

THE PUBLIC OPINION “GLOSS” ON POSTPARTUM PSYCHOSIS INSANITY DEFENSES: HOW BIAS AFFECTS INSANITY DEFENSE OUTCOMES AND HOW A FILICIDE ACT PROVIDES A REMEDY

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ABSTRACT

Insanity defense legal doctrine in the United States is ill-fitted for filicide cases where the mother brings an insanity claim based on postpartum psychosis because the doctrine fails to account for the unique characteristics of the condition. Consequently, factors other than the straightforward application of the law affect the outcome of a defendant’s insanity claim in a postpartum psychosis filicide case. Public opinion is one of those factors, but not all defendants with suspected postpartum psychosis are treated equally by the media and public opinion. This Note describes how the public response to the facts of a filicide case affects insanity defense outcomes by comparing the Andrea Yates case from 2001 and the Lindsay Clancy case from 2023, in which both women received public support and sympathy during their criminal prosecutions, with the cases of five other women accused of filicide who have not received public support or attention. It argues that public opinion should not be permitted to affect insanity defense outcomes, and that to restore postpartum psychosis defendants to an equal status where outcomes depend on law and science, the United States should adopt a filicide-specific criminal law that erases the need for such defendants to raise an insanity defense.

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INTRODUCTION

In 2001, Andrea Yates drowned her five children, and her case sparked a national discussion about postpartum psychosis that resulted in her being found not guilty by reason of insanity for the murders.¹ In January 2023, Lindsay Clancy allegedly strangled her three children to death, and her case ignited a renewed discussion about postpartum mental health that experts believe will help Clancy lodge a successful insanity defense.² However, not all mothers who exhibit symptoms of postpartum psychosis and are accused of murdering their children receive public sympathy and support. These defendants have a difficult time proving successful insanity claims because the insanity defense does not neatly accommodate the unique characteristics of postpartum psychosis. Therefore, postpartum psychosis insanity claims are largely dependent on the tone of public opinion surrounding a case; this is inequitable and unjust. To restore postpartum psychosis defendants to an equal status where outcomes depend on law and science rather than the whims of the public, the United States should adopt a filicide-specific criminal law that erases the need for such defendants to raise an insanity defense.

¹ See Aaron Levin, *Texas Case Awakens Public to Postpartum Mental Illness*, PSYCHIATRIC NEWS (Dec. 16, 2016), <https://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2016.12b20> [https://perma.cc/954Z-KURD].

² See Abby Patkin, *Where Could Lindsay Clancy's Case Go from Here? Here's What Legal Experts Say*, BOSTON.COM (Feb. 12, 2023), <https://www.boston.com/news/crime/2023/02/10/lindsay-clancy-duxbury-mom-criminal-case-trial-legal-experts/> [https://perma.cc/JTN2-EJLK].

Part I of this paper provides background on the insanity defense in the United States, postpartum psychosis, and the complexities that arise when a defendant raises an insanity defense based on postpartum psychosis. Part II describes the facts of, and the public response to, multiple cases where postpartum psychosis has or will likely play a role in an insanity defense to murder charges. Part III argues that because of the complex interplay between insanity standards and postpartum psychosis, the public response that postpartum psychosis filicide cases receive improperly and unfairly affects case outcomes. Finally, Part IV proposes that the United States should not prosecute postpartum filicide cases as murder where the defendant can raise an insanity claim. Rather, states should adopt and enforce a law specific to filicide under which such cases can be prosecuted, since such a law would better recognize the complexity of postpartum mental health and be unaffected by biases in public opinion.

I. TENSION BETWEEN THE INSANITY DEFENSE AND POSTPARTUM PSYCHOSIS

A. *The Insanity Defense in the United States*

Criminal defendants may argue that they should be excused from criminal responsibility because, though they committed a prohibited act, they lack culpability due to their mental condition.³ This is the insanity defense.⁴

The M’Naghten standard is the primary insanity measure in the United States; more than half of states use some form of this standard.⁵ The M’Naghten test was developed in England in the nineteenth century in response to the murder of Edward Drummond, the private secretary to the British Prime Minister Sir Robert Peel.⁶ Daniel M’Naghten shot Mr. Drummond, believing him to be the Prime Minister.⁷ M’Naghten was suffering from delusions that he was being persecuted by the Tories, including the Prime Minister, who he believed to be his enemies.⁸ M’Naghten was found insane and acquitted, but was

³ See *Insanity Defense*, LEGAL INFO. INST. WEX LEGAL, https://www.law.cornell.edu/wex/insanity_defense [<https://perma.cc/4Q3S-WU9D>] [hereinafter *Insanity*, WEX LEGAL].

⁴ See *id.*

⁵ See *The Insanity Defense Among the States*, USLEGAL, <https://criminallaw.uslegal.com/defense-of-insanity/the-insanity-defense-among-the-states/> [<https://perma.cc/75C9-YVCE>] (listing each state’s respective insanity defense regime). A few states combine the M’Naghten test with the irresistible impulse test, which excuses a defendant from criminal responsibility if a mental disease or defect rendered the defendant unable to control or resist his impulses and this caused his actions. See *Insanity Defense in Criminal Cases*, JUSTIA, <https://www.justia.com/criminal/defenses/insanity/> [<https://perma.cc/2TYT-HV78>]. When the two tests are combined, a defendant is deemed legally insane when they are unable to understand nor control their actions. See *id.*

⁶ Jessie Manchester, *Beyond Accommodation: Reconstructing the Insanity Defense to Provide an Adequate Remedy for Postpartum Psychotic Women*, 93 J. CRIM. L. & CRIMINOLOGY 713, 725–26 (2003).

⁷ *Id.* at 726.

⁸ See *id.*

sent to spend his life in an asylum.⁹ Many, including the Queen of England, thought M’Naghten’s sentence was too light, and a hearing in the House of Lords was called to develop a more concrete rule for determining insanity.¹⁰ The first iteration of the M’Naghten rule resulted from this hearing and required that a defendant must prove that “at the time of the committing of the act,” they were “labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act,” or that if the defendant was aware of what they were doing, that they did not know the act was wrong.¹¹ This new rule narrowed the insanity defense, making it more difficult for defendants to raise a successful defense.¹² The M’Naghten rule made its way to the United States, where its popularity waxed and waned. Throughout the 1900s, states adopted variants of the M’Naghten rule, or new rules altogether, to make their insanity standards more permissive.¹³ However, in 1982, when John Hinckley Jr. was acquitted for the attempted assassination of President Ronald Reagan by reason of insanity, the public criticized the more permissive tests, and Congress and many states reverted to the M’Naghten standard.¹⁴ Today, in M’Naghten jurisdictions, a defendant is legally insane if either, (1) at the time they committed the criminal act, they did not know what they were doing, or (2) they did know, but had no knowledge that their actions were wrong.¹⁵ This iteration of the standard has been criticized for taking a black and white view of mental capacity.¹⁶ Under this rule, a person either does or does not know what they were doing, or did or did not have knowledge of the wrongness of their actions and is, therefore, entirely culpable or entirely not culpable.¹⁷ Human decision-making is not so simple, but the test does not create space for there to be degrees of a person’s understanding or culpability.¹⁸ Under the M’Naghten standard, if a jury finds that a person was suffering from delusions or psychosis, but could still, to even a small degree, know the difference between right and wrong at the time they committed the acts charged, then the jury must find the person guilty.¹⁹ The M’Naghten standard has also been criticized because it fails to consider whether a person who knows their actions are wrong had the capacity to control their conduct and act in accordance with what they knew to be right.²⁰

⁹ *Id.*

¹⁰ *Id.* at 726–27.

¹¹ *Id.* at 727.

¹² *See id.*

¹³ *See id.* at 732–34.

¹⁴ *See id.* at 735–38.

¹⁵ *See M’Naghten Rule, in Insanity*, WEX LEGAL, *supra* note 3.

¹⁶ *See* Ralph Brancale, *More on McNaughten: A Psychiatrist’s View*, 65 DICK. L. REV. 277, 277 (1961).

¹⁷ *See id.* at 277–78.

¹⁸ *See id.*

¹⁹ *See* Manchester, *supra* note 6, at 745.

²⁰ *See id.* at 746.

Nineteen states and the District of Columbia have adopted an alternate approach, the Model Penal Code insanity test.²¹ It provides that a defendant is not criminally responsible for their actions “if at the time of such conduct as a result of defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.”²²

The insanity defense is raised in about one percent of United States felony cases, and only about thirty defenses are successful each year.²³ Despite small success rates overall, the defense is relatively more successful in infanticide cases where the defendant alleges insanity based on postpartum psychosis.²⁴ However, the outcomes for defendants with postpartum psychosis likely vary based on race and class²⁵ and based on courts’ limited understanding of the rapid shifts from lucidity to psychosis associated with the condition.²⁶

B. *Postpartum Psychosis*

Postpartum psychosis is a serious condition that affects mothers in about one to two deliveries per 1,000.²⁷ While onset is typically sudden and within two weeks postpartum, symptoms can develop anytime within a year of delivery.²⁸ Symptoms can include delusions,²⁹ hallucinations, severe depression, paranoia, and rapid mood swings.³⁰ The psychotic symptoms associated with

²¹ See USLEGAL, *supra* note 5.

²² MODEL PENAL CODE § 4.01(1). “Wrongfulness” is bracketed in the actual text of the code because state legislatures are able to choose to adopt either “criminality” or “wrongfulness” as a descriptor for the conduct at issue. See *Insanity*, WEX LEGAL, *supra* note 3. The remaining five states are New Hampshire, Idaho, Kansas, Montana, and Utah. New Hampshire uses the Durham, or Product, test which considers a person legally insane if their actions were a product of mental disease or defect, regardless of whether the person knew the wrongness of their actions. See USLEGAL, *supra* note 5; *Durham Test, in Insanity*, WEX LEGAL, *supra* note 3. The other four states abolished the state’s insanity defense. See USLEGAL, *supra* note 5.

²³ See JUSTIA, *supra* note 5.

²⁴ See Melissa L. Nau et al., *Postpartum Psychosis and the Courts*, 40 J. AM. ACAD. PSYCHIATRY L. 318, 320 (2012).

²⁵ See Jessica Winter, *What We Still Don’t Understand About Postpartum Psychosis*, THE NEW YORKER (Mar. 14, 2023), <https://www.newyorker.com/science/annals-of-medicine/what-we-still-dont-understand-about-postpartum-psychosis> [<https://perma.cc/Y3SF-A9HS>].

²⁶ See Nau, *supra* note 24, at 323–24.

²⁷ *Postpartum Psychosis*, POSTPARTUM SUPPORT INT’L, <https://www.postpartum.net/learn-more/postpartum-psychosis/> [<https://perma.cc/NJD3-PJS8>].

²⁸ *Id.*

²⁹ Margaret Spinelli, *Postpartum Psychosis: A Diagnosis for the DSMV*, 24 ARCHIVES OF WOMEN’S MENTAL HEALTH 817, 817 (2021).

