainly knew that murder was illegal and that her husband would have tried to stop her if he knew what she was thinking."[250] But, believing she was acting according to God's will, she believed what she was doing was "right," even if it was legally wrong.[251]

By contrast, Yates believed she was destined for hell because she killed her children.[252] Therefore, arguably, she believed what she was doing was "wrong." However, she also believed that she was killing her children to save them from Satan and sacrificing her own soul in the process.[253] So, in a way, she also believed what she was doing was unselfishly "right."

Given these facts, it is unclear why Yates was not also found insane. Perhaps the recent appellate court decision overturning Yates's conviction reveals the true reason—bias created by false testimony—that she was condemned while Laney was found insane.[254] Whether the explanation lies in the "differences" present in their cases or the false testimony, the discrepancy in the results makes clear that the Texas insanity law needs immediate reform. The details surrounding the two cases are too similar to result in different sentences for the defendants. A law that permits incongruous treatment of similarly situated

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247. *See supra* text accompanying notes 135–36 (describing the Texas standard for insanity).

248. Byers, *supra* note 220, at 464.

249. Springer, *supra* note 206.

250. *Id.*

251. Hancock, *supra* note 204.

252. *Id.*

253. *Id.*

254. *See supra* text accompanying notes 184–87 (noting the successful appeal of Yates's conviction due to Dietz's erroneous testimony).

defendants does not produce justice. Clearly, the scales of justice in Texas are not weighted blindly.[255]

V. THE FUTURE OF THE INSANITY DEFENSE IN TEXAS

A. The Current State of Affairs

One writer suggests that "[f]or a mother to kill her babies so goes against nature that she should be assumed to be doing it out of insanity unless there is evidence that she had some other motive."[256] Furthermore, "'[a]bsent those cases where it's done for money, it's generally recognized that what you have when a mother kills her children is a deeply sick individual.'"[257] While commentators recognize that these mental health issues should result in clemency for the afflicted mothers, the Texas legal system shows no mercy: "[P]rosecutors feel impelled to try to convince a jury that the women, in their mental illnesses, knew what they were doing was 'wrong.' [Yet] we don't even provide a definition of 'wrong.'"[258]

The *Yates* and *Laney* cases instigated a move for reform in insanity law;[259] any criminal justice system that could readily conclude that Yates was sane must be unsound. The incredible nature of these cases reveals the flaws of the insanity defense as it currently stands in Texas. Denise Brady, a lobbyist for the Mental Health Association in Texas, comments that "'[w]e do anticipate and hope that the spotlight being on [Yates's] case once again will lay the groundwork for real change.'"[260] But others are less optimistic, reasoning that "[a] wholesale rewrite of the [insanity] law is unlikely. . . . 'As long as the death penalty is

255. The idea that the scales of justice are weighted blindly is derived from the Goddess of Justice, Themis, who adorns courthouses across the country, standing with the scales of justice in her arms and a blindfold over her eyes. Benedict Sheehy, *The Importance of Corporate Models: Economic and Jurisprudential Values and the Future of Corporate Law*, 2 DEPAUL BUS. & COM. L.J. 463, 482 (2004).

256. Casey, *supra* note 1 (expressing disgust for the state of insanity jurisprudence in Texas).

257. Bruce Nichols, *Yates Verdict Reversed, but She Stays in Prison*, DALLAS MORNING NEWS, Jan. 7, 2005, at 1A (quoting Professor David Dow of the University of Houston Law Center).

258. Casey, *supra* note 1; *see also* Nichols, *supra* note 257 (explaining the Assistant District Attorney's position that Yates's "trial and conviction were proper under Texas law").

259. Nichols, *supra* note 257 (indicating the potential for changes in the law).

260. *Id.* (referring to the appellate reversal of Yates's conviction).

popular and the insanity defense is so unpopular, it's not like the Legislature to do something.'"[261]

The inconsistencies in cases like *Yates* and *Laney* prompted the Texas Senate Committee on Jurisprudence to discuss changes to Texas insanity law.[262] Although the Committee failed to make recommendations concerning the definition of the term "wrong," its December 2004 report did propose improvements: creating "tougher standards for expert psychiatric witnesses" and improving monitoring systems for those who are found not guilty by reason of insanity.[263] These suggestions hopefully indicate that the Texas legislature is ready to make some necessary adjustments to the insanity law. Still, a more thorough adjustment is necessary to adequately address the needs of society.

B. Incorporating the DSM-IV

Mental health professionals use the DSM-IV to assess mental disorders.[264] However, when discussing "insanity" in a courtroom, only legal constructs are used. Texas law holds that if the defendant knew that what he was doing was "wrong" at the time of the crime, then he is not legally insane.[265] Not only do Texas statutes fail to provide any guidelines for what "wrong" is,[266] they further neglect to take into account any scientific or medical terminology when defining insanity.[267] Quite simply, instead of ignoring progress in psychiatric science, the Texas legislature should incorporate models from the DSM-IV into Texas insanity jurisprudence.

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261. *Id.* (quoting Professor Gerald Treece of South Texas College of Law).

262. *Id.* (noting the legislative committee's report after the *Yates* and *Laney* trials); *see also* Alison J. Meyers, Comment, *Mentally Ill and Mentally Retarded Defendants in Texas May Get a Chance at Justice: Recommendations to the Task Force Created by Tex. S.B. 553, 77th Leg., R.S. (2001)*, 43 S. TEX. L. REV. 1233, 1235–36 (2002) (suggesting reforms to Texas laws dealing with the mentally ill and particularly emphasizing the need for standardization of procedures for determining competency and for selecting health examiners).

