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BLUE MOURNING: POSTPARTUM PSYCHOSIS AND THE CRIMINAL INSANITY DEFENSE, WAKING TO THE REALITY OF WOMEN WHO KILL THEIR CHILDREN

JESSICA BUTTERFIELD*

I. TROUBLED WATER

Everything is infected with brightness . . . and she prays for darkness the way a wanderer lost in the desert prays for water. The world is every bit as barren of darkness as the desert is of water. There is no dark in the shuttered room, no dark behind her eyelids. When she's crossed over to this realm of relentless brilliance, the voices start They are angry, accusatory, disillusioned This state makes her hellishly miserable [T]his state when protracted also begins to enshroud her, hour by hour, like a chrysalis. Eventually, when enough hours have passed, she emerges bloodied, trembling¹

In August 1983, Angela Thompson drowned her nine-month-old son in the bathtub.² Another woman, Sheryl Massip, began

* J.D. Candidate, The John Marshall Law School, January 2007. I would like to thank the editors of The John Marshall Law Review. Thank you to Pam Butterfield, my first editor; Peter Butterfield, my first and most formidable opponent; Liz Butterfield, the best sister in the world; and to all the women suffering from postpartum mental illness — in your darkest hour, you are not alone!

1. MICHAEL CUNNINGHAM, *THE HOURS* 71 (1998). Michael Cunningham's novel is inspired by the life of writer, Virginia Woolf. Virginia Woolf committed suicide in 1941:

On the morning of Friday 28 March . . . Virginia went as usual to her studio room in the garden. There she wrote two letters, one for Leonard, one for Vanessa—the two people she loved best. In both letters she explained that she was hearing voices, believed that she would never recover; she could not go on. . . .

QUENTIN BELL, *VIRGINIA WOOLF: A BIOGRAPHY* 226 (Harcourt Brace Jovanovich, 1972).

2. Tricia L. Schroeder, Note, *Postpartum Psychosis as a Defense to Murder?*, 21 W. ST. U. L. REV. 267, 283 (1993). Thompson described her experience saying:

I started becoming delusional after I stopped nursing Michael. I thought somehow that he represented the Devil The morning the

hearing voices and experiencing hallucinations shortly after the birth of her son.³ The voices insisted that her baby was in pain.⁴ Overcome by her delusions, Sheryl placed her son beneath the tire of her car and drove over him.⁵ Lorelei, Paula Sim's daughter, was only a few weeks old when she was killed by her mother's hand.⁶ Three years later, Lorelei's baby sister, Heather, suffered the same fate.⁷ Susan Mooney, desperate and psychotic, smothered her seven-month-old son.⁸ Dorothy Skeoch admitted to police that she had killed her infant daughter by tying a diaper around the baby's tiny neck.⁹ In May 1975, Pamela Sue Clark wrapped her infant in a blanket and abandoned it in the desert outside Las Vegas.¹⁰ Evonne Rodriquez, who killed her four-month-old child,

baby died, I got a phone call from a woman selling magazines. Right before she hung up, I thought she said "All right, Angela." I had been praying and asking God for guidance, and I thought that God was telling me to drown the baby. I filled the tub, put the baby in the water and held him down until he drowned.

Id.

3. *People v. Massip*, 235 Cal. App.3d 1884, 1889 (Cal. Ct. App. 1990). On April 27, 1987, Sheryl Massip consulted her obstetrician. Fearing that Massip was suffering a nervous breakdown, he prescribed tranquilizers. Two days later, on April 29, 1987, Sheryl took her infant son for a walk. While walking, she heard voices exclaiming that her baby was in pain and that she should "put him out of his misery." Later that day, she killed her son. *Id.*

4. *Id.*

5. *Id.*

6. *People v. Sims*, 750 N.E.2d 320, 323 (Ill. App. Ct. 2001), *appeal denied*, *People v. Sims*, 763 N.E.2d 324 (Ill. 2001).

7. *Id.*

8. Tracy Connor, *No Mercy for Killer Moms: Insanity no Defense as Courts Get Tough*, DAILY NEWS (New York), Sep. 7, 2003, at 13. Connor's article sets forth numerous examples of women who have killed their children while suffering from postpartum mood disorders. These cases support the author's argument that there is a growing trend of intolerance toward mothers who commit infanticide. Connor highlights high-profile cases in which women were severely sentenced for their crimes. *Id.*

9. *People v. Skeoch*, 96 N.E.2d 473, 474 (Ill. 1951). An expert in neurology and psychiatry testified on behalf of Skeoch. *Id.* at 475. His opinion was that the defendant was suffering from a mental disorder, specifically postpartum psychosis, at the time she took her daughter's life. *Id.* The expert further testified that such disorders often occur following delivery of a child. *Id.* The state did not offer any evidence that might prove the defendant was sane when she committed the crime. *Id.* Signs of Dorothy Skeoch's mental illness came to light before she gave birth. In a letter to her parents, Skeoch wrote she was despondent and that "[s]ometimes I feel like turning on the gas and forgetting everything." *Id.* at 474.

10. *Clark v. State*, 588 P.2d 1027, 1028 (Nev. 1979). Defendant pled not guilty by reason of insanity. *Id.* A jury convicted her of attempted murder; the Supreme Court of Nevada upheld the conviction. *Id.* The reviewing court noted that there was substantial evidence in the record to support the jury's conclusion that Clark had not sufficiently established her insanity defense. *Id.* The jury determined that the defendant had the capacity to tell right from wrong and knew what she was doing when she committed the crime in

reported to police that she believed her child was “possessed by demons.”¹¹ Perhaps the most-well known of these horrific tales, however, is the case of Andrea Yates, who drowned her five children in the family bathtub in the summer of 2001.¹² What common thread ties these women to one another? They were all suffering from postpartum psychosis when they committed their unspeakable acts — when they killed their children.

Law Professor Daniel Maier Katkin did a study of twenty-four such cases in which women asserted postpartum psychosis as a legal defense.¹³ His results emphasize the discrepancy in treatment these women receive: “[O]f those cases, eight women were acquitted, four were given probation, ten were sentenced to between three and twenty years, and two were sentenced to life in prison.”¹⁴

Katkin’s study is indicative of our national legal system’s disparate treatment of women suffering from postpartum psychosis who kill their children. These women are at sea; at the whim of whichever jurisdiction they happened to live in and the recent tides that shaped that jurisdiction’s current legal conception of insanity.¹⁵ The fates of these women were inexorably tied to the caprice of misunderstanding and ignorance regarding the severe and devastating condition that is postpartum psychosis.¹⁶ Such incongruous treatment is indicative of an

question. *Id.*

11. David Williams, *Postpartum psychosis: A difficult defense*, CNN, Feb. 27, 2002, <http://www.cnn.com/2001/LAW/06/28/postpartum.defense>.

12. Andrew Gumbel, *Mercy? Not in Texas*, HAMILTON SPECTATOR (Ontario, Canada), Mar. 14, 2001, at B1. Yates had a history of psychotic postpartum depression. *Id.* By the time her fourth child was born, her mental health had declined and she suffered a full-blown psychosis. *Id.* Her husband wanted to continue having children. *Id.* Yates’ psychiatrist had specifically warned her that having another baby would likely cause her to experience a psychosis as she had in the past. Linda Williamson, *A Plea to Spare a Murderer: If Andrea Yates is Put to Death, We Lose Our Chance at Learning About What Was Happening in Her Brain that Fateful Day*, LONDON FREE PRESS (Ontario, Canada), Mar. 15, 2002, at A9. Once a woman has experienced an episode of postpartum depression with psychotic features, the chance of recurrence with each subsequent pregnancy rises to one in three or one in four. Maud S. Beelman, *Mother Convicted of Murdering Baby; Killing Spurs Debate on Postpartum Depression*, L.A. TIMES, May 10, 1987, at 4.

13. Michele Connell, Note, *The Postpartum Psychosis Defense and Feminism: More or Less Justice for Women?*, 53 CASE. W. RES. 143, 146-47 (2002).