³⁰ POSTPARTUM SUPPORT INT’L, *supra* note 27. Other symptoms associated with the condition include: irritation, hyperactivity, flat affect, sleep disturbances or insomnia, communication difficulties, loss of inhibition, restlessness, confusion, and out-of-character behavior. See *id.*; *Postpartum Psychosis*, NAT’L HEALTH SERV., <https://www.nhs.uk/mental-health/conditions/post-partum-psychosis/> [<https://perma.cc/4UW2-4ADP>].

this condition are often missed because they can fluctuate or hide.³¹ Recognizing these psychotic symptoms, however, is critical because postpartum psychosis has a five-percent suicide rate and a four-percent infanticide rate.³² Therefore, people experiencing postpartum psychosis are urged to seek immediate, emergency treatment.³³ With proper treatment, most people completely recover.³⁴ While immediate treatment is critical to recovering from postpartum psychosis, much about the causes and treatment of the condition remains a mystery.³⁵ Experts are uncertain about the etiological factor, or factors, that underlie the condition, and, as of 2016, fewer than thirty publications addressed the treatment of postpartum psychosis.³⁶

There is no formal psychiatric diagnosis for postpartum psychosis.³⁷ The condition was included in the Diagnostic and Statistical Manual of Mental Disorders 1 (hereinafter DSM-1) and DSM-2 but was removed from the DSM-3 and has not been reinstated.³⁸ Rather, doctors using the DSM-5 can only designate other conditions as “postpartum” to specify that the condition’s onset took place during the postpartum period, not to identify a separate condition.³⁹ However, postpartum psychosis is distinct from non-postpartum psychosis in significant ways. First, women with postpartum psychosis experience more “homicidal ideation, lack of insight, impairment and atypical visual, and tactile and olfactory hallucinations” than women with psychosis unrelated to childbearing.⁴⁰ Additionally, when mothers suffering from postpartum psychosis kill their children, they often do so with the belief that their actions are altruistic⁴¹—that the child’s death will save or protect their child from greater suffering.⁴² When filicide is accompanied by suicide, the mother may be suffering from the delusion that she will be taking her child with her to

³¹ Veerle Bergink et al., *Postpartum Psychosis: Madness, Mania, and Melancholia in Motherhood*, 173 AM. J. PSYCHIATRY 1179, 1182 (2016).

³² POSTPARTUM SUPPORT INT’L, *supra* note 27.

³³ *Id.*

³⁴ NAT’L HEALTH SERV., *supra* note 30.

³⁵ See Bergink et al., *supra* note 31, at 1182–83.

³⁶ See *id.* at 1179–83. “The fundamental molecular and cellular mechanisms underlying postpartum psychosis remain elusive” and “[l]ittle research has been targeted at understanding the hormonal correlates of postpartum psychosis, and the majority of studies were performed two decades ago.” *Id.*

³⁷ See Spinelli, *supra* note 29, at 818.

³⁸ See *id.*

³⁹ See *id.* at 819. This is significant because diagnosing women experiencing the symptoms of postpartum psychosis with general psychosis or bipolar disorder specified as postpartum may result in insufficient treatment because the general diagnoses may call for an antipsychotic medication or a mood stabilizer as a treatment, but studies show that postpartum psychosis patients need both. See *id.*

⁴⁰ *Id.* at 820.

⁴¹ See Bergink et al., *supra* note 31, at 1180.

⁴² See Elizabeth Chuck & Julianne McShane, *What is Postpartum Psychosis? Rare Condition is in the Spotlight After the Killing of Three Children in Massachusetts*, NBC NEWS (Jan. 30, 2023), <https://www.nbcnews.com/news/us-news/postpartum-psychosis-rare-condition-spotlight-killing-three-children-m-rcna68165> [<https://perma.cc/DT7K-V54E>].

heaven.⁴³ These delusions “make sense to [the mother]; they feel very real to her” during a psychotic episode.⁴⁴ Third, the symptoms of postpartum psychosis can “wax and wane.”⁴⁵ A person will “seem[] well at one moment then floridly psychotic in the next.”⁴⁶ These rapid and unexpected changes can prove particularly dangerous, and sometimes fatal, when people are coaxed into a false sense of security during the moments of “wellness” and unprepared for a sudden psychotic episode.⁴⁷

C. *Issues When a Defendant Raises a Postpartum Psychosis Insanity Defense*

These differences are significant when criminal defendants, particularly in filicide cases, claim insanity due to postpartum psychosis. The condition, with its waxing and waning nature and association with altruistic killing, does not neatly fit within traditional legal insanity tests.⁴⁸ Therefore, defendants struggle to lodge a successful defense⁴⁹ in jurisdictions using the M’Naghten test, but also under the Model Penal Code test.⁵⁰ The M’Naghten test “doesn’t map on to most cases of maternal filicide” where postpartum psychosis is at issue.⁵¹ M’Naghten is predicated on the binaries that someone either (1) did or did not know what they were doing and either (2) did or did not know that what they were doing was wrong.⁵² It is difficult to pinpoint where within the binary a defendant with postpartum psychosis was at the time of the crime considering the condition waxes and wanes, making a defendant cogent one moment and psychotic the next.⁵³ Juries may believe that because a defendant could control themselves while cogent, they could control their psychosis.⁵⁴

Some defendants alleging postpartum psychosis act in ways that suggest they understand the wrongfulness of their actions, such as calling the police, waiting to act until alone with the child, or fabricating an alternative story about what happened to the child.⁵⁵ However, this conflates legal and moral wrongs. A defendant may act this way because she knows her actions are legally wrong but nevertheless believes her actions are overwhelmingly morally

⁴³ *See id.*

⁴⁴ POSTPARTUM SUPPORT INT’L, *supra* note 27.

⁴⁵ Spinelli, *supra* note 29, at 819.

⁴⁶ *Id.*

⁴⁷ *See id.*

⁴⁸ *See* Lindsey C. Perry, *A Mystery of Motherhood: The Legal Consequences of Insufficient Research on Postpartum Illness*, 42 GA. L. REV. 193, 204–05 (2007).

⁴⁹ *See id.*

⁵⁰ *See* Nau, *supra* note 24, at 320 for a comparison of verdicts in postpartum psychosis insanity defense cases brought in M’Naghten and Model Penal Code jurisdictions.

⁵¹ Winter, *supra* note 25.

⁵² *See id.*

⁵³ *See id.*

⁵⁴ *See id.*

⁵⁵ *See* Alexandra Nichols, *Twenty Years After Andrea: Postpartum Psychosis and the Insanity Defense*, 61 FAM. CT. REV. 443, 448 (2023).

right.⁵⁶ Not all insanity standards specify whether the test requires knowing moral or legal wrong.⁵⁷ Whether a factfinder considers a showing that the defendant knew her actions were *legally* wrong but believed they were *morally* right sufficient to find the defendant not culpable depends on how the jurisdiction interprets the test's "knowledge" requirement⁵⁸ and whether it defines the type of wrong.

Finally, because postpartum psychosis lacks a formal DSM-5 diagnosis, where a court requires evidence of a documented diagnosis of mental illness, factfinders may be less inclined to believe postpartum psychosis qualifies.⁵⁹ Though not all jurisdictions require a mental disease or defect to be a formally recognized condition for an insanity defense, expert witnesses can better explain their conclusions about the defendant's behavior when they can organize their findings around a formal diagnosis.⁶⁰ The lack of understanding and study on postpartum psychosis results in inconsistent and confusing testimony about the defendant's degree of impairment.⁶¹

These unique difficulties in the interplay between postpartum psychosis and legal insanity tests mean that jurors may be left uncertain about how postpartum psychosis manifests itself and what legally qualifies as knowledge of right and wrong. This uncertainty leaves room for biases about "good" and "bad" mothers to affect whether the defendant is perceived as ill and in need of postpartum treatment, or as a calculated villain abusing the defense. Public opinion regarding motherhood and mental health can shape these biases and affect verdicts in postpartum psychosis insanity defenses. I call this effect the public opinion "gloss."

While the remainder of this Note will focus on legal and policy problems with, and solutions to, the public opinion "gloss" on postpartum psychosis insanity cases, progress in non-legal fields is also critical. Greater public awareness of postpartum psychosis is necessary because it could help to destigmatize the condition, resulting in more mothers receiving critical treatment before a tragedy occurs.⁶² Additional research on postpartum psychosis can help ensure

⁵⁶ The Andrea Yates case, discussed *infra* Part II.A., is a good example of this. After Andrea's second trial, where she was found not guilty by reason of insanity, the jury foreman stated, "We understand that she knew it was legally wrong. But in her delusional mind . . . we believed that she thought what she did was right." Resnick, *infra* note 65, at 153.

⁵⁷ See Faith McLellan, *Mental Health and Justice: The Case of Andrea Yates*, 368 THE LANCET 1951, 1953 (2006).

⁵⁸ See Manchester, *supra* note 6, at 744–45.

⁵⁹ See Spinelli, *supra* note 29, at 819.

⁶⁰ See Jeffrey S. Janofsky et al., *AAPL Practice Guidelines for Forensic Psychiatric Evaluation of Defendants Raising the Insanity Defense*, 42 J. AM. ACAD. PSYCHIATRY L. S3, S29 (Supp. 2014).

⁶¹ See Victoria Frazier, Comment, *Kahler v. Kansas: How the Current Insanity Defense Regime Underserves Postpartum Psychosis Defendants, How the Supreme Court Failed to Act, and How Now is the Perfect Time to Implement a Gender-Specific Postpartum Defense*, 54 ST. MARY'S L.J. 265, 302 (2023).

⁶² See Jenna Ryu, *A Mom is Accused of Killing Her 3 Kids. It Sparked a National Conversation About Postpartum Psychosis*, USA TODAY (Feb. 15, 2023), <https://www.>

that when mothers seek treatment, their symptoms are recognized and treated properly.⁶³ This greater research also gives expert witnesses called to testify in postpartum psychosis cases a greater body of literature to draw upon to more clearly and consistently explain the condition and how it would affect a defendant’s ability to understand or control their actions to juries. Finally, postpartum psychosis should be formally recognized as a unique diagnosis in the DSM-5. This change would not only legitimize the condition as one that should satisfy certain courts’ requirements for a documented mental health diagnosis in insanity defense cases, but also ensure that people are more accurately diagnosed, and treated for the condition they *have* instead of a similar, but nevertheless distinct, condition of psychosis.⁶⁴ While greater research into and understanding of postpartum psychosis cannot fix bias in criminal cases nor all the imperfections of the insanity defense, it can hopefully lead to a world where people suffering from postpartum psychosis receive the care necessary to keep them and their families safe and well, eliminating the need for such a defense.