263. Nichols, *supra* note 257.

264. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: TEXT REVISION xxiii (4th ed. 2000) (explaining the credibility and usage of the DSM-IV in clinical and forensic settings).

265. *See* TEX. PEN. CODE ANN. § 8.01(a) (Vernon 2003).

266. *See supra* text accompanying note 258 (detailing one critic's view of the deficiencies of Texas insanity jurisprudence).

267. *See* § 8.01 (failing to provide any medical guidance for jurors in the determination of insanity).

1. The DSM-IV. The DSM-IV is a mental health reference guide designed to serve the needs of a variety of professionals, including "psychiatrists, other physicians, psychologists, social workers, nurses, occupational and rehabilitation therapists, counselors, and other health and mental health professionals."[268] Rather than utilizing a dimensional model, which classifies "clinical presentations based on quantification of *attributes*" present across the population, the DSM-IV employs a categorical model in which disorders are assigned into delimited, well-defined "criteria sets."[269] This categorical model utilizes a multifactor assessment of mental health, consisting of five axes upon which clinicians evaluate individuals. Axis I includes "Clinical Disorders" and "Other Conditions That May Be a Focus of Clinical Attention."[270] Axis II encompasses "Personality Disorders" and "Mental Retardation."[271] Axis III considers "General Medical Conditions,"[272] while Axis IV examines "Psychosocial and Environmental Problems."[273] Finally, Axis V provides a "Global Assessment of Functioning."[274] This multiaxial system encourages an inclusive evaluation by allowing the clinician to consider all relevant conditions—from acute mental disorders to overall mental malfunctioning.[275] In short, instead of examining only the symptoms presented by the individuals' mental illness (as Texas law currently mandates), the DSM-IV considers the whole person.

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268. AM. PSYCHIATRIC ASS'N, *supra* note 264, at xxiii.

269. *Id.* at xxxi–xxxii (emphasis added).

270. *See id.* at 27–28. Some examples of Axis I disorders include schizophrenia, mood disorders, and dissociative disorders. *Id.* at 28.

271. *Id.* at 28–29. Personality disorders and mental retardation are listed on a separate axis because they "might otherwise be overlooked when attention is directed to the usually more florid Axis I disorders." *Id.* at 28. Some personality disorders that are addressed by Axis II include Paranoid Personality Disorder, Schizoid Personality Disorder, and Antisocial Personality Disorder. *Id.* at 29.

272. *Id.* ("Axis III is for reporting current general medical conditions that are potentially relevant to the understanding or management of the individual's mental disorder.").

273. *Id.* at 31.

> Axis IV is for reporting psychosocial and environmental problems that may affect the diagnosis, treatment, and prognosis of mental disorders (Axes I and II). A psychosocial or environmental problem may be a negative life event, an environmental difficulty or deficiency, a familial or other interpersonal stress, an inadequacy of social support or personal resources, or other problem relating to the context in which a person's difficulties have developed.

Id.

274. *Id.* at 32 ("Axis V is for reporting the clinician's judgment of the individual's overall level of functioning.").

275. *Id.* at 27.

2. Proposal. Instead of using the term "wrong," the Texas legislature should integrate the five axes of the DSM-IV to determine a defendant's level of culpability for a criminal act. A mental health expert, approved by the court under the new recommendations set forth by the Senate Committee on Jurisprudence,[276] should examine each criminal defendant. The basis for judgment should be the DSM-IV's five axes, and the expert should determine whether the defendant can be judged "culpable" for the crime. Although no specific diagnosis is dispositive of culpability,[277] the DSM-IV provides a useful baseline for analysis. Instead of simply looking at whether a defendant knew right from wrong, a DSM-IV examination would allow the court to consider each defendant as a whole, including her physical, mental, and emotional state, to determine whether she can be held fully accountable for her acts. Moreover, using the DSM-IV would take into account current medical knowledge regarding mental illness and would give the justice system a common language for dealing with the insanity plea. As new information is created by research or clinical experience, the DSM-IV can be considered in a new light,[278] thus keeping the legal system abreast of the advancements in psychiatric knowledge.

VI. CONCLUSION

The current standard for asserting the insanity defense in Texas is too harsh and indefinite and results in inconsistent verdicts. Instead of maintaining a standard derived from the archaic *M'Naghten* test, the Texas legislature should consider using the DSM-IV in determining the culpability of a criminal defendant who wants to raise the issue of insanity. Using the DSM-IV as a guide would give the jury more information to consider in determining insanity and would provide more accurate and consistent application of the defense. This analysis would be more closely in line with American theories of punishment[279] because only those who were fully responsible for their crimes would be imprisoned. Furthermore, instead of creating a separate defense for each mental illness—postpartum

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276. *See supra* text accompanying notes 262–63 (discussing the suggestions set forth by the Senate Committee on Jurisprudence).

277. AM. PSYCHIATRIC ASS'N, *supra* note 264, at xxxii–xxxiii (emphasizing the caution needed in incorporating the DSM-IV into the criminal justice system).

278. *See id.* at xxxiii (commenting that as new information becomes available, the American Psychiatric Association will revisit and update the DSM-IV).

279. *See supra* Part II.A (describing the prevailing theories of punishment).

psychosis, deific delusions, et cetera—these issues would be considered through the template of the DSM-IV to determine the ultimate culpability of the defendant. Instead of a piecemeal analysis based on legal trends, courts should rely on a scientific assessment of mental processes and functioning regardless of how the psychological problems were manifested. Using the DSM-IV in conjunction with legal notions of culpability will provide the most accurate and equitable insanity standard. Creating this new paradigm will not only address societal needs for safety but also will better represent American society's need for consistency, fairness, and justice.

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