14. *Id.*

15. See Stuart S. Gordan, *Mothers Who Kill Their Children*, 6 BUFF. WOMEN’S L.J. 86, 99 (1998) (analyzing the difficulty that postpartum women face in court due to the fact that most jurisdictions in the United States do not recognize postpartum mental illness as a mental impairment severe enough to succeed as an insanity defense).

16. See Colleen Kelly, *The Legacy of Too Little, Too Late: The Inconsistent Treatment of Postpartum Psychosis as a Defense to Infanticide*, 19 J. CONTEMP.

anachronistic reaction to repugnant tragedy and reveals a pervasive ignorance of this disorder on the part of legal and medical professionals. As such, it is incumbent upon us to correct the course of this troubled area of the law.

Part I of this comment will discuss the symptoms of postpartum mental disorders, concentrating on the manifestations of postpartum psychosis and the medical community's current understanding of the psychosis' causes and implications. This section will also include a brief overview of the insanity defense as it has been variously defined across jurisdictions in the United States and will examine how a number of women on trial have fared in raising the defense when on trial for the murder of their infant children. Part II will focus specifically on the guilty but mentally ill verdict and will discuss how this verdict is particularly harmful to postpartum psychotic women at trial. Part III will discuss the Melanie Blocker-Stokes Postpartum Depression Research and Care Act and advocate for its passage into law. This section will also advocate for abolition of the guilty but mentally ill verdict, either in its entirety, or as it is applied to women suffering from postpartum mental illness on trial for murder. Finally, Part III will propose that the United States look to international wisdom and, in the years to come, develop and adopt a statute specific to infanticide committed by mothers suffering from postpartum mental disorders.

II. WOMEN'S TRIALS ON TRIAL

I kept imagining how it would be to drop him out of his bedroom window and he would go splat on the pavement below and shatter into millions of pieces.¹⁷

Angela Thompson, who drowned her baby in the bathtub, was charged with first-degree murder.¹⁸ The charge was reduced to

HEALTH L. & POL'Y 247, 247 (2002) (describing the general public and the medical community's lack of knowledge about causes, symptoms, and treatment for postpartum mental illness).

17. Joanne Silberner, *One Mother's Story, Postpartum Psychosis: Rare, Frightening, Treatable* (National Public Radio broadcast, Feb. 18, 2002), available at <http://www.npr.org/templates/story/story.php?storyId=1138240>. This candid quote from Silberner's article comes from an interview with Shelley Ash, a woman who was afflicted with postpartum psychosis shortly after giving birth to her first child. *Id.* In the interview Ash confides that the strange sensations began during delivery. *Id.* She felt she was viewing the event from above and was frightened by this feeling. *Id.* The attending nurses reassured her that the feeling would pass; it did not. *Id.* After taking her baby home, Shelley could neither eat nor sleep. *Id.* She was consumed by a debilitating depression. *Id.* Following aggressive treatment with anti-psychotic and anti-depressant medication, Ash is once again healthy, as is her five-year-old son. *Id.*

18. Schroeder, *supra* note 2, at 282-83.

voluntary manslaughter and felony child abuse.¹⁹ Four psychiatrists testified, on Angela's behalf, that she was suffering from postpartum psychosis at the time of the incident.²⁰ She was found not guilty by reason of insanity and ordered to begin inpatient treatment at a halfway house and to see a psychiatrist for six years.²¹

Sharon Comitz, who pled guilty but mentally ill to third degree murder, is currently serving her sentence in a Pennsylvania women's prison for killing her infant son.²² Following his wife's conviction, Glenn Comitz determined to educate the public about the terror and reality of postpartum mental illness.²³ He contends his wife fell victim to the ignorance—the ignorance of the public, of law enforcement officials, and even the ignorance of medical professionals—about postpartum disorders.²⁴

Clearly, postpartum depression and psychosis do not always cause women to kill their children. Cynthia Collado, for example, struggled against and eventually overcame postpartum mental illness after giving birth to her son, Dominic.²⁵ Although she recovered, Cynthia explained her decision not to have any more children by saying, "I don't want something that happened to Andrea Yates to happen to me . . . I don't want to go through the feelings of hurting my baby again."²⁶

In the wake of childbirth, many mothers are stricken with horrible thoughts of destroying their children. Katherine Stone, for one, was overcome with mortifying fantasies about smothering her newborn.²⁷ Similarly, Melanie Stokes was happy and excited

19. *Id.* at 283.

20. *Id.*

21. *Id.*

22. Beelman, *supra* note 12, at 4.

23. *Id.*

24. *Id.* In an interview, Glenn Comitz addressed the lack of empathy and understanding demonstrated by investigators, saying, "all those men are married, with women that are just as capable of having kids and getting this illness as my wife, but they took the air that, 'Ah, gee, it could never happen to my wife.'" *Id.*

25. Jennifer McGilvray, *Postpartum Psychosis More Than Baby Blues*, *TIMES* (Munster, Indiana), May 22, 2003, available at http://nwitimes.com/site_pages/about.php.

26. *Id.*

27.

One night while burping him with a burp cloth I wondered what would happen if I smothered him with it . . . I'd shake my head and think, I *know* I'd never hurt him. What's wrong with me? I told no one what was happening. How could I expect anyone to understand? . . . I was sure I had lost my mind and would be locked up forever.

Katherine Stone, *My Turn: I Was Scared That I Might Hurt My Baby*, *NEWSWEEK*, Jun. 7, 2004, available at <http://www.msnbc.msn.com/id/5085224/site/newsweek> (emphasis in original).

about being pregnant. After she gave birth to her daughter, Sommer Skyy, however, things changed radically for Melanie.²⁸ In the days and hours after giving birth, Melanie became increasingly paranoid and depressed.²⁹ She imagined the neighbors had drawn their blinds because they believed she was a bad mother.³⁰ On June 11, 2001, Melanie jumped to her death from a twelve-story window.³¹

Though the fates of each of these women and the fates of their children differ, all of them share a common struggle, a common nightmare—they all found themselves at the mercy of postpartum mental illness.

Postpartum mental illness, as a generalized term, falls into three categories: baby blues, postpartum depression, and postpartum psychosis.³² Risk factors for these disorders include a history of depression, premenstrual disorders, psychological stress factors, marital problems, and a history of mood disorders in the family.³³

Postpartum psychosis, the most debilitating and severe form of postpartum disorder, affects approximately one in every five hundred women, or one-fifth of one percent of women in the

In this autobiographical article, Katherine Stone writes about her terrifying experience with postpartum obsessive-compulsive disorder.

28. See *Melanie's Battle: The Hidden Plague of Postpartum Psychosis and Depression*, <http://www.melaniesbattle.org/story.html> (last visited Jan. 31, 2005) (describing Melanie's struggle with postpartum psychosis and depression, which ultimately led to her tragic and untimely death). Melanie's mother, Carol, has made it her mission to be an advocate for mothers suffering from postpartum depression. *Id.* She has written to many women accused of killing their children and has even appeared in court to testify on their behalf. *Id.* See also Postpartum Depression Alliance of Illinois, <http://www.ppdil.org> (last visited Jan. 31, 2005) (providing additional information on Melanie Stokes' story, as well as resources and links regarding Postpartum Depression).