II. DIFFERENCES IN PUBLIC RESPONSE TO DEFENDANTS WHO LIKELY SUFFER FROM POSTPARTUM PSYCHOSIS

A. *Public Support’s Impact on Andrea Yates’s Postpartum Psychosis Insanity Claim*

1. *Facts of the Andrea Yates Case*

Andrea Yates, a mother from Texas, struggled with her mental health and was diagnosed with postpartum psychosis following the birth of her daughter in May 2000.⁶⁵ She believed cameras were monitoring her, that her house was bugged, and that Satan was within her.⁶⁶ Yates did not disclose this to her family or psychiatrist because she believed this would spur Satan to make her kill her children.⁶⁷ Yates began to believe she had “ruined” her children through her poor mothering and that because she could not make them “respectful and righteous,” they would “burn in hell.”⁶⁸ On June 20, 2001, in the hour between when her husband left for work and when her mother-in-law

usatoday.com/story/life/health-wellness/2023/02/15/lindsay-clancy-duxbury-postpartum-psychosis-explained/11247303002/ [https://perma.cc/4632-QBHP].

⁶³ See Lauren M. Osborne, *Recognizing and Managing Postpartum Psychosis: A Clinical Guide for Obstetric Providers* 45 OBSTET. GYNECOL. CLIN. N. AM. 1, 1 (2018).

⁶⁴ MGH Center for Women’s Mental Health, *Essential Reads—Postpartum Psychosis: A Diagnosis for the DSMV*, MGH CTR. FOR WOMEN’S MENTAL HEALTH (Oct. 6, 2021), https://womensmentalhealth.org/posts/postpartum-psychosis-dsmv/ [https://perma.cc/WD92-BRHR].

⁶⁵ See Phillip J. Resnick, *The Andrea Yates Case: Insanity on Trial*, 55 CLEV. STATE L. REV. 147, 148 (2007).

⁶⁶ See *id.*

⁶⁷ See *id.*

⁶⁸ *Id.* at 149.

was expected to arrive at the home, Yates drowned each of her children, Noah, John, Luke, Paul, and Mary, in the bathtub.⁶⁹ She called the authorities and told them “I killed my kids.”⁷⁰ Though Yates knew that killing her children would result in her being arrested and likely put to death, she believed her actions would save her children’s souls and keep them from Satan.⁷¹

Yates was tried for the murders in 2002.⁷² Texas, where she was tried, used, and continues to use the M’Naghten standard.⁷³ During the Yates trial, the defense called several mental health professionals to testify about her mental health; the prosecution called one.⁷⁴ The experts concurred that Yates was suffering from a severe mental disease and agreed that she knew her actions violated the law because she waited until she was alone to act and she anticipated that she would be prosecuted and executed.⁷⁵ Nonetheless, the experts agreed, Yates believed she had been acting in her children’s best interest.⁷⁶ However, the prosecution expert testified that Yates knew the wrongfulness of her actions *beyond* the law, and therefore was not legally insane.⁷⁷ He testified that because she concealed her delusions and harmful thoughts, she knew these beliefs and thoughts were wrong.⁷⁸ He argued that Yates knew that her actions were sinful and that society and God would believe her actions to be “bad.”⁷⁹ The defense’s primary expert rebutted this claim by opining that Yates concealed her thoughts because she thought Satan would hear her and force her to act.⁸⁰ Though she believed her actions were sinful, the defense contended that Yates thought her mothering would cause her children to “stumble” and this was a greater sin than killing the children while they were still “innocent.”⁸¹ Though Yates believed society would think her actions wrong, she also believed that society could not fairly judge because it did not understand that her children would be damned if she raised them.⁸² Finally, since it had been five months since the killing by the time Yates agreed that God would judge her actions as wrong, the defense argued that too much time had passed for Yates to accurately recall what she believed during the killings.⁸³

⁶⁹ *See id.*

⁷⁰ *Id.*

⁷¹ *See id.*

⁷² *See id.* at 152.

⁷³ *See* USLEGAL, *supra* note 5 (“It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong.” Tex. Penal Code Ann. § 8.01(a)).

⁷⁴ *See* Resnick, *supra* note 65, at 149–50.

⁷⁵ *See id.* at 150.

⁷⁶ *See id.* For more specific details about the testimony of these witnesses, see *id.* at 150–52.

⁷⁷ *See id.* at 151.

⁷⁸ *See id.*

⁷⁹ *See id.*

⁸⁰ *See id.*

⁸¹ *See id.*

⁸² *See id.* at 152.

⁸³ *See id.*

Despite the defense’s rebuttal, after three and a half hours of deliberation, Andrea Yates was found guilty and sentenced to life in prison.⁸⁴

This verdict was overturned on appeal, and Yates was given a second trial.⁸⁵ The expert testimony at the second trial was substantially the same as the first, and Texas insanity law remained unchanged.⁸⁶ Despite this, in 2006, the second jury found Yates not guilty by reason of insanity because, though she knew her actions were legally wrong, they believed that Yates thought her actions to be right.⁸⁷ The primary defense expert believes the second trial yielded a different outcome in part because the public sentiment toward Yates softened and questions arose about whether the first verdict was just.⁸⁸

2. *The Public Response to the Andrea Yates Case and Its Effect on the Outcome*

The public reacted strongly to Yates’s initial guilty verdict. Yates’s defense attorney noted that “it seems . . . we’re still back in the days of Salem witchcraft, when you take a demonized woman and take her life.”⁸⁹ Deborah Bell from the National Association of Women was “devastated and horrified that this is what passes for justice in the state of Texas: to take someone who is so horribly mentally ill and have them persecuted, not just prosecuted.”⁹⁰ In 2003, Texas passed the Andrea Yates Bill to require prenatal care providers to provide information about postnatal mental health to new mothers.⁹¹ Houston’s Mental Health Association opened a fund to support women’s mental health education.⁹² People got help for their own loved ones.⁹³ After Yates’s second trial, Paul Appelbaum, M.D., the former chair of the American Psychiatric Association’s Council on Psychiatry and the Law said:

It’s rare that public opinion directly shapes the outcome of a criminal trial. But I think [Andrea Yates’ case] was one of those cases. After the first trial, in which the jury was so horrified by the crime that they gave short shrift to Yates’s insanity plea, there was a tremendous public outcry and discussion of the issues. This included extensive

⁸⁴ *See id.*

⁸⁵ *See id.* at 153.

⁸⁶ *See id.* at 149; TEX. PENAL CODE ANN. § 8.01(a).

⁸⁷ *See Resnick, supra* note 65, at 153.

⁸⁸ *See id.*

⁸⁹ *Andrea Yates Verdict Reaction*, CNN (Mar. 12, 2002), <https://www.cnn.com/2002/LAW/03/12/yates.verdict.reax/> [<https://perma.cc/97UD-R93S>].

⁹⁰ *Id.*

⁹¹ *See McLellan, supra* note 57, at 1954.

⁹² *See Suzanne O’Malley, Moved by Madness: Public Opinion May Change on Criminally Insane*, CHRON. (Jun. 20, 2004), <https://www.chron.com/opinion/outlook/article/Moved-by-madness-Public-opinion-may-change-on-1982916.php> [<https://perma.cc/6GEQ-3VXS>].

⁹³ *Id.*

discussion of the nature of postpartum psychiatric disorders and their potential impact on criminal responsibility.⁹⁴

The Yates case did not change insanity law, but it changed public opinion and the discussions about postpartum mental health. This greater awareness about postpartum psychosis likely affected the second Yates jury and is an example of the public opinion “gloss” affecting a postpartum psychosis insanity verdict.

B. *Public Support’s Impact on Lindsay Clancy’s Likely Postpartum Psychosis Insanity Claim*

1. *Facts of the Lindsay Clancy Case*

On January 24, 2023, Lindsay Clancy allegedly strangled her three children, Cora, Dawson, and Callan, to death before attempting to take her own life.⁹⁵ On February 7, 2023, while lying in a hospital bed, Lindsay was arraigned via Zoom and pleaded not guilty to two counts of murder.⁹⁶ The case was then transferred to Plymouth Superior Court, and in September 2023, a grand jury indicted Lindsay for three counts each of murder and strangulation.⁹⁷ At her second arraignment, Lindsay, still in the hospital, again pleaded not guilty.⁹⁸ Court hearings for Lindsay’s criminal case continue for scheduling

⁹⁴ Levin, *supra* note 1 (quoting Paul Appelbaum, M.D. in a 2006 interview).

⁹⁵ Though all three children were killed, Callan, the youngest, died at the hospital three days after the incident, and two days after Lindsay’s arrest warrant for two counts of homicide was issued; the charges had not yet been amended at the time of her first arraignment. See Johanna Li, *Lindsay Clancy: Timeline of Events in the Case of Massachusetts Mom Accused of Killing Her 3 Children*, INSIDE EDITION (Feb. 28, 2023), <https://www.insideedition.com/lindsay-clancy-timeline-of-events-in-the-case-of-massachusetts-mom-accused-of-killing-her-3> [<https://perma.cc/8UG9-AR8E>].

⁹⁶ Clancy was also charged with three counts each of strangulation and assault and battery with a dangerous weapon. Melanie Whyte, *New Information Released About Lindsay Clancy’s Mental State Before Attack*, POPSUGAR (Feb. 8, 2023), <https://www.popsugar.com/family/lindsay-clancy-postpartum-psychosis-49074339> [<https://perma.cc/YW7Y-669H>]. The prosecutor and Judge at Clancy’s first arraignment indicated that her case would likely be put before a grand jury for an indictment so the case could be transferred to Massachusetts Superior Court. In the Commonwealth of Massachusetts, District Courts initially have jurisdiction for all criminal charges, however the maximum sentence they may issue is two-and-a-half years in the House of Corrections. See Urbelis Law LLC, *What is the Difference Between District and Superior Court in Massachusetts Criminal Cases?*, <https://www.massduidefenselawyer.com/what-is-the-difference-between-district-and-superior-court-in-ma.html> [<https://perma.cc/JY6L-CVBZ>]. Therefore, charges that require longer sentences or prison time may be transferred to Superior Court. *Id.*

⁹⁷ Elizabeth Chuck, *Grand Jury Indicts Massachusetts Mother Lindsay Clancy on Charges of Killing her Three Young Kids*, NBC NEWS (Sept. 15, 2023), <https://www.nbcnews.com/news/crime-courts/grand-jury-indicts-massachusetts-mother-lindsay-clancy-charges-killing-rca105318> [<https://perma.cc/SM7C-FGW7>].

⁹⁸ David R. Smith, *Lindsay Clancy Pleads Not Guilty to Killing Her 3 Kids. Her Hearing was From the Hospital*, THE PATRIOT LEDGER (Oct. 26, 2023), <https://www.patriotledger.com/story/news/2023/10/26/duxbury-ma-mother-lindsay-clancy-arraigned-murder-killing-3-three-children-from-hospital-bed/71313147007/> [<https://perma.cc/QX4R-4WAE>].

and discovery purposes, but in October 2023 Lindsay was ordered to stay an additional six months at Tewksbury Hospital, and her lawyer waived her appearances at December 2023 and January 2024 hearings.⁹⁹

Lindsay Clancy gave birth to Callan, her third child, on May 26, 2022.¹⁰⁰ The following September, Lindsay was diagnosed with generalized anxiety disorder and, over the next few months, was prescribed thirteen¹⁰¹ different psychiatric medications for anxiety, depression, and insomnia.¹⁰² In January 2023, Lindsay’s husband, Patrick, told doctors that Lindsay’s medications were “turning her into a zombie,” and he asked for their help.¹⁰³ The morning of January 24, 2023, after taking her daughter to a scheduled doctor’s appointment, Lindsay played in the snow with her two older children.¹⁰⁴ That afternoon she looked up “kids Miralax,” ordered takeout, and used Apple Maps to route how long the drive between the takeout restaurant and her home was.¹⁰⁵ Patrick Clancy left the Clancy home to pick up the medication and takeout and returned to a silent house.¹⁰⁶ He found blood and an open window, so he rushed outside and found Lindsay on the ground, injured.¹⁰⁷ Patrick called 911 and on that call Lindsay can be heard saying “I tried to kill myself and jumped out the window;” she told Patrick the children were in the basement.¹⁰⁸ While still connected with emergency services, Patrick found his three children in the basement with exercise bands around their necks.¹⁰⁹ He removed the bands, and called out “she killed the kids” when officers arrived.¹¹⁰ An arrest warrant was issued for Lindsay Clancy on January 25, 2023,¹¹¹ but as of January 2024 she has remained hospitalized for psychiatric treatment and to treat the injuries she sustained due to her jump from the window, which

⁹⁹ Flint McColgan, *Lindsay Clancy Child Murder Case Returns to Court*, BOSTON HERALD (Dec. 15, 2023), <https://www.bostonherald.com/2023/12/15/lindsay-clancy-child-murder-case-returns-to-court/> [<https://perma.cc/4PWT-435B>].

¹⁰⁰ See Li, *supra* note 95.

¹⁰¹ Some sources say Clancy was prescribed twelve different medications. See, e.g., Cheyenne R. Ubiera, *Act of the Ill Lindsay Clancy’s Lawyer Reveals Reason Mom May Not Face Trial for ‘Strangling Three Kids to Death with an Exercise Band,’* THE U.S. SUN (Mar. 16, 2023), <https://www.the-sun.com/news/7648826/lindsay-clancy-mental-health-attorney-trial-arraignment/> [<https://perma.cc/AK82-RHTC>].

¹⁰² Li, *supra* note 95.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

left her permanently paralyzed from the waist down.¹¹² A judge ordered that Lindsay be transferred to a rehabilitation center upon her hospital discharge.¹¹³

Lindsay Clancy claims that at the time of the killings she experienced “a moment of psychosis” and “heard a man’s voice telling her to kill the kids and kill herself because it was her last chance.”¹¹⁴ The prosecution alleges she acted with “deliberate premeditation and extreme atrocity and cruelty.”¹¹⁵ They point to Clancy’s searches about travel time between the home and restaurant and allege “she planned these murders, gave herself the time and privacy needed to commit these murders, and then she strangled each child.”¹¹⁶ At her arraignment, the prosecution argued that Lindsay was able to engage in normal activities with her children on the day of the killings and, according to Patrick, she was having “one of her best days.”¹¹⁷ The defense argues that Lindsay was “overmedicated”¹¹⁸ and her actions were “a product of mental illness”—“postpartum depression, as well as the possibility of postpartum psychosis.”¹¹⁹ To the public’s knowledge, Lindsay has not received a diagnosis of postpartum psychosis. However, forensic psychiatrist Dr. Ian Lamoureux weighed in on the case and believes that postpartum psychosis accurately describes Lindsay’s symptoms.¹²⁰

¹¹² See WBZ News Staff, *Lindsay Clancy, Duxbury Mom Accused of Killing Her Children, Is Permanently Paralyzed*, WBZ (May 5, 2023), <https://www.cbsnews.com/boston/news/lindsay-clancy-duxbury-massachusetts-mother-accused-of-killing-her-children-paralyzed/> [<https://perma.cc/R8Z7-FMXZ>].

¹¹³ See Luis Feldman, *Timeline of Duxbury Killings: Prosecutor Lays Out Case Against Lindsay Clancy*, MASS LIVE (Feb. 9, 2023), <https://www.masslive.com/news/2023/02/timeline-of-duxbury-killings-prosecutor-lays-out-case-against-lindsay-clancy.html> [<https://perma.cc/HN99-D5FP>].

¹¹⁴ *Id.* (quoting prosecutor’s account of that phone call, not a first-hand account of what exactly was said according to Patrick, Lindsay, or the psychologist).

¹¹⁵ See Jessica Bartlett, *Experts, Advocates Worry Lindsay Clancy’s Case May Further Stigmatize Postpartum Mood Disorders*, BOS. GLOBE (Feb. 10, 2023) (quoting Assistant District Attorney Jennifer Sprague), <https://www.bostonglobe.com/2023/02/09/metro/experts-advocates-worry-lindsay-clancys-case-may-further-stigmatize-postpartum-mood-disorders/> [<https://perma.cc/YT23-7AS4>].

¹¹⁶ KC Baker, *Mass. Mom Lindsay Clancy Was ‘Mom Everyone Wanted to Be.’ Now She’s Accused of Killing Her 3 Kids*, PEOPLE (Feb. 16, 2023) (quoting Assistant District Attorney Jennifer Sprague), <https://people.com/crime/mass-mom-lindsay-clancy-was-mom-everyone-wanted-to-be-now-shes-accused-of-killing-her-3-kids> [<https://perma.cc/Q96U-2ERA>].

¹¹⁷ See Bartlett, *supra* note 115.

¹¹⁸ Baker, *supra* note 116 (quoting Clancy’s defense attorney Kevin Reddington). Lindsay was prescribed antidepressants, sedatives, sleep aids, mood stabilizers, and anxiety management medications in different combinations. The defense alleges the regimen she was prescribed changed abruptly, without tapering off one regimen and gradually adapting to the dose of the other. *Id.*

¹¹⁹ See Tristan Balagtas, *Medical Expert Weighs in on Lindsay Clancy Case and Postpartum Psychosis: ‘Untethered from Reality’*, PEOPLE (Feb. 9, 2023) (quoting Clancy’s defense attorney Kevin Reddington), <https://people.com/crime/medical-expert-lindsay-clancy-postpartum-psychosis> [<https://perma.cc/9QTV-UWVE>].

¹²⁰ *Id.* Dr. Lamoureux has not formally reviewed Lindsay Clancy’s medical records. *Id.*

2. *The Public Response to the Lindsay Clancy Case*

Since the killings, a GoFundMe with an initial goal of \$250,000 to help Patrick Clancy with medical bills and funeral services has raised over \$1,000,000 from almost 16,000 donors.¹²¹ On the GoFundMe page, Patrick asked the public to “find it deep within yourselves to forgive Lindsay, as I have. The real Lindsay was generously loving and caring towards everyone . . . The very fibers of her soul are loving.”¹²² Mothers that donated to the GoFundMe have expressed condolences and empathy for the Clancy family, including Lindsay, in the comments.¹²³ Others have shared their own experiences with postpartum psychosis.¹²⁴ Some call for more discussion and resources for mothers who struggle with postpartum mental health.¹²⁵ One woman shared that she “desperately hope[s] [Lindsay] is able to find some sort of peace and . . . that the justice system treats this how they should—as a situation where a mental health challenge clearly led to this, not criminal intent.”¹²⁶ TikTok is also flooded with support for Lindsay Clancy. A TikTok video captioned “I stand in support of #LindsayClancy” posted by a mother who shared her own story of postpartum mental health has more than two million views and more than 172,000 likes.¹²⁷ The comment section for this video is full of other mothers agreeing that, though the killings were tragic, Lindsay was failed due to the lack of mental health resources for new mothers and the stigma surrounding postpartum mental health.¹²⁸ The TikTok hashtag #postpartum-psychosis has more than 70.1 million views, and many of these views are of videos by mothers, like this one.¹²⁹ Dozens of letters were sent to Lindsay’s defense attorney and filed in court to provide character references for Lindsay, express support, or share medical and legal expertise.¹³⁰ Lindsay’s nursing coworker at Massachusetts General Hospital shared that she “did not know a

¹²¹ See GoFundMe PATRICK CLANCY DONATIONS, <https://www.gofundme.com/f/patrick-clancy-donations> [<https://perma.cc/N7HL-BD4T>] (amount as of Feb. 19, 2024).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See Cassandra Stone & Jessica D’Argenio Waller, *Moms Who Have Experienced Postpartum Mental Health Struggles Donate to Lindsay Clancy’s Family*, MOTHERLY (Jan. 30, 2023), <https://www.mother.ly/news/viral-trending/lindsay-clancy-postpartum-psychosis/> [<https://perma.cc/4HH6-ZR2Y>].

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See @ifitwerentfunny, TIKTOK (Jan. 31, 2023) [<https://perma.cc/H92Q-W7YT>].

¹²⁸ *Id.*

¹²⁹ See Lindsay Dogson, *Moms on TikTok are Sharing Stories of Postpartum Psychosis After Lindsay Clancy Was Accused of Murdering Her 3 Kids*, BUS. INSIDER (Mar. 7, 2023), <https://www.businessinsider.com/lindsay-clancy-tiktok-moms-share-stories-of-postpartum-psychosis-2023-3> [<https://perma.cc/58DR-8YVY>].

¹³⁰ See Abby Patkin, *‘I Do Not Know a Better Mother’: Dozens of Letters Show Public Support for Lindsay Clancy*, THE BOS. GLOBE (Feb. 13, 2023), <https://www.boston.com/news/crime/2023/02/13/lindsay-clancy-duxbury-mother-letters-filed-court-show-support/> [<https://perma.cc/5HGB-F3RA>].

better mother.”¹³¹ Even Rusty Yates, Andrea Yates’ ex-husband, spoke out to urge medical treatment, not criminal penalties, for Lindsay.¹³² This swell of public support for Lindsay Clancy will likely affect the outcome of her case. Even if the facts do not neatly fit within Massachusetts’ Model Penal Code insanity test,¹³³ Lindsay’s likely insanity claim will be benefited by the public opinion “gloss.” Daniel Medwed, a criminal law professor, said “[i]t’s going to be hard to find 12 jurors that aren’t going to be sympathetic to a new mom struggling with mental health issues.”¹³⁴

*C. Defendants With Suspected Postpartum Psychosis
with Less Public Support*

Andrea Yates’s insanity defense prevailed after a shift in public support, and experts believe that the public sympathy for Lindsay Clancy will translate to jury sympathy for her. These are examples of the public opinion “gloss” at work. Because postpartum psychosis does not fit neatly into traditional insanity tests, I believe that this “gloss” plays a significant role in successful postpartum psychosis insanity defenses. However, this “gloss” is not applied evenly. Multiple stories of mothers charged with their children’s murders who were poor, homeless, or women of color, and probably suffered from postpartum mental health conditions, demonstrate that race and class likely affect the frequency and tone of public attention that a case receives.¹³⁵

A jury convicted Sonia Hermsillo of first-degree murder and sentenced her to life in prison after she was found to be legally sane when she dropped her seven-month-old son off of a parking structure in 2011.¹³⁶ Sonia speaks Spanish and required a translator in court.¹³⁷ Sonia suffered from postpartum psychosis following her son’s birth¹³⁸ and was hospitalized for multiple days

¹³¹ *Id.*

¹³² See Jen Smith, *Ex-Husband of Andrea Yates—Who Drowned Her Five Kids in Bath Tub in 2001—Says Paralyzed, Postpartum Midwife Mom Who Strangled Her Children Shouldn’t Be Prosecuted and Needs Medical Care Instead*, DAILY MAIL (Feb. 8, 2023), <https://www.dailymail.co.uk/news/article-11727083/Andrea-Yates-husband-says-paralyzed-midwife-mom-post-partum-shouldnt-prosecuted.html> [<https://perma.cc/R5AU-KYG8>].