29. Melanie's Battle, *supra* note 28.

30. *Id.*

31. Kelly, *supra* note 16, at 247.

32. Jessie Manchester, *Beyond Accommodation: Reconstructing the Insanity Defense to Provide an Adequate Remedy for Postpartum Psychotic Women*, 93 J. CRIM. L. & CRIMINOLOGY 713, 719 (2003). Research has revealed that up to 85% of women will experience the "blues" following childbirth. *Id.* Symptoms include crying spells, irritability, mood swings, and disorientation, among others, and usually dissipate within a twelve days. *Id.* Postpartum depression may occur in up to 25% of women following childbirth. *Id.* at 720. Symptoms are those of major depression as set forth in the Diagnostic and Statistical Manual of Mental Disorders ("DSM-IV") and can include "loss of interest in usually pleasurable activities, loss of appetite, sleep disturbance, fatigue, difficulties in making decisions, excessive guilt, and suicidal thoughts." *Id.*

33. Linda Chaudron, M.D., M.S., *Is Postpartum Psychosis a Bipolar Variant? A Phenomenological Question*, PSYCHIATRIC TIMES, July 1, 2003, at 54.

childbearing population.³⁴ Symptoms begin abruptly in the weeks following birth and may include confusion, hallucinations, delusions, and severe mood swings.³⁵ Symptoms are usually extreme and require immediate psychiatric hospitalization.³⁶ Auditory hallucinations, which often accompany this illness, have been noted to center around violent ideation directed towards oneself or the newborn.³⁷

In sharp contrast to the relatively low occurrences of postpartum disorders, clinical diagnostics show that two-thirds of women who kill their children in the wake of childbirth suffer from postpartum psychosis.³⁸ One of the reasons such disorders so often are allowed to progress to their tragic end is because symptoms are often acute and develop without warning.³⁹ Because this disorder is characterized by rapidly changing mood states,

34. Manchester, *supra* note 32, at 720.

35. Chaudron, *supra* note 33, at 54. Chaudron notes in her article that DSM-IV-TR does not recognize any postpartum psychiatric disorder as a separate and distinct category of disorder. *Id.* The manual does, however, allow for the indicator-term, "with postpartum onset," to be applied to "major depressive disorder, bipolar disorder (type I or II) and brief psychotic disorder if the onset of symptoms occurs within the four weeks following childbirth." *Id.*

36. *Id.* Melanie Stokes was hospitalized a total of three times in a period of approximately seven weeks. Her treatment included combinations of anti-depressant, anti-psychotic, and anti-anxiety medications. Melanie's Battle, *supra* note 28. Additionally, she was given electroconvulsive therapy. Unfortunately, all of these efforts proved to be for naught. *Id.*

37. Kelly, *supra* note 16, at 252.

38. Velma Dobson & Bruce Sales, *The Science of Infanticide and Mental Illness*, 6 PSYCHOL. PUB. POL'Y AND L. 1098, 1102 (2000). Epidemiological research has produced clear scientific evidence linking childbirth and postpartum psychosis. *Id.* at 1106. These studies have shown that the risk of psychosis necessitating psychiatric hospitalization is highest during the first month following childbirth and continues to be a significant risk through the 2nd postpartum year. *Id.* at 1106-07.

39. See Steven R. Lee, *Postpartum Emotional Disorders*, AM. FAM. PHYSICIAN, Aug. 1982, at 197-201 (illustrating that postpartum symptoms are often acute). The story of a twenty-one-year-old woman with no history of emotional disturbance or mental disorder who became severely depressed one week after a planned delivery is one apt example set out by Lee. *Id.* Her symptoms quickly worsened and were characterized by auditory hallucinations and sexual delusions. *Id.* In his article, Lee urges that once symptoms of postpartum mental illness develop, it is extremely important the woman who is suffering not be left alone because she may be subject to rapidly shifting mood states, which may impair her ability to care for herself and her child. *Id.* Early intervention is highly recommended. *Id.* Lee included a Table outlining when postpartum mood disorders would begin following child birth. *Id.* A significant number of cases, approximately 45%, arise within the first two weeks following childbirth. *Id.*

immediate and aggressive drug therapy is recommended,⁴⁰ though many times it is not obtained.

Postpartum mental illness is not just a modern-day phenomenon. As early as 1875, a French physician wrote about postpartum disorders.⁴¹ Some scholars even trace mention of such disorders back to the time of Hippocrates.⁴² Nevertheless, postpartum disorders are foremost mental illnesses, and mental illness, on the whole, has met stolid resistance from the general and legal public as a mitigating or exculpatory factor in criminal prosecutions. A foreign journalist, in his article about the Andrea Yates murder trial, commented on the place of mental illness in the American justice system: “[M]ental illness has never been much of a mitigating factor in the great retributive machine that is the United States No mercy—that has been the watchword of prosecutors in jurisdiction after jurisdiction.”⁴³

In the United States the legal test for insanity varies by jurisdiction. The majority of American jurisdictions, however, follow the M’Naghten test.⁴⁴ This test considers whether or not the individual accused knew right from wrong at the time of the offense.⁴⁵ Criticism of the M’Naghten test by the legal and medical

40. *Id.* (listing commonly used psychotropic medications and the concentrations in which such medications can be excreted in breast milk).

41. See Connie Huang, *It’s a Hormonal Thing: Premenstrual Syndrome and Postpartum Psychosis as Criminal Defense*, 11 S. CAL. REV. L & WOMEN’S STUD. 345, 354 (2002) (crediting Victor Louis Marce, a French doctor, as one of the early scholars to write about postpartum mental disorders in his 1856 text, *Traite de la Folie des Femmes Enceintes* (translated as “Study of the Madness of Pregnant Women”)).

42. See *id.* (acknowledging that some scholars believe Hippocrates described postpartum disorders in his early medical writings, while other scholars distinguish these literary references as specific descriptions of “delirium associated with puerperal sepsis” (infection and fever arising from complications following childbirth)).

43. Gumbel, *supra* note 12. In her article about the Andrea Yates trial, journalist Linda Williamson made an insightful statement regarding the possibility that Yates might have been put to death: “[K]ill her and we’ll learn nothing but the same old lesson about ourselves — we’d rather not confront the murky demons that but for a quirk of brain chemistry, could rise up to attack any one of us.” Linda Williamson, *A Plea to Spare a Murderer: If Andrea Yates is Put to Death, We Lose Our Chance at Learning About What Was Happening in Her Brain that Fateful Day*, LONDON FREE PRESS, Mar. 15, 2002, at A9.

44. Gordan, *supra* note 15, at 99. See Gumbel, *supra* note 12 (explaining that the Andrea Yates case fell into one of these majority jurisdictions, applying the pervasive M’Naghten insanity test). At trial, the jury’s only request for clarification to the judge was regarding the legal definition of insanity, and was certainly a determinative factor in their decision to convict Andrea. *Id.* In his article, Gumbel quoted the associate dean of South Texas College of Law as saying, “[a] person can be totally psychotic and still, in that world, know right from wrong.” *Id.*

45. See M’Naghten Case, 8 Eng.Rep. 718 (UKHL 1843) (laying the

communities throughout the twentieth century, however, prompted the American Law Institute ("ALI") to establish an insanity test in Model Penal Code that looks not only to cognizance of wrongdoing of the actor but also to the voluntariness of the act.⁴⁶ Section 4.01 of the Model Penal Code reads: "a person is not responsible for her criminal conduct if, at the time of the conduct, as a result of mental disease or defect, she lacked substantial capacity to: (1) appreciate the criminality of her conduct or (2) to conform her conduct to the requirements of the law."⁴⁷ This insanity test was viewed as over-inclusive, however, and was adopted by only a minority of jurisdictions in the United States.⁴⁸ Wholesale rejection of the ALI test did not begin until John Hinckley, Jr. was acquitted by reason of insanity after his attempt to assassinate President Ronald Reagan, and a national backlash against the minority rule ensued.⁴⁹ Passage of the Insanity Defense Reform Act in 1984 officially removed the "volitional" aspect of the American Law Institute test for insanity.⁵⁰ Under this statute, the defendant bears the burden of proving insanity by

foundation upon which the majority of jurisdictions have fashioned the standards for and test of insanity throughout the Twentieth Century). See also Gordan, *supra* note 15, at 99 (describing the M'Naghten test as evaluating whether the defendant knew what she was doing at the time she committed the offense and whether she knew what she was doing was wrong). Texas follows the M'Naghten test. Gumbel, *supra* note 10. The M'Naghten test was also similarly applied in *Commonwealth v. Comitz*, 530 A.2d 473 (Pa. Super. Ct. 1987). Comitz killed her one-month-old infant by dropping him into a cold Pennsylvania stream. Defendant suffered from postpartum depression after the birth of her first child and was being treated with anti-depressant medication at the time of the crime. Connell, *supra* note 13, at 148-49. Comitz was sentenced to eight to twenty years in prison and this sentence was affirmed on appeal. *Id.*

46. JOSHUA DRESSLER, *CASES AND MATERIALS ON CRIMINAL LAW*, 624 at n.1 (3d. ed. 2003).

47. *Id.* at 623.

48. Gordan, *supra* note 12, at 100. Gordan points out that the recent trend in the United States is toward the M'Naghten test, as critics see the ALI test as overly broad. *Id.*

49. Manchester, *supra* note 32, at 716. Manchester argued that the M'Naghten test for legal insanity is "antiquated and does not reflect modern understanding of human psychiatry . . . particularly . . . when applied to postpartum psychotic women, because the test was developed within Victorian England when women's status within the law was vastly different than today." *Id.* at 717. One of the most common critiques of the M'Naghten test is that it substantially restricts the scope of expert testimony, ultimately leading to the consequence that the trier of fact may not have a complete understanding of the defendant's mental state. DRESSLER, *supra* note 46, at 622.

50. DRESSLER, *supra* note 46, at 625 n. 1. See also 18 U.S.C. § 17 (2000) ("It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts.").

“clear and convincing evidence.”⁵¹ This provision marks a bold shift in the law: Prior to enactment Insanity Defense Reform Act, the burden of proof in federal courts and approximately half of the country’s state courts lay with the prosecution to prove a defendant’s sanity beyond a reasonable doubt.⁵²

Despite majority approval, this new standard proved inadequate in several cases. In response to calls to reform insanity defense standards throughout the country, eleven states, including Illinois, responded by instituting the “guilty but mentally ill” verdict.⁵³ In such states, a jury may now choose between guilty, not guilty, not guilty by reason of insanity, or guilty but mentally ill as possible verdicts.⁵⁴ A woman found guilty but mentally ill is not relieved of criminal responsibility.⁵⁵ To the contrary, once a verdict of guilty but mentally ill has been entered against woman charged with infanticide, the court has discretion to impose any sentence on her as could be imposed on a defendant guilty of the same offense but not mentally ill.⁵⁶

By way of comparison, England’s treatment of this issue, the Infanticide Act of 1938, provides that a woman who kills her child within the first year of birth and in the throws of postpartum mental illness, cannot be charged with murder.⁵⁷ Instead she may be charged with infanticide and sentenced as though guilty of

51. 18 U.S.C. § 17(b).

52. Manchester, *supra* note 32, at 736. Many states followed the example set by the federal courts’ application of the Insanity Defense Reform Act. *Id.* at 737. In the end, seven states adopted a narrower test for insanity, twelve adopted a guilty but mentally ill verdict, sixteen shifted the burden of proof onto the defendant, twenty-five adopted more stringent standards regarding when a defendant found guilty by reason of insanity is able to be released for treatment, and three (Idaho, Montana and Utah) did away with the insanity defense entirely. *Id.*

53. Kelly, *supra* note 16, at 264.

54. *Id.*

55. People v. Brady, 485 N.E.2d 1159, 1168-69 (Ill. App. Ct. 1985). *See also* Kelly, *supra* note 16, at 264 (noting that although a defendant found guilty but mentally ill is not relieved of criminal responsibility, she may be entitled to receive psychiatric care or treatment or hospitalization for mental illness as a part of her sentence). *But see* Richard E. Redding, *Justice, Ethics, and Interdisciplinary Teaching and Practice: Why It Is Essential to Teach About Mental Health Issues in Criminal Law (And a Primer on How To Do It)*, 14 WASH. U. J.L. & POL’Y 407, 420 (2004) (discussing the reality that the criminal justice system often fails to meet prisoners’ needs for mental health treatment).

56. 730 ILL. COMP. STAT. 5/5-2-6(a) (2004).

57. Infanticide Act, 1938, c. 36, § 1 (Eng.). The Act specifically provides that a mother who kills her own child less than twelve months after birth, and whose unbalanced mind was “disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child,” shall be guilty of infanticide, not murder, and sentenced as though she committed manslaughter. *Id.*

manslaughter.⁵⁸ Other countries, such as Austria, Australia, Canada, and New Zealand have enacted similar statutes.⁵⁹

Although the United States has enacted no statute specific to infanticide, several members of Congress have proposed legislation that would provide for research and study of such disorders. For example, Representative Bobby Rush (D-IL) first introduced the “Melanie Blocker-Stokes Postpartum Depression Research and Care Act” in the 107th Congress.⁶⁰ It failed to pass, but an identical bill has been proposed to the 108th Congress.⁶¹ Such legislation is an excellent start to addressing this devastating mental illness.

III. WOMEN AND CHILDREN FIRST

I feel certain that I am going mad again: I feel I can't go through another of these terrible times. And I shant recover this time. I begin to hear voices, and can't concentrate. So I will do what seems the best thing to do.⁶²

The relevance of the topic of postpartum psychosis was brought to the forefront when on November 22, 2004, Dena Schlosser, was charged with capital murder in Texas after admitting to police that she had killed her eleven-month-old child

58. *Id.*

59. Dobson & Sales, *supra* note 38, at 1099. Recently, Professor Michelle Oberman collected an array of infanticide statutes from a number of countries from around the world. Michell Oberman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 8 DEPAUL J. HEALTH CARE L. 3, 21-24 (2004). Of the numerous countries that have enacted specific infanticide statutes, Oberman concludes, all but one recognize infanticide as less severe a crime than ordinary homicide. *Id.*

60. H.R. 2380, 107th Cong. (2001).

61. Office of Legislative Policy and Analysis, Legislative Updates, Melanie Blocker-Stokes Postpartum Depression Research and Care Act (Mar. 7, 2005), <http://olpa.od.nih.gov/legislation/108/pendinglegislation/postpartum.asp> (last visited Jan. 31, 2005). The Melanie Blocker-Stokes Postpartum Depression Research and Care Act would amend the Public Health Service Act to provide for research on the topic of postpartum depression and psychosis and allocate resources for service to individuals suffering from these disorders. *Id.* Senator Richard Durbin, speaking before the President and the 108th Congress, First Session, described certain provisions of the bill. He said:

[M]y legislation authorizes the Secretary of Health and Human Services to organize a series of national meetings that focus on developing a consensus research and treatment plan for postpartum depression and psychosis [T]he bill makes grant funding available through the Substance Abuse and Mental Health Services Administration to aid in the delivery of treatment services for postpartum depression to women and their families.

149 Cong. Rec. S 2840 (daily ed. Feb. 26, 2003) (statement of Sen. Durbin).

62. See CUNNINGHAM, *supra* note 1, at 6-7. (recreating Virginia Woolf's final letter, her suicide note, written to her husband Leonard on the day of her death).

by cutting off his arms.⁶³ Unsurprisingly, Dena had a history of postpartum mental illness.⁶⁴ The night before she killed her child, she told her husband that she wished to “give her children to God.”⁶⁵ As in the case of Andrea Yates, another tragic story of motherhood poisoned with mental illness will play itself out in a Texas courtroom.⁶⁶ Andrea Yates was not the first and she will certainly not be the last woman to face the tragedy of infanticide and the ignominy of a legal system unable to understand her plight.

While the country waits for resources to be allocated to the study of postpartum psychosis, we must deal with the hand we have been dealt. In Illinois, this means postpartum psychotic women on trial must confront the guilty but mentally ill verdict.⁶⁷ The following sections will examine the case of *People v. Gindorf*⁶⁸ as illustrative of the repercussions of the guilty but mentally ill verdict on postpartum psychotic women on trial for murder.

A. *Postpartum Psychosis and the Guilty But Mentally Ill Verdict: A Devastating Pair*

On the night of March 28, 1985, Debra Lynn Gindorf opened a box of Unisom sleeping tablets.⁶⁹ Carefully, she crushed the medicine and divided the powdery substance into three piles: one for herself, one for her three year-old, Christina, and one for her

63. Jennifer Emily & Terri Langford, *Baby's Arms Severed: Plano Mom who Suffered Postpartum Depression Charged with Murder*, THE DALLAS MORNING NEWS, Nov. 23, 2004, at 1A.