¹³³ See USLEGAL, *supra* note 5.

¹³⁴ Patkin, *supra* note 2.

¹³⁵ See Winter, *supra* note 25.

¹³⁶ See Sareen Habeshian, *O.C. Mom Gets Life Sentence for Pushing Infant Son Off Hospital Parking Structure, Killing Him*, KTLA (May 4, 2022), <https://ktla.com/news/local-news/la-habra-mother-gets-life-sentence-for-pushing-infant-son-off-o-c-hospital-parking-structure/> [<https://perma.cc/NYQ2-NQVA>].

¹³⁷ *Id.*

¹³⁸ *Id.*; Christian Martinez, *Orange County Mother Convicted of Dropping Baby from Parking Garage Receives Life Sentence*, L.A. TIMES (May 5, 2022), <https://www.latimes.com/california/story/2022-05-05/orange-county-mother-convicted-of-dropping-baby-from-parking-garage-receives-life-sentence> [<https://perma.cc/4CN9-PUNK>].

before his death.¹³⁹ However, Sonia’s family was poor and lacked health insurance, so she and her husband were not always able to refill her prescribed medications.¹⁴⁰ The prosecutor of the case told the jury that Sonia had “very severe depression,” but that “is not legal insanity.”¹⁴¹ Sonia’s case did not receive nearly the public attention that Lindsay Clancy’s has. Despite Sonia’s postpartum psychosis diagnosis, the media covering her case does not talk about postpartum psychosis broadly the way that the stories about Lindsay do.

Aleah Newell, a Black woman from Chicago, is being held without bail on charges of first-degree murder for killing her two-year-old and seven-month-old in January of 2020.¹⁴² The judge called the alleged acts “reflective of wanton cruelty.” After Aleah allegedly killed her two children she, like Lindsay Clancy, jumped out of her apartment window in an attempted suicide.¹⁴³ She had attempted suicide the summer before, and during the hospital stay that followed, was diagnosed with a mood disorder¹⁴⁴ and treated for a psychological issue.¹⁴⁵ After the killings, Aleah’s mother noted that she “thought [Aleah] was over” the mood disorder, but “maybe behind closed doors it was another thing;” she added that she knew that “deep inside [Aleah] loved her kids.”¹⁴⁶ Despite this case being just over two years old and having significant parallels to the Lindsay Clancy case, there have been few news updates. The disposition of the case was unclear until I searched the Cook County inmate directory and found that Aleah, as of March 18, 2024, was still being held without bond.¹⁴⁷ Though her inmate page indicates her next court date is June 5, 2024,¹⁴⁸ not a single relevant article appears in Google

¹³⁹ See Jerry Lambe, *Jury Finds California Mother Was Sane When She Threw Special Needs Infant Son Off the Roof of Hospital Parking Structure*, L. & CRIME (Sept. 14, 2021), <https://lawandcrime.com/crime/jury-finds-california-mother-was-sane-when-she-threw-special-needs-infant-son-off-the-roof-of-hospital-parking-structure/> [<https://perma.cc/VFV2-MXPX>].

¹⁴⁰ *Id.*

¹⁴¹ *Id.* (quoting Deputy District Attorney Mena Guirguis).

¹⁴² See Madeline Buckley, *Woman Accused of Killing Young Sons, Assaulting One and Hurling Another Out South Shore High-Rise Window, Is Held Without Bail*, CHI. TRIB. (Jan. 2020), <https://www.chicagotribune.com/2020/01/04/woman-accused-of-killing-young-sons-assaulting-one-and-hurling-another-out-south-shore-high-rise-window-is-held-without-bail/> [<https://perma.cc/QLS3-A56W>].

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ See Sandra Rose, *Chicago Woman, 20, Charged with Stabbing Grandfather, 70, and 7-Month-Old Son Before Throwing 2-Year-Old Son From 11-Story Window, Then Jumping Herself*, SANDRA ROSE (Jan. 5, 2020), <https://sandrarose.com/2020/01/chicago-woman-20-charged-with-stabbing-grandfather-70-and-7-month-old-son-before-throwing-2-year-old-son-from-11-story-window-then-jumping-herself/> [<https://perma.cc/ZJ7R-SNN5>].

¹⁴⁶ See Leah Scott, *A Chicago Mom Killed Her Two Children and Was Charged with The City’s First Homicides of 2020*, MTRU (Jan. 7, 2020), <https://wearemitu.com/wearemitu/news/a-chicago-mom-killed-her-two-children-and-was-charged-with-the-citys-first-homicides-of-2020/> [<https://perma.cc/Q6KU-XPJF>].

¹⁴⁷ See Newell, Aleah C, <https://iic.ccsheeriff.org> [<https://perma.cc/4SQ6-Z224>] (agree to the Terms and Conditions, click begin search, search for “Aleah Newell,” certify under the reCAPTCHA, and click on Details/Request Visitation).

¹⁴⁸ Current as of March 18, 2024.

search results for “Aleah Newell” about the hearing.¹⁴⁹ Further, while Patrick Clancy’s GoFundMe has amassed more than one million dollars, a now deactivated GoFundMe page created to help Aleah’s mother bury her grandchildren raised only twenty dollars.¹⁵⁰

Three Black mothers were charged with the murder of their children within six months of Lindsay Clancy’s case but have not received the same level of public opinion or support as Lindsay, despite also exhibiting symptoms of postpartum psychosis. New York mother Erin Merdy allegedly drowned her three children at the beach in September 2022.¹⁵¹ She had been struggling with her mental health and suffered from bipolar schizophrenia.¹⁵² Investigators are trying to determine if postpartum psychosis and depression, brought on by the birth of her third child three months before, played a role in the drownings.¹⁵³ Erin told law enforcement she had “dreams of the babies in the water” and “imagined walking the kids into the water.”¹⁵⁴ Despite suspicions that both Erin and Lindsay suffered from postpartum psychosis, and that both the cases occurred within six months of one another, the response to the Merdy case is the polar opposite of the response to the Clancy case. While a TikTok search for #lindsayclancy yields too many video results to count, a search of #erinmurdy yields only seven¹⁵⁵—one of these is captioned “Erin Merdy I hope they kill you in prison.”¹⁵⁶ Erin is being held without bail and potentially faces three life sentences if convicted on the three counts of first-degree murder she’s charged with.¹⁵⁷ Dimone Fleming, a Bronx mother experiencing homelessness, was charged with two counts of murder after she allegedly stabbed her eleven-month-old and three-year-old

¹⁴⁹ No articles about Aleah’s case, at all, are populated in a Google search for “Aleah Newell” that’s filtered to include articles published between March 28, 2022 through March 18, 2024. The most recent coverage of Aleah’s case was published on March 27, 2022 by Fox 32. See FOX 32 Digital Staff, *Chicago Mom Accused of Tossing Baby Out 11th Story Window, Drowning Other Child, to be in Court Monday*, FOX 32 CHICAGO (Mar. 27, 2022), <https://www.fox32chicago.com/news/chicago-mom-accused-of-tossing-baby-out-11th-story-window-drowning-other-child-to-be-in-court-monday> [<https://perma.cc/X9LF-9U2G>].

¹⁵⁰ *To Help Zera Newell Bury Her Grandchildren*, GOFUNDME (Jan. 2, 2020), https://www.gofundme.com/f/1uu7546zw0?utm_medium=copy_link&utm_source=customer&utm_campaign=p_lico+share-sheet. [<https://perma.cc/F4ZD-Y5KM>].

¹⁵¹ See David Propper, *NYC Mom Accused of Drowning Her Kids Indicted on Murder Charges*, N.Y. POST (Oct. 6, 2022), <https://nypost.com/2022/10/06/erin-merdy-indicted-on-1st-degree-murder-in-coney-island-drownings> [<https://perma.cc/EL4B-AXFE>].

¹⁵² See Srinija Grandhi, *Erin Merdy: Mentally Unstable Brooklyn Mom, 30, Who Drowned 3 Children Charged with Murder*, MEAWW (Jan. 16, 2023), <https://meaww.com/erin-merdy-mentally-unstable-brooklyn-mom-who-drowned-3-children-charged-with-murder> [<https://perma.cc/C2DL-8YC9>].

¹⁵³ *Id.*

¹⁵⁴ See Forrest McFarland, ‘Shocking’ Act Huge Update After Mom ‘Drowned Her Three Small Children’ as Prosecutors Pledge to ‘Seek Justice for Unspeakable Crime’, THE U.S. SUN (Oct. 8, 2022), <https://www.the-sun.com/news/6400335/prosecutors-seek-justice-mom-drowned-three-children/> [<https://perma.cc/8NT4-8F82>].

¹⁵⁵ Current as of May 11, 2023.

¹⁵⁶ See @maria_mirabela218, TIKTOK (Sept. 14, 2022), https://www.tiktok.com/@maria_mirabela218/video/7143360631683435822 [<https://perma.cc/99FC-XLV7>].

¹⁵⁷ See Propper, *supra* note 151.

in November 2022.¹⁵⁸ Dimone admitted to police that she stabbed her children because she believed they were possessed.¹⁵⁹ Dimone was denied bail.¹⁶⁰ Only seven TikTok videos are posted with the hashtag #dimonefleming.¹⁶¹ Less than a month before the Clancy killings, in December 2022, Paulesha Green-Pulliam allegedly killed her two daughters before attempting to take her own life.¹⁶² Paulesha lost her son during pregnancy a few months prior, and subsequently, her mental health suffered.¹⁶³ She reportedly muttered “they following us” or “they tappin’ my phone.”¹⁶⁴ She believed people were trying to sexually traffic her daughters; just after the alleged killings, she told officers that she “should have let that happen rather than take their life. I’m sorry.”¹⁶⁵ Despite mental health professionals opining that Paulesha suffered from postpartum psychosis, she was charged with two counts of murder and faces potential life in prison.¹⁶⁶ At the time of this writing, she was being held without bail with a court date scheduled.¹⁶⁷ Though Paulesha’s case bears similarities to the Lindsay Clancy case and takes place on a nearly parallel timeline, the public response to Paulesha’s case has been quiet. The hashtag, #pauleshagreen, has a single video with 4029 views on TikTok.¹⁶⁸ Not a single video returns for searches of “#pauleshagreenpulliam” or “#pauleshagreen-pulliam.”¹⁶⁹

This is not to say that the public’s response to the Lindsay Clancy case is bad—rather, the Andrea Yates and Lindsay Clancy cases have brought critical attention to postpartum mental health that helps mothers everywhere. The contrast between the amount of public support that Lindsay Clancy has received and the lack of support and attention that these other mothers received is not intended to criticize the response to Lindsay. Instead, it is intended to

¹⁵⁸ See Yaron Steinbuch et al., *Mom of Bronx Boys Found Fatally Stabbed in Bathroom is Charged With Murder*, N.Y. POST (Nov. 28, 2022), <https://nypost.com/2022/11/28/bronx-mom-dimone-fleming-charged-after-2-children-found-dead/> [<https://perma.cc/X3WJ-FPCA>].