64. *Id.*

65. *Jennifer Emily*, Plano Mom's Trial Set for February, McKinney: Attorney Plans Insanity Defense in Baby Arm-Severing Case, DALLAS MORNING NEWS, Nov. 11, 2005, at 2B.

66. The Court of Appeals of Texas, First District, recently overturned Andrea Yates' murder conviction. *Yates v. State*, 2005 Tex. App. LEXIS 81 (Tex. Ct. App. 2005). The prosecution's sole psychiatric witness at trial was Dr. Park Dietz. *Id.* at 8. After interviewing the accused, Dietz testified that Andrea Yates was psychotic when she committed the crimes against her children, but, that she knew right from wrong. The crux of Dietz's testimony centered on his claim that Yates had watched a "Law & Order" episode prior to committing the crimes in which a mother had drowned her children in the bathtub and was found not guilty by reason of insanity. *Id.* It was Dr. Dietz's testimony that the show aired shortly before Andrea Yates' drowned her children. *Id.* at 9. This testimony proved false and its falsity was brought to light before sentencing. *Id.* at 13. Nevertheless, the trial court refused to grant a mistrial on the grounds of false or perjured testimony. *Id.* at 1. On review, the court of appeals found that there was "reasonable likelihood" that Dr. Dietz's testimony could have prejudicially affected the jury against the rights of Yates and so found that the trial court had abused its discretion in refusing to grant a mistrial. *Id.* at 19-20.

67. 720 ILL. COMP. STAT. 5/6-2; 730 ILL. COMP. STAT. 5/5-2-6.

68. 512 N.E.2d 770 (Ill. App. Ct. 1987), *cert. denied*, 486 U.S. 1011 (1988).

69. *Id.* at 772.

three-month-old, Jason.⁷⁰ She mixed one portion with baby formula and put it in Jason's bottle and served Christina juice laced with the poison.⁷¹ She stirred the final portion into her own glass of Southern Comfort.⁷² The children soon became sick and vomited.⁷³ Debra laid them down to sleep and then went to bed.⁷⁴ When she awoke, her children were dead.⁷⁵ Having failed to end her own pain, Debra Lynn spent the day somewhere between life and death, trying to take her own life.⁷⁶ Unable to finish the task, at 6:30 p.m. on March 29, 1985, Debra Lynn Gindorf went to the Zion police station and turned herself over to the criminal justice system.⁷⁷ Ray Nicholas, a police officer on duty, was the first to hear her story.⁷⁸

Debra Lynn was charged with six counts of murder in the deaths of her children.⁷⁹ Following a bench trial, she was found guilty but mentally ill and sentenced to a mandatory term⁸⁰ of natural life in prison.⁸¹

At trial, two experts testified in her defense.⁸² Both concluded that Debra was suffering from severe mental illnesses at the time she committed the crime, including major psychotic depression, post-traumatic stress disorder due to previous physical and mental abuse by her husband,⁸³ and borderline personality disorder.⁸⁴

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.* Examination of the children later revealed that their deaths were caused by an acute overdose of the active ingredient in Unisom sleeping tablets. *Id.*

76. *Id.* Debra Gindorf, realizing her children were deceased, turned on the gas stove and attempted to asphyxiate herself. *Id.* When that failed, she slashed her wrists with a knife and tried to smother herself with a pillow. *Id.* After these repeated suicide attempts proved futile, she turned herself in. *Id.*

77. *Id.*

78. *Id.* Nicholas observed that although Gindorf seemed nervous, there was nothing abnormal about her behavior. *Id.* Gindorf waived her constitutional right to plead the Fifth Amendment and told Nicholas her story. She willingly gave police the key to her apartment. *Id.* When they arrived, the police discovered her two children dead. *Id.*

79. *Id.* at 771.

80. *Id.* at 772. The Illinois legislature has established that a crime of two or more murders necessitates a life sentence and that there are no mitigating factors that will reduce such a penalty. *People v. Strayhorn*, 518 N.E.2d 1047, 1050 (Ill. 1988).

81. *Gindorf*, 512 N.E.2d at 772.

82. *Id.* at 773-74.

83. *Id.* Gindorf's husband admitted to hitting his wife in the past and admitted that they divorced on the grounds of physical cruelty. *Id.* at 774. On January 3, 1983, she was taken to the emergency room following a previous assault she asserted was perpetrated by her husband. *Id.* She was treated for contusions and abrasions on her head, arms and right knee. Earlier in the

Sharon Strauss, Ph.D., one of the defense experts, explained that the combination of major depression and an underlying personality disorder could cause extreme episodes of psychosis and departure from reality.⁸⁵ Even the state's rebuttal expert, Dr. Ronald Baron, testified that the "defendant was suffering from a severe mental illness at the time of the offense."⁸⁶ Nevertheless, Dr. Baron ultimately concluded that despite her mental illness at the time she committed the crime, Debra Lynn was able to tell right from wrong and capable of conforming her conduct to the requirements of the law.⁸⁷ Under Illinois law, which follows the ALI's definition of insanity, Dr. Baron's testimony essentially defeated the two-prong test for insanity.⁸⁸

In the years following Debra Lynn's conviction, several psychiatric experts have independently reviewed her case and concluded that she was afflicted with postpartum psychosis at the time she killed her children and tried to kill herself.⁸⁹ Significantly, such a conclusion was supported by the testimony of lay witnesses who testified at the trial.⁹⁰ Neighbors observed that before the birth of her son Jason, in January 1985, the defendant

year she had been rushed to the emergency room following a miscarriage. *Id.* Her husband, present at the time, was assertive, boisterous, and smelled of alcohol. *Id.*

84. *Id.* at 773. Gindorf was administered two blood tests (Dexamethasone Suppression Tests) in order to determine whether she suffered any physiological imbalance at the time of the offense. *Id.* The first test, given shortly after the incident in the summer of 1985, revealed that "depression-related biochemical imbalances" were present in Gindorf's system. *Id.* After she was treated with anti-depressant medication, a second test in October of the same year was negative. *Id.* at 773-74. Walker, an expert for the defense, noted that defendant's mood improved dramatically with the administration of medication. *Id.* at 774.

85. *Id.*

86. *Id.*

87. *Id.* Years later, Dr. Ronald Baron changed his mind. In a letter written to Governor Ryan in 2002, Dr. Baron described Gindorf's life sentence as "a miscarriage of justice." Eric Zorn, *Tragic Case Cried Out for Ryan's Mercy*, CHI. TRIB., Jan. 23, 2003, Metro at 1. He appealed to the Governor to rectify the injustice stating "[t]his is a special situation, which needs your humanitarian touch to correct." *Id.*

88. See DRESSLER, *supra* note 46, at 623 (setting forth the American Law Institute's test of criminal responsibility).

89. Julie Deardorff, *Slain Kids' Mom Seeks Release; Clemency Asked in 1985 Killings*, CHI. TRIB., Apr. 4, 2002, Metro at 1. Carol Blocker, the mother of Melanie Blocker-Stokes who committed suicide in 2001 while suffering from postpartum psychosis, testified at Gindorf's clemency hearing and urged the board to grant clemency. *Id.* She argued that "[b]ecause of this terrible, untalked-about illness, women have gone untreated. With postpartum psychosis, someone is going to die—the mom, the baby or both Every woman in jail for killing their baby should be retried and treated." *Id.*

90. *Gindorf*, 512 N.E.2d at 773.

was often depressed.⁹¹ They noted that after Jason was born, Debra Lynn's depression intensified to the point where she no longer wanted to spend time with them and became increasingly isolated; this, just two months before the murders.⁹² The symptoms the neighbors described comport with research that suggests that for some women, the risk of psychosis severe enough to require hospitalization is extremely elevated during the first few months following childbirth.⁹³ Even women with no history of psychiatric illness may find themselves victims of this disorder.⁹⁴ A study of postpartum women affected by mental illness found significant impairment of behavior and cognitive functioning as well as prevalence towards homicidal ideation during the postpartum period.⁹⁵

As evidenced by the outcome in *Gindorf*, lay testimony may hurt rather than help a postpartum psychotic woman on trial.⁹⁶ But the significance of lay testimony is especially pertinent in Illinois, where the trier-of-fact may decide the question of insanity by rejecting expert testimony in favor of lay testimony that supports a finding that a defendant was sane at the time of the offense.⁹⁷

91. *Id.* at 772-73.