¹⁵⁹ *Id.*

¹⁶⁰ See Rocco Parascandola & Elizabeth Koegh, *Bronx Mom Dimone Fleming Held Without Bail for Murder of Two Young Sons*, N.Y. DAILY NEWS (Dec. 1, 2022), <https://www.nydailynews.com/2022/12/01/bronx-mom-dimone-fleming-held-without-bail-for-murder-of-two-young-sons/> [<https://perma.cc/L8DK-8U6Z>].

¹⁶¹ Current as of May 11, 2023.

¹⁶² See Joe Kukura, *More Details Emerge in Tragic Killing of Two SF Children; Mother May Have Had Postpartum Psychosis*, SFIST (Jan. 19, 2023), <https://sfist.com/2023/01/19/harrowing-new-details-emerge-on-tragic-pre-christmas-killing-of-two-bayview-children/> [<https://perma.cc/LXT3-CACG>].

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See The Superior Court of California, Case Calendar, <https://webapps.sftc.org/cc/CaseCalendar.dll?=&SessionID=9062180AD024582460D3C09EF3B2040999C4D062> [<https://perma.cc/GUZ6-7MUK>] (certify the reCAPTCHA, click “Search by Name,” select “Criminal” in the drop-down box for Case Type, and type “Pulliam, Paulesha” into the “Party Name” box, then click “Search.”).

¹⁶⁸ Current as of March 18, 2024.

¹⁶⁹ Current as of March 18, 2024.

illuminate that public sympathy for mothers who have suffered postpartum mental health challenges and allegedly killed their children as a result is not universal. Public support is driven by the media and falls along racial and class lines. Andrea and Lindsay are white, while Sonia, Aleah, Erin, Dimone, and Paulesha are all women of color. The white women received public attention and sympathy, while the women of color have not.

This difference in public attention given to women accused of infanticide parallels “Missing White Woman Syndrome.” Missing White Woman Syndrome is a “fixation on missing White women and children” that results in thorough, widespread, and long-term public attention on cases of missing white women and children.¹⁷⁰ The level of attention given to such cases is significant when contrasted with the disproportionately low amount of attention given to missing people of color.¹⁷¹ A 2015 study found that while thirty-five percent of missing children’s cases involved Black children, those cases made up just seven percent of missing child media coverage.¹⁷²

This disparity is the result of deeply rooted societal biases, which are reinforced by a feedback loop between the public and media companies.¹⁷³ To maximize profit, media companies broadcast stories they believe will interest their viewers.¹⁷⁴ Since media companies remain primarily white organizations, a white audience is likely assumed.¹⁷⁵ The companies’ ideas about what will interest their viewers are based on who they believe consumers can relate to.¹⁷⁶ Stories about white people are considered more relatable to a white customer base.¹⁷⁷ Decisions about which stories to tell are also made based on “underlying judgments of value and worth,” and when viewers consume this media, their perceptions about what and *who* is valuable is affected by these underlying judgments.¹⁷⁸ This media coverage, or lack thereof, on missing women and children of color “reinforces a social hierarchy” that white women are “innocent, valuable, and worth saving,” while the lives of women of color are “less valuable and less of a priority for rescue.”¹⁷⁹

¹⁷⁰ Danielle C. Slakoff & Henry F. Fradella, *Media Messages Surrounding Missing Women and Girls: The “Missing White Woman Syndrome” and Other Factors that Influence Newsworthiness*, 20 CRIMINOLOGY, CRIM. JUST. L. AND SOC’Y 80, 81 (2019).

¹⁷¹ *Id.*

¹⁷² Naomi Ishisaka, *How the Media Privileges White Victims*, THE SEATTLE TIMES (Aug. 15, 2022), <https://www.seattletimes.com/seattle-news/law-justice/how-the-media-privileges-white-victims> [<https://perma.cc/NC6W-DHKU>].

¹⁷³ *Id.*

¹⁷⁴ See Zach Sommers, *Missing White Woman Syndrome: An Empirical Analysis of Race and Gender Disparities in Online News Coverage of Missing Persons*, 106 J. CRIM. L. AND CRIMINOLOGY 275, 311 (2016).

¹⁷⁵ See Janice Gassam Asare, *Recent Figures Show that Media is Still Overwhelming White*, FORBES (Apr. 23, 2023), <https://www.forbes.com/sites/janicegassam/2023/04/23/recent-figures-show-that-media-is-still-overwhelming-white/?sh=64ac60685bf4> [<https://perma.cc/5SKM-LBP6>].

¹⁷⁶ See Sommers, *supra* note 174, at 311.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 311.

¹⁷⁹ *Id.* at 289–91.

Analogous reasoning may explain why Lindsay Clancy’s case is receiving more public attention than the cases of Aleah Newell, Erin Merdy, Dimone Fleming, and Paulesha Green-Pulliam. Lindsay may receive more media attention because, as a white woman, she is considered relatable to a white audience and customer base. One online article is even titled: “I’m a Postpartum Survivor—But I Could Have Been Lindsay Clancy.”¹⁸⁰ As a white woman, Lindsay is viewed as “innocent,” “valuable” and “worth saving” apart from her mental illness, but also from harsh criminal punishment. In contrast, Aleah, Erin, Dimone, and Paulesha are all women of color, and, therefore, less relatable and “less of a priority” in media coverage.

Further, racial bias in the media reinforces “a presumption of guilt and dangerousness assigned to Black people when reporting on crime while devaluing the lives of Black people and the harm they suffer when victimized.”¹⁸¹ There’s little reason to report on these women because they have already been presumed guilty and dangerous, and their stories are considered not newsworthy because of racist associations between Black people and violence.¹⁸² Conversely, Lindsay’s story is prioritized in the media because society does not expect an affluent, white, pretty mother to kill.

III. UNFAIR DISPARITY IN THE EFFECTS OF THE PUBLIC OPINION “GLOSS” ON POSTPARTUM PSYCHOSIS INSANITY CASES

Why does it matter that some postpartum psychosis insanity cases, like Andrea’s or Lindsay’s receive widespread public attention while others, mentioned above, do not? Because predominant legal insanity tests do not neatly accommodate postpartum psychosis insanity claims,¹⁸³ I believe that the public opinion “gloss” is doing more work to determine whether a defendant’s insanity claim is successful than the straightforward application of insanity law is. A study comparing outcomes in infanticide cases where a postpartum insanity defense was raised found that the outcomes were not “entirely dependent on the legal standard for insanity in the jurisdiction in which the cases are tried.”¹⁸⁴ This study demonstrates that legal insanity tests do not

¹⁸⁰ Kimberly Zapata, *I’m a Postpartum Survivor—But I Could Have Been Lindsay Clancy*, PARENTS (May 12, 2023), <https://www.parents.com/im-a-postpartum-survivor-but-i-could-have-been-lindsay-clancy-7101357> [<https://perma.cc/T8MD-9HYB>].

¹⁸¹ *Report Documents Racial Bias in Coverage of Crime by Media*, EQUAL JUST. INITIATIVE & GLOB. STRATEGY GRP. (Dec. 16, 2021) (quoting Brian Stevenson, director of Equal Justice Initiative), <https://eji.org/news/report-documents-racial-bias-in-coverage-of-crime-by-media> [<https://perma.cc/V8AW-HYV7>].

¹⁸² See Emily Widra, *Stark Racial Disparities in Murder Victimization Persist, Even as Overall Murder Rate Declines*, PRISON POL’Y INITIATIVE (May 3, 2018), https://www.prisonpolicy.org/blog/2018/05/03/homicide_overtime [<https://perma.cc/S9YG-MMAC>]; Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCH. 876, 876 (2004).

¹⁸³ See Lindsey C Perry, *A Mystery of Motherhood: The Legal Consequences of Insufficient Research on Postpartum Illness*, 42 GA. L. REV. 193, 204–205 (2007).

¹⁸⁴ See Nau, *supra* note 24, at 320.

neatly accommodate postpartum psychosis insanity claims. Specifically, there were similar success rates for defendants across jurisdictions with the M’Naghten and Model Penal Code standards,¹⁸⁵ indicating that though the strictness of the M’Naghten test has been criticized,¹⁸⁶ that strictness does not translate to fewer successful insanity claims than Model Penal Code jurisdictions.¹⁸⁷ This suggests that something besides clean application of insanity tests is driving the outcomes in postpartum psychosis cases. One possibility is the public opinion “gloss.” This is a problem because the “gloss” is not dependent on legal or psychological facts, nor is it applied evenly. These non-legal, non-psychological facts creep into the public discourse and shape public opinion—they “prime” the public from which the jury is drawn to feel a certain way about a defendant and a case. This is important because “priming” affects a factfinder’s ultimate outcome,¹⁸⁸ so the fate of a defendant could be dependent on whether the jury pool was primed to feel sympathy or anger toward them.

In studies of punitive behavior, when participants are primed to feel anger toward someone, they are more likely to conclude that the person should be punished because the anger causes the participant to feel that the person is responsible and in control.¹⁸⁹ This anger can overshadow testimony that mental illness diminished a defendant’s responsibility and control.¹⁹⁰ Media attention “primes” the public on how to react to a case. Media characterizes mothers in postpartum insanity cases as “mad” or “bad.”¹⁹¹ When mothers are “bad,” the public is primed to feel anger toward that mother, opening the door for more punitive results. For example, prior to Sonia Hermsillo’s conviction, the public was primed to feel anger because headlines described her as a mother who tossed her infant from a parking structure.¹⁹² One headline read: “California Mom Who Dropped Disabled Infant Son to His Death Off Parking Garage Accused of Not Loving Him and Wanting Him to Die, as Murder Trial Starts.”¹⁹³ Multiple pieces of this headline prime the public to feel anger toward Sonia—to view her as “bad.” For example, it does not include Sonia’s

¹⁸⁵ *See id.*

¹⁸⁶ *See* Winter, *supra* note 25.

¹⁸⁷ *See* Nau, *supra* note 24, at 320.

¹⁸⁸ *See* Chioma Ajoku, *The Insanity Defense, Public Anger, and the Potential Impact on Attributions of Responsibility and Punishment* (Sept. 2015) (Ph.D. dissertation, CUNY) (on file with CUNY Academic Works).