92. *Id.* at 772. Neighbors stated that prior to the incident they spent time with the defendant and her children. *Id.* Their testimony centered primarily on the defendant's habits of keeping her children clean, fed, and clothed. *Id.* One lay witness recalled that the defendant asked her daughter to give her neighbor a hug and kiss goodbye because they were going home, which was unusual because the defendant had never previously made such a request. *Id.*

93. Dobson & Sales, *supra* note 38, at 1106-07. One of the earliest scientific studies done on postpartum psychosis, conducted in 1963 in Massachusetts, revealed that admission of women of childbearing age to psychiatric facilities was low while the women were pregnant, but increased dramatically within the first three months following the birth of the child. *Id.* at 1106. Another study, conducted in Edinburgh, Scotland in 1987, confirmed this pattern. *Id.*

94. See Chaudron, *supra* note 33, at 54 (describing a case in which a woman with no personal history of psychiatric disorder began experiencing severe mental disturbance three days after the birth of her first child, presenting symptoms that included anxiety, phobias, depression and hallucinations).

95. *Id.* In her conclusion, Chaudron advocates pharmacological intervention, specifically the administration of mood stabilizing medication to women, as well as family therapy to facilitate understanding of this severe disorder and its inherent risks. *Id.* Her goal in studying and writing about this devastating disorder is to eventually improve treatment and effectuate prevention of the disorder altogether. *Id.*

96. See *Gindorf*, 512 N.E.2d at 774-75 (considering all of the evidence, the court put much more weight on the testimony of lay witnesses than it did on that of experts by specifically considering lay witnesses' descriptions of the defendant's behavior prior to and following the crime in determining that *Gindorf* was sane during the commission of the offense).

97. *People v. Skorka*, 498 N.E.2d 607, 611 (Ill. App. Ct. 1986) (citing *People v. Marshall*, 448 N.E.2d 969 (Ill. App. Ct. 1983)).

Sharon Strauss, called as defense expert on psychiatry at the Gindorf trial, testified that a person could be afflicted with a serious mental illness and yet appear normal to a layperson.⁹⁸ Unfortunately, this testimony seemed to have little impact on the verdict.⁹⁹ This result is not uncommon, because without a better, common understanding of postpartum illnesses, judges and juries will lend credence to one expert over another simply on the basis of their own, largely inapposite beliefs and experiences.¹⁰⁰

In Illinois, sanity is a question of fact.¹⁰¹ The finding by the trier-of-fact that the defendant was sane when she committed the offense will not be reversed absent a finding that such a determination was “palpably erroneous so as to suggest its basis was passion or prejudice.”¹⁰² Furthermore, upon reviewing a decision rendered from the bench, the appellate court will assume the trial court weighed only relevant evidence unless there is a clear indication in the record that such was not the case.¹⁰³

B. Guilty But Mentally Ill: Implications of an Unforgiving Verdict for Postpartum Psychotic Women

A defendant found guilty but mentally ill is not relieved of criminal responsibility.¹⁰⁴ Once a verdict of guilty but mentally ill has been entered, the court has discretion to impose any sentence on the convicted defendant that could be imposed on a defendant guilty of the same offense but not mentally ill.¹⁰⁵ This is grounded

98. *Gindorf*, 512 N.E.2d at 774. In Strauss' opinion, Debra was suffering from a mental disorder so severe that she could not conform her conduct to the requirements of the law at the time of the offense. *Id.* It was Strauss' assertion at trial that Gindorf was in the throws of a psychotic episode when she killed her children. *Id.*

99. *Id.* at 774-75. The court held that although the defendant was mentally ill at the time of the offense, she was not insane. *Id.* The court concluded that such illness “did not impair her judgment to the extent that she was unable to appreciate the wrongfulness of her behavior or unable to conform her conduct to the requirements of the law.” *Id.* at 775.

100. See *Skorka*, 498 N.E.2d at 611 (concluding that it was not error for the trial judge to give more credence to the testimony of an expert witness over another).

101. *People v Clark*, 429 N.E.2d 1256, 1258 (Ill. App. Ct. 1981).

102. *Gindorf*, 512 N.E.2d at 776. In *Gindorf*, the court found the trial court did not err in holding that the defendant had not met her burden of proving insanity by a preponderance of the evidence. *Id.* at 778.

103. *Skorka*, 498 N.E.2d at 612.

104. *Brady*, 485 N.E.2d at 1168-69. See also Kelly, *supra* note 16, at 264 (noting that although a defendant found guilty but mentally ill is not relieved of criminal responsibility, she may be entitled to receive psychiatric care or treatment for hospitalization for mental illness as a part of her sentence). *But see* Redding, *supra*, note 55, at 420. (discussing the reality that the criminal justice system often fails to meet prisoners' needs for mental health treatment).

105. 730 ILL. COMP. STAT. 5/5-2-6; *People v. Urioste*, 561 N.E.2d 471, 482

on the premise that a defendant who is found guilty but mentally ill is no less culpable for the offense charged than a defendant found guilty who does not suffer from a mental illness and commits the same crime.¹⁰⁶

Even though a guilty but mentally ill verdict may require psychiatric treatment for the offender as a part of sentencing, if the offender is at some point deemed "cured," she must still serve the remainder of her sentence.¹⁰⁷ Something is wrong here. Of the essence in our criminal justice system is that a person who intentionally and willfully commits a crime should be held accountable, and one, who commits a crime involuntarily, as the result of mental illness, is not culpable.¹⁰⁸ The guilty but mentally ill verdict does not distinguish between these two categories. Offenders who commit crimes because they are mentally ill are subject to the same sentences as their sane counterparts.¹⁰⁹

The American Bar Association's Criminal Justice Mental Health Standards and the American Psychiatric Association Statement on the Insanity Defense have both recommended against the adoption of the guilty but mentally ill verdict.¹¹⁰ In almost every state where such a verdict was adopted, the trigger was a controversial insanity acquittal by a citizen recently released from psychiatric care.¹¹¹

Following the enactment of the Insanity Defense Reform Act of 1984,¹¹² the Illinois legislature reformed its own insanity defense

(Ill. App. Ct. 1990).

106. *Gindorf*, 512 N.E.2d at 782. Consider the case of Sharon Comitz (530 A.2d 473): The state charged Comitz with first and third-degree murder in the death of her infant son, Garret. She pled guilty but mentally ill to the charge. *Comitz*, 530 A.2d at 474.

107. See Anne Damante Brusca, Note, *Postpartum Psychosis: A Way Out For Murderous Moms?*, 18 HOFSTRA L. REV. 1133, 1156-57 (1990) (explaining that the only difference between guilty but mentally ill is that a woman found to be the latter is entitled to a psychiatric exam before starting her prison term).

108. *Id.* at 1150-51.

109. See *Brady*, 485 N.E.2d at 1169 (upholding a statute that states, in pertinent part, that a "person is not relieved of criminal responsibility if the person's mental illness impairs that person's judgment").

110. Christopher Slobogin, *Symposium on the ABA Criminal Justice Mental Health Standards: The Guilty But Mentally Ill Verdict: An Idea Whose Time Should Not Have Come*, 53 GEO. WASH. L. REV. 494, 496-97 (1985).

111. *Id.* at 497. It is important to note, however, that predominately all of the states require that an insanity acquittee be confined for a period of up to ninety days for an initial evaluation. *Id.* at 500. Furthermore, these acquittees may be confined until they are determined to no longer be mentally ill, and the statutory requirements for such release are often difficult to meet. *Id.* Additionally, data collected by the National Center for State Courts demonstrated that in Illinois, the number of insanity acquittals actually increased following the passage of the guilty but mentally ill verdict. *Id.* at 507.

112. 18 U.S.C. § 17. Most notably, it was the acquittal of John Hinckley

standards. As a result, both the guilty but mentally ill verdict was made an available alternative, and the requirements for raising an insanity defense were altered. Effective January 1, 1984, insanity became an affirmative defense to be proven by a defendant.¹¹³ Prior to 1984, the state bore the burden of proving the defendant's sanity beyond a reasonable doubt.¹¹⁴ In Illinois, a person is still presumed sane until proven otherwise.¹¹⁵ To rebut such a presumption under the current statute, a defendant must prove she was insane at the time of the commission of the offense by a preponderance of the evidence.¹¹⁶ A jury instruction on the legal meaning of insanity will only be given if the court determines that the defendant has met her burden.¹¹⁷

Consider *Gindorf*¹¹⁸: Despite the testimony of two defense experts who asserted that the defendant was suffering from numerous mental disorders at the time of the crime;¹¹⁹ blood tests, which supported a finding of mental illness;¹²⁰ and admission by the state's expert that the defendant was mentally ill at the time of the offense,¹²¹ Debra Lynn Gindorf was convicted and sentenced to life in prison.¹²² In determining the proper sentence, the trial

after he attempted to assassinate then-President Ronald Reagan that spurred the public opposition to the insanity defense. Manchester, *supra* note 32, at 716. As analyzed in a recent law review, "[c]onspicuous insanity acquittals prompt a huge outcry not just against the insanity defense, but against the entire criminal justice system." Christopher Slobogin, *The Integrationist Alternative to the Insanity Defense: Reflections on the Exculpatory Scope of Mental Illness in the Wake of the Andrea Yates Trial*, 30 AM. J. CRIM. L. 315, 338 (2003).

113. 720 ILL. COMP. STAT. 5/3-2 (2004). See *People v. Moore*, 498 N.E.2d 701, 703-04 (Ill. App. Ct. 1986) (citing to the relevant statutory provision that sets forth the requirement that the burden of proving insanity as an affirmative defense rests with the defendant).

114. *People v. Silagy*, 461 N.E.2d 415, 425 (Ill. 1984), *cert. denied*, 469 U.S. 873 (1984).

115. *Id.* (citing *People v. Martin*, 409 N.E.2d 114, 117 (Ill. App. Ct. 1980)).

116. *Moore*, 498 N.E.2d at 704-05.

117. *Id.* at 704.

118. See *Gindorf*, 512 N.E.2d at 770 (affirming Gindorf's guilty but mentally ill conviction as well as the resulting sentence of life imprisonment).

119. *Id.* at 773-74.

120. *Id.* Kathleen Hamill, of the Illinois State Appellate Defender's office, represented Debra Lynn Gindorf on appeal. Hamill encouraged the use of blood tests to determine the presence of physiological factors that might have been affecting Gindorf at the time of the crime. *Id.* Hamill also testified on behalf of Paula Sims, stating that although she encouraged Sims' attorney to utilize available blood tests as a diagnostic tool to determine whether or not his client was suffering from a hormonal or chemical imbalance, he did not do so. *Sims*, 322 Ill.App.3d at 403.

121. *Gindorf*, 512 N.E.2d at 774-75.

122. *Id.* at 772. On appeal, the court rejected Gindorf's contention that her sentence violated her Eighth Amendment right to protection against cruel and unusual punishment. *Id.* at 780-81. The court admitted that Illinois courts

judge relied heavily on the testimony of lay witnesses in concluding that the defendant “did [not] exhibit qualities of an insane person to those who came in contact with her daily prior to the incident.”¹²³ Ironically, the trial court concluded that Debra was “suffering from a mental disorder, in that she had a substantial disorder of thought, mood and behavior which affected her at the time of incident.”¹²⁴ Such contradictions are made possible by the guilty but mentally ill verdict.¹²⁵

IV. HEARING WOMEN, HEARING VOICES

She could go . . . into that other landscape; she could leave them all behind—her child, her husband . . . her parents, everybody—in this battered world (it will never be whole again, it will never be quite clean), saying to one another . . . We thought she was all right, we thought her sorrows were ordinary ones. We had no idea.¹²⁶

There are three specific courses of action, which will begin to do justice for women suffering from postpartum mental disorders. The first is for Congress to pass the Melanie Blocker-Stokes Postpartum Depression Research and Care Act.¹²⁷ The second is for states that have the guilty but mentally ill verdict to abolish it either in its entirety or, at the very least, to make it inapplicable to women who kill their children while in the throws of a postpartum psychosis. The third, which may necessarily take years in coming, is for the United States to enact a statute similar to England’s Infanticide Act of 1938.

had not considered a constitutional challenge to a mandatory life sentence in a case where a defendant was found guilty but mentally ill. *Id.* However, the court declined to address this difference. It deferred to the legislature’s determination that a defendant found guilty but mentally ill is not absolved of criminal culpability for her actions. *Id.* at 781.

123. *Id.* at 778.

124. *Id.* at 775.

125. The American Bar Association has, in general, rejected most of the insanity defenses available throughout the jurisdictions. Instead, they propose the Mental Health Standards should be adopted in their place. Slobogin, *supra* note 110, at 520. The text of these standards reads:

(a) A person is not responsible for criminal conduct if, at the time of such conduct, and as a result of mental disease or defect, that person was unable to appreciate the wrongfulness of such conduct. (b) When used as a legal term in this standard “mental disease or defect” refers to: (i) impairments of mind, whether enduring or transitory; or, (ii) mental retardation, either of which substantially affected the mental or emotional processes of the defendant at the time of the alleged offense.

Id.

126. Cunningham, *supra* note 1, at 152.

127. Melanie Blocker-Stokes Postpartum Depression Research and Care Act, H.R. 846, 108th Cong. (2003). The full text of the bill as it was introduced to the 108th Congress is available at <http://www.ppdil.org/melanieblockerstokesbill.htm> (last visited Nov. 14, 2005).

The Melanie Blocker-Stokes Postpartum Depression Research and Care Act (“Postpartum Depression Act”) is an essential place to for our society to begin the process of healing the sickness that is postpartum mental illness. The Congressional Findings contained in the Postpartum Depression Act, as presented to the 107th Congress, state that “[t]he causes of postpartum depression are complex and unknown at this time.”¹²⁸ Additionally, this section emphasizes that untreated postpartum mood disorders have a great impact on society due to the potential effects on the welfare of the mother and infant.¹²⁹ When this bill was first proposed in the 107th Congress,¹³⁰ the Postpartum Depression Act did not pass. The efforts, however, continue. On February 26, 2003, Senator Dick Durbin, joined by Senator Fitzgerald and Senator Clinton, once again introduced the Act to the 108th Congress during its first session.¹³¹ Passage of the Postpartum Depression Act would allocate much needed resources to the study of postpartum mental illness.¹³² If this act fails to pass in the 108th Congress, it must be presented and advocated again and again until it is codified because the tragic stories of postpartum infanticide are certain to be rewritten again and again in the future by new mothers and infants.¹³³

While awaiting passage of legislation such as the Melanie Blocker-Stokes Postpartum Depression Research and Care Act, in Illinois, the reality of and difficulties caused by the guilty but

128. Melanie Blocker-Stokes Postpartum Depression Research and Care Act (as proposed in the 107th Congress), *available at* <http://theorator.com/bills107/hr2380.html> (last visited Nov. 14, 2005).