¹⁸⁹ *See id.*

¹⁹⁰ *See id.* at 34.

¹⁹¹ *See* Barbara Barnett, *Medea in the Media*, 7 JOURNALISM 411, 417 (2006).

¹⁹² *See, e.g.,* Robert Henry & Jack Noyes, *Mother Accused of Throwing Child from Parking Structure*, KNBC (last updated Aug. 23, 2011, 7:20 PM), <https://www.nbclosangeles.com/news/local/baby-critical-after-fall-criminal-investigation-underway/1906064/> [<https://perma.cc/38WP-36MA>].

¹⁹³ Matt McNulty, *California Mom Who Dropped Disabled Infant Son to His Death Off Parking Garage Accused of Not Loving Him and Wanting Him to Die, as Murder Trial Starts*, DAILY MAIL (Aug. 6, 2021), <https://www.dailymail.co.uk/news/article-9868805/California-mom-pushed-disabled-baby-son-death-didnt-love-murder-trial-hears.html> [<https://perma.cc/Q6MN-K9SR>].

name, which makes it difficult to humanize her. The headline uses active voice, making it clear exactly what Sonia did. It does not include “allegedly” even though a verdict had not yet been rendered. This headline further elicits anger because it *describes* one of the most virulent injustices—the killing of a child by a parent, a person the child is supposed to be safe with. It then piles on more injustice—the prospect of a child unloved by his mother. When people are primed to feel that injustice occurred, their anger increases.¹⁹⁴ The public was primed to consider Sonia “bad.” Compare this to the headlines about the Lindsay Clancy case: “A Troubled Mother Faces Murder Charges in Her Young Children’s Deaths,”¹⁹⁵ “Mass. Mom Lindsay Clancy Was ‘Mom Everyone Wanted to Be.’ Now She’s Accused of Killing Her 3 Kids,”¹⁹⁶ “Act of the Ill: Lindsay Clancy’s Lawyer Reveals Reason Mom May Not Face Trial for Strangling Three Kids to Death with an Exercise Band.”¹⁹⁷ The public is being primed to view Lindsay as “mad,” not “bad.” She’s “troubled,” “ill,” and the “mom everyone wanted to be.” While the Sonia Hermsillo headlines use the active voice, the Lindsay Clancy headlines do not directly attribute the actions causing the Clancy children’s deaths to Lindsay. “Children’s deaths” does not make it clear what happened to cause those deaths. “Accused of killing” does not make Lindsay the actor, but rather the *subject* of the accusation. Even the headline describing the strangulation does so in a way that makes the strangulation seem like a feature of the trial rather than an act allegedly committed by Lindsay. Though Lindsay has yet to be sentenced while Sonia was sentenced to twenty-five years to life in prison,¹⁹⁸ it is easy to read these headlines and conclude that Sonia was rightfully sentenced to life, and Lindsay was rightfully ordered to go to a rehabilitation center instead of jail after her release from the hospital and before she is tried. This is because the Sonia Hermsillo headlines prime the public to feel anger, and therefore more punitive—the negative public opinion “glossed” her case and may have affected the outcome. Meanwhile, the Lindsay Clancy headlines elicit sympathy, and that public sympathy is a positive “gloss” that compels compassionate treatment of Lindsay.

¹⁹⁴ See Ajoku, *supra* note 188, at 33.

¹⁹⁵ Ellen Barry, *A Troubled Mother Faces Murder Charges in Her Young Children’s Deaths*, N.Y. TIMES (Feb. 8, 2023), <https://www.nytimes.com/2023/02/08/health/lindsay-clancy-child-murder-charges-massachusetts.html> [<https://perma.cc/QS8V-CYV9>].

¹⁹⁶ Baker, *supra* note 116.

¹⁹⁷ Ubiera, *supra* note 101.

¹⁹⁸ See City News Service, *OC Mother Gets 25-to-Life for Dropping 7-Month-Old Son to His Death From Hospital Parking Structure*, EYEWITNESS NEWS (May 5, 2022), <https://abc7.com/la-habra-mother-sentenced-baby-killed-orange-county-hospital/11819082/> [<https://perma.cc/6MR5-7XLE>]. A Court of Appeal for the California 4th District recently remanded Sonia’s sentence to a lower court to consider whether her mental health should make her eligible for parole. See Noa Halff, *California Mother Who Hurling Disabled Baby Son to his Death Off Four-Story Parking Lot in 2011 Could Get Parole After Appeals Court Ruled Original Sentencing Failed to Consider Her Mental Illness*, DAILY MAIL (Feb. 28, 2024), <https://www.dailymail.co.uk/news/article-13136665/california-mother-threw-disabled-baby-death-parole-mental-illness-diagnosis.html> [<https://perma.cc/W4PH-VGR9>].

The public discourse about a postpartum psychosis insanity case is important because the public does not understand insanity pleas well.¹⁹⁹ This lack of clarity provides the space for biases to creep into jury decisions about insanity.²⁰⁰ It provides room for jurors to make conclusions based on how they have been primed to think about a case. Jurors who have greater exposure to and understanding of a mental illness are more likely to support a verdict of not guilty by reason of insanity and feel more favorable towards people suffering mental illness.²⁰¹ Jurors can better understand mental illness when an illness receives honest media exposure. Where honest, sympathetic media exposure on a condition is associated with a specific defendant with that condition, then the public is primed not only with a better understanding of mental illness, but with a sympathetic perception of that defendant. White, affluent women get more media exposure of their cases than women of color do; the phenomenon is a version of “missing white woman syndrome.”²⁰² Therefore, white, affluent defendants raising postpartum psychosis insanity claims are more likely to benefit from positive priming on their condition and case that will later help the jury feel more favorably toward their insanity claim. This discrepancy is currently playing out on mainstream media channels today. Lindsay Clancy, Erin Merdy, Dimone Fleming, and Paulesha Green-Pulliam each allegedly killed their children within four months of each other;²⁰³ Aleah Newell’s case is just two years older.²⁰⁴ Each mother experienced psychotic symptoms.²⁰⁵ Lindsay, the only white mother, is the sole woman receiving treatment instead of jail time pre-trial.²⁰⁶ Because Lindsay will receive treatment, she will

¹⁹⁹ See Jerie J. Bolin, *Attitudes on Legal Insanity and the Impact of Race* (2019) (Ph.D. dissertation, Wright State University) (CORE Scholar).

²⁰⁰ *Id.*

²⁰¹ See *id.* at 32–33.

²⁰² See Winter, *supra* note 25.

²⁰³ See Li, *supra* note 95 (Lindsay Clancy allegedly killed her children in January 2023); Propper, *supra* note 151 (Erin Merdy allegedly killed her children in September 2022); Steinbuch et al., *supra* note 158 (Dimone Fleming allegedly killed her children in November 2022); Kukura, *supra* note 162 (Paulesha Green-Pulliam allegedly killed her children in December 2022).

²⁰⁴ See Scott, *supra* note 146 (Aleah Newell allegedly killed her children in January 2020).

²⁰⁵ See Li, *supra* note 95 (Lindsay Clancy reported she had “a moment of psychosis” and “heard a man’s voice”); McFarland, *supra* note 154 (Erin Merdy had hallucinations or delusions about her children in the water); Steinbuch et al., *supra* note 158 (Dimone Fleming believed her children were possessed); Kukura, *supra* note 162 (Paulesha Green-Pulliam believed that people were trying to sexually traffic her daughters, that her phone was tapped, and that her family was being followed); Rose, *supra* note 145 (it is unclear whether Aleah was suffering from psychotic symptoms closer to the killings, but she was treated for a psychological issue following the birth of her second son, which suggests that her psychotic symptoms could have been brought on by childbirth).

²⁰⁶ See Feldman, *supra* note 113 (Lindsay Clancy ordered to be transferred to a rehabilitation center after her discharge from the hospital); Propper, *supra* note 151 (Erin Merdy held without bail); Rocco Parascandola & Elizabeth Keogh, *Bronx Mom Dimone Fleming Held Without Bail for Murder of Two Young Sons*, N.Y. DAILY NEWS (Dec. 1, 2022, 8:13 PM), <https://www.nydailynews.com/2022/12/01/bronx-mom-dimone-fleming-held-without-bail-for-murder-of-two-young-sons> [<https://perma.cc/56TU-93HR>] (Dimone

receive documentation about her mental health, including medical and treatment records and doctors’ notes, that her lawyers can bring to trial to support her insanity claim. The mothers being held without treatment do not have the same resources. This is an example of the public opinion “gloss” affecting a defendant’s ability to make a successful insanity claim. First, the public’s sympathetic response to Lindsay, as compared to the relatively negative responses to Erin, Dimone, Paulesha, and Aleah, helped Lindsay get access to care and potentially critical evidence of insanity. Second, research suggests that defendants who are detained pretrial are more likely to be convicted than defendants who are not.²⁰⁷ Finally, pretrial detention affects sentencing.²⁰⁸ Pretrial detention has been shown to be “the strongest *single* factor influencing a convicted defendant’s likelihood of being sentenced to jail or prison.”²⁰⁹ These detained Black mothers face an uphill court battle.

It is unclear whether Lindsay Clancy, Erin Merdy, Dimone Fleming, Paulesha Green-Pulliam, and Aleah Newell will raise postpartum psychosis insanity defenses and whether they will be successful at trial. However, the pretrial discrepancies between the cases are important because they provide a signal about whether the public opinion “gloss” on a potential insanity defense will be positive or negative and lay the groundwork for how accessible mental health treatment records will be.

A potentially significant difference between four of these pending cases is that Lindsay will be tried in Massachusetts, a Model Penal Code insanity state, while Erin and Dimone will be tried in New York and Paulesha in California, both of which use a version of the M’Naghten standard.²¹⁰ If Lindsay is successful in her insanity claim and one or more of the other mothers are not, it could be a result of the different insanity standards. But, because defendants have similar success rates under both,²¹¹ I do not think that difference is enough to justify entirely different outcomes; the public opinion “gloss” will likely also play a role. For example, Sonia Hermosillo²¹² and Andrea Yates were also tried in M’Naghten jurisdictions.²¹³ Sonia’s postpartum psychosis insanity defense was unsuccessful; her case was not “glossed” with positive public opinion. Andrea Yates’s postpartum psychosis insanity defense was initially unsuccessful *until* she received the benefit of the public opinion “gloss.”²¹⁴

Fleming held without bail. While Dimone was sent to a hospital for a psychiatric evaluation immediately after the incident, no further information indicates she was ever ordered to be transferred to a rehabilitation center, like Lindsay Clancy; Buckley, *supra* note 142 (discussing Aleah Newell held without bail).

²⁰⁷ See Léon Digard & Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*, VERA EVIDENCE BRIEF 1, 3–4 (2012).

²⁰⁸ See *id.* at 1, 5.

²⁰⁹ *Id.* at 5 (quoting Mary T. Phillips, *A Decade of Bail Research in New York City*, N.Y.C. CRIM. JUST. AGENCY, INC. 97, 118 (2012)).

²¹⁰ See USLEGAL, *supra* note 5.

²¹¹ See Nau et al., *supra* note 24, at 320.

²¹² Hermasillo was tried in California. Habeshian, *supra* note 136.

²¹³ See USLEGAL, *supra* note 5.

²¹⁴ See Levin, *supra* note 1.

Aleah Newell will be tried in Illinois,²¹⁵ a Model Penal Code standard state.²¹⁶ Comparing the Aleah Newell and Lindsay Clancy cases as they progress will be helpful in determining the effects of the public opinion “gloss” on Model Penal Code postpartum psychosis insanity claims.

The divide between postpartum psychosis insanity cases that receive a positive public opinion “gloss” and those that receive a negative “gloss” falls on racial lines. This means that a simpler name for the public opinion “gloss” is “bias.” Bias is affecting outcomes in postpartum psychosis insanity cases. Therefore, American law needs to change to ensure that outcomes for defendants who likely have postpartum psychosis are based on the law and science instead of implicitly affected by positive or negative public opinion “gloss.”

IV. AN INTERNATIONAL MODEL OF A FILICIDE LAW TO REMEDY THE PUBLIC OPINION “GLOSS”

The legitimacy of the insanity defense is undermined by its vulnerability to the bias of the public opinion “gloss.” This vulnerability means that the standards are not applied reliably or predictably, and the defense becomes helpful only to “sympathetic” defendants, not unpopular ones—even those equally affected by postpartum psychosis. The most efficient way to ensure that outcomes in postpartum psychosis-related filicide cases are not affected by public bias is to remove such cases from the insanity inquiry altogether. Instead, a criminal filicide law, with a rebuttable presumption that defendants charged with filicide within one-year postpartum acted because of a mental health condition caused by postpartum changes, should be passed. The British Infanticide Act of 1938 provides an example of such a law.

The United Kingdom passed the British Infanticide Act in 1922 in response to public concern about the treatment of mentally ill mothers in criminal infanticide cases.²¹⁷ Austria, New Zealand, Canada, Germany, and Australia have similar laws.²¹⁸ The British Infanticide Act created an offense, comparable to the lesser charge of manslaughter, under which women who allegedly killed their children within a year of giving birth would be prosecuted.²¹⁹ Under this law, where a woman willfully acts, or refrains from acting, and causes the death of her child who is under one-year-of-age, it is presumed that the woman’s “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 caused by the birth of the child.”²²⁰ This law cannot be used

²¹⁵ Buckley, *supra* note 142.

²¹⁶ See USLEGAL, *supra* note 5.

²¹⁷ See Frazier, *supra* note 61, at 305.

²¹⁸ *Id.*

²¹⁹ See *id.*

²²⁰ Nicola Laver, *Infanticide and the Criminal Law*, CLAIMS.CO.UK, <https://www.claims.co.uk/knowledge-base/court-proceedings/infanticide-and-criminal-law> [<https://perma.cc/WJ73-G2TC>].

to prosecute a woman if the facts would not support a homicide charge.²²¹ The presumption that a woman was suffering from a pregnancy or childbirth-related mental health condition is rebuttable, so the prosecution can prove that a murder charge would be more appropriate in instances where there is evidence that a mother acted as a result of motivations unrelated to postpartum mental health.²²² Typically, when a woman is convicted under the infanticide law, she is given a non-custodial sentence and receives treatment or hospitalization.²²³ Some criticize this law; they believe such cases should be charged as murder and defendants should raise a diminished capacity defense.²²⁴ However, the United Kingdom has retained the infanticide law because lawmakers believe some mothers would be unjustly disadvantaged by bearing the burden of proving diminished capacity.²²⁵ Therefore, the Infanticide Act is being retained to protect against disparate outcomes similar to those that result from a negative public opinion “gloss.”

A distinct filicide statute, like the British Infanticide Act, could diminish the disparate impact of the public opinion “gloss” in postpartum psychosis murder case outcomes for two reasons. First, it erases the confusion caused by convoluted inquiries about knowledge of right and wrong and accommodates the waxing and waning nature of postpartum psychosis. This is an improvement from the current scheme because it removes ambiguous inquiries in which the public opinion “gloss” can creep in. Second, it creates a presumption in favor of diminished capacity that *all* defendants who would otherwise have alleged they were insane due to postpartum psychosis are entitled to, regardless of the tone of public discourse priming. This presumption is not radical—it is a version of a *prima facie* case of diminished culpability, and American courts commonly incorporate *prima facie* rebuttable presumptions.²²⁶ It is fair to presume before rebuttal that defendants within twelve-months postpartum who are accused of filicide suffered from a mental health condition because postpartum mental health conditions are common. The brain changes during pregnancy and the postpartum period, and these changes make a new mother vulnerable to mental health disorders.²²⁷ Up to one in five people suffer from mood or anxiety disorders during pregnancy or the postpartum period.²²⁸ Further, suicide is a leading cause of death for

²²¹ *See id.*

²²² *See id.*

²²³ *Id.*

²²⁴ *See id.*

²²⁵ *See id.*

²²⁶ *See Prima Facie*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/prima_facie [<https://perma.cc/3M6Q-F38Y>] [hereinafter *Prima*, WEX LEGAL].

²²⁷ *See* Erika Barba-Müller et al., *Brain Plasticity in Pregnancy and the Postpartum Period: Links to Maternal Caregiving and Mental Health*, 22 ARCHIVES WOMEN'S MENTAL HEALTH 289, 295 (2019).

²²⁸ *See* Ctr. for Neuroscience Women's Health, *Pregnancy and Mental Health*, STAN. MED. (2024) https://med.stanford.edu/womensneuroscience/wellness_clinic/Pregnancy.html [<https://perma.cc/7C9P-CX7G>].

mothers within one-year postpartum.²²⁹ Eleven percent of pregnancy-related deaths result from mental health conditions, and sixty-three percent of those deaths were the result of suicide.²³⁰ Because mental disorder in the postpartum period is common, it is fair to follow the science and recognize that, “at first sight,”²³¹ a postpartum mother accused of filicide was likely suffering from a mental condition that was a causal factor in their actions. The state can rebut this presumption and *should* when justice requires. This rebuttable provision provides a means by which intentional and knowingly malicious murders can be prosecuted. In general, prosecutors have the burden to prove that a defendant committed all elements of a charged crime, and a filicide law like this one would just require prosecutors to make a showing of *mens rea* that they would otherwise be responsible for proving if the mother’s acts were charged as murder.²³²

Two changes should be made to an American version of the British Infanticide Act. First, the filicide statute should be gender-neutral; the presumption of diminished culpability should apply where a person of any gender identity has given birth within the year. This ensures the law will not unjustly discriminate against people who gave birth or were pregnant, but do not identify as women or mothers. Second, the filicide law should apply not only to the killing of the child born within the year whose gestation and birth were connected to the postpartum mental health condition, but also to criminal acts of violence that the defendant committed in the same event. For example, Andrea Yates experienced an episode of postpartum psychosis in June 2001 because of the effect that her daughter’s birth had on her mental health.²³³ The British Infanticide Act, as written, would require that Andrea be charged with infanticide for her daughter Mary’s death, but with murder for the deaths of her other four children,²³⁴ despite all killings taking place in the same psychotic episode while Andrea was still suffering from the mental condition that the Infanticide Act presumes. The British Act, as written, would also not cover Paulesha Green-Pulliam’s situation because she lost her infant during pregnancy, but still suffered from postpartum mental health conditions.²³⁵ To better cover the range of situations that may arise in filicide cases involving postpartum psychosis, the law should cover any filicide the defendant allegedly commits within twelve months or fewer postpartum.

²²⁹ See Kathleen Chin et al., *Suicide and Maternal Mortality*, 24 CURRENT PSYCHIATRY REPS. 239, 266 (2022).

²³⁰ *Id.*

²³¹ See *Prima*, WEX LEGAL, *supra* note 226.

²³² See *Mens Rea*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/mens_rea [<https://perma.cc/D9RB-P897>].

²³³ See Resnick, *supra* note 65, at 149.

²³⁴ The law only covers the death of a child under twelve-months-old. See Laver, *supra* note 220.

²³⁵ See Kukura, *supra* note 162.

A filicide-specific criminal law would not treat women as uniquely delicate nor in special need of “light” criminal treatment.²³⁶ The law still requires sentences congruent to other murder sentences when prosecutors overcome the presumption that postpartum mental disorder played a role in the filicide. Therefore, this law only mitigates sentences where postpartum mental disorder *did* play a role in the filicide and treatment is proper. Additionally, this law is not creating a baseline that people who give birth are “crazy” or that pregnancy and childbirth *make* one “crazy.” Rather, it creates the presumption that *when filicide occurs* within the postpartum period, more investigation should be done to ensure that a postpartum mental health disorder did not play a role because they are so common. This law destigmatizes postpartum mental health. Instead of sending the message “you’re insane” to all the mothers who shared stories about how they relate to Lindsay Clancy’s experience with postpartum mental health, it sends a different message. This law communicates that these mothers are not alone—the brain changes during pregnancy and childbirth, and that is normal. Therefore, the legal system is doing its due diligence to make sure it seeks treatment for people suffering from a condition that is out of the person’s control and that diminishes their culpability.

A throughline between the Yates, Clancy, Hermosillo, Newell, Merdy, Fleming, and Green-Pulliam cases is that all women were within one-year postpartum. This means that all these mothers allegedly committed the acts they were, or are, accused of during a time when their brain had changed, and during which they were particularly vulnerable to mental disorder. A filicide law modeled after the British Infanticide Act would recognize this throughline and ensure that all these criminal defendants would be tried on a playing field built on science and unaffected by a biased public opinion “gloss.”

CONCLUSION

The complexities of postpartum psychosis do not neatly map on to traditional United States insanity standards. Therefore, when insanity cases based on postpartum psychosis are successful, it is likely that sympathetic public opinion “glosses” the facts of the case to make the claim work. This “gloss,” however, is not evenly applied, and the disparity is clear when the response to the Andrea Yates and Lindsay Clancy cases are compared to other likely postpartum psychosis filicide cases where the defendants are women of color or poor. Just outcomes in postpartum psychosis insanity cases cannot be achieved if the success of an insanity defense is affected by biased

²³⁶ See Michele Connell, *The Postpartum Psychosis Defense and Feminism: More or Less Justice for Women?*, 53 CASE W. RESRV. L. REV. 143, 167 (2002) (referencing criticism of “special treatment” laws arguing that “accommodate[ing] a collective sense that women should be treated lightly for certain crimes” harms women’s rights).

public opinion. Therefore, postpartum psychosis filicide cases should not be tried as murder cases where the defendant can raise an insanity claim. The United States should instead adopt a filicide-specific statute within criminal law that includes a rebuttable presumption that when a defendant commits filicide within twelve-months postpartum, postpartum mental health disorder diminishes their culpability.