129. *Id.* It is aptly pointed out in this section that postpartum mood disorders may not be diagnosed and therefore go untreated due to the “social stigma” around mental illness and the general lack of understanding of this disorder in the medical community and society at large. *Id.*

130. Office of Legislative Policy and Analysis, *supra* note 60.

131. 149 CONG. REC. S 2840 (daily ed. Feb. 26, 2003). Senator Durbin emphasized his desire to “work in a bipartisan, bicameral fashion” to come to a consensus approach to learning about postpartum mental illness through passing the statute in memory of Melanie Stokes and the many other women who have suffered from this devastating disorder. *Id.*

132. Interestingly, it is the United Kingdom, one of the first countries to enact an infanticide statute, which has done the most research in this area. They have special psychiatric facilities where women can be treated for postpartum disorders. Connell, *supra* note 13, at 152. On the contrary in 1926, the American Medical Association and the American Psychiatric Association decided to eliminate postpartum psychosis from its list of mental illnesses based on the notion that no connection could be found between childbirth and any specific psychiatric disorder. *Id.* It wasn’t until 1994 that postpartum psychosis was added to the Diagnostic and Statistical Manual of Mental Disorders in its fourth addition. *Id.*

133. *See, e.g.*, Emily & Langford, *supra* note 63 (describing the gruesome story of Dena Schlosser, who is the most recent sufferer of postpartum mental illness to make headlines by killing her own child).

mentally ill verdict persist. As discussed *supra*, the American Bar Association's Criminal Justice Mental Health Standards and the National Mental Health Association's Commission on the Insanity Defense have both recommended against the adoption of the guilty but mentally ill verdict.¹³⁴ The reasoning behind the guilty but mentally ill verdict was, in part, that it would assure better treatment for mentally ill offenders.¹³⁵ The truth is that most jurisdictions already have treatment options in place for mentally ill offenders and adoption of the new verdict has done little to expand any pre-existing treatment programs.¹³⁶ Additionally, the guilty but mentally ill provision in Illinois vests the discretion to decide what treatment is appropriate for a mentally ill offender with the department of corrections where the offender is imprisoned.¹³⁷

English law clearly recognizes postpartum mental illness and has, specifically, carved out a place for women who commit crimes while suffering from this disorder by enacting a statute.¹³⁸ The Infanticide Act of 1938 provides that a woman who kills her child within the first twelve months following birth will not be subject to a murder charge.¹³⁹ The fact that at least five other countries have enacted similar statutes demonstrates that postpartum psychiatric disorders do not discriminate, they affect women worldwide.¹⁴⁰ It is time for the United States to follow suit.

134. Slobogin, *supra* note 110, at 496-97.

135. *Id.* at 505. Proponents argue that such a verdict would in fact reduce the number of insanity pleas and thus the number of insanity acquittals. *Id.* The facts, however, do not support such claims. In Illinois, the number of insanity acquittals actually increased after the adoption of the guilty but mentally ill verdict. *Id.* at 507.

136. *Id.* at 512. Before the adoption of the guilty but mentally ill verdict in Illinois, the law of the state already provided for the removal of mentally ill prisoners to psychiatric facilities where they could receive proper treatment. *Id.*

137. *Id.* at 513. The Illinois court of appeals has interpreted this discretionary provision to mean that the guilty but mentally ill offender is only constitutionally entitled to "minimally adequate medical care available to all prisoners." *Id.*

138. Schroeder, *supra* note 2, at 278.

139. *Id.* The actual text of the Infanticide Act of 1938 reads:

Where a woman by any willful act or omission causes the death of her child being under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child . . . then, notwithstanding that the circumstances were such that but for this Act the offense would have amounted to murder she shall be guilty of felony, to wit infanticide, and may for such offense be dealt with and punished as if she had been guilty of the offense of manslaughter of the child.

Dobson & Sales, *supra* note 38, at 1099.

140. Dobson & Sales, *supra* note 38, at 1099.

Before any statute is proposed or enacted, however, it is important that the medical and legal communities, as well as the public, are educated about postpartum mental illness.¹⁴¹ One critic pointed to the negative effect that ignorance of postpartum psychosis had on Sharon Comitz' fate.¹⁴² In interpreting expert testimony given at trial, the court looked to the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), then in its third edition. The manual made no specific reference to postpartum mental illness as a category unto itself, and this proved adverse to the defense argument that Comitz was suffering from postpartum psychosis.¹⁴³ It was not until 1994, that the DSM was updated in its fourth addition to include postpartum psychosis as a separate and distinct disorder from other forms of psychosis.¹⁴⁴

The difficulty in using postpartum psychosis as a defense to murder is compounded by the fact that many feminist legal theorists take the position that sex-specific defenses harm rather than help women¹⁴⁵ and would more than likely take the same position about a sex-specific statute.¹⁴⁶ It should be noted that sex in itself is documented to be one of the most reliable "predictors of crime."¹⁴⁷ It will always remain the reality that men cannot get pregnant, and will never experience postpartum psychosis. Any

141. See *id.* (discussing the theory that although England's infanticide statute has its critics, what is lacking from such criticism is an understanding of the science of postpartum mental illness, which is necessary to evaluate the accuracy of such statute).

142. Connell, *supra* note 13, at 152.

143. *Id.* at 153.

144. *Id.* at 152.

145. *Id.* at 153. When a Wall Street journal article characterized Andrea Yates as the new "feminine icon," one feminist argued that gender was incidental to Yates' psychosis and that the label was misguided. *Id.* at 153. However, this standpoint completely overlooks the fact that Andrea Yates' psychosis was specifically related to childbirth and, therefore, dependent on her sex. *Id.*

146. See Manchester, *supra* note 32, at 747-48 (implying feminist disapproval of a sex-based statute through enumeration of various approaches designed to incorporate women into the criminal law's focus on and from the male perspective). There are three major approaches taken by feminist theorists as to how female offenders should be treated by our criminal law: the assimilationist, accommodationist, and acceptance approaches. *Id.* at 748. The crux of the assimilationist approach is that women need to adapt to fit within the current confines of the law, and that the law, need not adapt to women's needs. *Id.* at 748. The accommodationist theory recognizes the differences between the genders and proposes special treatment for women within the system. *Id.* The acceptance approach focuses on the individual offender, whether male or female, and advocates consideration of the individual's life circumstances in deciding criminal responsibility. *Id.*

147. *Id.* at 747. Studies show that men are responsible for approximately 87.5% of all homicides, while women are predominately responsible for violent crimes against children. *Id.*

defense based on postpartum mental illness is necessarily sex-specific, and any statute addressing the problem must be as well.

V. LET US MEET OUR BURDEN

Here she is then; the woman of wrath and sorrow, of pathos, of dazzling charm; the woman in love with death; the victim and torturer . . . Here she is with another hour before her.¹⁴⁸

The disparate treatment of women who kill their children while suffering from postpartum psychosis requires serious and thoughtful attention. We, as members both of society and, especially, the legal profession, do not have nearly enough knowledge of this tragic illness that afflicts so many women. Without a firm, scientific, medical, and psychiatric understanding of postpartum psychosis as a disorder, is it imprudent, if not impossible to forge legal standards addressing the problem? We must, from the very beginning, admit that as long as women continue to have children, this disorder will persist.

After confronting the reality and permanence of postpartum psychosis, Congress must take the first step by passing the Melanie Blocker-Stokes Postpartum Depression Research and Care Act. Next, state legislatures must consider whether the guilty but mentally ill verdict serves women accused of killing their children while suffering from postpartum psychosis, or if, in fact, it serves any mentally ill offender at all. If it does not, those legislatures that have created the option must wipe it clean from their respective statute books. Finally, in the future, Congress must enact a statute specific to postpartum psychosis that allows those qualified women accused of murder, a legal, but merciful avenue to justice.

The problem will only grow worse; the socio-legal thicket only larger and more dense, further obscuring from view the possible solution. When another afflicted mother stands trial, accused of causing the death of her child, a silent society will stand trial as well.

Increasing the public's understanding of postpartum illness is the only way these tortured mothers might find a helping and caring hand in their darkest hour, and not just the cold and persecuting stare of a disdainful majority. Reshaping the laws to better resemble our growing knowledge of the human psyche, sanity, and the imbalances that can so readily devastate women in the weeks and months following childbirth, is the only way our society might live up to the burden of its promises of impartial justice.

148. CUNNINGHAM, *supra* note 1, at 226.

